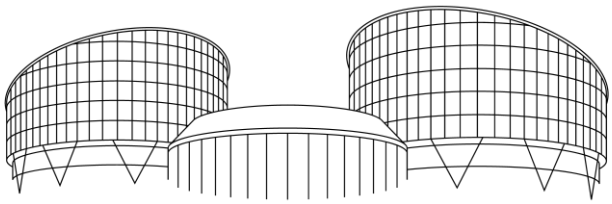

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF C.A.S. AND C.S. v. ROMANIA

(Application no. 26692/05)

JUDGMENT

STRASBOURG

20 March 2012

FINAL

24/09/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of C.A.S. and C.S. v. Romania**,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 21 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 26692/05) 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 C.A.S. ("the first applicant") and Mr C.S. ("the second applicant"), on 11 July 2005. The President of the Section decided not to have their names disclosed (Rule 47 § 3 of the Rules of Court).

2. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

3. The applicants, who had been granted legal aid, were represented by Mr L. Hincker, a lawyer practising in Strasbourg. The Romanian Government ("the Government") were represented by their Agent, Mrs I. Cambrea, of the Ministry of Foreign Affairs.

4. The applicants raise several complaints related to the repeated rape and other ill-treatment suffered by the first applicant. In particular, the first applicant alleged that the criminal investigations into those facts had been ineffective, and that there had been an interference with his right to respect for his private and family life.

5. On 15 June 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, son and father, were born in 1990 and 1954 respectively and currently live in Iasi.

A. The alleged rape and violence inflicted on the first applicant

1. Applicants' version of the abuse

7. From January 1998 to April 1998, the first applicant, who was then a seven year-old boy, was allegedly subjected to repeated rape and violence by P.E.

8. In January 1998, the child was followed home from school by P.E. In front of the applicant's family's apartment, P.E. grabbed the key from his hand, opened the door and forcefully pushed the boy inside. He hit the child several times in the stomach. He pulled the applicant's clothes off and tied his hands and legs and gagged him with strips of white cloth that he had taken out of his trouser pocket. Then P.E. dragged the boy into the kitchen, removed a piece of furniture from against the wall and placed it near the couch. He bent the child over the furniture and sexually abused him. He then removed the gag and forced the child into oral sex. P.E. hit the applicant again several times in the stomach, head and genitalia, untied him and told him to put his clothes on. He threatened the child with a knife and warned him that he would kill him if anyone found out what had happened.

9. The first applicant was too scared to scream during the assault.

10. The abuse continued during the following months, several times per week. At a certain point, P.E. made a copy of the applicant's key so he could enter the apartment. Sometimes he would wait for the child inside, sometimes he came with a dog and once with other persons, including two minor children. Before leaving the apartment, P.E. sometimes stole food and small sums of money.

11. Eventually the applicant told his brother and father about what was happening to him.

12. After the events the first applicant changed school and in October 2005 the family finally moved from Bacău to Iaşi, following the advice of the school psychologist.

2. The Government's position

13. The Government did not contest the description of the facts by the first applicant.

B. Criminal investigations into the allegations of rape and violence

1. Police investigations

14. On 27 April and 4 May 1998 on behalf of his son, the second applicant reported the sexual abuse and violence inflicted on the child to the Bacău Police. He accused P.E., S.P. and L.I.D. He reiterated his complaints on 18 and 28 May, 4, 8 and 9 June and on 19 July 1998.

15. The police started investigating the case.

16. On 18 May 1998, at the request of the investigators, the first applicant underwent a medical examination at the Bacău Clinic. The record noted:

> "... healing anal lesion and hypotonia of the anal sphincter. No signs of violence on the body ... The lesions necessitate 16-18 days of medical care and could have been caused by anal intercourse."

A medical certificate issued on 19 May 1998 at the request of the police, summarised the findings of the examination.

17. On 12, 15 and 29 June 1998 P.E. gave statements to the police. He claimed that he had not been in the area during that period, and that he did not know the applicants' family. He had only been in the building once, on New Year's Eve, for approximately ten minutes. He admitted that he used to take his sister's dog out for a walk but he had not done so in a while; during the time in question he had been training a similar dog, in the afternoons, from 5 p.m. to 7 p.m. During a polygraph test, P.E. showed simulated behaviour when asked whether he had had sexual intercourse with the first applicant.

S.P. and L.I.D. denied any participation in the abuse.

18. The first applicant was interviewed several times by the investigators. He gave details about the facts. His statements were recorded on 19 June 1998, 12 October 2001, 31 May 2002 and 25 March 2003. In some of the interviews he declared that he had told his brother and father about the abuse, but in others he stated that he had not mentioned anything to anyone. In his first statement he also told the police that the day after he had told his father about the abuse, his parents had allowed him to return on his own from school and he had remained alone in the apartment after school.

19. The second applicant gave statements to the investigators, relating the facts as his son had described them.

20. On 15 December 1999 the first applicant's mother declared that she had suspected something was going on as her son's voice on the phone had sometimes been trembling and as she had sometimes found the house untidy and litter in the bathroom, but that she had thought the children were responsible. Before the prosecutor she supplemented her statements and

stated that during that time she had noticed that food and money had disappeared from the house.

21. The first applicant identified P.E. in a line up at the police headquarters.

22. Several other witnesses were interviewed by the police, including neighbours and acquaintances.

R.M., the neighbour from upstairs, stated that she had no knowledge of what had happened in the applicants' home. A few days later she changed her statements and declared that she had seen a man who fitted P.E.'s description entering the applicants' apartment with a dog during the period in question. She explained that she had been afraid that if she talked about what she had seen, the neighbours would have thought she had been spying on them. During the investigations and court proceedings R.M. changed her statements, claiming both to have seen P.E. entering the victim's apartment several times, between February and March, and to have seen him entering only once.

23. On 10 January 2000 the police confronted R.M. and P.E. They both maintained their previous statements.

24. B.V. informed the police that at the second applicant's request, he had followed the applicant to school and home a few times in April 1998. He had noticed P.E. in the vicinity several times, and on 22 April 1998 had seen him forcing the first applicant into the apartment.

R.I., R.M.'s adolescent son, stated that he had seen P.E. entering the victim's home from January to April, sometimes with a dog. On 27 June 1998 the police organised a confrontation between R.I. and P.E. R.I. maintained that he had seen P.E. entering the apartment with the victim and then had heard the child scream. P.E. denied having seen R.I. or having abused the first applicant.

25. The investigators also searched the applicants' and P.E.'s homes, but found no further evidence to support the accusations. They checked the record of calls made from the applicants' telephone during the period under investigation. They also checked and confirmed that the upstairs neighbours could see, from the hallway, who entered the applicants' apartment.

26. During the investigations the first applicant underwent several medical and psychiatric evaluations in the presence of his father.

27. On 1 February 2000 a new medical examination by the Bacău Laboratory of Forensic Medicine, ordered by the police, confirmed the findings of the expert examination of 18 May 1998. The doctors considered that it was impossible to tell whether the perpetrator had been an adult or a minor. They concluded that the lesions could only have been caused by repeated sexual abuse.

2. The prosecutors' decisions

28. On 16 June 2000 the Prosecutor's Office attached to the Bacău District Court decided to discontinue prosecution of P.E. and not to prosecute S.P. and L.I.D. The second applicant objected.

29. On 27 July 2000 the prosecutor at the Bacău District Court allowed the objection and sent the case back to the police for further investigation.

30. On 28 February 2001 the Prosecutor's Office attached to the Bacău District Court again decided to discontinue the prosecution. On 5 September 2001 the second applicant's objection was allowed by the Prosecutor's Office attached to the Supreme Court of Justice. The latter sent the case to the District Court prosecutor and ordered him to continue the investigation.

31. On 7 March 2002 the prosecution file was sent to the Prosecutor's Office attached to the Bacău County Court with an instruction to continue the investigation.

32. On 16 September 2002 the prosecutor at the Bacău County Court discontinued the prosecution of P.E. and decided not to prosecute S.P. and L.I.D. on the ground that they had not committed the crimes. It was also decided to continue the investigation in order to identify the criminals.

33. The second applicant appealed against the decision. On 11 November 2002 the Prosecutor's Office attached to the Bacău Court of Appeal reversed the decision.

34. On 8 April 2003, the prosecutor at the Bacău County Court committed P.E. to trial for rape and unlawful entry of the victim's home (*violare de domiciliu*). It was also decided not to prosecute S.P. and L.I.D. The first applicant sought civil damages in the amount of 300,000,000 Romanian lei.

35. During this period some witnesses were brought in again for interviews and a new expert report was drafted concluding that the anal lesions suffered by the first applicant may have been produced ten to twelve days before the expert examination of 19 May 1998. On 31 March 2002, the second applicant refused to subject his son, the first applicant, to another psychiatric evaluation.

3. Complaints about the investigations

36. Throughout the investigation and prosecution, the second applicant complained several times about the length of the proceedings. His complaints were dismissed by the Prosecutor's Office attached to the Bacău District Court on 16 August 1999 and 29 February 2000. On 12 July 2002 the Bacău County Police answered a similar complaint, outlining the latest procedural steps taken in the case.

37. In addition, on 22 November 2001 the second applicant complained that he, his family and some of the witnesses had received threats from P.E.

On 8 November 2004 P.E. threatened the applicants with retaliation. They reported the incidents to the police.

38. On 20 April 2004 the second applicant complained about the prosecutor's decision not to prosecute S.P. and L.I.D. On 21 May 2004 the Bacău District Court dismissed the complaint. The decision became final as the parties did not appeal against it.

C. First-instance proceedings

39. The case was initially referred to the Bacău County Court. However, on 27 May 2003 the County Court changed the legal classification of the crimes and sent the case to the District Court. It noted that at the time when the facts occurred, males were not recognised as potential victims of rape. Furthermore, at the time of the investigations, same-sex relations had been decriminalised. Therefore the facts under investigation could only be classified as the crime of "sexual perversion" and "sexual corruption of a minor", which were under the jurisdiction of the district courts.

The Bacău District Court started the examination of the case. On 13 May 2003 the first applicant gave a detailed description of the facts. P.E. denied having committed any crime against the applicant.

40. In September 2003 the first applicant's older brother gave a statement to the court. He related what his brother had told him about the abuse. He further stated that around that period (January to April 1998) his brother's behaviour had changed, he had refused to eat, had constantly been scared and had sometimes had blood on the back of his underpants. He declared that their mother had also noticed those blood stains.

41. The first applicant's mother admitted that neither she nor her husband had taken time off work to accompany the child and see what had happened, although she had noticed the changes in his behaviour and sometimes even physical signs of potential abuse.

42. Several witnesses were interviewed by the court, including the neighbours R.I. and R.M., as well as S.P.

43. Between 20 December 2002 and 25 March 2003, the first applicant underwent a psychological evaluation. The final report revealed that he showed anxiety when shown his alleged aggressor's image, uncertainty and social isolation; that he wished to have the routine of a "normal child"; and that he had a tendency to exaggerate and invent things, common to sufferers of trauma caused by such violence, especially children.

44. On 3 June 2003 the second applicant complained about the length of the proceedings and about P.E.'s request for release. On 11 August 2003 he complained that P.E. had been released from detention.

45. On 17 November 2003 the first applicant underwent a psychiatric evaluation in Iaşi Hospital No. 7. The examination commission noted that

he was scared, insecure, had difficulty concentrating and showed the frustration associated with the experience of not being believed by others.

46. On 5 May 2004 the Bacău District Court acquitted P.E., on the ground that the crimes had not been committed by him.

47. The court noted in particular that the parents had failed to notice the change in their child's behaviour and to notify the authorities in good time, but rather had waited until after the abuse had been going on for some time. The court also observed that the descriptions of the facts given by the first applicant and the witnesses had not been accurate and differed in the details and pointed to the fact that the second applicant had tried to influence some of the witnesses to give statements against P.E. The court also attached importance to the fact that the searches performed during the criminal investigation had revealed no traces of P.E.'s presence in the victim's apartment or any evidence in P.E.'s apartment to support the accusation against him. Lastly, the court considered that the findings of the medical report were not conclusive as to P.E.'s guilt.

D. The appeal proceedings

48. On 4 October 2004 the Bacău County Court dismissed the appeals lodged by the prosecutor and the applicant against the judgment given by the District Court.

The County Court found that there were contradictions in the statements given by the parties and witnesses. It acknowledged that such contradictions may have been caused by the time that had lapsed between the events and the examination of evidence by the courts, but considered that the length of the investigations had not been the main cause of the discrepancies. Accordingly, it noted that from the beginning of the investigation the second applicant and the witnesses had given contradictory descriptions of the aggressor in their various statements and considered that some of the witnesses had been dishonest and that the victim's father had tried to influence several individuals to testify against P.E. The court also considered that the police line up had not been carried out properly, as the persons chosen to stand with P.E. had differed in physical appearance, in particular their height, length of hair, and posture. It also noted that only one family from the whole block of flats had heard the child screaming. The court was concerned by the fact that despite the alleged physical evidence of abuse (blood stains for example) and other odd occurrences around the house (missing food, moved furniture), the parents had waited a long time before reporting the alleged abuse to the police. Lastly, it noted that his psychological profile indicated that the first applicant was prone to exterior influence and fantasizing, and considered that he might have "put his parents on a false track, either because he did not know who the aggressor was or because he wanted to hide the latter's identity".

On 20 January 2005 the Bacău Court of Appeal dismissed, by two votes to one, the appeals in cassation lodged by the prosecutor and the applicant. It reiterated the arguments put forward by the County Court. The dissenting judge argued that the evidence in the file was sufficient to convict P.E. for sexual corruption and unlawful entry.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

49. At the date when the abuse against the first applicant occurred, the relevant provisions of the Criminal Code read as follows:

Article 197 Rape

"(1) Sexual intercourse with a female through coercion or taking advantage of her incapability of defending herself or of expressing her will, is punishable by three to ten years of imprisonment.

(2) The sentence will be from five to fifteen years if:

(a) the act was committed by two or more than two persons together; ...

(3) The sentence will be from ten to twenty years if the victim is not yet fourteen years old ..."

Article 198 Sexual intercourse with a minor female

"(1) Sexual intercourse with a female who has not yet reached fourteen years of age is punishable by imprisonment of from one to five years."

Article 200 Sexual intercourse between persons of the same sex

"(1) Sexual intercourse between persons of the same sex, carried out in public or which causes a public scandal, is punishable by imprisonment of between one and five years.

(2) Sexual intercourse by an adult with a juvenile of the same sex is punishable by imprisonment of between two and seven years and loss of certain rights.

(3) Sexual intercourse with a person of the same sex who is incapable of defending him or herself or of expressing his or her will, or which is performed through coercion, is punishable by imprisonment of between three and ten years and loss of certain rights."

Article 201 Sexual perversion

"(1) Acts of sexual perversion committed in public which cause a public scandal are punishable by imprisonment from one to five years."

Article 202 Sexual corruption

"(1) Acts of an obscene nature committed to a minor or in his or her presence are punishable by imprisonment from three months to two years or by a fine."

50. Articles 197 and 198 have been amended successively in order to recognise males as potential victims of rape and statutory rape, by Law no. 197/2000, which entered into force on 15 November 2000 and by Emergency Ordinance no. 89/2001, which entered into force on 26 June 2001. The latter Ordinance also decriminalised consenting same sex intercourse.

51. On 28 September 1990 Romania ratified the United Nations Convention on the Rights of the Child ("the CRC"), in force since 2 September 1990. The CRC stipulates that the best interests of the child and his or her dignity shall be a primary consideration in all actions concerning children (Article 3).

52. The CRC urges Member States to take all appropriate measures to protect children from all forms of violence, including sexual abuse, and to provide for the recovery and social reintegration of victims. The relevant articles read as follows:

Article 19

"1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

Article 34

"States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;"

Article 39

"States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of

> neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

53. The Committee on the Rights of the Child interpreted the text of the CRC in its General comments. Its latest General comment no. 13 (2011) on the right of the child to freedom from all forms of violence is aimed at guiding State parties in understanding their obligations under Article 19 of the CRC, building on existing documents and reflecting on the evolution of the protection in question. The Committee acknowledged the efforts of the States to prevent and respond to violence. It nevertheless found that the States were lagging behind in their obligations:

> "§ 12 ...In spite of these efforts, existing initiatives are in general insufficient. Legal frameworks in a majority of States still fail to prohibit all forms of violence against children, and where laws are in place, their enforcement is often inadequate."

The Committee expresses the view that States are under a "strict obligation" to undertake all appropriate measures to fully implement this right for all children (paragraph 37 of the General comment). Among the State obligations, the Committee identified the need to: review and amend domestic legislation in line with Article 19 of the CRC; ensure protection to child victims and effective access to redress and reparation; enforce law in a child-friendly way; and provide for counselling support (paragraphs 41-44 of the General comment).

The Committee develops further on the content of the "protective measures", stressing the importance of prevention, the need for an easily accessible report mechanism, the importance of rigorous and child-sensitive investigation and of effective and child-friendly justice where due process must be respected (in particular paragraphs 45-58 of the General comment).

54. On 25 October 2007 the Council of Europe, recognising that the well-being and best interests of children are fundamental values shared by all member States, adopted the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse urging the Member States to adopt measures to protect children from any form of abuse and to put in place a system capable of punishing any such acts.

On 17 May 2011 the respondent State ratified that Convention which entered into force in respect of Romania on 1 September 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

55. The first applicant complained under Articles 3 and 8 of the Convention about the violence and sexual abuse he was subjected to by P.E. with the help of S.P. and L.I.D. Both applicants complained under Article 8 that P.E. destroyed their home and family and that they had been forced to leave town after the events in order to reconstruct a normal life.

56. Article 3 of the Convention reads as follows:

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

57. Article 8 of the Convention reads as follows:

> "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."

A. Admissibility

58. The Government averred that the applicants' complaint under Article 8 refers only to the fact that the alleged perpetrators had been acquitted and that the applicants had been forced to leave town in order to protect the first applicant after the incidents. In their view, these aspects should not fall within the realm of Article 8 of the Convention and in any case the applicants could not be considered victims of a violation of that Article. They put forward that the applicants had chosen to leave and had not been forced to do so by the authorities; the applicants had also waited for nine months after the end of the proceedings and almost seven years after the events before they had actually moved. The Government also pointed out that the applicants had failed to complain to the authorities about any impact on their private and family lives of the allegedly ineffective investigation.

59. The applicants contested those arguments.

60. The Court notes that the second applicant only complains about the fact that he and his family had been forced to leave town after the events. These allegations are also raised by the first applicant in his complaint under Article 8. However, there is no indication in the file that the authorities had

in any way contributed to that departure. Furthermore, the applicants had not complained as such to the authorities about the fact that they had had to leave town.

It follows that this part of the complaint raised by the first applicant and the whole complaint raised by the second applicant are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

61. Furthermore, the Court notes that the first applicant complained about ill-treatment inflicted by a third party. At no point did he claim that State officials had been involved in the actual abuse.

It follows that, as far as the complaint concerns the material aspects of Article 3 of the Convention, it is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

62. Lastly, the Court considers that in so far as it concerns the effectiveness of the investigations and their impact on the first applicant's family life, the remainder of the complaint raised by the first applicant under Articles 3 and 8 of the Convention 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' positions

63. The first applicant pointed out that abuse such as that he had suffered had been qualified by the Court as torture. He made reference to the case of *Aydın v. Turkey* (25 September 1997, *Reports of Judgments and Decisions* 1997-VI), where the victim had been in detention. As for the proceedings in the case at hand, he argued that the investigation had been neither prompt nor effective, that the prosecutor had waited for three weeks before opening the investigation and for two months to question P.E. He also contended that some essential investigative steps had not been taken by the police, in particular the taking of DNA samples from the applicants' flat, from the accused persons and from the dog; while some measures had been overemphasised, despite their limited relevance to the facts. The first applicant also complained about the manner in which the courts had weighted the evidence, pointing out, in particular, that the courts had discarded the direct evidence proving P.E.'s guilt (polygraph test, police line up, first medical certificates) while favouring later expert evaluations of the victim and blaming the parents for not having reacted sooner.

64. Lastly, the first applicant complained that the legal classification given to the facts by the domestic courts contradicted the Convention

requirements and had only been made possible because there had been no adequate legislation to deal with rape of boys at that time.

65. The Government contended that the authorities had had a difficult task in establishing the facts of the case, given the conflicting statements made by the victim, his family and the witnesses throughout the proceedings. In their view, the investigation had been prompt, thorough and rapid and the mere fact that a conviction had not been secured did not render the investigation ineffective. They considered that it had taken the victim's family too long to react despite the fact that there had been visible signs of abuse. That attitude was, in their view, inexplicable, especially since the child had not had any social problems before the incidents.

66. The Government also pointed out that the obligation imposed on the States under the procedural head of Article 3 was not an obligation of result but one of means.

67. As far as Article 8 is concerned, the Government contended that, in the context of the case and given the way the applicants phrased their complaint, it would be difficult to identify a negative or positive obligation incumbent on the State.

2. The Court's appreciation

(a) General principles

68. The Court reiterates that the obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *M.C. v. Bulgaria*, no. 39272/98, § 149, ECHR 2003-XII).

69. Furthermore, the absence of any direct State responsibility for acts of violence that meet the condition of severity such as to engage Article 3 of the Convention does not absolve the State from all obligations under this provision. In such cases, Article 3 requires that the authorities conduct an effective official investigation into the alleged ill-treatment even if such treatment has been inflicted by private individuals (see *M.C.*, cited above, § 151, and *Denis Vasilyev v. Russia*, no. 32704/04, §§ 98-99, 17 December 2009).

70. Even though the scope of the State's positive obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals, the requirements as to an official investigation are similar. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible.

This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context. In cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time. Consideration has been given to the opening of investigations, delays in taking statements and to the length of time taken for the initial investigation (see *Denis Vasilyev*, cited above, § 100 with further references; and *Stoica v. Romania*, no. 42722/02, § 67, 4 March 2008).

71. Furthermore, positive obligations on the State are inherent in the right to effective respect for private life under Article 8; these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrence against serious acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection (see *M.C.*, cited above, § 150).

72. The Court reiterates that it has not excluded the possibility that the State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (see *M.C.*, cited above, § 152).

Lastly, the Court notes that the United Nations Committee on the Rights of the Child has emphasised that a series of measures must be put in place so as to protect children from all forms of violence which includes prevention, redress and reparation (see paragraphs 52-53 above).

(b) Application of those principles to the case under examination

73. On the facts of the case, the Court notes at the outset that the acts of violence suffered by the first applicant and not contested by the Government undoubtedly meet the threshold of Article 3. The State's positive obligations were thus called into action.

74. The Court notes with concern that despite the gravity of the allegations and the particular vulnerability of the victim, the investigations did not start promptly. Indeed, it took the authorities three weeks from the date the complaint had been lodged, to order the medical examination of the victim and almost two months to question the main suspect. The investigation took five years and the applicants' repeated complaints about

its length were unsuccessful. The County Court acknowledged the significant lapse of time, but drew no inference from it.

Furthermore, the Court notes that for almost three years no significant investigative steps were taken after the prosecutor's first decision not to prosecute (16 June 2000), despite the repeated hierarchical instructions to continue the investigations.

75. At the end of the criminal proceedings, some seven years after the date of the alleged facts, the accused person was exonerated. Nothing in the file indicates that the authorities tried to find out if somebody else could be held criminally responsible for these serious crimes. This raises doubts as to the effectiveness of the proceedings, in particular in such a sensitive case as that involving the violent sexual abuse of a minor (see, *mutatis mutandis*, *Stoica*, cited above, § 77).

76. The Court has found no indication of arbitrariness in the way the courts classified the facts in law. Indeed, in application of the principle of the more lenient criminal law, the rape of male juveniles was not criminally punishable at the time, as males were not recognised as potential victims of rape until 15 November 2000 and as in 2001 Article 200, which prohibited sexual intercourse with a person of the same sex, including through coercion, was abolished (see paragraphs 49 and 50 above). Before the scope of the protection against rape was extended to potential male victims, the system allowed nevertheless for those acts to be reprimanded in the context of other crimes, such as the ones invoked in the case under examination.

The Court notes that the respondent State's legislation currently protects all persons, including male and female juveniles, against rape, including statutory rape. It also notes that Romania has ratified the CRC and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (see paragraphs 51-54 above) which provide obligations for the Member States to protect children against any form of abuse.

77. As for the proceedings in the case at hand, the Court reiterates that it is not concerned with allegations of errors or isolated omissions in the investigation; that it cannot replace the domestic authorities in the assessment of the facts of the case; and that it cannot decide on the alleged perpetrators' criminal responsibility (see *M.C.*, cited above, § 168). In similar cases, the Court has expressed the opinion that it was for the authorities to explore all the facts and decide on the basis of an assessment of all the surrounding circumstances (see *M.C.*, cited above, § 181).

78. Notwithstanding its subsidiary role in the matter, the Court is particularly concerned that the authorities did not try to weigh up the conflicting evidence and made no consistent efforts to establish the facts by engaging in a context-sensitive assessment (see *M.C.*, cited above, § 177). The Court emphasises that investigation has to be rigorous and child-sensitive in case involving violence against a minor.

79. The Court cannot but note that while the authorities adopted a lax attitude concerning the length of the investigation, the domestic courts attached significant weight to the fact that the family did not report the alleged crimes immediately to the police and that, to a certain extent, the victim did not react sooner (see paragraph 47 above).

80. The Government also evoked the parents' alleged negligence in spotting and reporting the abuse in good time. Even if - with hindsight - it might have been advisable for the parents to take prompt action when they noticed the first changes in the behaviour of the first applicant and the blood in his underpants, the Court fails to see how this could have had a major impact on the diligence of the police in their response to the reported facts. Neither can the Court understand why the domestic courts have attached such a significant weight to that fact.

81. Concerning notably the weight attached to the victim's reaction, the Court considers that the authorities were not mindful of the particular vulnerability of young people and the special psychological factors involved in cases concerning violent sexual abuse of minors, particularities which could have explained the victim's hesitations both in reporting the abuse and in his descriptions of the facts (see *M.C.*, cited above, § 183).

82. The Court points out that the obligations incurred by the State under Articles 3 and 8 of the Convention in cases such as this require that the best interests of the child be respected. The right to human dignity and psychological integrity requires particular attention where a child is the victim of violence (see, *mutatis mutandis, Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002-III). The Court regrets that the first applicant was never offered counselling and was not accompanied by a qualified psychologist during the proceedings or afterwards. The only mention of such support is from the school counsellor, who suggested that it would be better if the family moved away. Bearing in mind the positive obligations that the Respondent State has assumed under the various international instruments protecting the rights of child, this cannot be considered to constitute an adequate measure for "recovery and reintegration".

83. The failure to adequately respond to the allegations of child abuse in this case raises doubts as to the effectiveness of the system put in place by the State in accordance with its international obligations and leaves the criminal proceedings in the case devoid of meaning.

The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to meet their positive obligations to conduct an effective investigation into the allegations of violent sexual abuse and to ensure adequate protection of the first applicant's private and family life.

There has accordingly been a violation of Articles 3 and 8 of the Convention in respect of the first applicant.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

84. The first applicant complained about the length and outcome of the investigation and of the criminal proceedings. He relied on Article 6 of the Convention.

85. Both parties presented observations on the matter.

86. Having regard to the finding relating to Articles 3 and 8 (see paragraph 70 above), the Court considers that this complaint is admissible, but that it is not necessary to examine whether, in this case, there has been a violation of Article 6 (see, among other authorities, *Bota v. Romania*, no. 16382/03, § 59, 4 November 2008).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

87. Lastly, the first applicant complained, under Article 2 of the Convention, that P.E. had threatened to kill him if he told anyone about the abuse and under Article 5 of the Convention that P.E. had deprived him of his liberty.

88. However, 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.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

90. The applicants claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage suffered by the first applicant.

91. The Government argued that there was no causal link between the alleged violation and the amount sought and that the applicants' claims were in any case exaggerated. Lastly, they suggested that a finding of a violation would constitute just satisfaction in the case.

92. The Court acknowledges that the first applicant must have suffered hardship and distress because of the ineffective investigation and the interference with the normal course of his private and family life. It therefore awards the first applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

93. The applicants did not make a claim under this head.

C. Default interest

94. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints raised by the first applicant under Articles 3 and 8 concerning the alleged lack of effectiveness of the investigation and its impact on his private and family life and the complaint raised by him under Article 6 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Articles 3 and 8 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 6 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the first applicant, in respect of non-pecuniary damage, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, to be converted into the Respondent State's national currency at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President