

**Romania, ECtHR, Application no. 3891/19, Case of Cînta v. Romania, 18 February 2020**

Member State

 Romania

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Topic

Rule of law- non discrimination and equality before the law

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Deciding Court Original Language

Judecătoria Baia Mare

Tribunalul Maramureş

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Deciding Court English translation

Baia Mare District Court

Maramureş County Court

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Registration N

3891/19

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Date Decision

18 February 2020

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ECLI (if available)

ECLI:CE:ECHR:2020:0218JUD000389119

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ECtHR Jurisprudence

Alajos Kiss v. Hungary, no. 38832/06, 20 May 2010

B. v. Romania (no. 2), no. 1285/03, 19 February 2013

Çam v. Turkey, no. 51500/08, 23 February 2016

D.H. and Others v. the Czech Republic [GC], no. 57325/00, 13 November 2007

D.M.D. v. Romania, no. 23022/13, 3 October 2017

E.B. v. France [GC], no. 43546/02, 22 January 2008

Eberhard and M. v. Slovenia, no. 8673/05 and 9733/05, 1 December 2009

Guberina v. Croatia, no. 23682/13, 22 March 2016

Ignaccolo-Zenide v. Romania, no. 31679/96, 25 January 2000

K. and T. v. Finland [GC], no. 25702/94, 12 July 2001

Kiyutin v. Russia, no. 2700/10, 10 March 2011

Kocherov and Sergeyeva v. Russia, no. 16899/13, 29 March 2016

Molla Sali v. Greece [GC], no. 20452/14, 19 December 2018

S.S. v. Slovenia, no. 40938/16, 30 October 2018

Strand Lobben and Others v. Norway, [GC], no. 37283/13, 10 September 2019

X v. Latvia [GC], no. 27853/09, 26 November 2013

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### Subject Matter

The respondent State did not rebut the presumption of discrimination against the applicant on the grounds of his mental health, in relation to the restrictions imposed by the national Courts on the applicant's contact rights in respect of his four-year-old daughter during divorce and custody proceedings.

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### Legal issue(s)

Non discrimination and equality before the law

The applicant complained that he had been discriminated against on the grounds of his mental illness, in the setting of contact rights with his child. He relied on Article 14 of the Convention, taken together with Article 8, which the applicant also invoked in substance.

The case is the first one against Romania regarding Romanian courts proceedings refusing family rights for the category of parents with mental health issues and at the same time, it raises a systemic issue in Romanian Court proceedings.

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### Request for expedited/PPU procedures

No

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## National Law Sources

Civil Code (Article 262, Article 263, Article 400, Article 401)

Code of Civil Procedure (Article 226, Article 920)

Article 16 of the Constitution

Government Ordinance no. 137/2000 on preventing and punishing all forms of discrimination (Article 1, Article 2 paragraph 1)

The Mental Health Act- Law no. 487 of 11 July 2002 on mental health and the protection of people with mental disorders (Article 41, Article 42)

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## Facts of the case

The applicant lodged an action for an interim injunction with the Baia Mare District Court. He requested that, during the divorce proceedings, the child be returned to the family home to live with him, as she had done since her birth. The child had been moved out of the family home by her mother; both mother and child were living out of the family home. Alternatively, he requested that the Court establishes a contact schedule so that he could spend time with the child in his home, every Tuesday and Thursday from 6 p.m. to 8 p.m. and every other week from 6 p.m. on Fridays to 6 p.m. on Sundays. On 8 August 2018, the applicant's wife acquiesced to allow the applicant contact with their daughter but only on Tuesdays and Thursdays, in public places and in her presence. On 4 September 2018, Baia Mare District Court gave judgment and set weekly contacts between the applicant and his daughter from 6 p.m. to 8 p.m. on Tuesdays and Thursdays only in public places and in the mother's presence. It also set the child's residence with her mother until the end of the divorce proceedings, and ordered the applicant to pay maintenance for his daughter. The applicant lodged an appeal with the Maramureş County Court, complaining mainly that the District Court had relied exclusively on his mental illness (paranoid schizophrenia). On 15 November 2018, Maramureş County Court dismissed the appeal.

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## Reasoning (role of the Charter or other EU, ECHR related legal basis)

The European Social Charter has been mentioned in the Judgment of ECtHR, regarding the specific rights for persons with disabilities, in particular Article 15 (right of persons with disabilities to independence, social integration and participation in the life of the community) and Article E (providing that the rights of the Charter shall be secured without discrimination on any grounds). It has also been mentioned the Recommendation Rec(2006)5 of the Committee of Ministers: "the Council of Europe Action Plan to promote the rights and full participation of persons with disabilities in society: improving the quality of life of persons with disabilities in Europe 2006-2015". The Recommendation included in its appendix the Council of Europe Action Plan 2006-2015. The fundamental goal of the Action Plan was to help member States reinforce anti-discriminatory and human-rights measures to enhance equal opportunities and independence of people with disabilities, to guarantee their freedom of choice, full citizenship and active participation in the life of the community, and to improve their quality of life. It has also been mentioned the Council of Europe Disability Strategy 2017-2023, its goal being that of achieving equality, dignity and equal opportunities for persons with disabilities. As for Article 14 of the Convention, taken together with Article 8, which the applicant also invoked in substance, a prima facie case of discrimination has

been established by the ECtHR. Taking into consideration that the respondent State did not rebut the presumption of discrimination against the applicant on the grounds of his mental health, the ECtHR considered that there had been discrimination. The ECtHR accepted that mental illness may be a relevant factor to be taken into account when assessing parents' capability of caring for their child. It turned out that there had been a difference in treatment from other parents seeking contact with their estranged children. Was justified the difference in treatment? For this reason, the ECtHR examined the reasons provided by the national Courts when giving the Judgment and the Decision. On this point, the ECtHR noted that, at national level, the applicant was perceived as a threat because of his mental illness without further consideration to the concrete circumstances of the case and the family situation. At the time, the national Judgment/Decision were taken, the applicant had been taking his medication regularly and for the previous two years, there had been no episodes of psychiatric decompensation caused by his illness. In this respect, the case differs from the situation examined by the Court in *S.S. v. Slovenia*, where the applicant was divested of her parental rights not based on her psychiatric diagnosis, but on her consequent inability to take care of the child, which had been confirmed by all the expert reports produced in the proceedings. The ECtHR also noted that the national legislation recognise the right to private life and the free exercise of all civil rights to persons with mental disorders. The international standards and recommendations encourage respect for equality, dignity and equal opportunities for persons with mental disabilities. The Court reiterated that mentally-ill persons represented a vulnerable group whose rights required special consideration from the State authorities.

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#### [Connected national caselaw / templates](#)

At the national level, other case regarding Romanian courts proceedings refusing family rights for the category of parents with mental health issues:

File no. 9527/327/2010

Tulcea District Court

Tulcea County Court

Constanța Court of Appeal

After the divorce proceedings, the father of the child lodged an action with the Tulcea District Court and requested that the Court establishes a contact schedule so that he could spend time with his daughter.

The first instance rejected the father's request, taking into consideration his mild cognitive disorders.

Tulcea County Court dismissed the father's appeal for "best interests of the child" considerations.

The second appeal was allowed and Constanța Court of Appeal decided to establish a contact schedule, but only once a month, on Saturday, from 2 p.m. till 4 p.m. at mother's home, in the presence of a psychologist.

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[\(Link to\) full text](#)

[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22%223891/19%22%22\],%22documentcollectionid2%](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22%223891/19%22%22],%22documentcollectionid2%22:)

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. 4 September 2018- Judgment of Baia Mare District Court
  2. 15 November 2018- Final Decision of Maramure? County Court
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