



## Criminal-law system in Romania failed to effectively investigate and punish alleged rape of 14-year old girl with intellectual disability

In today's **Chamber** judgment<sup>1</sup> in the case of **I.C. v. Romania** (application no. 36934/08) 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.**

The case concerned a complaint about the inadequacy of the investigation into a 14-year old girl's allegation of rape.

The Court considered that the Romanian authorities had put undue emphasis on the lack of proof that Ms I.C., the applicant, had shown resistance during the incident, basing their conclusions only on the statements given by the alleged rapists in which they claimed that the girl had consented to having sexual intercourse, taken together with the fact that her body had shown no signs of violence. Furthermore, neither the prosecutors nor the judges deciding on the case had taken a context-sensitive approach, failing to take into account her young age, her slight intellectual disability and the fact that the alleged rape, involving three men, had taken place at night in cold weather – all factors which had heightened her vulnerability. Indeed, particular attention should have been focused on analysing the validity of Ms I.C.'s consent to the sexual acts in the light of her slight intellectual disability. In that context, the nature of the alleged sexual abuse against Ms I.C. had been such that the existence of useful detection and reporting mechanisms had been fundamental to the effective implementation of the relevant criminal laws and to her access to appropriate remedies.

### Principal facts

The applicant, Ms I.C., is a Romanian national who was born in 1992 and lives in Cotiglet (Romania).

Ms I.C., 14 years old at the time, alleges that she was raped on 13 January 2007. Attending a funeral wake, she claims that she was grabbed by three teenage boys in the road and taken to a man, M.C., who was waiting for her in the garden of a deserted building and raped. Two other men were also present; one, A.C.L., attempted to rape her and the other, although intending to have intercourse with her, finally decided to help her and take her back to the house where the wake was taking place. Ms I.C.'s father, on learning that his daughter had been raped, immediately alerted the police and the next day they lodged a formal complaint.

During the subsequent investigation, the six men involved in the incident claimed that the young girl had consented to having sexual intercourse. The prosecutor, accepting this explanation, indicted M.C. for the crime of sexual intercourse with a minor and A.C.L. for attempting to commit the same crime. Furthermore, the prosecutor considered that the three teenage boys involved could not have known M.C.'s intentions and therefore found that they had no criminal responsibility in the case. The criminal proceedings against the remaining man were discontinued as he had not had sexual

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).

intercourse with the girl. The national courts, in a judgment of October 2007, found M.C. and A.C.L. guilty as charged and gave them suspended sentences, subsequently increased on appeal to three years' and 18 months' imprisonment, respectively.

The prosecutor and the courts essentially based their conclusions on the statements by the alleged rapists, who claimed that they had not forced the girl in any way, taken together with the fact that her body showed no signs of violence, as attested to by a medical certificate, and that she had not called for help or immediately told her girlfriends about the alleged abuse on returning to the wake. The authorities did not address the extensive medical evidence submitted with regard to the trauma suffered by Ms I.C., who was admitted to a psychiatric hospital on three occasions since the incident with stress-related anxiety, a sleep disorder, headaches and depression and, in February 2007, diagnosed with a slight intellectual disability (IQ of 68). Nor did they address her requests for the incident to be examined as rape.

## Complaints, procedure and composition of the Court

Ms I.C. complained that, there having been no physical evidence of assault, the criminal justice system in Romania had been more inclined to believe the men involved in the abuse, rather than her. Furthermore, the authorities, refusing to take into consideration her young age and physical/psychological vulnerability, had shown no concern for the need to protect her as a minor. The case was examined under Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life).

The application was lodged with the European Court of Human Rights on 14 July 2008.

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

András Sajó (Hungary), *President*,  
Boštjan M. Zupančič (Slovenia),  
Nona Tsotsoria (Georgia),  
Paulo Pinto de Albuquerque (Portugal),  
Egidijus Kūris (Lithuania),  
Iulia Motoc (Romania),  
Gabriele Kucsko-Stadlmayer (Austria),

and also Marialena Tsirli, *Section Registrar*.

## Decision of the Court

The Court considered that the authorities had put undue emphasis on the lack of proof that Ms I.C. had shown resistance during the incident. Both the prosecutor and the national courts had based their conclusions only on the statements given by the alleged rapists, taken together with the fact that Ms I.C.'s body had shown no signs of violence and that she had not called for help or immediately told her girlfriends about the alleged abuse.

Furthermore, the authorities had failed to take a context-sensitive approach to the case. Notably, at no point during the investigation and trial had they questioned the people known to Ms I.C. (such as friends, neighbours or teachers) or her alleged rapists to assess the credibility of their statements or sought an opinion from a specialist psychologist. Nor were any of the personal circumstances taken into account by the prosecutors or judges deciding on the case, such as Ms I.C.'s slight intellectual disability, her young age or the fact that the incident, involving three men, had taken place at night in cold weather – all factors which heightened her vulnerability.

Indeed, particular attention should have been focused on analysing the validity of Ms I.C.'s consent to the sexual acts in the light of her slight intellectual disability, as diagnosed in February 2007.

International materials on the situation of people with disabilities pointed out that the rate of abuse and violence committed against people with disabilities was considerably higher than the rate for the general population. In that context, the nature of the sexual abuse against Ms I.C. had been such that the existence of useful detection and reporting mechanisms had been fundamental to the effective implementation of the relevant criminal laws and to her access to appropriate remedies.

Moreover, those shortcomings were aggravated by the fact that no psychological evaluation had ever been ordered by the national courts in order to obtain a specialist analysis of Ms I.C.'s reactions in view of her young age. At the same time, the authorities had not considered at all the extensive medical evidence of the trauma she had suffered following the incident.

In conclusion, without expressing an opinion on the guilt of the three men involved in the incident, the Court found that the investigation of the case had been deficient, notably on account of the State's failure to effectively apply the criminal-law system for punishing all forms of rape and sexual abuse. The Court therefore held that there had been a violation of Article 3.

In view of that conclusion, the Court also held that no separate issue arose under Article 8 of the Convention.

#### Article 41 (just satisfaction)

The Court held that Romania was to pay Ms I.C. 12,000 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in English.*

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