

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF STOIAN v. ROMANIA

(Application no. 289/14)

JUDGMENT

STRASBOURG

25 June 2019

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Stoian v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Faris Vehabović, *President,*
Iulia Antoanella Motoc,
Péter Paczolay, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 4 June 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 289/14) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Romanian nationals, Mr Ștefan-Moshe Stoian ("the first applicant") and Mrs Luminiţa Stoian ("the second applicant"), on 19 December 2013.

2. The applicants were represented by Mr C. Cojocariu and Ms C.M. Radulescu, lawyers practising in Orpington and Bucharest respectively. The Romanian Government ("the Government") were represented by their Agent, most recently Mr V. Mocanu, of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that the first applicant, who is wheelchair-bound, did not have access to his physical environment and in particular to the school premises, that no reasonable accommodation had been made for him despite his condition, and that both applicants had been victims of ill-treatment and lacked an effective remedy by which to bring their grievances before the domestic authorities.

4. On 11 July 2014 and 14 June 2017 the Government were given notice of the application.

5. The Council of Europe Commissioner for Human Rights ("the Commissioner") exercised his right to intervene in the proceedings and submitted written comments (Article 36 § 3 of the Convention and Rule 44 § 2 of the Rules of Court). Third-party comments were received from the Mental Disability Advocacy Center (MDAC); the UN Special Rapporteur on the rights of persons with disabilities; Amnesty International; the International Disability Alliance (IDA), the European Disability Forum (EDF) and the *Consiliul National al Dizabilităţii din România* (CNDR) (grouped observations); Inclusion International and Inclusion Europe (grouped observations); the *Centrul European pentru Drepturile Copiilor cu Dizabilităţi* (CEDCD); and the Regional Network for Inclusive Education Latin America (RREI Latinoamerica). These non-governmental

organisations (NGOs) were all given leave by the President to intervene in the proceedings (Article 36 § 2 of the Convention and Rule 44 § 3).

6. The parties replied to those comments (Rule 44 § 6).

7. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 2001 and 1967 respectively and live in Bucharest.

A. The applicants' background

9. The first applicant is the second applicant's son.

10. The first applicant has spastic quadriplegia, a medical condition characterised by impaired function in the limbs but which does not affect his mental capacities. From the age of one, he was registered as having a severe disability (*grad de handicap sever*) requiring a personal assistant.

11. Owing to his disability, the first applicant has undergone complex and ongoing medical treatment aimed at maintaining the mobility of his limbs and compensating for abnormalities in muscle tone. He has undergone regular surgery, has been admitted on several occasions to rehabilitation clinics in Romania and Ukraine, has undergone neurological and orthopaedic tests in Israel and is under constant physiotherapy. He relies on assistive devices to walk, including electric wheelchairs, mopeds and tricycles. His health is monitored at M.C. Children's Hospital in Bucharest. In January 2011 the first applicant underwent significant surgical interventions which left him wheelchair-bound.

12. The second applicant is a single parent and sole breadwinner.

13. When the first applicant reached school age, the authorities assessed his situation and recommended that he attend a mainstream school (report of 25 October 2007, see paragraph 35 below). The recommendation was maintained in all subsequent assessments.

14. On 8 February 2013 the Bucharest Directorate General for Social Welfare and Child Protection (*Direcţia Generală de Asistenţă Socială şi Protecţia Copilului*, "the child protection authority") drafted a plan for the first applicant's physical rehabilitation. It listed the rights provided for by law, such as the right to special allowances, free public transport, parking in spaces reserved for people with disabilities, physiotherapy, and special

arrangements at school such as a specially adapted curriculum and methods of testing, appropriate physical education, appropriate facilities in the school building to ensure accessibility, and assistance from a school nurse. It recommended that a personal assistant be hired by its Human Resources Department and that the accessibility of public infrastructure be improved (accessibility of kerbs, pedestrian crossings and pathways, public transport stations and parks).

15. The first applicant attended several schools:

(a) In 2004 the first applicant was enrolled in nursery school but, according to the second applicant, he was forced to leave after only three days, when the school manager informed the mother that her institution "[did] not do handicap".

(b) From 2007 to April 2013 the first applicant attended classes at school no. 131, a mainstream educational facility for primary and secondary education (children aged six to fourteen). The school building was located sixty metres from the applicants' home. The applicants argued that the school did not offer adequate conditions despite the authorities' reassurance and the applicants' continuous efforts.

(c) In the academic year 2013/14 the first applicant attended school no. 148 where, according to the applicants' submissions, the conditions and the support were acceptable.

(d) In October 2015 he started classes in "Mihai Eminescu" High School ("M.E. School") where he remained until 2017. The applicants complained about the conditions in this school.

(e) On 30 August 2017 the first applicant moved to a private school for the second-last year of high school. In April 2018, the date of the latest communication to the Court from the applicants, he was still attending this school.

B. Accessibility of school premises

1. The applicants' version

(a) School no. 131

16. The applicants' description of the situation concerns the academic years 2011/12 and 2012/13. When the first applicant started school, the school building had no facilities for disabled students. A new gate had to be pierced in the fence facing the street where the applicants lived and a concrete strip was laid leading to the students' entrance in the main building. The toilets were not equipped for disabled children and a cubicle was improvised in the girls' toilet on the first floor. Later, in 2013, a special toilet on the ground floor was equipped for the needs of children with disabilities, but the first applicant still required support when using it. The sports facilities were not adapted for the use of disabled children and the

first applicant could neither take part in class sports activities nor do the exercises recommended by his physicians in order to help with his muscle tone.

17. The second applicant alleged that, at her own expense, she had arranged for small adjustments to be made to the classroom and toilet, such as rails on the walls, to facilitate her son's movements.

18. Because there were no access ramps in the school, the first applicant could not on his own reach the upper floors of the building, where some important facilities were located such as the doctor's office, the psychologist's office, the laboratories and the after-school care facilities. The second applicant had to spend significant amounts of time at the school carrying him and the walking devices to the upper floors, and helping him go to the toilet, do the mandatory physical exercise recommended by his physicians and carry his school books, lunchbox and other items. In the first applicant's first four years at school, in addition to his mother's support, his classmates or the school staff also helped him with some of these tasks.

19. The absence of adequate medical personnel at the school and the lack of access to medical facilities during school hours contributed to the worsening of the first applicant's physical condition. The benefits he gained from surgery were lost and he became less autonomous and more reliant on support from others.

20. Because of the lack of accessibility of public buildings, the first applicant could not be included in some of the school activities, such as outings. No alternative activities were provided for him. The second applicant's attempts to have extracurricular activities arranged for her son remained futile; for example, although the child was admitted to piano lessons, the building housing the piano club was inaccessible to wheelchairs.

21. In time the situation generated tensions between, on the one hand, the applicants and, on the other hand, the school staff, the other children and their parents.

(b) M.E. School

22. According to the applicants, the school building was not adapted for the needs of children with disabilities and its premises remained mostly inaccessible. In the absence of any support in school, the second applicant had to physically carry her son on a daily basis around the school building and to the upper floors where the science laboratory and the gym were situated. The school also failed to provide for his basic needs such as personal and intimate care, feeding and moving around. He was often abandoned unassisted in the school corridors.

23. The applicants submitted that during the first applicant's stay in M.E. School, the authorities had failed to devise and implement an individualised educational plan. The teaching, testing and curriculum had

not been adapted to his situation and some of the school teachers had openly refused to adapt their routine to his needs or had asked that he be sent to a special school, an attitude which had been tolerated by the school administration.

2. The Government's version

(a) School no. 131

24. Based on the information provided by the management of school no. 131 and the local administration, the Government gave a different account of the situation. They explained that from the time of his enrolment in the school, the needs of the first applicant had always been taken into account.

25. In September 2008 the school administration contacted the Bucharest Schools Inspectorate (*Inspectoratul Şcolar al Municipiului Bucureşti*, "the ISMB"), in order to seek financial help to adapt the school premises to the first applicant's needs.

26. During 2012 and 2013 the school buildings were rendered more accessible to wheelchairs. In particular, an access ramp was installed; one toilet cubicle was equipped with an alarm bell linked directly to the school secretariat; the yard was asphalted; the nurse's office was moved to the ground floor, next to the first applicant's classroom; the first applicant was provided with specially adapted desks in the classroom; and an air-conditioning unit was placed in the classroom.

27. On 7 April 2014 an ISMB internal audit concluded, after verifying the school documents, that the entire cost of the work had been met from the school's budget.

28. The first applicant was able to use the toilet facilities but because of the deterioration of his general health he was sometimes unable to reach the toilets on time. The school personnel helped with all aspects of his personal and intimate care and offered fresh clothes when his mother did not want to provide clean changes.

29. The child did not return to school after 3 April 2013 (see paragraph 69 below). From the official documents it appears that from 7 to 24 May 2013 the first applicant received medical treatment in Băile Felix Hospital and attended classes in the nearby Oradea School Centre for Inclusive Education. According to the Government, the second applicant did not inform the administration of school no. 131 about this situation and continued to complain that she and her son were being denied access to the school premises.

(b) M.E. School

30. Starting with the 2015/16 school year the first applicant attended classes in M.E. School. At that time, the building was partially accessible: it

was equipped with an access ramp, had classrooms on the ground floor, and had access in the yard for a specially adapted car.

31. On 9 September 2015, as soon as it was informed of the first applicant's transfer, the M.E. School administration asked the local authorities for help in installing an accessible toilet and a lift, acquiring a computer with specially adapted software, and creating a medical office and a library on the ground floor.

32. According to the information provided by the authorities, in March 2016 the school building had two access ramps, two reserved parking places for people with disabilities, a classroom on the ground floor, and a specially adapted desk in the first applicant's classroom.

33. The school was unable to negotiate the acquisition of a lift during the 2015/16 school year. According to the information presented by the local authorities, the second applicant refused several options proposed to her. Eventually, the school administration managed to purchase a stairlift which was installed on 21 November 2016. On the same day the school personnel were trained in how to operate it.

34. On several occasions the second applicant brought her son into school without a wheelchair by carrying him on her back (on 3-5 February and on 3 and 18 March 2016) and left him without any means of moving around the school premises. According to the Government, at that time the school was accessible with a wheelchair, the first applicant had a specially adapted desk in his classroom and his transport to and from school was taken care of by the foundation "Motivation". On other occasions the second applicant refused to let the child stay in school as he did not have a personal assistant.

C. Educational support in school

1. School no. 131

35. On 25 October 2007 the child protection authority recommended that the first applicant attend classes in school no. 131 and be given the assistance of a support teacher (*professor de sprijin*). The recommendation was reiterated on 25 August 2011 in relation to secondary education.

36. The school adapted the timetable and testing methods to the first applicant's needs. The child was entitled to a 50% increase in the time allotted for written exams and was partly exempted from attending school. In addition, the school offered the first applicant the possibility to attend classes via Skype during periods when he needed to be away from school for medical reasons.

2. M.E. School

37. From 22 September 2015 M.A. was assigned as a support teacher for the first applicant. On 7 December 2015 M.A. drafted a personal intervention plan detailing the subjects that the first applicant would take in school and the specially adapted teaching methods. On the same day M.A. informed her superiors of the difficulties she had with the second applicant, who had asked her not to work with her son and had tried to dictate to her which subjects to exclude from her son's curriculum.

38. On 11 December 2015 M.A. was replaced by D.C., who on 4 March 2016 presented a new intervention plan which was accepted by the majority of the first applicant's teachers. D.C. continued to assist the first applicant in the school year 2016/17, and on 15 September 2016 drafted a new intervention plan which was accepted by most of the teachers. According to the documents in the file, the second applicant refused any communication with D.C. and did not participate in any of the meetings organised by D.C. with the school staff in order to discuss the first applicant's development and needs.

39. After the adoption of decision no. 913 of 25 July 2016 (see paragraph 63 below), the authorities put in place a system for providing the first applicant with support and assistance in school. Specifically, in September 2016 the child protection authority designated for this task several professionals working in a centre for abused children who had experience in working with children. According to the Government, they encountered difficulties with the second applicant, who on occasions refused to leave the child at school, refused to explain the reason for his absence or verbally abused the representatives of the child protection authority.

40. The first applicant did not attend school daily and was absent on several occasions, sometimes for long periods of time. He also attended other schools in the towns where he was hospitalised for treatment or rehabilitation. According to the report drafted by the support teacher, the first applicant's long absences from school, as well as the second applicant's attitude, had a negative impact on the first applicant's education.

D. Therapy in school

1. School no. 131

41. The first applicant's physicians set out recommendations for the school and other authorities regarding the child's medical needs, emphasising the importance of regular physiotherapy and occupational therapy, including during school hours. They advised against keeping the patient in the same position for long periods of time, as that could cause muscle rigidity and discomfort, thus compromising his rehabilitation and, in

time, leading to deformities. They recommended that the child alternate periodically between sitting and standing up.

42. In November 2012 a physiotherapist was assigned to come to the school to work with the first applicant, and the school reserved a space in the gym room for the physiotherapy sessions. During the second term of the 2012/13 school year, the physiotherapist and the first applicant met for three sessions of one hour each.

43. At the beginning of the 2011/12 school year the school requested that it be provided with a physiotherapist, a nurse and a medical assistant.

44. It appears from the information provided by the Government that the second applicant failed to provide the school with the medical information concerning the first applicant's needs in terms of physical recuperation. The physical education teacher created a special programme for the child despite not being acquainted with the precise medical recommendations. The second applicant refused to bring the child to his sessions.

45. The school also arranged psychological counselling for the applicants, which was not pursued as the second applicant stopped bringing the child to the meetings.

2. M.E. School

46. During the 2015/16 school year the first applicant received weekly sessions of speech therapy and educational therapy during the periods when he attended school. In the next school year the sessions were discontinued because the second applicant refused to give her assent.

47. The first applicant could not receive physiotherapy in school as his mother refused to allow him to participate in any session which did not take place in the school gymnasium. She also omitted to present the medical certificates that were required in order for the therapist to adapt the sessions to the first applicant's needs.

E. Personal assistant

48. In 2011 the second applicant asked the authorities to appoint a personal assistant for her son to provide him with support, in particular during school hours. She explained that she could not act as his personal assistant as she had to work for a living. On 15 September 2011 the school administration also informed the child protection authority that in the absence of a personal assistant the first applicant could not safely continue his studies in a mainstream school.

49. According to the applicants, the child protection authority initially denied that the first applicant had the right to a personal assistant, then considered the second applicant to be the child's personal assistant.

50. In a judgment of 19 July 2011 (case no. 8249/3/2011), the Bucharest County Court (hereinafter "the County Court") partly allowed an action

brought by the second applicant against various authorities concerning the manner in which they had dealt with her son's situation. The court observed that the rehabilitation plan had not been drawn up in accordance with the legal requirements, in particular because the second applicant had not been involved in the process and the plan had not included all the services required by the child and had not taken into account his particular needs. It therefore ordered the child protection authority to supplement the plan according to the court's instructions. Furthermore, the court noted that it was not objectively impossible for the authorities to hire a personal assistant for the first applicant. It therefore ordered the child protection authority to identify a suitable person and to make a proposal to the city council, which in turn was ordered to provide the necessary funds from its budget to cover the salary of the personal assistant. The decision was upheld by the Bucharest Court of Appeal in a final decision of 9 April 2012.

51. On 19 October 2011 the second applicant asked school no. 131 to hire a nurse who could assist her son with his needs, as an alternative to the appointment of a personal assistant, but no such appointment was made during the first applicant's stay in this school (see paragraph 15 above).

52. According to the information transmitted by the Government, between 2011 and 2014 the child protection authorities organised several interviews in order to find a suitable personal assistant for the first applicant. Eventually, on 23 May 2014 the child protection authority hired a personal assistant. On 17 September 2014 that person resigned, on the ground that the second applicant had asked her to perform tasks which were not consistent with her job description.

53. On 29 January 2015 the second applicant informed the authorities that she insisted that a personal assistant be hired. Three individuals expressed an interest in the position and were approved by the second applicant. However, one refused to sign the contract as he considered the second applicant's attitude towards him to be abusive and offensive; he explained that the second applicant had asked him to wash dishes and clean the house, tasks which had not been in his job description, and had then accused him of wanting to harm her son. The other candidates took the job on a part-time basis starting on 1 September 2015. One had to leave on 16 December 2015 as his visa was not extended, and the other resigned for health reasons on 27 January 2016.

54. In January 2016 the authorities started the process of finding a new personal assistant, working in close contact with various non-governmental organisations involved in the protection of disabled persons.

F. Complaints and litigation

55. The second applicant lodged several complaints with the administrative authorities, with the National Council against Discrimination

(*Consiliul Naţional pentru Combaterea Discriminării*, "the NCAD") (at least six cases lodged directly with this authority and continued before the courts), with the courts (at least five applications lodged directly with the courts) and with the prosecutor's office (at least sixteen complaints have been investigated so far by the prosecutor's office). These complaints mainly concerned the alleged lack of services for her son, both in school and outside school, and the manner in which the competent authorities handling his case had discharged their obligation to support the first applicant and to adapt the infrastructure to the needs of people with disabilities, and in particular to the first applicant's needs.

1. Request for a performance order (court case no. 14001/3/2014)

56. The case concerned an application lodged by the applicants on 24 April 2014 against the authorities with responsibility for assisting the applicants with matters concerning disability and education, namely the Bucharest Centre for Resources and Educational Assistance (*Centrul Municipiului Bucureşti de Resurse şi Asistenţă Educaţională*, "the CMBRAE"), the Bucharest local council of the fourth precinct, which was responsible for M.E. School ("the Bucharest IV local council"), the Bucharest local council of the fifth precinct, which was responsible for school no. 131 ("the Bucharest V local council"), the child protection authority, the Commission for Child Protection (an authority created at local level under Law no. 272/2004 on the protection and promotion of children's rights), the ISMB, and the NCAD. The applicants sought to compel these authorities to re-evaluate the first applicant's educational placement, to provide support in school, to adapt the school premises to the first applicant's needs, and to grant compensation for the harm suffered by the child in school.

57. On 30 June 2014 and 13 and 20 August 2015 the applicants extended their action and on the last-mentioned date asked the court to ensure that the same hardship would not continue also in M.E. School. On 25 November 2014 the Administrative Disputes Division of the County Court sent the case to the Civil Division of the same court and on 23 June 2015 the case was sent to a bench of the Civil Division specialising in children's rights.

58. In a decision of 10 June 2016 the County Court found partly in favour of the applicants and ordered the local authorities to take several actions, in accordance with their remit:

(a) It ordered the CMBRAE to issue a new personalised intervention plan (*plan de intervenţie personalizat*); it also noted that the first applicant was already allowed extended work time during tests in class and had a specially adapted desk, but considered that those measures, while being necessary, were not sufficient.

(b) The court ordered the CMBRAE and the ISMB to adapt the school curriculum and the educational plans to the first applicant's needs, finding as follows:

> "While in the special education [curriculum] the educational plans and school curriculum are tailored to the type and degree of disability, thus allowing time for therapy ..., in mainstream schools this kind of adaptation does not exist.
>
> However, in the present case the child, who was placed in a mainstream school, has a normally developed intellect but has a neuromotor disability which drastically limits his movement ... A daily school programme of 6-7 hours goes against the medical recommendations ... and limits his opportunities to undergo therapy."

(c) It ordered the ISMB and the child protection authority to continue to provide the first applicant with psycho-educational assistance and a safe environment in school, in terms of the physical surroundings and specialist personnel. The court found as follows:

> "The current legislation provides for measures capable of ensuring the integration of children with disabilities in school and in society, notably special educational services via the support teacher, speech therapy and psycho-educational counselling. ...
>
> The personal rehabilitation plan drafted by the child protection authority [for the first applicant] provided for such services: physiotherapy, speech therapy and psychological counselling. ....
>
> Based on the parties' statements, the court finds that the authorities involved did not refuse to provide the child with the services that he was entitled to under the law and which were included in his personal rehabilitation plan; [what they refused were] merely the conditions imposed by the mother that [the services] should be provided on the school premises ...
>
> However, in order to meet the child's complex needs and ensure that he had access to all services, the authorities, in addition to the psycho-educational counselling offered by the school psychologist, organised speech therapy and physiotherapy in his school.
>
> For these reasons, the [applicants'] action is allowed and the institutions involved are ordered to take measures to ensure the continuity of services in terms of personnel, but also in terms of the physical environment and the necessary equipment."

(d) The court ordered the ISMB, the child protection authority, the Bucharest V local council and the Bucharest IV local council to take measures to ensure the child's assistance and safety in school, via teachers, school auxiliary staff, a personal assistant or a qualified caregiver. The court found as follows:

> "The services provided in school to assist [the first applicant], provided by psychologists, speech therapists, school counsellors, support teachers, physiotherapists, etc., are necessary in order to ensure the effectiveness of the child's recuperation and therapy, but do not fully meet the child's complex needs during school time.
>
> ... the child has severe neuromotor disabilities which make it impossible for him to move, to walk, to help himself, to take notes in class, etc., and which consequently make it necessary for him to be assisted by another person who can move him, as

needed, from the wheelchair or assistive devices to his desk and back; help him move around the school (take charge of him at the school door, accompany him back to the door at the end of the school day, and take him to the toilet, the sports room, and the laboratories which are on the upper floor); help him with taking notes during lessons and writing down the homework; assist him with physical exercises; assist him in the event of an emergency evacuation, etc. ...

Concerning the presence of a nurse [*infirmier*] the court notes that, although the law requires that children with disabilities be integrated in mainstream schools, the schools' structure does not include qualified staff who can meet the complex needs of a child with severe neuromotor disabilities that limit or exclude the child's capacity to move or to help himself.

The absence of assistance ... makes it impossible for the child to attend school and affects ... his right to education ...

The personal assistant not only acts as an accompanying adult for a child with severe disabilities but must also provide basic care (personal hygiene, dressing and undressing, personal and intimate care, feeding, hydration, transport, mobility and movement, etc.), assist in the child's family, community, and school activities, and assist in the child's school and with his or her educational integration.

There is nothing to prevent the [child protection authority] and the Bucharest V local council from including these activities in the personal assistant's contract ...

Therefore the court considers that, in principle, the assistance, supervision and safety of the child during school hours must be ensured by his personal assistant or in the latter's absence ... by a person approved and nominated for the purpose by the parent ...

For the same reason, the ISMB and the Bucharest IV local council ... must take measures in order to ensure the child's effective access to education and his supervision and safety. ...

As the court thus considers that the child's action is well-founded on this count, it orders the ISMB, the child protection authority and the Bucharest IV and V local councils to take measures in order to ensure the child's supervision and safety in school, via the teachers or auxiliary staff, his personal assistant or a qualified caregiver."

(e) The court ordered the ISMB and the Bucharest IV local council to ensure the first applicant's access to education by rendering the school building accessible by wheelchair, in particular by: providing specially adapted desks in the classroom and laboratories; ensuring access to the upper floors of the school building; removing the obstacles preventing the first applicant from moving around the school, such as thresholds and narrow doors; adapting the sports room to the child's needs; and providing him with a computer and software adapted to his educational needs. The court noted that on 28 October 2015, at its request, the authorities had met with the applicants in order to listen to their demands and agree on solutions. It took note of the fact that at the date of the meeting, in M.E. School, there had been two reserved parking places and a toilet adapted to the first applicant's needs.

59. At the same time, the District Court dismissed the applicants' request for reimbursement of the costs incurred in respect of transport to and from school with their own vehicles, on the grounds that they received financial assistance from the State in the form of free public transport and an annual lump sum for costs, which was meant to cover transport as well.

60. Lastly, with regard to the request for non-pecuniary damage on account of the discrimination suffered by the applicants because of the authorities' attitude towards them, the District Court separated the issue from the main proceedings and created case no. 22624/3/2016. In a final decision of 31 May 2018 in that case, the Bucharest Court of Appeal ordered the ISMB, the CMBRAE and the Bucharest V local council to pay the applicants 7,500 Romanian lei (RON)[1] in respect of non-pecuniary damage.

61. In a final decision of 7 February 2018 the Bucharest Court of Appeal examined the appeals lodged by the parties against the decision of 10 June 2016. It amended the County Court's decision so that the authorities' obligations applied only for as long as the first applicant attended classes in a mainstream school, but dismissed the remaining appeals.

62. On 5 April 2018 the applicants started enforcement proceedings through the offices of a bailiff.

2. Interim injunction (ordonanţă preşedenţială) – case no. 16673/3/2016

63. In decision no. 913 of 25 July 2016 the County Court ordered the authorities to appoint a person to assist the first applicant in school until the decision of 10 June 2016 became final (see paragraph 58 above).

64. On 28 November 2016 the bailiff ordered the authorities to comply with the court order and to pay the applicants the costs of the enforcement proceedings.

65. The Bucharest IV local council contested the enforcement proceedings, arguing that the council had already complied with the court order in so far as, when the school year had started on 12 September 2016, a person had been appointed to assist the first applicant in school. The council explained that the person appointed to assist the first applicant had been replaced on several occasions because of disagreements with the second applicant, but argued that the mere fact that the second applicant was dissatisfied with these persons could not be regarded as a failure on the part of the authorities to comply with the court order.

66. In a judgment of 2 March 2017 the Bucharest District Court dismissed the objection and found as follows:

1. About EUR 1,600.

> "It appears that the minor, Stoian Ștefan Moshe, was unable to benefit from the measures ordered by the court not only because of the poor cooperation between his legal representative and the ... authorities, but also because of the bureaucratic mechanism for implementing the measures and the manner in which responsibilities in this sphere are shared between the authorities concerned.
>
> The court considers that there is no evidence that the minor's legal representative refused enforcement of the obligations laid down in the court order."

67. On 25 April 2017 the District Court dismissed an objection to enforcement in which the ISMB and the CMBRAE also claimed that they had already complied with the court order. The court found as follows:

> "The assertions made by the objecting parties – that at the date on which the enforcement request was lodged they had already complied with the obligations laid down in the court decision – is contradicted by the facts, as the child's school situation is still uncertain in so far as he still does not benefit in school from the conditions set by that court decision."

68. On 23 January 2018 the District Court noted that the authorities had not fully complied with their obligation under the interim injunction of 25 July 2016 and that all the objections to enforcement had been dismissed. Consequently, it ordered each of those authorities to pay RON 200 for each day of delay in enforcement.

G. Incident of 3 April 2013

69. On 3 April 2013 the second applicant had a dispute in school with her son's teacher, during the lesson. The class teacher asked her to leave the classroom, warning her that her presence was no longer tolerated and that the authorities had been alerted. The second applicant refused to leave and was eventually removed by force by two police officers and taken to the police station. She was given a formal warning for refusing to leave the school premises. She left the police station three hours later and went back to the school to collect her son. According to the Government, during the second applicant's stay in the police station, the first applicant remained in school, in the presence of the school nurse and a teacher on duty.

70. On 31 May 2013 the applicants filed a criminal complaint about the incidents. The school headmaster, supported by parents' statements, also lodged a complaint against the second applicant, alleging that she had repeatedly disturbed the learning process. The second applicant and the school headmaster gave statements to the police. On 4 April 2017 the prosecutor's office attached to the Bucharest District Court closed the investigation. It found, based on the evidence in the file, that the force used by the police officers had been necessary in order to put an end to the second applicant's disruptive behaviour and had been proportionate to her reactions. It observed that the second applicant had disturbed lessons and had refused to leave the classroom, to show her identity papers to the police

and to accompany the police officers to the police station. The prosecutor concluded that the injuries suffered by the second applicant had been the result of the use of force and of her own opposition to the police officers' actions. On 18 October 2017 the objection lodged by the applicants against the prosecutor's decision was dismissed as out of time by the chief prosecutor from the same prosecutor's office. The applicants' appeal was subsequently dismissed by the Bucharest District Court (final decision of 11 December 2017).

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

71. The relevant domestic law and practice are described in *Gherghina v. Romania* ((dec.) [GC], no. 42219/7, §§ 34-56, ECHR 2015).

72. The relevant international materials are described in *Çam v. Turkey*, no. 51500/08, §§ 37-38, 23 February 2016, and *Guberina v. Croatia*, no. 23682/13, §§ 34-42, ECHR 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL No. 1 TO THE CONVENTION TAKEN ALONE OR TOGETHER WITH ARTICLE 14 OF THE CONVENTION

73. The applicants mainly complained that the authorities had failed to take the requisite measures in compliance with their obligations under national law and the Convention to ensure that the first applicant's physical integrity and dignity were respected at school and that he enjoyed the right to quality education without discrimination. They relied on Articles 3, 8, 13 and 14 of the Convention, on Article 2 of Protocol No. 1 to the Convention and on Article 1 of Protocol No. 12 to the Convention.

74. The Court, which is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), will examine these complaints from the standpoint of Article 8 of the Convention and Article 2 of Protocol No. 1, read alone and in conjunction with Article 14 of the Convention (see *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 59, ECHR 2015). The provisions in question read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 2 of Protocol No. 1

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

A. Admissibility

1. The parties' observations

75. The Government argued that the applicants had failed to exhaust domestic remedies. They pointed out that several relevant sets of proceedings were still pending when the observations had been submitted, on 23 December 2014 and 1 September 2017 respectively. Moreover, they considered that the length of the proceedings in case no. 14001/3/2014 (see paragraph 56 above) had been reasonable and did not render the remedy ineffective in practice, in so far as the applicants had raised several additional complaints throughout the proceedings and during those proceedings had successfully made use of the interim injunction procedure (see paragraph 63 above).

76. The applicants argued that the length of the proceedings initiated by them rendered those remedies ineffective, at least in practice.

2. The Court's assessment

77. The Court makes reference to the general principles it has developed in its case-law concerning the exhaustion of domestic remedies (see *Gherghina*, cited above, §§ 83-89).

78. The Court considers that the Government's objection is closely linked to the substance of this complaint and decides accordingly to join it to the merits.

79. The Court also notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' observations

(a) The applicants

80. The applicants reiterated that the State authorities had an obligation to adapt mainstream schools in order to include children with disabilities. However, despite the abundant legislation on the matter, the situation remained confusing, with multiple authorities that had overlapping responsibilities and were insufficiently regulated, with the result that children integrated in mainstream schools did not get the support they were formally entitled to. The applicants also argued that the assistance received by the first applicant in school had been superficial and that the schools lacked specially adapted curricula and timetables and had been unable to provide him with the proper therapy and assistance despite the court decisions ordering them to do so, which remained unenforced.

81. The applicants contended that the concessions made to the first applicant in school, as well as the good grades he received, were mainly meant to keep him busy in class in the absence of individualised assistance from the teacher. For instance, they submitted that the first applicant had been allowed to use his tablet in class, but that the teacher never verified that he was actually using it for school purposes and not to play games. The school had also exempted him from the attendance requirement, but had never made arrangements to help him make up for his long absences.

82. The applicants further contended that the authorities' failure to assist the first applicant amounted to a *de facto* expulsion from school, and implicitly a denial of education. However, they observed that their case was not exceptional, that children with disabilities were more likely to be segregated in special schools where they received education of inferior standard, and that the lack of inclusive education was a systemic problem in the respondent State. Lastly, they reiterated the Commissioner's findings concerning inclusive education after his 2013 visit to Romania, and in particular the overreliance on special schools; the low level of attendance in mainstream schools; the high drop-out rates and the poor data collection concerning the education of children with disabilities; the lack of trained teachers and appropriate teaching methods; the lack of funding for assisting pupils with disabilities, which often forced the parents to bear the costs; the reported practice of mainstream schools refusing enrolment to children with disabilities; and the ill-treatment of children with a disability by their

educators and peers. The applicants concluded that this information offered sufficient prima facie evidence of discrimination in the present case. They further relied on the findings of the UN Committee on the Rights of the Child (2017 report), the Special Rapporteur on extreme poverty and human rights (report on the mission to Romania, 8 April 2016), the European Committee of Social Rights (2016 report), UNICEF (2015 report), and on the Government's Disability Strategy 2016-2020.

83. Lastly, the applicants reiterated that accessibility was a gradual and anticipatory process by nature and that the authorities did not have to wait until a student with special needs requested it. They argued that the respondent State had had a duty to render school buildings and public infrastructure accessible since as far back as 1999, under Government Ordinance no. 102/1999. However, most of the improvements had come too late, when the applicant had already changed schools (specially adapted toilets, desks in the classrooms, stairlifts).

(b) The Government

84. The Government agreed that the right of access to education for children with a disability required that a system adapted to their needs be put in place. However, such a system could not function without the cooperation of all interested parties. On this point they reiterated that on several occasions the second applicant had failed to cooperate with the authorities or to bring her child to the activities organised for him by those authorities, had behaved improperly on school premises and had disobeyed the school rules.

85. The Government admitted that the local authorities had been late in complying with their legal obligation to render the school buildings accessible, and submitted that this was caused mainly by a lack of resources and by the other demands on the local budget. They pointed out that the school administration had compensated for those deficiencies by making reasonable accommodation for the first applicant's benefit, by providing access ramps and gates for wheelchair access, asphalt in the school yard, a specially adapted toilet, air-conditioning in his classroom, and a specially adapted school desk.

86. They further admitted that it would be desirable to appoint a personal assistant after consultation with the family of a child with disabilities. However, they urged the Court to take into account the statements made by the persons who worked as personal assistants and the difficulties they had encountered in cooperating with the second applicant.

87. The Government accepted that not all the second applicant's demands could be met, but pointed out that the authorities had to manage the budget in such a way as to cater not only to the applicants' needs, but also to the needs of the rest of the population dependent on State resources. Relying on *McIntyre v. the United Kingdom* (no. 29046/95, Commission

decision of 21 October 1998, unreported) and *Groza v. Romania* ((dec.), no. 31017/05, 21 February 2012), the Government argued that the measures taken by the authorities were proportionate to the legitimate aim pursued.

88. Referring to Article 14 of the Convention, the Government further argued that the authorities had ensured that the first applicant had access to education on an equal basis with pupils who did not have disabilities. The authorities had adapted the school programme to his needs and provided both educational and physical resources to assist him in school.

(c) The third parties' comments

89. The Court received submissions from a number of third-party interveners. They all referred to the international standards for the protection of persons with disabilities, and in particular the UN Convention on the Rights of Persons with Disabilities (CRPD), General Comments nos. 4 and 5, the Social Charter and other Council of Europe standard-setting papers or recommendations, as well as similar legislation from other member States. They emphasised the need for inclusive education, which determined lifelong patterns of social inclusion. Furthermore, they stressed that in the field of education States had a positive obligation to make reasonable accommodation for children with disabilities. They pointed out that a wide gap still existed between standards in the field of education and the reality in many countries, including Council of Europe member States.

90. The Commissioner reiterated that children with disabilities were one of the groups most affected by school segregation, and that inclusion in mainstream education was often denied to these children on account of a lack of sufficient resources to provide individual support, the non-accessibility of the school environment, and prejudice, including on the part of school administrations, educators, peers and the families of non-disabled children. Although, according to the official statistics for 2013 in the respondent State, 60% of children with a disability were in mainstream education, other reliable sources indicated that the rate of inclusion was as low as 38%. On this point, the CEDCD submitted that out of 70,600 children with disabilities registered in Romania at the time of the submission of its observations, 31,486 were segregated in special schools and 17,975 children were out of school.

91. The Commissioner further reiterated that inclusion in mainstream education required reasonable accommodation and adequate and genuine support. He submitted that the implementation of laws on accessibility was often unduly delayed and not sufficiently monitored. In his view, the resulting lack of legal certainty, coupled with a widespread lack of understanding of the right to inclusive education, made it difficult for parents to challenge decisions infringing the right to education of their children. On this point he stressed that promptness and diligence were

elements of particular relevance when considering whether a remedy in respect of a violation of children's rights, such as the right to education, could be considered effective.

92. While admitting that the complaint lodged with the NCAD did not represent an effective remedy in this sphere, the CEDCD presented three examples of successful applications before that body in which teachers, school principals and even the parents of the victim's classmates had been sanctioned for discriminating against children with disabilities and trying to bully them out of mainstream schools.

93. The United Nations Special Rapporteur on the rights of persons with disabilities reiterated that persons with disabilities could not effectively enjoy their right to education without an accessible environment, including schools and other places of education, and without accessible public transport, services and information and communications technologies. Furthermore, the authorities had an immediate obligation to provide reasonable accommodation from the moment it was requested; this could serve as a temporary solution for an individual when accessibility was lacking. The Special Rapporteur referred to the following as examples of reasonable accommodation in education: providing mobile ramps to enable access to the facilities; changing the location of a class; customising the timing of studies; adapting or acquiring the necessary equipment to enable persons with disabilities to attain and maintain maximum independence, including full physical and mental capacity; and allowing support persons (personal assistants, parents or any other person of their choice) to accompany them and assist during lessons. The Special Rapporteur also argued that the availability of supports should be considered in the light of the larger pool of resources available in the education, social protection and health systems and not limited to resources available at the educational institution in question.

94. In its submissions, Amnesty International referred to the standards developed by other jurisdictions in the field of inclusive education. The United States Supreme Court, in *Endrew F. v. Douglas County School District RE-1*, had ruled that simply passing a child with disabilities from grade level to grade level with no actual educational benefit was not sufficient under the relevant legislation. In *Hurst v. State of Queensland*, the Federal Court of Australia had found that teaching English and English sign language to a child with a hearing impairment whose first language was Auslan (Australian sign language) did not afford the child adequate conditions to enable her to learn to her full potential, and considered that the child in question would suffer serious disadvantage if she was required to simply cope with the conditions imposed. Lastly, the House of Lords decided in *Regina v. East Sussex County Council Ex Parte Tandy*, HL 21 May 1998, that when assessing the appropriate educational needs for a

student with disabilities, the local authority must not consider its financial constraints as a reason not to provide appropriate education.

95. The RREI Latinoamerica presented case-law from the Inter-American Court of Human Rights according to which disability was to be assessed under a social model, as required by the CRPD, and not under a medical model. In particular, in the case of *Sebastián Furlán v. Argentina* the Inter-American Court had stated that if the social model for disability was taken into account, disability was not only defined by the presence of a physical, mental, intellectual or sensory impairment, but was related to the barriers or limitations that existed socially for persons to exercise their rights effectively. Furthermore, in 2016 the Inter-American Court of Human Rights had ordered a precautionary measure in favour of a twelve-year-old girl with disabilities, ordering Argentina to ensure and protect her right to life, physical integrity and health, as it found that on several occasions the medical treatments that the child needed in order to improve her health and attend school had been suspended (Precautionary measure no. 376/15 (Resolution 2016), published on 7 July 2016).

2. The Court's assessment

(a) General principles

96. The Court has held that the notion of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8 (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III, and *Di Trizio v. Switzerland*, no. 7186/09, § 63, 2 February 2016).

97. The Court further observes that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private and family life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance to be struck between the competing interests (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 70, ECHR 2007-V).

98. The Court also makes reference to the general principles concerning the right to education, as recently reiterated in *Çam v. Turkey* (no. 51500/08, § 52-53, 23 February 2016, with further references). Furthermore, it has already held that, in order to comply with the requirements of Article 14 of the Convention, States have an obligation to make reasonable

accommodation in the case of people with disabilities (see *Çam*, cited above, §§ 54 and 65, with further references).

(b) Application of those principles to the present case

99. The Court has already had the opportunity to examine the system put in place by the respondent State to allow people with disabilities to complain about alleged infringements of their rights (see *Gherghina*, decision cited above, §§ 94-115, and *Popa v. Romania* (dec.), no. 4238/09, §§ 53-56, 14 November 2017). It concluded that an action lodged by the aggrieved party before the domestic courts represented an effective remedy which needed to be exhausted. The Court sees no reason to depart from this finding in the present case. More particularly, it notes that the domestic courts examined the applicants' complaints exhaustively and gave judgment on all counts, allowing most of their claims and ordering the authorities to act upon them (see paragraphs 56 to 61 above).

100. The Court acknowledges the complexity of the matter brought before the domestic courts (see, *mutatis mutandis, Popa*, cited above, §§ 8 and 35). It also notes that the applicants lodged their main action with the wrong division of the County Court and then also modified it during the course of the proceedings (see paragraph 57 above). In this context the length of the proceedings, which started on 24 April 2014 (see paragraph 56 above) and ended almost four years later, on 7 February 2018 (see paragraph 61 above), cannot be attributed solely to the authorities, who, moreover, did not remain passive but accompanied the applicants to the best of their abilities. In particular, the courts gave interim instructions to the authorities and insisted on their full implementation (see paragraphs 63 to 68 above), and the authorities provided the first applicant with support and assistance in school (see, for instance, paragraphs 39 and 46 above), or made efforts to find and retain a suitable personal assistant for him (see, in particular, paragraphs 53 and 54 above).

101. The Court notes that the authorities recommended that the first applicant attend mainstream schools throughout his education (see paragraph 13 above). This assessment is in compliance with the international standards in the field, which recommend inclusive education for children with disabilities (see *Çam*, cited above, § 64, and *Enver Şahin v. Turkey*, no. 23065/12, § 62, 30 January 2018).

102. The third-party observations confirm the difficulties encountered by children with a disability owing to a lack of infrastructure and of reasonable accommodation (see, in particular, paragraphs 90 and 93 above). The Government also admitted in their observations that there were delays in ensuring the accessibility of school buildings (see paragraph 85 above). On this point the Court reiterates that inclusive education is widely accepted to be the most appropriate means of guaranteeing inclusion and non-discrimination in the field of education (see *Çam*, cited above, § 64,

and *Enver Şahin*, cited above, § 62). Therefore, in the absence of accessibility of the physical environment prior to the integration of children with a disability in mainstream schools, the authorities have an obligation to provide reasonable accommodation from the moment it is requested (see paragraphs 93 and 98 above). However, this obligation may not impose a disproportionate or undue burden on the authorities (see *Çam*, cited above, § 65). Moreover, it is not for the Court to define the "reasonable accommodation" – which can take on different material and non-material forms – to be implemented in the educational sphere in response to the educational needs of persons with disabilities (see *Enver Şahin*, cited above, § 61).

103. In this context, the Court acknowledges, in the educational sphere, that reasonable accommodation may take a variety of forms, whether physical or non-physical, educational or organisational, in terms of the architectural accessibility of school buildings, teacher training, curricular adaptation or appropriate facilities (see *Çam*, cited above, § 66). These adjustments can serve as a temporary solution for an individual when accessibility is lacking.

104. That being said, the Court will now examine whether the domestic authorities had recourse to alternative solutions in order to accommodate the first applicant.

105. At the outset, the Court finds it important that the first applicant was never completely deprived of education as he continued to attend school, to be graded for his work, and to advance through the school curriculum (see*, mutatis mutandis, Şanlısoy v. Turkey* (dec.), no. 77023/12, § 60, 8 November 2016).

106. The Court further observes that the authorities were aware of their obligation to ensure access to education for the first applicant, an obligation which stemmed both from the national law and from the State's international commitments (see paragraphs 71 and 72 above). Moreover, this obligation was consistently reiterated by the domestic courts in the proceedings brought by the applicants (see paragraphs 61 and 63 above). On this point, the Court notes that reasonable accommodation was made for the first applicant's benefit, as highlighted by the Government in their submissions (see paragraphs 39 and 85 above). In particular, when alerted by the applicants to the lack of accessibility and of reasonable accommodation in school (see paragraph 56 above), the domestic courts ordered the local authorities to take concrete measures in the first applicant's favour (see paragraph 58 above). The courts also gave interim orders compelling the authorities to make immediate accommodation for the first applicant in school (see paragraph 63 above). The Court observes that the domestic courts reacted quickly and adequately to changes in the first applicant's situation and renewed their instructions to the administrative

authorities whenever they found that the measures taken by those authorities were insufficient (see paragraph 68 above).

107. Furthermore, the Court acknowledges the difficulties encountered by the State in finding a suitable personal assistant for the first applicant (see paragraphs 52, 53 and 86 above). It cannot ignore the fact that some of these difficulties were created by the applicants themselves, and in particular by the second applicant, who, by insisting that the personal assistants perform tasks incompatible with their job description, jeopardised the relationship between the parties concerned (see paragraphs 52 and 53 above). It also notes that the authorities renewed their efforts to find a suitable personal assistant (see paragraph 54 above), thus striving to comply with the domestic courts' findings in that regard (see paragraphs 50, 58 (d) and 66 above).

108. The Court notes that the second applicant also rendered futile other measures put in place by the authorities in school, in particular, by refusing the speech therapy (see paragraphs 46 and 47 above), the assistance by a support teacher (see paragraphs 37-39 above) and the physiotherapy and psychological counselling (see respectively paragraphs 44 and 45 above) organised in school for the first applicant, as well as the installation of a stairlift (see paragraph 33 above).

109. The Court emphasises that it is not its task to define the resources to be implemented in order to meet the educational needs of children with disabilities. The national authorities, by reason of their direct and continuous contact with the vital forces of their countries, are in principle better placed than an international court to evaluate local needs and conditions in this regard (see *Çam*, cited above, § 66). It is, however, important that those authorities take great care with the choices they make in this sphere, in view of the impact of those choices on persons with disabilities, whose particular vulnerability cannot be ignored. Bearing this in mind, the Court notes that, in the present case, the authorities did not turn a blind eye to the first applicant's needs, but allocated resources to the schools attended by him in order to help accommodate his special requirements. It notes, for instance, that various adaptations were made to render his physical environment more accessible (see paragraphs 16, 25-26 and 30-33 above) and that support teachers and various therapists were assigned to him (see, for instance, paragraphs 37-39, 42, 45 and 46 above).

110. Therefore, in the light of all the material before it, the Court is satisfied that the domestic authorities complied with their obligation to provide reasonable accommodation "not imposing a disproportionate or undue burden" and, within their margin of appreciation, to allocate resources in order to meet the educational needs of children with disabilities.

111. There has accordingly been no violation of Article 8 of the Convention or of Article 2 of Protocol No. 1 to the Convention taken alone

or together with 14 of the Convention. In view of the above, it is not necessary to consider separately the Government's preliminary objection (see paragraphs 75 and 78 above).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

112. The applicants complained about the second applicant's removal by the police from the school premises and the impact this incident had on the first applicant (see paragraph 69 above). They relied on Articles 3 and 8, which read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

113. The applicants argued that the police intervention had been neither proportionate nor gradual, in contradiction with the domestic requirements on the use of force by the police. The police officers treated the second applicant as if she had been a complete stranger trespassing on school property, thus ignoring the fact that, at that point, she had been providing personal assistance to her son on an almost daily basis for more than six years. They averred that the disproportionate character of the police intervention was emphasised by the gravity of the injuries caused to the second applicant, the relatively insignificant offence for which she had been sanctioned and the minor sanction applied.

114. The Government contended that the investigation had been effective and prompt.

115. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. In particular, the applicants failed to bring any evidence that the use of force by the police officers when removing the second applicant from the school premises had been disproportionate, or that the first applicant had been left without supervision in school during his mother's absence. Moreover, the applicants failed to pursue their domestic complaints within the time-limits set by law, without

bringing any evidence that the mechanism placed at their disposal would be ineffective.

116. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's preliminary objection of failure to exhaust domestic remedies;

2. *Declares* the complaints concerning the first applicant's physical integrity and dignity in school, his right to quality education without discrimination admissible and the remainder of the application inadmissible;

3. *Holds* that there has been no violation of Article 8 of the Convention taken alone or together with Article 14 of the Convention;

4. *Holds* that there has been no violation of Article 2 of Protocol No. 1 to the Convention taken alone or together with Article 14 of the Convention;

5. *Holds* that it is not necessary to consider the Government's preliminary objection.

Done in English, and notified in writing on 25 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Faris Vehabović
Deputy Registrar	President