



## Failure to enforce sentence imposed on sex offender breached Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [E.G. v. Republic of Moldova](#) (application no. 37882/13) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights and a violation of Article 8 (right to respect for private life).**

The case concerned a sexual assault on the applicant in February 2008, and in particular the failure to enforce the sentence imposed on one of her three attackers.

The offender in question had been granted an amnesty while the authorities were still looking for him and he had never served his sentence. The benefit of this amnesty had subsequently been annulled. However, the period of about one year during which he had benefited from the amnesty had enabled him to leave Moldova, shortly before the last annulment decision.

The Court found that the sexual assault on the applicant had constituted a serious breach of her right to protection from bodily harm and mental distress. The measures taken by the State for the enforcement of the offender's sentence had not been sufficient in the light of its obligation to enforce criminal sentences handed down against the perpetrators of sexual assaults. The granting of the amnesty and the authorities' failure to enforce the sentence had been incompatible with the positive obligations of the Moldovan State under Articles 3 and 8 of the Convention.

### Principal facts

The applicant, E.G., is a Romanian national who was born in 1977 and lives in Chisinau (Romania). She has dual Romanian and Moldovan nationality.

On the night of 9-10 February 2008 E.G. was sexually assaulted by three individuals, who were charged by the public prosecutor's office following a complaint filed by the applicant.

In June 2009 a court found the three defendants guilty of sexual assault committed jointly and sentenced them to suspended prison terms. E.G. appealed.

In December 2009 the Chişinău Court of Appeal upheld the lower court's findings, found two of the individuals guilty of committing the offence of gang rape and sentenced them to prison terms of six and five and a half years respectively. It sentenced the third individual to five years' imprisonment for indecent assault. The first two individuals were arrested on the day of the trial. The third was not present at the trial and a wanted notice was issued for his arrest.

In April 2011 the third offender, through his lawyer, applied for a discharge from his sentence under an amnesty law of 2008. His application was granted in May 2012 and then annulled in November 2013.

Subsequently, E.G. sought to find out whether her third attacker was serving his sentence. She was informed that no wanted notice had been issued for his arrest and that no measures had been taken

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).

to find him because neither the public prosecutor's office nor the Court of Appeal had ordered a search for him.

In February 2014 the police issued a wanted notice within the member States of the Commonwealth of Independent States. In April 2015 they issued an international wanted notice. According to the information in the file, the third offender had still not been traced by March 2020.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private life) of the Convention, E.G. alleged that the State had not fulfilled its positive obligations to ensure the effective enforcement of the sentence imposed on her third attacker. In particular she complained of the decision to grant him an amnesty, and in respect of the periods where he did not benefit from the amnesty, of a failure by the authorities to conduct an effective search for him.

The application was lodged with the European Court of Human Rights on 9 May 2013.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,  
Marko **Bošnjak** (Slovenia),  
Aleš **Pejchal** (the Czech Republic),  
Valeriu **Grițco** (the Republic of Moldova),  
Carlo **Ranzoni** (Liechtenstein),  
Pauline **Koskelo** (Finland),  
Saadet **Yüksel** (Turkey),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

## Decision of the Court

### Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life)

The Court began by reiterating that rape and serious sexual assault amounted to treatment falling within the ambit of Article 3 of the Convention, and that these offences also typically implicated fundamental values and essential aspects of "private life" within the meaning of Article 8 of the Convention<sup>2</sup>. It further reiterated that States had a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions that effectively punished rape and to apply them in practice through effective investigation and prosecution. This positive obligation also required the penalising and effective prosecution of any non-consensual sexual act<sup>3</sup>.

The Court noted that the third offender had been sentenced to five years' imprisonment, for indecently assaulting the applicant, and that this decision had become enforceable on 2 December 2009, but that it had not been enforced to date. It further observed that, on 22 May 2012, the applicant had been granted an amnesty even though he was wanted by the authorities and had not served any of his sentence. In this connection, the Court had previously found that amnesties and pardons should not be tolerated in cases of torture or ill-treatment by State agents. The Court confirmed that this principle also applied to acts of violence committed by private individuals. However, it reiterated that amnesties and pardons were essentially a matter for the domestic law of the member States and that, in principle, they were not incompatible with international law, except

<sup>2</sup> *Y c. Bulgarie*, n° 41990/18, §§ 63-64, 20 février 2020 et les affaires qui y sont citées.

<sup>3</sup> *M.G.C. c. Roumanie*, n° 61495/11, § 59, 15 mars 2016, et *Z c. Bulgarie*, n° 39257/17, § 67, 28 mai 2020.

where they concerned acts which constituted serious violations of fundamental human rights. The sexual assault committed against the applicant had constituted a serious breach of her right to protection from bodily harm and mental distress, and the granting of an amnesty to one of the perpetrators of that assault was, in the particular circumstances of the case, at odds with the State's obligations under Articles 3 and 8 of the Convention.

The Court also noted that there was no uniform practice of the Chişinău Court of Appeal in relation to the application of the 2008 Amnesty Law. In particular, one of the other attackers (who was in a similar situation to the third assailant and had already served part of his sentence) had been denied the benefit of the amnesty. The Court therefore considered that, in the case of the third offender, the judges of the Court of Appeal had exercised their discretion in minimising the consequences of an extremely serious illegal act rather than showing that such acts could not be tolerated in any way. Whilst the granting of the amnesty had ultimately been annulled, the fact that he had benefited from it for a total period of approximately one year was at odds with the procedural requirements of Articles 3 and 8 of the Convention, particularly so as it had enabled him to leave Moldova shortly before the adoption of the last decision annulling the benefit of the amnesty.

As to the question whether the measures adopted by the authorities to enforce the third offender's sentence, outside the periods when the amnesty was applicable, were sufficient, the Court observed that the State authorities appeared to have disregarded the first decision, in June 2012, to annul the benefit of the amnesty. They had arrested him on 22 October 2012, but had released him that same day on the basis of the May 2012 decision, which had already been annulled and which no longer had force of law at that time. The Court saw this as, at best, a lack of coordination between the different State services, resulting in the offender's release without a valid legal basis.

The Court further noted that the last decision to annul the benefit of the amnesty, taken on 18 November 2013, had been transmitted to the authority competent to conduct the search for the offender more than two months after its adoption. It took note of the opinion of the public prosecutor's office that this time-frame had not complied with domestic rules. Even though it had subsequently been established that the offender had left the country before 18 November 2013, the Court was of the view that the issuance by the authorities of their wanted notice within the Commonwealth of Independent States must have been delayed accordingly. Moreover, the international wanted notice had not been issued until 2015 and there was no explanation in the file for this delay. These delays were inconsistent with the requirement of reasonable diligence and expedition.

Consequently, the measures taken by the State for the enforcement of the third offender's sentence had not been sufficient in the light of its obligation to enforce criminal sentences handed down against the perpetrators of sexual assaults. The granting of an amnesty to the offender and the authorities' failure to enforce his sentence had been incompatible with the positive obligations of the Moldovan State under Articles 3 and 8 of the Convention. There had thus been a violation of these Articles.

### Just satisfaction (Article 41)

The Court held that the Republic of Moldova was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,820 in respect of costs and expenses.

*The judgment is available only in French.*

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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.