



Romanian authorities should have carried out effective investigation of repeated rape of seven-year-old boy and made sure he had counselling

In today's Chamber judgment in the case [C.A.S. and C.S. v. Romania](#) (application no. 26692/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been a:

Violation of Article 3 (prohibition of inhuman or degrading treatment and effective investigation) and of Article 8 (right to respect for private and family life and the home) of the European Convention on Human Rights.

The case concerned a seven-year-old's complaint that it had taken the authorities five years to investigate his repeated rape by a man, eventually acquitted, who had forced his way into the family flat when the boy had come home alone from school in a period from January to April 1998.

In this judgment, the European Court clearly recognised that States had an obligation under Articles 3 and 8 to ensure the effective criminal investigation of cases involving violence against children. It, moreover, specifically referred to the international obligations² Romania had undertaken for the protection of children against any form of abuse, including helping recovery and social reintegration of victims, and particularly regretted that C.A.S. had never been provided with counselling or been accompanied by a qualified psychologist during the proceedings concerning his rape or afterwards.

Principal facts

The applicants, C.S. and C.A.S., father and son, are Romanian nationals who were born in 1954 and 1990, respectively, and currently live in Iasi (Romania).

In January 1998, C.A.S. was followed home from school by a man, P.E.. P.E. forced his way into the family flat and hit C.A.S. several times in the stomach. His parents still at work, he was stripped naked, gagged and his hands and legs tied up. P.E. then raped him and forced him into oral sex. The aggressor then hit the boy again in the stomach, head and genitalia and warned him at knife-point that he would be killed if he told anyone what had happened.

Over the following months the abuse continued several times a week.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² In 1990 Romania ratified the United Nations Convention on the Rights of the Child and in 2001 the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

Eventually told by his son what was happening, C.S. lodged a complaint with the local police at the end of April, beginning of May 1998.

The police started investigating the case and interviewed numerous witnesses. C.A.S. was questioned on a number of occasions between June 1998 and March 2003 during which he repeated the allegations of rape but gave contradictory statements about whether he had told anyone about the abuse. He also identified P.E. in a line-up. P.E. was interviewed in June 1998 and denied the accusations. However, a lie-detector test showed simulated behaviour when asked whether he had had sexual intercourse with C.A.S. Several other witnesses, including neighbours and acquaintances, stated that they had seen P.E. entering or in the vicinity of the boy's flat during the period in question. One neighbour's adolescent son had seen P.E. entering the flat and had heard the boy scream.

The investigators searched both the applicants' and P.E.'s homes but found no further evidence to support the accusations.

Two medical examinations of the boy were ordered: the first, of 18 May 1998, noted lesions to his anal sphincter; and, the second, of 1 February 2000, concluded that those injuries could only have been caused by repeated sexual abuse.

The investigation was discontinued on three occasions until, in April 2003, the prosecuting authorities committed P.E. to trial for rape and unlawful entry of the victim's home.

The local district court finally acquitted P.E. in May 2004, finding that he had not committed the crimes of which he stood accused. The case was further dismissed on appeal. The courts found that the parties and witnesses had given contradictory statements and were particularly concerned by the fact that, despite being aware of possible abuse (blood stains in the boy's underpants) and odd occurrences around the house (missing food, moved furniture), the parents had waited a long time before going to the police. They further noted that C.A.S. had not given an accurate description of the facts and that he was prone to fantasizing.

Throughout the investigation and prosecution, C.A.S.'s father made numerous complaints about the length of the proceedings. They were all dismissed.

Following the abuse, C.A.S. first changed schools and eventually, in October 2005, the family moved to Iasi on the advice of the school counsellor.

Complaints, procedure and composition of the Court

C.A.S. alleged in particular that the violent sexual abuse to which he had been subjected was of such gravity that it had amounted to torture, and that the proceedings had been slanted, the domestic courts having blamed his parents, and to a certain extent him, for not reacting sooner. He relied on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life and the home). Both applicants further complained under Article 8 that their family life had been destroyed and that they had been forced to leave the town in which they lived to rebuild a normal life. Lastly, relying on Article 6 § 1 (right to a fair trial within a reasonable time), C.A.S. also complained about the outcome and excessive length of the related criminal proceedings.

The application was lodged with the European Court of Human Rights on 11 July 2005.

Judgment was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
 Alvina **Gyulumyan** (Armenia),
 Egbert **Myjer** (the Netherlands),
 Ineta **Ziemele** (Latvia),
 Luis **López Guerra** (Spain),
 Mihai **Poalelungi** (Moldova),
 Kristina **Pardalos** (San Marino), *Judges*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

[Article 3 \(effective investigation into allegations of ill-treatment\) and Article 8 \(effective protection of private and family life\)](#)

The Court noted with concern that, despite the gravity of the allegations and the particular vulnerability of the victim, the investigation had neither been prompt nor effective. Indeed, the authorities had waited three weeks after the complaint of rape had been lodged before ordering a medical examination of the victim, two months before interviewing the main suspect, and, overall, the investigation had lasted five years. Furthermore, seven years after the incident, P.E. had been exonerated without the authorities even trying to find out if there was any other suspect.

Of even further concern in such a case of violent sexual abuse of a minor was that the authorities had not tried to weigh up the conflicting evidence and establish the facts or carry out a rigorous and child-sensitive investigation.

In fact, while the courts had paid no attention to the length of the authorities' investigation, they had attached significant importance to the fact that the family had not reported the crimes immediately to the police and, to a certain extent, that the victim had not reacted sooner. The Court failed to see how the parents' alleged negligence could have any impact on the diligence of the police in their response to the rape of a seven-year-old boy. Nor could it understand why the authorities had not been more aware of the particular vulnerability of the victim and the special psychological factors involved, which could have explained his hesitation in reporting the abuse and describing what had happened to him.

The Court pointed out that States had an obligation under Articles 3 and 8 to ensure the effective criminal investigation of cases involving violence against children, with respect for their best interests being paramount. It was particularly regrettable that C.A.S. had never been given counselling or been accompanied by a qualified psychologist either during the rape proceedings or afterwards.

The failure to adequately respond to allegations of child abuse in this case cast doubt over the effectiveness of the system in place in Romania, in accordance with its international obligations, to protect children from all forms of violence – including helping the recovery and social reintegration of victims. Indeed, it had left the criminal proceedings devoid of any meaning.

The Court therefore held that the authorities had failed to carry out an effective investigation into the allegations of violent sexual abuse of C.A.S. and to ensure adequate protection of his private and family life, in violation of both Articles 3 and 8.

Other articles

Given the findings above, the Court held that there was no need to examine the complaint under Article 6 concerning the length and outcome of the criminal proceedings.

Article 41 (just satisfaction)

The Court held that Romania was to pay C.A.S. 15,000 euros (EUR) in respect of non pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.