



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

FOURTH SECTION

CASE OF I.C. v. ROMANIA

(Application no. 36934/08)

JUDGMENT

STRASBOURG

24 May 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of I.C. v. Romania,

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

András Sajó, *President*,

Boštjan M. Zupančič,

Nona Tsotsoria,

Paulo Pinto de Albuquerque,

Egidijus Kūris,

Iulia Motoc,

Gabriele Kucsko-Stadlmayer, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 3 May 2016,

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

PROCEDURE

1. The case originated in an application (no. 36934/08) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Ms I.C. (“the applicant”), on 14 July 2008.

2. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged that the Romanian authorities had failed to conduct an effective investigation into her allegations of rape committed against her when she was fourteen years old, thereby breaching their positive obligation to protect her from inhuman and degrading treatment.

4. On 6 November 2013 the application was communicated to the Government and it was decided to grant the applicant anonymity under Rule 47 § 4 of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1992 and lives in Cotiglet, Romania. At the time of the events complained of, she was aged fourteen years and four months.

A. The events of 13 January 2007

6. On 13 January 2007 the applicant was attending a funeral wake in her village. At around 8 p.m. she went with two girlfriends, P.A. (ten years old) and Z.F.D. (fourteen years old) to fetch some drinking water at a neighbour's house. On their way, three boys, M.I.C. (fifteen years old), M.S. (fifteen years old) and M.C.S. (sixteen years old), approached the girls. M.I.C. pulled the applicant's arm behind her back, grabbed her head and told her to go with him. The boys took her into the garden of a nearby deserted building, where a man, M.C. (twenty-two years old), was waiting.

7. The three boys left and M.C. pushed the applicant to the ground, partially undressed her and had sexual intercourse with her. In the meantime, another man, A.C.L. (twenty-six years old), arrived at the scene and tried to have sex with the applicant, but was physiologically incapable. A third man, V.F. (thirty years old) was also there. He had also intended to have sexual intercourse with the applicant but finally decided to help her get up, clean and dress herself, and accompanied her back to the house where the funeral wake was being held. Twenty minutes later the applicant's father came looking for her and she told him that she had been raped. He immediately alerted the police.

B. The applicant's subsequent medical condition

8. The applicant underwent a forensic examination by a doctor on 14 January 2007. According to the subsequent forensic medical report, there were no signs of traumatic lesions on the applicant's body and no sperm could be found either. The forensic doctor found signs of pathology which could have resulted from sexual intercourse. Lastly, the doctor mentioned that the applicant was in a state of anxiety and fear, and he recommended psychological counselling and possibly a neuropsychiatric examination.

9. On 15 February 2007 the applicant was admitted to the Oradea Psychiatric Hospital. The hospital observation sheet stated that the applicant had sought treatment because she had been raped. She was diagnosed with stress-related anxiety, irritability, a sleep disorder, slight intellectual disability (an IQ of 68) and lice infestation. She was prescribed treatment with anxiolytics and anti-depressives, and was discharged from hospital in a slightly improved condition on 20 February 2007.

10. On 5 March 2007 an additional forensic medical report was issued at the request of the applicant's father. It stated that the applicant presented a psychological disorder caused by a physical and psychological trauma to which she had been exposed on 13 January 2007. The doctor held that, according to the documents presented by the Oradea Psychiatric Hospital, the applicant's condition had required fourteen days of medical care. No signs of pregnancy had been detected.

11. On 24 April 2007 the applicant was readmitted to the Oradea Psychiatric Hospital. According to the hospital observation sheet, her state of health was slightly improving but she had started to have headaches. She was discharged from hospital the following day, having been told to continue the initial treatment and to return for further tests at the end of May.

12. In July 2007 the applicant was again hospitalised in the Oradea Psychiatric Hospital for fourteen days with symptoms including frontal headaches, depression, tearfulness and feelings of social isolation. She was diagnosed with an emotional disorder, a sleep disorder and anaemia, among other conditions. She received treatment with neurotropic drugs, anxiolytics and vitamins. The doctors prescribed further treatment with neurotropic drugs and anxiolytics until a follow-up examination scheduled for September.

C. The criminal investigation

13. On 14 January 2007 the applicant, accompanied by her father, lodged a formal complaint with the police. On the same day she made a written statement about the events of the previous day, accusing the three adult men involved in the incident of rape. She also mentioned that, all the way to the deserted house, M.I.C. and M.S. had held her by her arms and neck, not allowing her to leave, and had threatened to beat her if she screamed for help. The police accompanied the applicant and her father to the scene of the incident and took photographs. No objects or other evidence were found.

14. Later the same day, written statements were given to the police by M.C. and M.I.C. M.C. stated that he had not forced the applicant in any way and he had not been aware that she was under fifteen. He alleged that he had seen the applicant during the wake and had invited her to go with him to the deserted house, which she had done voluntarily. After he had had consensual sex with the applicant, he had left her in the company of M.C.S. and had returned to the wake. M.I.C. denied any involvement in the events, stating that he had not left the house where the wake had been held.

15. On 15 January 2007 A.C.L., V.F. and M.C.S. gave statements to the police.

16. A.C.L. stated that on the evening of 13 January 2007 he had been passing by the deserted house when he had heard noises coming from the garden. He decided to go inside to see what was happening. There he met V.F., who told him that M.C. was there with a girl. He saw M.C. on top of the applicant, having sex. After he had finished, M.C. called him to do the same thing. He tried, but was physiologically incapable of having sex so he stood up and put his clothes back on. He left together with M.C., who was waiting for him nearby.

17. M.C.S. stated that he had seen how M.I.C. had grabbed and twisted the applicant's arm and had left with her from the wake. He had followed them together with M.S., but received a phone call and continued on a separate road.

18. In his statement, V.F. claimed that he had been at the wake when the applicant's brothers had asked him to help them look for their sister. He left alone and went to the deserted house where he found the applicant with M.C. A.C.L. was also there. At that moment his phone rang so he did not pay attention to the three people. When he finished on the phone he heard the applicant calling him and went to her. She was alone, lying on the ground, undressed from the waist down. He asked her what had happened but she did not say anything. When she asked him to come closer, he started kissing her and wanted to have sex with her, but felt uneasy about it, so he helped her get dressed and clean up the mud on her coat, and accompanied her back to the wake.

19. On 17 January 2007 the applicant's two girlfriends made statements to the police. They mentioned that M.I.C., M.S. and M.C.S. had approached the applicant, twisted her arm to her back and taken her with them. When she returned to the wake, the applicant did not tell them where she had been. P.A. also stated that she had heard the applicant shouting at the three boys to leave her alone. Z.F. had also seen the three boys surround the applicant and take her with them.

20. The applicant gave another detailed account of the facts in a statement drafted on 18 January 2007. She repeated that the three boys had forced her to go with them without saying where they were taking her, so she had not known what was going on. Once they arrived at the deserted house, there was M.C. who threatened to beat her if she would not accept to have sex with him. She further clarified that M.C.S. had kept her there by force until M.C. had raped her a second time. Then A.C.L. and V.F. came around and tried to rape her but failed and it was V.F. who had finally helped her leave the scene of the incident. Lastly, she mentioned that she had never had sex before the incident of 13 January and that M.C., A.C.L. and V.F. had known her and had been aware of her age.

21. M.S. stated to the police on 22 January 2007 that he had heard M.C. asking M.I.C. to take the applicant to the deserted house without telling her why. When the girls came out of the house where the wake was being held, he saw M.I.C. going after them and grabbing the applicant's head, twisting her arm to her back and taking her in the direction of the deserted house. He denied having touched or spoken to the applicant. He had just walked behind her and continued on his way past the deserted house. M.C.S. gave the same account of the facts.

22. M.I.C. was questioned again on 22 January 2007, when he re-considered his initial statement and told the police that M.C. had asked him, M.S. and M.C.S. to "grab" the applicant and take her to the deserted

house. He then admitted having grabbed her by the arms, but claimed that afterwards she had walked along with him voluntarily.

23. On 6 February 2007 the police took another round of statements from those involved in the events, who reiterated their previous statements. In addition, all the men questioned stated that they knew for a fact that the applicant had had sex before with other men and that they had been unaware of her age at the time.

24. On 2 March 2007 the case was transmitted to the prosecutor's office attached to the Bihor County Court in order for it to pursue the investigation into the crime of sexual intercourse with a minor.

25. On 26 April 2007 the applicant gave a statement before the prosecutor and requested that M.C., A.C.L., M.I.C., M.C.S. and M.S. be investigated for rape and complicity to rape.

26. M.C. and A.C.L. also gave brief statements before the prosecutor. M.C. claimed on this occasion that the applicant was the one who had sent word through M.I.C. that she wished to meet with him. A.C.L. stated that he knew the applicant had already had sex before and she had poor school results.

27. On 23 May 2007 the prosecutor indicted M.C. for the crime of sexual intercourse with a minor and A.C.L. for attempt to commit the same crime. The prosecutor based the decision on the following facts: the two men declared that they had not forced the applicant in any way; the forensic medical certificate attested to no signs of violence on the applicant's body; and after returning to the wake she had not told her girlfriends what had happened to her. In view of those elements it was considered that the applicant had consented to have sex with M.C. and A.C.L. The witnesses, M.I.C., M.C.S. and M.S., did not know about M.C.'s intentions and therefore it was considered that they had no criminal responsibility in the case. The criminal proceedings were discontinued with respect to V.F. because he had not had sexual intercourse with the applicant.

D. The trial

28. The Beiuş District Court scheduled a first hearing in the case on 15 June 2007. The applicant stressed before the court that M.C. had twice had sexual intercourse with her without her consent. In support of her allegations, she submitted copies of the medical reports referred to in paragraphs 8-11 above. She also claimed civil damages for the suffering caused by the actions of the two defendants.

29. M.C. testified before the court that, once he had arrived at the funeral wake, M.I.C. had told him that the applicant was waiting for him at the deserted house. When he reached the meeting point, the applicant started kissing him and asked him to go with her to the back of the garden, away from the road. They then lay down on his coat and the applicant started

undressing herself. They had sexual intercourse once, which was consensual. He did it because V.F. had told him once that he had had sex with the applicant in the past. Lastly, M.C. mentioned that he had done this before with other girls at other funeral wakes.

30. A.C.L. reiterated the statements he had given during the investigation. He concluded his testimony before the court with the remark:

“... I was asked by someone in the village whether it was true what happened and whether I was not ashamed of what I had done, but I replied that it was not safe to leave girls alone on the streets.”

31. On 31 August and 28 September 2007 the court heard statements from the applicant’s two girlfriends, as well as from M.I.C. and M.C.S. In her testimony Z.F. claimed that the applicant had been scared when she had returned to the wake. She also mentioned that the applicant was a well-behaved girl who did not go out with boys or go to bars. M.C.S. stated that he had heard the applicant asking M.I.C. to let go of her hand, but the latter had refused.

32. In his testimony M.I.C. also stated as follows:

“The next morning we went to the police to give statements and afterwards I asked M.C. what had really happened. He then told me that he had raped her [the applicant]. He did not seem too happy about his actions. We have played this game before at another wake: you must take the girl to a secluded place where she must be kissed by the boy she chooses. When the defendant [M.C.] told me he had raped the victim, he also mentioned that he had kissed her.”

33. On 12 October 2007 the Beiuș District Court convicted M.C. of sexual intercourse with a minor and gave him a suspended sentence of one year and four months. A.C.L. was convicted of attempted sexual intercourse with a minor and given a suspended sentence of one year.

34. In reaching its decision the court firstly observed that the forensic medical report indicated that no signs of violence had been detected on the victim’s body. The court further established the course of the events on the evening of 13 January 2007 as described by M.I.C., M.C.S. and M.S. It cited the parts of the statements given by the applicant’s two girlfriends in which they had mentioned that the applicant had not cried for help. Lastly, the court concluded that the two defendants ought to have known that the injured party was under the age of fifteen. The court did not address the applicant’s statement, the medical reports attesting to her medical condition or her requests for the incident to be examined as rape. It rejected her claim for civil damages, considering that the medical conditions described in the forensic reports had no connection with the incident at issue. In addition, it had come to light from witness statements that the applicant had had sex before the impugned incident.

35. All parties to the trial, including the applicant represented by her lawyer, appealed against the decision of the Beiuș District Court. In her reasons for appeal the applicant claimed that the sexual abuse committed

against her could only be classified as rape. She asked the court to extend the examination of the case to M.I.C., M.C.S. and M.S., whom she considered accomplices to rape. Lastly, the applicant considered that the medical reports submitted clearly attested to the suffering she had endured and therefore the court had erred in rejecting her claim for damages.

36. On 27 February 2008 the Bihor County Court decided to increase the sentences imposed on the two defendants to three years' imprisonment for M.C. and eighteen months' imprisonment for A.C.L. The decision of the Beiuş District Court concerning the classification of the crime and the suspension of the execution of the sentences was upheld. The County Court also decided to award the applicant 2,000 Romanian lei (RON) (approximately 600 euros (EUR)) in respect of non-pecuniary damage. In reply to the applicant's reasons for appeal, the court reasoned:

"It must be mentioned that the victim tried to convince the court that, in fact, she had not agreed to have sexual intercourse with the two defendants and that she had been the victim of a rape, but these allegations had not been proved in any way. Hence, the witnesses Z.F. and P.A. ... stated that ... the injured party had not cried for help ... and had not told them what had happened. ...

It must also be noted that from the forensic medical report ... it does not appear that the injured party was the victim of a rape, since she displayed no signs of post-traumatic injury on her body."

37. An appeal on points of law (*recurs*) lodged by the applicant against that judgment was rejected as ill-founded on 8 May 2008 by the Oradea Court of Appeal. The court declared briefly that by corroborating the victim's statement with the forensic medical report of 14 January 2007, the existence of a crime of rape had been excluded in the case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

38. Excerpts of the relevant legal provisions, as well as the relevant practice of the domestic courts, are detailed in *M.G.C. v. Romania* (no. 61495/11, §§ 30-37, 15 March 2016, not final).

39. In addition, the Government submitted Decision no. 1037 of 5 April 2012 taken by the High Court of Cassation and Justice in the case of the sexual abuse of a fourteen-year-old girl by three men in conditions similar to the ones in the current case. The High Court upheld the defendants' conviction for rape, reasoning as follows:

"In order to establish the facts, the court took into account the following evidence: the statements given by the victim, the defendant B.A., the witnesses ...; the statements given by P.D., R.C., and A.F. as defendants; the report on the examination carried out on the victim and on the material evidence as revealed in judicial photographs; the examination of the crime scene in the presence of the defendants accompanied by photographs and an orientation plan; the forensic medical certificate...; the investigation conducted by the social services and the school report; the psychiatric forensic examination; the report about the examination of the crime

scene in the presence of the witness P.D. with photographs; the polygraph test report ...

Based on the evidence produced before the first-instance court, it has been correctly held that there had been no direct coercion of the victim. However, this situation is irrelevant for the verdict on the existence of the crime of rape. The defendant took advantage of the victim's inability to defend herself, since any possibility of riposte was annihilated by the actions of the other aggressors [who had sexual intercourse with the victim before the defendant] ...

The victim's young age and psychological vulnerability [limited intellectual capacity] ... in the context of the events, namely during the night, in a secluded area, in a low temperature, the victim being scantily dressed, were all elements capable of placing her in a situation in which any opposition would have failed."

III. RELEVANT INTERNATIONAL MATERIAL

40. A detailed description of the relevant international material concerning sexual violence against children and women can be found in *M.G.C. v. Romania* (cited above, §§ 38-46).

41. As regards people with disabilities, on 2 February 2005 the Committee of Ministers of the Council of Europe adopted the Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse. The Resolution recognizes that abuse against people with disabilities may also take the form of sexual abuse and exploitation, including rape, sexual aggression, indecent assault or indecent exposure. In this respect it reads as follows:

"These abuses require a proportional response – one which does not cut across legitimate choices made by individuals with disabilities but one which recognises vulnerability and exploitation. The term 'abuse' therefore refers to matters across a wide spectrum, which includes criminal acts, breaches of professional ethics, practices falling outside agreed guidelines or seriously inadequate care. As a consequence, measures to prevent and respond to abuse involve a broad range of authorities and actors, including the police, the criminal justice system, the government bodies regulating service provision and professions, advocacy organisations, user networks and patient councils, as well as service providers and planners. ...

They should encourage cooperation between authorities and organisations in finding measures to prevent abuse, to improve detection and reporting of abuse, and to support the victims."

42. The relevant parts of Recommendation Rec(2006)5 of the Committee of Ministers to member States on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society read as follows:

"Persons with disabilities constitute a varied population group, but all have in common ... the need for additional safeguards in order to enjoy their rights to the full ... There are indicators that the rate of abuse and violence committed against persons with disabilities is considerably higher than the rate for the general population, and higher in women with disabilities ...

While governments cannot guarantee that abuse will not happen they must do their utmost to establish protection and the strongest possible safeguards ... Persons with disabilities who experience abuse or violence should have access to appropriate supports. They must have a system in which they can have sufficient confidence to report abuse and expect follow-up action, including individual support. Such systems require personnel who are skilled and qualified to detect and respond to situations of abuse.”

43. The United Nations Special Rapporteur on Disability stated the following in her 2006 report on the question of monitoring the situation of people with disabilities:

“2. People with developmental disabilities are particularly vulnerable to human rights violations. Also, people with disabilities are rarely taken into account, they have no political voice and are often a sub group of already marginalized social groups, and therefore, have no power to influence governments. They encounter significant problems in accessing the judicial system to protect their rights or to seek remedies for violations; and their access to organizations that may protect their rights is generally limited. While non-disabled people need independent national and international bodies to protect their human rights, additional justifications exist for ensuring that people with disabilities and their rights be given special attention through independent national and international monitoring mechanisms.”

44. In the context of the Convention on the Rights of Persons with Disabilities the United Nations had published the following relevant findings:

“Persons with disabilities are more likely to be victims of violence or rape, according to a 2004 British study, and less likely to obtain police intervention, legal protection or preventive care.

Research indicates that violence against children with disabilities occurs at annual rates at least 1.7 times greater than for their non-disabled peers.”

THE LAW

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

45. The applicant complained that the Romanian authorities had not investigated her allegations of rape effectively and had breached their positive obligation to protect her from inhuman and degrading treatment.

The relevant Convention provisions 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 ... life ...”

A. Admissibility

46. The Court notes that 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' submissions*

47. The applicant submitted that the authorities had not investigated her allegations of rape effectively. As there had been no physical evidence of assault, the criminal justice system had been more inclined to believe the perpetrators, showing no concern for the need to protect her as a minor. Discrepancies in the evidence had been disregarded and undue emphasis placed on the absence on her body of any signs of physical violence and on her lack of resistance to the perpetrators. The authorities failed to take into consideration her young age and her physical and psychological condition or the fact that six adult men had participated in her abuse. This approach intensified her feelings of humiliation, anguish and frustration without rendering an effective conviction.

48. The severe consequences of this situation on the applicant's state of mind had been documented by the medical reports submitted during the domestic proceedings, as well as before the Court.

49. The Government contended that the investigation had been thorough and effective. All possible steps had been taken to gather the necessary evidence and to establish the facts, and in the absence of “direct” proof of rape, the national authorities had taken into consideration all the circumstances of the case. The authorities had not found it established that rape had been committed. The applicant had given conflicting testimony while the perpetrators had presented a constant position throughout the investigation. She had agreed to accompany the boys to the deserted house and had not asked for help. In addition, the difference in age between the applicant and the perpetrators was not significant.

50. The Government further argued that from the examples of domestic practice as already submitted in the case of *M.G.C. v. Romania* (cited above), it was obvious that the domestic courts were not requiring proof of physical violence in order to establish the existence of rape and that the victim's resistance was not considered an important element in the analysis of such cases. When a victim was not young enough for the act to be

automatically classified as rape, but was under the age of fifteen and gave her/his consent to the sexual act, the law provided that the victim's will was not valid because of her young age and classified the act as the crime of sexual intercourse with a minor. The domestic courts have made a distinction between the two crimes, holding that the victim's failure to defend herself/himself or to express her/his will must be established on a case-by-case basis. A fourteen-year-old girl might find herself unable to express her consent, whereas a much younger victim might have the capacity to defend herself and express her will.

2. The Court's assessment

(a) General principles

51. 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 *I.G. v. Moldova*, no. 53519/07, § 40, 15 May 2012). These measures should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *M.C. v. Bulgaria*, cited above, § 150). In the case of people in a vulnerable position, including people with disabilities, the Court held that the authorities must show particular vigilance and afford increased protection in view of the fact that such individuals' capacity or willingness to pursue a complaint will often be impaired (see *B. v. Romania*, no. 42390/07, § 50, 10 January 2012).

52. On that basis, the Court considers that States have a positive obligation inherent in Article 3 of the Convention to enact criminal-law provisions that effectively punish rape and to apply them in practice through effective investigation and prosecution (see *M.C. v. Bulgaria*, no. 39272/98, § 153, 4 December 2003). In addition, in accordance with contemporary standards and trends in this area, member States' positive obligations under Article 3 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim (*ibid.*, § 166).

(b) Application of the above-mentioned principles to the present case

53. The Court notes that the authorities in the current case were confronted with two conflicting versions of the events. The applicant alleged that she had been raped on the evening of 13 January 2007. However, the six men involved in the incident claimed that she had consented to having sexual intercourse that evening. Therefore, the

authorities' central task in this case was to determine whether the sexual intercourse had been consensual.

54. In similar cases the Court has already held that the presence of two irreconcilable versions of the facts obviously called for a context-sensitive assessment of the credibility of the statements made and for verification of all the surrounding circumstances (see *M.C. v. Bulgaria*, cited above, § 177). That could be done by questioning people known to the applicant and the perpetrators, such as friends, neighbours, teachers and others who could shed light on the trustworthiness of their statements or by seeking an opinion from a specialist psychologist (see *I.G. v. Moldova*, cited above, § 43). In this context, the authorities could also verify whether any reasons existed for the victim to make false accusations against the alleged perpetrators. However, the Court observes that none of the above was done at any stage of the investigation and trial in the current case.

55. The Court further observes that international materials on the situation of people with disabilities point out that the rate of abuse and violence committed against people with disabilities is considerably higher than the rate for the general population (see paragraphs 42-44 above). According to medical documents dated 15 February 2007 the applicant had been diagnosed with slight intellectual disability. In this context, the nature of the sexual abuse against her was such that the existence of useful detection and reporting mechanisms were fundamental to the effective implementation of the relevant criminal laws and to the applicant's access to appropriate remedies (see, *mutatis mutandis*, *Juppala v. Finland*, no. 18620/03, § 42, 2 December 2008). Indeed the Court is of the view that failure to properly investigate or provide appropriate judicial response to complaints of sexual abuse against children or other vulnerable persons such as persons with intellectual disabilities creates a background of impunity which may be in breach of the State's positive obligations under Article 3 of the Convention.

56. In such circumstances, the Court considers that the applicant's intellectual disability, confirmed by medical documents, placed her in a heightened state of vulnerability and required both the investigative authorities and the domestic courts to show increased diligence in analysing the applicant's statements (compare *B v. Romania*, cited above, § 57). Moreover, particular attention should have been also focused on analysing the validity of the applicant's consent to the sexual acts in the light of her intellectual capacity. However, it appears that none of the personal circumstances of the applicant, such as her age and her mental and physical development or the circumstances in which the incident took place – at night, in cold weather, as well as the number of men who took part in it – were considered by the prosecutors or the judges deciding on this case.

57. The conclusions drawn by the prosecutor and the domestic courts appear to have been based only on the statements given by the alleged

perpetrators, taken together with the fact that the applicant's body showed no signs of violence and that she had not called for help or immediately told her girlfriends about the alleged abuse (see paragraphs 34 and 36 above). The Court notes in this context the multitude of investigative steps conducted in the example of domestic case-law submitted by the Government (see paragraph 39 above).

58. In view of the above elements, the Court considers that the authorities put undue emphasis on the absence of proof of resistance from the applicant and they failed to take a context-sensitive approach in the current case (see *M.C. v. Bulgaria*, cited above, § 182). The authorities' conduct was aggravated by the fact that no psychological evaluation was ever ordered by the domestic courts for the purposes of obtaining a specialist analysis of the applicant's reactions from the point of view of her age. At the same time, the extensive medical evidence of the trauma suffered by the applicant following the incident at issue was not considered by the authorities at all.

59. Lastly, the Government claimed, among other arguments, that the applicant had given conflicting statements to the authorities. However, the Court notes that in the statements she gave throughout the investigation and trial, the applicant had merely clarified her initial statement, given immediately after the incident. The ones who appear to have re-considered their statements were M.C. and M.I.C. (see paragraphs 14, 22 and 26 above). Nevertheless, it is not clear from the case file whether the authorities took any steps to verify their credibility or the course of the events as described by the two men.

60. In view of the above, without expressing an opinion on the guilt of M.C., A.C.L. and V.F., the Court finds that the investigation of the applicant's case fell short of the requirements inherent in the States' positive obligations to apply effectively a criminal-law system punishing all forms of rape and sexual abuse.

61. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of the respondent State's positive obligations under Article 3 of the Convention. In view of this conclusion, the Court also holds that no separate issue arises under Article 8 of the Convention (see *I.G. v. Moldova*, cited above, § 45).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

64. The Government submitted that the amount claimed was excessive.

65. The Court considers that the applicant must have suffered distress and psychological trauma resulting at least partly from the shortcomings in the authorities’ approach in the present case. Making an assessment on an equitable basis, the Court awards her EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicant did not claim costs or expenses. Accordingly, the Court does not make any award under this head.

C. Default interest

67. 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 application admissible;
2. *Holds* that there has been a violation of the respondent State’s positive obligations under Article 3 of the Convention;
3. *Holds* that no separate issue arises under Article 8 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mariáléna Tsirli
Registrar

András Sajó
President