



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

FOURTH SECTION

CASE OF A.Ö. AND H.Ö. v. ROMANIA

(Application no. 1455/20)

JUDGMENT

STRASBOURG

3 May 2022

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

In the case of A.Ö. and H.Ö. v. Romania,

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

Gabriele Kucsko-Stadlmayer, *President*,

Iulia Antoanella Motoc,

Pere Pastor Vilanova, *judges*,

and Crina Kaufman, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 1455/20) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 18 February 2020 by two Romanian nationals, A.Ö. (“the first applicant”) born in 2005 and living in Ghimbav and H.Ö. (“the second applicant”) born in 1978 and being currently detained in Codlea Prison;

the decision to give notice of the application to the Romanian Government (“the Government”), represented by their Agent, Ms O. Ezer, of the Ministry of Foreign Affairs;

the decision not to have the applicants’ names disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the European Roma Rights Centre, who were granted leave to intervene by the President of the Section;

the decision to dismiss the Government’s objection to the examination of the application by a Committee;

Having deliberated in private on 29 March 2022,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the lack of effective criminal proceedings into allegations of sexual abuse of the first applicant when she was thirteen years old and while placed by the child protection services in a privately run child-care home.

2. Following complaints by the first applicant’s father (the second applicant) lodged on 29 January 2019, and by representatives of the care home lodged on 30 January 2019, an investigation into allegations of sexual act with a minor set forth by Article 220(1) of the Criminal Code was opened by the police. The second applicant complained that his daughter, the first applicant, born in January 2005, had been sexually abused from the summer of 2018 and until January 2019 when she was still thirteen years old. He specifically complained that representatives of the care home had failed to take the necessary measures to protect his daughter from sexual abuse and had failed to duly notify the police. The first applicant stated to the police that, in January 2019, an older boy – a former resident who was regularly

visiting the care home, had asked her to perform oral sex on him and she accepted. She mentioned that she knew the boy since the summer of 2018 and that he had initiated previous intimate encounters with her in hidden parts of the care home's courtyard. The suspect, who was twenty years old at the time of the events, confirmed the intimate encounters (kissing and touching), the last such encounter happening in December 2018, but he denied that they ever had oral sex. A social worker employed by the care home was interviewed by the police and confirmed that she knew about the oral sex and stated that the issue had been discussed in a meeting with the employees of the care home. No indication was given as to the date of the meeting and no further details were requested.

3. Psychological evaluations of the first applicant and the suspect were conducted, one by the psychologist of the care home, and were all focused on the difficult family situation of the first applicant, her lack of adaptability, her low school results and her emotional difficulties, while the suspect was portrayed as a responsible adult with a job and without any prior criminal convictions. It appears from the statements given to the police that the psychologist of the care home, who drafted one of the above reports, had asked the first applicant to apologise to the suspect for what she "had forced him" to do to her.

4. On 14 May 2019 the prosecutor's office attached to the Braşov County Court decided to close the investigation as the statements of the victim and the suspect were contradictory and no direct evidence was found in the case. Moreover, the prosecutor considered that, since she was born in January, the victim was already fifteen years old at the time of the alleged event and therefore, even assuming that a sexual act had taken place, she was already past the fifteen-years age limit imposed for the crime of sexual act with a minor. As regards the complaint made by the second applicant against the care home, the prosecutor stated that no investigation had been conducted on this aspect since representatives of the care home had duly and timely notified the authorities about the alleged abuse, on 30 January 2019.

5. The second applicant's complaint against the above decision was rejected with final effect by the Braşov District Court on 7 October 2019. The court held that the prosecutor had correctly decided to close the investigation since the suspect denied the facts and as there was no direct evidence of a sexual act.

6. Documents in the investigation file attest to the fact that an *ex officio* lawyer and an employee of the care home had been appointed to represent the first applicant. However, none of them appear to have lodged any requests on her behalf, they did not appeal the prosecutor's decision of 14 May 2019 and were not present before the court.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

7. The first applicant complained that the authorities had not investigated her allegations of sexual abuse effectively and had thus breached their positive obligation to protect her from inhuman and degrading treatment.

8. The Government contended that the investigation had been thorough and effective.

9. The third-party intervener submitted that reports from various organisations and monitoring bodies show that in Europe, women of Roma ethnic origin, such as the first applicant, receive a poorer response from the police to complaints of gender-based violence.

10. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

11. The general principles concerning the State's positive obligation to provide effective protection from ill-treatment to children and other vulnerable persons and the relevant legal provisions, along with examples from the practice of the domestic courts and the relevant international material have been summarized in *I.C. v. Romania* (no. 36934/08, §§ 51-52 and 38-44 respectively, 24 May 2016; and, most recently, in *X and Others v. Bulgaria* [GC], no. 22457/16, §§ 176-92, 2 February 2021).

12. In similar previous cases, where the conclusions drawn by the domestic authorities appeared to have been based only on the statements given by the alleged perpetrators and without an examination of the validity of the applicant's consent in the light of her age and vulnerability, the Court had concluded 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 (see *I.C. v. Romania*, cited above, §§ 56, 57 and 60; *M.G.C. v. Romania*, no. 61495/11, §§ 68-75, 15 March 2016, and *X and Others v. Bulgaria* [GC], cited above, §§ 213 and 228).

13. Having examined all the material submitted to it, the Court has identified similar shortcomings in the investigation conducted in the current case: mistake as regards the first applicant's age – an essential element of the investigation (see paragraph 4 above); conclusions based solely on the statements of the suspect (see paragraphs 4 and 5 above); given the assumption of the investigating authorities, albeit erroneous, that the first applicant was 15 years old at the time of events, none of the psychological examinations conducted in the case verified her capacity to give her valid consent to the sexual act under investigation (see paragraph 3 above); presence of stereotypes – already observed by the Court in previous cases (see *M.G.C. v. Romania*, cited above, § 38) – that the minor victim had

provoked an older man into having sex (see paragraph 3 above); lack of any investigation into the second applicant's allegations of failure on the part of the representatives of the care home to take the necessary measures to prevent the abuse and to notify the police in due time (see paragraph 4 above); lack of an effective representation afforded to the first applicant. In respect of the latter point, it is to be noted that the father was in prison, that the minor was represented by an employee of the institution against which complaints had been made in the same case (see paragraph 2 above) and also by an *ex officio* lawyer, and that none of these representatives lodged any meaningful requests during the investigation, and failed to appeal the prosecutor's decision in the case (see paragraph 6 above).

14. Having regard to the case-law on the subject and to the elements of the case-file, the Court considers that the shortcomings in investigation in the instant case (see paragraph 13 above) were such, that the investigation fell short of the requirements inherent in the States' positive obligations to apply effectively a criminal-law system punishing all forms of sexual abuse against children in general and vulnerable persons such as the first applicant in particular (see *M.G.C. v. Romania*, §§ 60-75, and *I.C. v. Romania*, §§ 53-61, both cited above).

15. There has accordingly been a violation of the respondent State's positive obligations under Article 3 of the Convention in respect of the first applicant.

REMAINING COMPLAINTS

16. The applicants raised other complaints under various Convention provisions. Having examined them, the Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. The applicants claimed 127,000 euros (EUR) in respect of non-pecuniary damage.

18. The Government considered the amount excessive and unjustified and submitted that the finding of a violation would be sufficient compensation for any damage sustained.

19. The Court considers that, in view of the violation found above, the first applicant is entitled to compensation for non-pecuniary damage and awards her EUR 12,500 in that respect, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 3 of the Convention lodged by the first applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation in respect of the first applicant;
3. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months, EUR 12,500 (twelve thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;
4. *Dismisses* the remainder of the first applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Crina Kaufman
Acting Deputy Registrar

Gabriele Kucsko-Stadlmayer
President