



## Romanian authorities' investigation into sexual abuse of three-year old boy was inadequate

In today's Chamber judgment in the case [M. and C. v. Romania](#) (application no. 29032/04), which is not final<sup>1</sup>, the European Court of Human Rights held:

By six votes to one, that there had been **a violation of Article 3 (prohibition of inhuman and degrading treatment – lack of effective investigation) and Article 8 (right to respect for private and family life)** of the European Convention on Human Rights on account of the Romanian authorities' failure in the case to establish and effectively apply a criminal-law system to punish all forms of sexual abuse;

Unanimously, that there had been **no violation of Article 8** of the Convention as concerned the separation of the boy from his mother and her limited contact rights; and,

Unanimously, that there had been **no violation of Article 14 taken together with Article 6** concerning the proceedings brought by the mother to limit the father's contact rights.

The case concerned allegations that a three-year old boy was sexually abused amidst acrimonious proceedings between his parents over custody and contact rights.

### Principal facts

The applicants are C.M. and her son, A.C., Romanian nationals who were born in 1965 and 1994 respectively and live in Saint-Priest, France. C.M. is a Jehovah's Witness.

In December 1994 C.M. filed for divorce from her son's father, D.C., on the grounds of his volatile and violent behaviour. She was granted full custody of their son in February 1995. In July 1995 she brought criminal proceedings against her ex-husband for hitting and threatening to kill her for which he was later convicted and sentenced to six months' imprisonment. The courts held in particular that C.M. lived in fear of her ex-husband and, as a result, repeatedly had to move home with her son. Criminal proceedings for aggressive behaviour were also brought against D.C. both by C.M.'s sister as well as the Jehova Witnesses Congregation.

On 14 July 1998 C.M. lodged a criminal complaint against her former husband, alleging that her son had told her that he had been sexually abused by his father during a visit on 4 July 1998. An investigation was launched during which witnesses were heard and medical and psychological reports were ordered and carried out. Two witnesses stated that they had been told by the boy that he had been sexually assaulted; that they had witnessed D.C.'s violent behaviour towards his ex-wife; and, that they had seen the boy undressing and touching other children. Two medical reports of July and August 1998

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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](http://www.coe.int/t/dghl/monitoring/execution)

noted that the child had lesions in the anal area which could have been caused by a sexual assault. Both parties were heard and took a lie detector test. The father passed the test and was considered sincere when denying that he had sexually abused his son. However, the mother failed on three out of the ten questions relating to whether she had set up or been involved in setting up the assault on her child. In June 1999 the child himself was heard by the police in the presence of his mother, a psychologist and lawyer and in June 2000 a psychologist's report noted that the child had permanent anxiety about his body which indicated possible repeated paternal sexual abuse.

In March 2000 the prosecuting authorities decided not to indict D.C., as the witness statements had mainly been based on the word of a four-year old, who was unable to distinguish reality from fiction, and, of a mother who had failed a lie detector test and was involved in a conflict over child custody. That decision was then quashed in September 2000 and a further investigation was ordered with instructions to look into the medical and psychological reports which corroborated the accusation of sexual abuse. In July 2003 the prosecuting authorities, on the basis of the evidence already in the case file and used to take the decision of March 2000, again decided not to press charges. C.M.'s appeal was ultimately dismissed in March 2004.

On account of the criminal investigation pending against his father and at the request of his mother, A.C. was temporarily placed in care from August 1998 until October 1999. Both parents had weekly contact with the child. The measure was discontinued at the mother's request; they were immediately reunited and continue to live together.

In the meantime, between January 1998 and October 2002, D.C. brought three sets of proceedings in which he applied for custody of his son. All three claims were dismissed, at first on account of his violent behaviour and the negative impact this could have on his son, and subsequently due to the conflict between the parents.

In May 2001 C.M. lodged a civil complaint seeking to limit her ex-husband's contact rights to two visits per month and only in her presence. Her complaint was dismissed at first-instance. The court considered that C.M., a Jehova's Witness, had been consistently determined to end any kind of relationship between her son and his father and that the real reason for this was that D.C. was no longer himself a member of the Jehova's Witnesses. It concluded that C.M. herself could have caused the injuries to her child in an attempt to set her ex-husband up. The courts also dismissed the complaint on appeal in February 2005. They found this time that D.C. had not been convicted of any unlawful behaviour, violent or otherwise, and that the evidence showed that meetings between D.C. and his son had been normal, the child being happy every time he saw his father. In taking this decision the courts took into consideration both the interests of the child as well as the right of the divorced parent without custody to maintain personal ties.

## Complaints, procedure and composition of the Court

C.M. alleged, on her own and her son's behalf, that the Romanian authorities had failed to ensure adequate protection of her son, a minor, from alleged sexual abuse by his father. She also complained about the separation from her child due to his placement in care and her subsequent limited contact rights. The applicants relied in particular on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life). Further relying on Article 6 (right to a fair trial) and Article 14 (prohibition of discrimination), C.M. also alleged that the civil proceedings she had brought on contact rights had been unfairly dismissed on account of her religious beliefs.

The application was lodged with the European Court of Human Rights on 30 July 2004.

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

Josep **Casadevall** (Andorra), *PRESIDENT*,  
 Corneliu **Bîrsan** (Romania),  
 Egbert **Myjer** (the Netherlands),  
 Ján **Šikuta** (Slovakia),  
 Ineta **Ziemele** (Latvia),  
 Nona **Tsotsoria** (Georgia),  
 Kristina **Pardalos** (San Marino), *JUDGES*,

and also Santiago **Quesada**, *SECTION REGISTRAR*.

## Decision of the Court

### Articles 3 and 8

*Whether A.C. had been given adequate protection from sexual abuse*

First, the Court noted that the Romanian authorities had reacted diligently to C.M.'s request to protect her son from his father's alleged sexual abuse by temporarily placing him in care. Moreover, an investigation had been carried out involving all parties with witnesses being heard and expert medical and psychological reports and lie detector tests being ordered and carried out. The Romanian authorities had faced a difficult and sensitive task with conflicting versions of events and little direct evidence. The Court recognised the efforts made by the authorities in their work on the case, with the courts giving reasoned decisions to explain their position in detail.

However, little had been done to actually test the credibility of the parties' or witnesses' versions of events. In particular, no attempt had been made to establish exactly why the child had had inappropriate behaviour towards other children, as witnessed by his carers. Moreover, in their final decision of July 2003 discontinuing the criminal proceedings brought against D.C., the prosecuting authorities had relied exclusively on the evidence already available without observing the further instructions to look into the accusations corroborated by medical and psychological reports. The domestic courts then dismissed C.M.'s complaint against that decision without paying any attention to the question raised by the courts themselves about D.C.'s violent behaviour. Similarly, the authorities could also be criticised for attaching little weight to the particular vulnerability and psychology of the young victim in the case, as shown in the psychologist's report of June 2000. Indeed, although the authorities suspected C.M.'s potential involvement in the abuse, they had failed to examine the possibility of opening a criminal investigation against her. Lastly, the investigation, pending before the prosecuting authorities for a year and ten months with no further evidence being produced in spite of specific instructions to do so, had been significantly delayed.

The Court therefore held that the investigation into the case had fallen short of Romania's obligation to effectively apply the criminal-law system to punish all forms of sexual abuse, in violation of both Articles 3 and 8.

*C.M.'s complaint about separation from her son and limited contact*

The child had been placed in a care home at his mother's request and for a limited amount of time. Contact had been allowed with both parents on a regular basis. The Court therefore considered that the authorities had shown the degree of prudence and vigilance necessary in such a delicate and sensitive situation, and had not done so to the detriment of C.M.'s rights or the superior interests of the child. Consequently, there had been no violation of Article 8 as regards C.M.'s complaint.

## Article 6 § 1 and Article 14

Although the first-instance court had touched upon the fact that C.M. was a Jehovah's witness, their judgment had not been final and there was no evidence that that angle had subsequently been endorsed in any way by the appellate courts. Indeed, the primary concern of the courts when examining the appeal had been the child's best interests, such as whether the meetings between the child and his father had been positive. Other considerations had been the policy of preserving the rights of the divorced parent without custody to maintain personal ties with the child. In sum, nothing in the case suggested that the Romanian courts could have decided differently had it not been for C.M.'s religion. Consequently, the Court held that there had been no violation of Articles 6 or 14.

## Other complaints

Given the findings above, the Court found that there was no need to rule separately on the applicants' other complaints.

## Article 41 (just satisfaction)

The Court held that Romania was to pay 13,000 euros (EUR) in respect of non-pecuniary damage to A.C and EUR 500, jointly to both applicants, for costs and expenses.

## Separate opinion

Judge Egbert Myjer expressed a separate opinion which is annexed to the judgment.

*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.