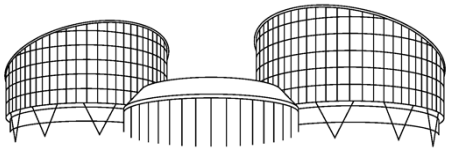

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF D.M.D. v. ROMANIA

(Application no. 23022/13)

JUDGMENT

STRASBOURG

3 October 2017

FINAL

03/01/2018

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

In the case of D.M.D. v. Romania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Iulia Motoc,
Carlo Ranzoni,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 11 July 2017,

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

PROCEDURE

1. The case originated in an application (no. 23022/13) 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, Mr D.M.D. ("the applicant"), on 22 March 2013. The Court acceded to the applicant's request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant, who had been granted legal aid, was represented by Ms N.T. Popescu, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged that the criminal investigations into his allegations of domestic abuse perpetrated by his father had been ineffective and that the ensuing proceedings had been unfair.

4. On 25 March 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 2001 and lives in Bucharest. His parents, C.I. and D.D., separated in April 2004 and divorced in September 2004, mainly because of D.D.'s abusive behaviour towards his wife and their son. The applicant remained with his mother. On 27 February 2004 C.I. called

the hotline of the Bucharest Child Protection Authority (*Direcţia Generală de Asistenţă Socială şi Protecţia Copilului*) to report the domestic abuse she and the applicant had been suffering at the hands of D.D. Since then, the case has been monitored by the Authority. On 7 October 2008 the Child Protection Authority certified that since 2004 it had included the applicant in a psychological counselling programme.

The Child protection Authority issued the following statement concerning the monitoring of the applicant's case (on 29 August 2005 for the purpose of court proceedings):

> "Mrs [C.I.] kept contact with our institution, the case being monitored by the Legal Counselling Service (legal counselling concerning eviction from home ...) as well as by the Service concerning emergency relocation and the Centre for Psychological Counselling for Parents."

6. On 5 March, 16 April, 7 May and 30 June 2004 C.I. lodged complaints with the Bucharest Police about the alleged violence inflicted by her husband on the applicant. No action was taken on these complaints. On 1 July 2004 C.I. lodged a new complaint with the police concerning the alleged abuse. The police heard evidence from witnesses on behalf of the applicant and obtained information about the applicant's situation from the centre where he and his mother had been relocated. Based on the evidence gathered, the police sent the file to the prosecutor's office attached to the Bucharest District Court ("the prosecutor").

7. On 1 November 2005 the prosecutor instituted a criminal investigation against D.D. It heard evidence from C.I., D.D. and six witnesses and examined the expert reports concerning the applicant's and D.D.'s psychological evaluations. It concluded that the applicant had suffered trauma during his early childhood because of his father who had done everything he could to torment him and to make him suffer.

8. On 27 December 2007 the prosecutor indicted D.D. for abusive behaviour towards his son.

9. The Bucharest District Court heard evidence from a psychologist who had observed the applicant during therapy, from C.I. and other witnesses, as well as from D.D., the last mentioned denying having hurt his son. C.I. did not request damages on behalf of the applicant. In a decision of 9 June 2008 the court acquitted D.D. on the grounds that his occasionally inappropriate behaviour towards the applicant had not been severe enough to constitute a crime. This decision was upheld by the County Court on 19 February 2009, but on 19 June 2009 the Bucharest Court of Appeal quashed this latter decision and remitted the case to the County Court, as it considered that the lower courts should have heard evidence from the applicant and relied on the psychological reports.

10. On 14 December 2009 the County Court held a private hearing and interviewed the applicant. He told the judges how D.D. used to hit him, lock him in a small room without lights, throw water on him while he was

sleeping and call him names. He stated that D.D. had often fought with his mother and that sometimes he had thrown the applicant's maternal grandmother and aunt – who were bringing food to the child – out of their apartment. The applicant told the court that he did not want to live with D.D. or even meet him on the street. He was persuaded that D.D. would want to hurt him. He stated that he wished that D.D. would be punished for what he had done to him.

11. In a decision rendered on 22 December 2009 the County Court convicted D.D. of ill-treatment inflicted on a minor and sentenced him to a suspended penalty of four years' imprisonment. It considered that the evidence in the prosecution file, in particular the psychological reports and the testimony given by a psychologist, confirmed that the child had suffered trauma as a consequence of his father's abusive behaviour.

The court also noted that C.I. had not requested damages on behalf of the applicant (see paragraph 9 above). Based on Article 17 of the Code of Criminal Procedure ("the CCP", see paragraph 24 below), the court, on its own initiative, awarded the applicant 20,000 Romanian lei (RON) in respect of non-pecuniary damage.

12. Upon an appeal on points of law lodged by D.D., on 7 April 2010 the Bucharest Court of Appeal remitted the case to the County Court and ordered that court to obtain an expert examination of the applicant by the Forensic Medicine Institute.

13. On 26 April 2012 the County Court rendered a new decision. Based on the evidence before it, notably the expert evaluations, psychologist's testimony, witness statements, as well as the parents' and the applicant's statements, the County Court considered it established that D.D. had physically and verbally abused his child from 2002 to 2004. It stated:

> "The County Court notes that the acts perpetrated by [D.D.] cannot be considered as isolated and random acts of physical punishment which parents can administer to their minor children, but became more severe and caused *childhood attachment troubles*."

14. D.D. was convicted of ill-treatment inflicted on a minor. He was given a suspended sentence of one year's imprisonment; in addition, his right to be elected and his parental rights were suspended during the sentence and for two additional years.

15. When sentencing D.D., the court took into account the undue length of the criminal proceedings and that there had been significant periods of inactivity by the authorities involved, in particular by the investigators and the Forensic Medicine Institute.

16. No award of damages was made. The court did not give any explanation in its judgment as to why it decided not to award compensation to the applicant.

17. All parties appealed on points of law. Relying on Article 17 of the CCP (see paragraph 24 below), the applicant and the prosecutor complained notably about the fact that the County Court had not awarded damages.

18. The Bucharest Court of Appeal examined the parties' submissions in the light of the evidence before it. It reaffirmed that D.D. had physically and verbally abused his child; his sentence was recalculated based on the same criteria, including the reduction as a remedy for the length of the trial. The court accordingly increased the sentence to three years' imprisonment and suspended it. The additional penalty of restricting D.D.'s right to be elected and his parental rights was maintained.

19. The court further considered that in so far as both the prosecutor and the applicant had limited their initial appeals to solely the criminal aspects of the District Court's decision of 9 June 2008, the County Court had been right in not awarding damages on its own initiative. The relevant part of the decision reads as follows:

> "In so far as the prosecutor's office and the injured party argued that the [County Court] should have examined the award of damages on its own initiative because the injured party was a minor, it is to be observed from the content of the decision under review that both the prosecutor's office and the injured party had expressly limited their appeals to the criminal aspects of the case.
>
> In this situation, the [County Court] was right in limiting its examination strictly to the issues brought before it."

20. The Court of Appeal rendered its final decision on 1 November 2012 and rectified the text of the operative part on 22 November 2012.

II. RELEVANT DOMESTIC LAW

21. The Protection and Promotion of Children's Rights Act (*Legea privind protecţia şi promovarea drepturilor copiilor*, Law no. 272/2004) forbids corporal punishment as follows:

Article 33

> "(1) A child has the right to respect for his or her personality and individuality and may not be subjected to physical punishment, or humiliating or degrading treatment.
>
> (2) Measures of punishment may only be taken if they respect the child's dignity; under no circumstances may corporal punishment or punishment which affects the physical or psychological development or the emotional state of the child be permitted."

Article 89

> "(1) A child has the right to be protected against abuse, neglect, exploitation, trafficking, illegal migration, abduction, violence, internet pornography, and any form of violence, irrespective of the child's environment: family, school, medical institution ..."

Article 94

"(1) Abuse of a child is any voluntary act perpetrated by a person in a position of responsibility, trust or authority towards the child, whereby the child's life, physical, mental, spiritual, moral or social development, corporal integrity, or physical and psychological health are put at risk; it can be classified as physical, emotional, psychological, sexual, and economic abuse."

Article 95

"Any act of violence or of deprivation of a child's rights which threatens the child's life, physical, mental, spiritual, moral or social development, corporal integrity, or physical and psychological health, perpetrated within the family, is forbidden ..."

22. Articles 98-103 of the Act provide that the Child Protection Authority has an obligation to verify any information concerning allegations of abuse and must have the support of the police in its undertakings. The Child Protection Authority may seek a court order for interim measures meant to ensure that the child does not (continue to) suffer abuse.

23. Under Article 14 of the CCP, as in force at the relevant time, the victim of a crime had the right to obtain pecuniary and non-pecuniary damages from the responsible person, within the framework of criminal proceedings.

24. According to Article 17 of the CCP, as in force at the relevant time, if a victim of a crime lacked full legal capacity to exercise his or her rights (as, for example, a minor), the court was under an obligation to examine the possibility of awarding damages on its own initiative. Article 17 read as follows:

"(1) The civil action shall also be initiated and pursued on the court's initiative, when the aggrieved party is a person without legal capacity or with restricted legal capacity.

(2) To this end, the investigative authority or the court shall ask the person concerned, through his legal representative, to explain the situation concerning the pecuniary and non-pecuniary damage and information concerning the acts that caused the damage.

(3) The court shall examine on its own initiative the matter of compensation for pecuniary and non-pecuniary damage, even without a formal request for compensation from the victim."

II. RELEVANT INTERNATIONAL STANDARDS CONCERNING DOMESTIC ABUSE AGAINST CHILDREN

A. Council of Europe

25. The Council of Europe through various conventions and implementing mechanisms as well as large-scale campaigns is fighting against domestic violence affecting children. In particular, children's rights

are specifically addressed in several articles of the European Social Charter, notably: Article 7 (the right of children and young persons to protection) and Article 17 (the right of children and young persons to social, legal and economic protection). The European Committee of Social Rights, which monitors the European Social Charter took note of the wide consensus at both the European and international level that corporal punishment of children should be expressly and comprehensively prohibited in law (Decision on the merits: Association for the Protection of All Children (APPROACH) Ltd. v. France, Complaint No. 92/2013, 12 September 2014).

Romania ratified the Social Charter on 7 May 1999.

26. In his 2008 Issue Paper on "Children and corporal punishment: 'The right not to be hit also a children's right'", the Council of Europe's Human Rights Commissioner made a thorough analysis of the situation of domestic abuse against children and the progress made towards ending corporal punishment:

> "Progress towards ending corporal punishment of children at global level
>
> There is a global context for making quick progress: the key message of the United Nations Secretary General's Study on Violence against Children, reported to the General Assembly in October 2006, is that no violence against children is justifiable; all violence against children is preventable. The Study urges all States to move quickly to prohibit all forms of violence against children – including all corporal punishment – setting a target of 2009.
>
> *'The Study should mark a turning point – an end to adult justification of violence against children, whether accepted as 'tradition' or disguised as 'discipline'. There can be no compromise in challenging violence against children. Children's uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence.'*
>
> At present, globally, some 23 states have prohibited all corporal punishment, including in the family.
>
> Progress towards ending corporal punishment of children in Europe
>
> Though some progress has been made in efforts against corporal punishment, it is clear that this form of abuse has an alarming frequency and prevalence all over the world. Statistics show that it is a world-wide phenomenon which affects children irrespective of their country or social origin. The prevalence of corporal punishment has been substantiated by interview surveys conducted in a number of countries with parents, other carers and increasingly with children to determine more about why and how often corporal punishment occurs.
>
> In its Recommendation 1666 (2004) calling for a Europe-wide ban on corporal punishment of children, the Parliamentary Assembly of the Council of Europe considered that
>
> '*any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. The social and legal acceptance of corporal punishment of children must be ended*.'

Therefore the Recommendation called for a coordinated and concerted campaign for the total abolition of corporal punishment of children. Noticing the success of the Council of Europe in abolishing the death penalty, it called for Europe to become, as soon as possible, '*a corporal punishment-free zone for children*.'

The Committee of Ministers of the Council of Europe has for more than 20 years encouraged Member States to prohibit corporal punishment. It started in 1985 with a Recommendation of which the preamble notes that 'the defence of the family involves the protection of all its members against any form of violence, which all too often occurs among them'. The explanatory memorandum describes corporal punishment as "an evil which must at least be discouraged as a first step towards outright prohibition. It is the very assumption that corporal punishment of children is legitimate that opens the way to all kinds of excesses and makes the traces and symptoms of such punishment acceptable to third parties". This condemnation was echoed in further recommendations in 1990 and 1993. The Committee of Ministers has insisted on the need to begin, in all Member States, a coordinated and concerted campaign for the abolition of all violence against children.

Therefore, in order to pursue that objective, it announced a comprehensive three-year programme of action on "Children and Violence" with the following objectives:

- assist member states in implementing international standards at national and local levels, in particular the United Nations Convention on the Rights of the Child, the European Social Charter and the European Convention on the Exercise of Children's Rights;

- by 2008, to propose a coherent and comprehensive set of instruments and methodological guidelines covering all aspects of the question;

- improve the visibility and the impact of Council of Europe's work in the field.

...

Conclusions

The imperative for removing adults' assumed rights to hit children is that of human rights principles. It should therefore not be necessary to prove that alternative and positive means of socializing children are more effective. However, research into the harmful physical and psychological effects of corporal punishment in childhood and later life and into the links with other forms of violence do indeed add further compelling arguments for banning the practice and thereby breaking the cycle of violence."

27. Furthermore, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) requires States Parties to prevent violence against women, protect victims and prosecute the perpetrators. It introduces a number of criminal offences for physical, sexual and psychological violence for which more severe sentences are required when the offence is committed against or in the presence of a child.

On 27 June 2014 Romania signed that convention with reservations and on 1 September 2016 the Istanbul Convention entered into force with respect to the Respondent State.

28. The Recommendation CM/Rec(2009)10 of the Committee of Ministers of the Council of Europe to Member States on integrated national strategies for the protection of children from violence, adopted by the Committee of Ministers of the Council of Europe on 18 November 2009, emphasises that "children's fragility and vulnerability and their dependence on adults for the growth and development call for greater investment in the prevention of violence and protection of children on the part of families, society and the State".

29. On 17 November 2010 at the 1098th meeting of the Ministers' Deputies, the Committee of Ministers adopted Guidelines on child-friendly justice (CM/Del/Dec(2010)1098/10.2). It reiterated that the best interest of children must be a primary consideration in all matters involving or affecting them and that justice must be adapted to and focused on the needs and rights of the child, including his or her right to respect for his or her physical integrity and dignity. The guidelines recognise the children's right to legal counselling and to expeditious proceedings.

B. United Nations

30. The United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, also recognises the children's right to be protected from domestic abuse and urges States to put in place adequate procedures and mechanisms to deal with the matter (Article 19):

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."

31. The relevant part of General Comment no. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*) adopted by the Committee on the Rights of the Child at its forty-second session held from 15 May to 2 June 2006, reads as follows:

"40. The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The de minimis principle – that the law does not concern itself with trivial matters – ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.

41. Children's dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children's best interests. It is the Committee's view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The affected child's views should be given due weight, according to his or her age and maturity.

42. Advice and training for all those involved in child protection systems, including the police, prosecuting authorities and the courts, should underline this approach to enforcement of the law. Guidance should also emphasize that article 9 of the Convention requires that any separation of the child from his or her parents must be deemed necessary in the best interests of the child and be subject to judicial review, in accordance with applicable law and procedures, with all interested parties, including the child, represented. Where separation is deemed to be justified, alternatives to placement of the child outside the family should be considered, including removal of the perpetrator, suspended sentencing, and so on."

32. On 18 April 2011 the UN Committee on the Rights of the Child issued a general comment on the right of the child to freedom from all forms of violence giving an overview of the instances of violence in children's lives and a comprehensive legal analysis of Article 19 of the UN Convention on the Rights of the Child (General Comment No. 13 (2011)). It affirmed that no form of violence against children, however light, could be tolerated, including in the familial sphere, and reiterated the States' obligation to prevent violence and protect child victims. The Committee further reiterated that corporal punishment, as defined in its general comment No. 8, however light, was also banned. The relevant parts read as follows:

"17. No exceptions. The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable. "All forms of physical or mental violence" does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.

...

24. Corporal punishment. In general comment No. 8 (para. 11), the Committee defined "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions, burning, scalding, or forced ingestion. In the view of the Committee, corporal punishment is invariably degrading. Other specific forms of corporal punishment are listed in the report of the independent expert for the United Nations study on violence against children (A/61/299, paras. 56, 60 and 62).

...

41. State parties that have not yet done so must:

...

(d) Review and amend domestic legislation in line with article 19 and its implementation within the holistic framework of the Convention, establishing a comprehensive policy on child rights and ensuring absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators;

...

61. Article 3 (best interests of the child). The Committee emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention. In particular, the Committee maintains that the best interests of the child are best served through:

(a) Prevention of all forms of violence and the promotion of positive child-rearing, emphasizing the need for a focus on primary prevention in national coordinating frameworks;

(b) Adequate investment in human, financial and technical resources dedicated to the implementation of a child rights-based and integrated child protection and support system."

33. The Special Representative of the Secretary General of the UN on violence against children actively participates in programmes and activities aimed at tackling the issue of domestic violence against children, to name the most recent: support to the Panama Declaration on Ending Violence against Children adopted by over five hundred faith leaders from 70 countries at the 5th Forum of the Global Network of Religions for Children in May 2017; participation in 2015 in the study and report "Counting Pennies", reviewing Official Development Assistance (ODA) allocations to end violence against children; global survey to help map and assess progress in the implementation of the 2006 UN Study

recommendations on ending violence against children, and set future priorities.

34. In December 2013 UNICEF launched the initiative #ENDviolence which builds on growing public consensus that violence against children can no longer be tolerated and that it can only be stopped by the collective efforts of ordinary citizens, policymakers, governments and international stakeholders. In this context, in September 2014 UNICEF launched the report "Hidden in Plain Sight", consisting of statistical data on violence against children and which aims to show the extent of physical, sexual and emotional abuse to which children are exposed all over the world. According to UNICEF, the statistical data gathered over two decades provided evidence that countries need to develop effective policies, legislation and programmes to address violence. Relevant in this campaign is also UNICEF's report "Ending violence against children: six strategies for action", also launched in September 2014, in which UNICEF proposed the main tools to enable society as a whole, from families to governments, to prevent and reduce violence against children. The strategies developed include supporting parents and equipping children with life skills; changing attitudes; strengthening judicial, criminal and social systems and services; and generating evidence and awareness about violence and its human and socio-economic costs, in order to change attitudes and norms.

C. European Union

35. The European Union's Victims' Directive (2012/29/EU) reiterates that children's best interests must be a matter of primary consideration and urges States to implement a child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns. It regulates the right to compensation in the following terms:

Article 4

Right to receive information from the first contact with a competent authority

"1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

...

(e) how and under what conditions they can access compensation;

..."

Article 16

Right to decision on compensation from the offender in the course of criminal proceedings

"1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained that the authorities (the police, the prosecutor's office and the courts) had failed to investigate promptly and effectively the allegations of ill-treatment inflicted on him, despite the evidence brought before them. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' observations

38. The applicant argued that the proceeding had been excessively long and that the authorities had protracted the investigation and had failed to take into account that he had been a vulnerable person, a minor subject to domestic abuse.

39. The Government argued that in the light of the serious and sensitive subject matter of the case, specifically accusations of ill-treatment of the applicant by his father, D.D., the effectiveness of the investigation had required an in-depth analysis of the evidence in order to avoid a miscarriage of justice, in particular as the parties had presented diverging and subjective

representations of the situation which had rendered more difficult the establishment of facts. In their view, there had been no periods of inactivity imputable to the authorities, whereas the applicant's representative had contributed to the general length by making use of every appeal at her disposal.

2. The Court's assessment

(a) General principles

40. The relevant principles concerning the State's positive obligation inherent in Article 3 of the Convention to investigate cases of ill-treatment, and in particular domestic abuse committed by private individuals, are set out in *M.C. and A.C. v. Romania* (no. 12060/12, 12 April 2016), whose paragraphs 107-12 read as follows:

> "107. The Court reiterates at the outset that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see, for example, *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015; *M. and M. v. Croatia*, no. 10161/13, § 131, 3 September 2015; *A. v. the United Kingdom*, 23 September 1998, § 20, *Reports of Judgments and Decisions* 1998-VI; and *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C).
>
> 108. Treatment has been held by the Court to be 'degrading – and thus to fall within the scope of the prohibition set out in Article 3 of the Convention – if it causes in its victim feelings of fear, anguish and inferiority (see, for example, *Ireland v. the United Kingdom*, 18 January 1978, § 167, Series A no. 25, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 203, ECHR 2012), if it humiliates or debases an individual (humiliation in the victim's own eyes, see *Raninen v. Finland*, 16 December 1997, § 32, *Reports* 1997-VIII, and/or in other people's eyes, see *Gutsanovi v. Bulgaria*, no. 34529/10, § 136, ECHR 2013 (extracts)), whether or not that was the aim (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV), if it breaks the person's physical or moral resistance or drives him or her to act against his or her will or conscience (see *Jalloh v. Germany* [GC], no. 54810/00, § 68, ECHR 2006-IX), or if it shows a lack of respect for, or diminishes, human dignity (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, §§ 118 and 138, 17 July 2014).
>
> 109. The obligation of the High Contracting Parties under Article 1 of the Convention to secure for 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, confirmed more recently in *O'Keeffe v. Ireland* [GC], no. 35810/09, § 144, ECHR 2014 (extracts)).
>
> 110. Furthermore, the absence of any direct State responsibility for acts of violence of such severity 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; *C.A.S. and C.S. v. Romania*, no. 26692/05, § 69, 20 March 2012; and *Denis Vasilyev v. Russia*, no. 32704/04, §§ 98-99, 17 December 2009).

111. 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 has been inflicted by private individuals, the requirements regarding 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 as to the results to be achieved but as to the means to be employed. The authorities must have taken the steps reasonably 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 Article 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 the length of time taken for the preliminary investigation (see *Bouyid*, cited above, §§ 119-23; *Mocanu and Others*, cited above, § 322; *Identoba and Others*, cited above, § 66; *Begheluri and Others*, cited above, § 99; *Denis Vasilyev*, cited above, § 100 with further references; and *Stoica v. Romania*, no. 42722/02, § 67, 4 March 2008). A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. Tolerance by the authorities towards such acts cannot but undermine public confidence in the principle of lawfulness and the State's maintenance of the rule of law (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007).

112. Moreover, when the official investigation has led to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of Article 3 of the Convention. In this respect the Court has already held that the protection mechanisms available under domestic law should operate in practice in a manner that allows for the examination of the merits of a particular case within a reasonable time (see, for example, *W. v. Slovenia*, no. 24125/06, § 65, 23 January 2014)."

41. Concerning children or other vulnerable individuals, the Court stated as follows in *M. and M. v. Croatia* (no. 10161/13, § 136, ECHR 2015 (extracts); see also, *mutatis mutandis*, C*.A.S. and C.S. v. Romania,* no. 26692/05, §§ 68-70 and 82, 20 March 2012, and *Z and Others v. the United Kingdom,* [GC], no. 29392/95, § 73, ECHR 2001-V):

"136. The Court further reiterates that Article 1 of the Convention, taken in conjunction with Article 3, imposes on States positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such treatment is administered by private individuals. Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see, for example, *A. v. the United Kingdom*, cited above, § 22, and *Opuz v. Turkey*, no. 33401/02, § 159, ECHR 2009, as well as the Council of Europe

Recommendation on integrated national strategies for the protection of children from violence, cited in paragraph 103 above). The Court has also acknowledged the particular vulnerability of victims of domestic violence and the need for active State involvement in their protection (see *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008, and *Opuz*, cited above, § 132). Those positive obligations, which often overlap, consist of: (a) the obligation to prevent ill-treatment of which the authorities knew or ought to have known (see, for example, *Đorđević v. Croatia*, no. 41526/10, §§ 138-139, ECHR 2012), and (b) the (procedural) obligation to conduct an effective official investigation where an individual raises an arguable claim of ill-treatment (see, for example, *Dimitar Shopov v. Bulgaria*, no. 17253/07, § 47, 16 April 2013)."

(b) Application of these principles to the present case

42. Turning to the facts of the present case, the Court notes that the authorities became aware of the applicant's situation on 27 February 2004, when the applicant's mother (C.I.) called the hotline of the Child Protection Authority to report the abuse (see paragraph 5 above). There is however no indication that anything concrete was done to verify the information or transmit it to the police for investigation or in any way to protect the victims from the alleged abuse, despite the legal obligation to do so (see paragraph 22 above). Moreover, no action was taken by the authorities in respect of the first four criminal complaints lodged by C.I. against D.D., from March to June 2004 (see paragraph 6 above).

43. As for the proceedings, the Court notes that they started on 1 July 2004 (see paragraph 6 above) and ended on 1 November 2012 (see paragraph 20 above). They thus lasted eight years and four months at three levels of jurisdiction. Moreover, the investigation lasted until 27 December 2007, that is, for almost three years and six months, and little seems to have been done during this period besides hearing evidence from six witnesses and examining reports (see paragraphs 6 to 8 above). The Government could not point to any investigative act that would have taken place other that the ones mentioned previously, nor to any particular difficulty encountered by the police and the prosecutor during the investigation (see paragraph 39 above). Moreover, the domestic courts themselves acknowledged that there had been significant periods of inactivity caused by the investigators and the Forensic Medicine Institute (see paragraph 15 above). Under these circumstances, it is difficult to account for the significant length of this phase of the proceedings. In addition, the court proceedings were dominated by repeated quashing of decisions caused by the lower courts' omissions (see paragraphs 9 *in fine* and 12 above). The applicant cannot be blamed for any excessive protraction of the proceedings and cannot be deemed to have abused his procedural rights.

44. The Court considers that, in and of itself, the length of the investigation and the trial was excessive according to the Court's standards under Article 6. However, the purpose of its analysis under Article 3 is different. As pointed out in its case-law, albeit from the standpoint of Article 2, the requirement of promptness should not be examined in isolation and irrespective of the other parameters, the combination of which makes an investigation effective (see, *mutatis mutandis*, *Sarbyanova-Pashaliyska and Pashaliyska v. Bulgaria*, no. 3524/14, § 41, 12 January 2017).

45. Furthermore, the Court observes that at the end of the proceedings in the instant case the authorities may be considered to have achieved the essential purpose pursued with the investigation, in so far as D.D., the person responsible for the abuse, was convicted and sentenced to a term of imprisonment (see paragraph 18 above).

46. Notwithstanding this, the Court considers that several shortcomings were apparent in the proceedings which undermine the overall effectiveness of the investigation.

47. Firstly, the Court observes that while the domestic courts took into account the excessive length of the proceedings to grant redress to D.D. by reducing his prison sentence (see paragraph 18 above), they failed to offer any comparable compensation to the applicant himself. However, he also suffered the consequences of the extensive length of the case as he was a party to the proceedings and the victim of the domestic abuse under investigation.

48. Furthermore, the Court notes that the applicant received no compensation for the abuse (compare and contrast with *Sarbyanova-Pashaliyska and Pashaliyska*, cited above, § 42).

49. The Court further notes that the District Court in the first round of the proceedings acquitted D.D., having found no crime in "his occasionally inappropriate behaviour towards the applicant" (see paragraph 9 above). Along this vein, the County Court later seemed to consider that "isolated and random" acts of violence could be tolerated within the family sphere (see paragraph 13 above). The Court fails to see how this statement fits in with the relevant provisions of domestic law prohibiting in absolute terms domestic corporal punishment (see paragraph 21 above). Moreover, the Court notes that the Council of Europe recognises that the best interests of the children, which unquestionably include the respect for their rights and dignity, are the cornerstone of the protection afforded to children from corporal punishment (see paragraphs 25 to 29 above).

50. It is also to be noted that the overriding concern in the 1989 United Nations Convention on the Rights of the Child (see paragraph 30 above) is dignity. Such a value is consistent with both evolving international law on human rights and the developing psychological perspective in jurisprudence. Respect for the dignity of children is consonant with

provision of those elements important to their growth as full members of the community. Assuring basic dignity to the child means that there can be no compromise in condemning violence against children, whether accepted as "tradition" or disguised as "discipline". Children's uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence, including from domestic corporal punishment, the latter being invariably degrading (see General Comment No. 13 (2011) cited at paragraph 32 above).

51. It is thus clear that respect for children's dignity cannot be ensured if the domestic courts were to accept any form of justification of acts of ill-treatment, including corporal punishment, prohibited under Article 3. In this context, the Court considers that Member States should strive to expressly and comprehensively protect children's dignity which in turn requires in practice an adequate legal framework affording protection of children against domestic violence falling within the scope of Article 3, including a) effective deterrence against such serious breaches of personal integrity, b) reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge, and c) effective official investigations where an individual raises an arguable claim of ill-treatment (see *M. and M. v. Croatia,* cited above, § 136, and *Söderman v. Sweden* [GC], no. 5786/08, §§ 80 and 81, ECHR 2013).

52. For these reasons, bearing in mind what was at stake for the applicant in the proceedings, the length and pace of the proceedings, and the difference in treatment between the applicant and the perpetrator in respect of that length, as well as the manner in which the courts dealt with the issue of domestic abuse, the Court concludes that the investigation into the allegations of ill-treatment was ineffective as it lasted too long and was marred by several serious shortcomings. It follows that the domestic authorities did not comply with their procedural obligations under Article 3 of the Convention (see, *mutatis mutandis*, *W. v. Slovenia*, no. 24125/06, §§ 66-70, 23 January 2014; *P.M. v. Bulgaria*, no. 49669/07, §§ 65-66, 24 January 2012; and *M.C. and A.C.*, cited above, §§ 120-125).

53. Accordingly, there has been a violation of the procedural limb of Article 3 of the Convention.

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

54. The applicant further complained about the length of the criminal proceedings against D.D. and about the failure of the courts to award him damages. He relied on Article 6 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

55. The Court notes that this complaint is twofold. Firstly, the applicant complained about the alleged lack of fairness of the proceedings, and implicitly about the lack of access to a court. Secondly, the applicant complained about the length of the criminal proceedings against his father. The Court will examine these aspects separately.

A. Fairness of the proceedings

1. Admissibility

56. The Government argued that the applicant had failed to exhaust the domestic remedies available. On the one hand, he had not sought damages during the criminal proceedings, thus remaining essentially passive in this respect. On the other hand, he had not lodged a separate civil claim before the domestic courts, based on the relevant provisions of the Civil Code applicable at that time.

57. The applicant contested that argument and stressed that the State authorities, notably the Child Protection Authority, the prosecutor and the judge had had a legal obligation to protect his interests as he had been a minor victim of domestic abuse at the time of the relevant criminal proceedings.

58. The Court notes that this objection is closely linked to the merits of the complaint. It therefore joins the preliminary issue to the merits. It further observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is also not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' observations

59. The applicant reiterated that the domestic court had had an obligation to award damages on its own motion as he had been a minor at the relevant time. He also pointed out that both he and the prosecutor had complained in their appeals about the County Court having omitted to award compensation.

60. The Government stressed the applicant's passivity throughout the first-instance court proceedings concerning the right to receive compensation and considered that the courts had provided sensible reasons for not making such an award. They argued that in so far as "the constant position of the applicant's representative was that '*she does not request moral damage*' from the defendant", and leaving aside the alleged lack of

application of Article 17 of the CCP, it would not have been reasonable to award compensation against the applicant's will.

(b) The Court's assessment

(i) General principles

61. The Court refers to the general principles articulated in its case-law, and in particular in its judgment in the case of *Bochan v. Ukraine (no. 2)* ([GC], no. 22251/08, ECHR 2015), where it explained under what circumstances the domestic court's appreciation of the facts of a particular case may be considered to be "arbitrary". Paragraph 62 of that judgment reads as follows:

> "62. Thus, in *Dulaurans* the Court found a violation of the right to a fair trial because the sole reason why the French Court of Cassation had arrived at its contested decision rejecting the applicant's cassation appeal as inadmissible was the result of *une erreur manifeste d'appréciation* ('a manifest error of assessment') (see *Dulaurans*, cited above). The thinking underlying this notion of *erreur manifeste d'appréciation* (a concept of French administrative law), as used in the context of Article 6 § 1 of the Convention, is doubtless that if the error of law or fact by the national court is so evident as to be characterised as a 'manifest error' – that is to say, is an error that no reasonable court could ever have made –, it may be such as to disturb the fairness of the proceedings. In *Khamidov*, the unreasonableness of the domestic courts' conclusion as to the facts was "so striking and palpable on the face" that the Court held that the proceedings complained of had to be regarded as "grossly arbitrary" (see *Khamidov*, cited above, § 174). In *Anđelković*, the Court found that the arbitrariness of the domestic court's decision, which principally had had no legal basis in domestic law and had not contained any connection between the established facts, the applicable law and the outcome of the proceedings, amounted to a 'denial of justice' (see *Anđelković*, cited above, § 27)."

(ii) Application to the present case

62. The Court finds at the outset that the present case concerns a dispute (*contestation* in the French text) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law (see *Bochan*, cited above, § 42; see also, *mutatis mutandis*, *Anđelković v. Serbia*, no. 1401/08, § 25, 9 April 2013). Domestic law provided for the right to receive compensation (see paragraph 23 above) and the applicant's complaint with the Court of Appeal constituted a genuine and serious dispute (see paragraph 17 above). The proceedings were directly decisive for the right in question and the decision rendered by the Court of Appeal represented the final resolution of the matter (see respectively paragraphs 19 and 20 above).

63. Further, the Court notes that according to the applicable law, the courts were under an obligation to rule on the matter of compensation even without a formal request to that end from the applicant, who was a minor and therefore a person without legal capacity at the relevant time. Moreover, both the courts and the prosecutor had to actively seek information from the

victim about the extent of the damage incurred (see paragraph 24 above). The law thus afforded reinforced protection to the vulnerable persons, such as the applicant, by placing an extended responsibility on the authorities to take an active role in this respect (see, *mutatis mutandis*, *Lamarche v. Romania*, no. 21472/03, § 34, 16 September 2008). For this reason and in the light of the object of the investigation, the proceedings went beyond mere litigation between private individuals, thus engaging the State's responsibility with respect to Article 6 § 1 of the Convention.

64. In this connection, the Court considers that the case is to be examined form the stand point of the courts' obligation to secure the applicant's rights in the concrete and exceptional circumstances of the case. Whether the applicant expressly requested compensation or not is irrelevant, as the courts had an obligation to examine on their own initiative the question of damages.

65. In particular, despite the express provisions of Article 17 of the CCP (see paragraph 24 above), only the first domestic court which convicted D.D. examined the matter of compensation (see paragraph 11 above). In its decision of 26 April 2012 rendered in the last set of proceedings, the County Court did not award compensation to the applicant and failed to give any reasons for its choice (see paragraphs 13 and 16 above).

66. In turn, the Court of Appeal did not examine the merits of the complaint brought before it by the applicant concerning the lower court's omission to award damages (see paragraph 19 above). It did no more than observe that neither the applicant nor the prosecutor requested compensation before the lower court, thus precluding the court from examining that issue. In doing so, the Court of Appeal refrained from examining the extent of the domestic courts' own role or that of the prosecutor in securing the applicant's best interests, in particular with regard to the provisions of Article 17 of the CCP.

67. Moreover, the Court of Appeal's reasoning had no legal foundation (see, *mutatis mutandis*, *Anđelković*, cited above, § 27, with further references). In the light of the unequivocal wording of the obligation enshrined in Article 17 of the CCP, the Court of Appeal should have examined on the merits the right to compensation, deciding whether or not the applicant was entitled to an award.

68. In conclusion, the Court considers that the omission on behalf of the domestic courts to apply Article 17 of the CCP in favour of the applicant and thus examine whether compensation should have been awarded to him amounted to a denial of justice (see, *mutatis mutandis*, *Anđelković*, cited above, § 27, and *Bochan (no. 2),* cited above, § 64).

69. There has accordingly been a violation of Article 6 § 1 of the Convention. Consequently, the Court dismisses the objection raised by the Government concerning the alleged non-exhaustion of domestic remedies.

B. Length of the proceedings

70. Having regard to the finding that a breach of the procedural aspect of Article 3 occurred notably because of the length of the criminal proceedings (see paragraph 52 above), the Court considers that there is no need to give a separate ruling on the admissibility and merits of the complaint concerning the alleged violation of the "reasonable time" requirement enshrined in Article 6 § 1 of the Convention (see, among other authorities, *Dimitrov and Others v. Bulgaria*, no. 77938/11, § 171, 1 July 2014, and, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).]

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

73. The Government contested the amount sought.

74. Having regard to all the circumstances of the present case, the Court accepts that the applicant must have suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

B. Costs and expenses

75. The applicant claimed EUR 1,326.69 for the costs and expenses incurred before the domestic courts. He also claimed EUR 3,497.50 for the costs incurred before the Court, legal fees and secretarial costs; the applicant asked that the relevant sums be paid directly to his counsel (EUR 3,197.50) and to the Association for the Defence of Human Rights in Romania – the Helsinki Committee ("the APADOR-CH") (EUR 300).

76. The Government contested the claim.

77. In line with its consistent case-law (see, notably, *Serban Marinescu v. Romania*, no. 68842/13, §§ 78-80, 15 December 2015, and *Drăgan v. Romania*, no. 65158/09, §§ 99-102, 2 February 2016), the Court rejects the claim made by the APADOR-CH, as this association did not represent the applicant in the current proceedings. Regard being had to the documents in its possession, the Court considers it reasonable to award the sum claimed for the costs and expenses incurred before the domestic courts, that is, EUR 1,326.69. It also considers it reasonable to award the sum claimed for the representation of the applicant before it, namely EUR 3,197.50, less the sum already received under this head in legal aid (EUR 850), making a total of EUR 2,347.50, to be paid directly into the bank account of the applicant's representative (see, *mutatis mutandis*, *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 219, ECHR 2013).

C. Default interest

78. 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

1. *Joins*, unanimously, to the merits the Government's preliminary objection of failure to exhaust domestic remedies concerning the complaint about the alleged breach of the applicant's right to a fair trial and *dismisses* it;

2. *Declares*, unanimously, the complaint under Article 3 of the Convention admissible;

3. *Declares*, by a majority, the complaint concerning the alleged breach of the applicant's right to fair trial as guaranteed by Article 6 of the Convention admissible;

4. *Holds*, unanimously, that there has been a violation of the procedural limb of Article 3 of the Convention;

5. *Holds*, by four votes to three, that there has been a violation of Article 6 § 1 of the Convention in that the applicant has been denied his right to a fair trial;

6. *Holds*, unanimously, that there is no need to examine the admissibility and merits of the complaint raised under Article 6 of the Convention concerning the length of the proceedings;

7. *Holds*, by four votes to three,
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 1,326.69 (one thousand three hundred and twenty six euros and sixty nine cents) plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred in the domestic proceedings;
(iii) EUR 2,347.50 (two thousand three hundred and forty seven euros and fifty cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred in the proceedings before the Court, to be paid into the bank account of the applicant's representative;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint concurring opinion of Judges De Gaetano, Pinto de Albuquerque and Motoc;

(b) partly concurring opinion of Judge Bošnjak;

(c) joint partly dissenting opinion of Judges Yudkivska, Ranzoni and Bošnjak.

G.Y.
M.T.

JOINT CONCURRING OPINION OF JUDGES DE GAETANO, PINTO DE ALBUQUERQUE AND MOTOC

1. We agree with all the eight operative provisions of the judgment. Nevertheless we are of the view that, in the light of the special features of the case, notably the fact that domestic violence was involved and the vulnerability of the applicant, some further emphasis is required as to the general principles applicable. We are particularly concerned with the lack of clarity of the Chamber judgment as to the scope of the prohibition of ill-treatment of children and the nature of the denial of justice in the present case.

2. The applicant's "Calvary" in the Romanian courts – there is no other word to describe what he must have gone through – lasted from July 2004 to November 2012. He was three years old when it started and more or less eleven when it finished. His entire childhood was dominated by the criminal proceedings. In our view any proceedings, civil or criminal, which directly involve minors, automatically attract not so much the special diligence requirement as the "exceptional diligence" requirement (see *H. v. the United Kingdom*, no. 9580/81, § 85), which should characterise such proceedings. In this case we agree that there is no need to examine the Article 6 complaint regarding the length of the proceedings only because the same fact is, as it were, absorbed in the more serious Article 3 violation, as described in paragraphs 43 to 53. There is here, in a sense, a formal or ideal concurrence of violations of the Convention, and this has been adequately catered for in the amount of non-pecuniary damage awarded.

3. According to the Bucharest Court of Appeal, since neither the prosecutor nor the applicant had based their appeals on civil aspects of the case, the County Court was right in limiting its examination of the case to the criminal issues brought before it. The argument invoked by that court is, in effect, based on the principle *quantum apellatum, tantum devolutum*, according to which the appellate court is obliged to confine itself to deciding the appeal within the boundaries of the grounds of appeal. By so arguing, the Court of Appeal chose to ignore Article 17 of the Code of Criminal Procedure obtaining at the relevant time, thereby also ignoring a cardinal principle of the administration of justice: *in omnibus quidem, maxime tamen in jure, aequitas spectanda sit.*

4. As a matter of law, Article 17 imposed a legal obligation on courts, including appellate courts, to examine the possibility of awarding damages on their own initiative, when the aggrieved party was, as in the present case, a person without legal capacity or with restricted legal capacity. In effect, it created an exception to the principle that it is for the victim to request damages, placing the obligation on the investigative authority and the court itself. The *ex officio* nature of this type of inquiry trumps the principle *quantum apellatum, tantum devolutum.* In such a scenario, one would

expect that only an explicit waiver of such right to compensation by the victim would release the courts from their *ex officio* legal obligation to consider the issue of the damages. No such explicit waiver was ever put forward by the applicant or his representative. The fact that the applicant's mother did not want to participate as a civil party (*constituire de parte civilă*) in the criminal proceedings (paragraph 9) – and not, as tendentiously stated by the Government (paragraph 60), that she did "not request moral damage" – cannot be read as a waiver on behalf of her minor son. In effect, the requirements imposed upon the courts by Article 17 were independent of any formal request to participate as a civil party as well as of any specific request for moral damages made by the legal representative of the person without legal capacity or with restricted legal capacity. Thus, the argument of the Government that the applicant had waived, through his representative, his right to compensation by limiting the appeal to the criminal aspects of the case, is wrong. In fact, the County Court itself accorded damages to the applicant of its own motion in its decision of 22 December 2009. More critically, there was a constant practice affirming the *ex officio* nature of the inquiry. Thus, in decision no. 1776/2005, the High Court of Cassation and Justice, relying precisely on the said Article 17, quashed a decision because the Court of Appeal, while convicting the husband for murdering his wife, had omitted to examine the question of damages for the victim's minor children. In like vein, in case no. 254/1990, the Bucharest County Court dismissed, as running counter to the interests of the minor children, a waiver of the right to receive compensation made by their mother on their behalf. It is, therefore, quite surprising that in the instant case the same court decided not to award such damages, without giving any justification, in its decision of 26 April 2012. This arbitrary conduct of the County Court was reproached even by the prosecutor, who complained about the fact that the County Court had not awarded damages (see paragraph 17). Bearing in mind that the Bucharest Court of Appeal was called to remedy this conduct of the lower court and did not, the applicant was the victim of a serious denial of justice and thus of a violation of Article 6 of the Convention, which is not absorbed or consumed by the autonomous violation of Article 3.

5. In the light of the elements of international law cited in paragraphs 25 to 34 of the judgment, we consider that the Chamber should have stated, in more principled and clearer terms, that member States of the Council of Europe have a positive obligation under the European Convention on Human Rights to prohibit all forms of violence against children in all settings, and to effectively investigate, prosecute and punish those responsible for such violence: the expression "should strive", as used in paragraph 51, does not adequately reflect this obligation as it exists today. This punishment should be sufficiently severe to act as a deterrent, as required by the Council of Europe Convention on Preventing and

Combating Violence against Women and Domestic Violence (see paragraph 27) and the United Nations Convention on the Rights of the Child (paragraph 32). Article 45 of the above mentioned Council of Europe Convention requires Parties to match their action with the seriousness of the offences; the parties are in fact required "to take the necessary legislative or other measures to ensure that the offences established in accordance with [the] Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness". We note that D.D. was convicted of physical and verbal abuse against the applicant, covering a period of two years (from 2002 to 2004), and yet he was sentenced to a mere suspended prison term. Such a penalty would clearly not be in line with the above-mentioned international standards.

PARTLY CONCURRING OPINION OF JUDGE BOŠNJAK

While I share the majority's view that there has been a violation of the procedural limb of Article 3 of the Convention in the present case, I cannot subscribe to some of the reasons set out in the judgment. In my opinion, the circumstances described in paragraphs 42 to 44 of the judgment are in themselves sufficient to find the above violation. The competent authorities failed to take any action in respect of the first four criminal complaints lodged by the applicant's mother. Once the authorities decided to react, it took them almost three and a half years to complete the investigation in a case of child abuse, and the proceedings as a whole lasted more than eight years for three levels of jurisdiction, with an intervening significant period of inactivity. The fact that the perpetrator was finally convicted and given a suspended sentence of one year's imprisonment can hardly counterbalance the serious lack of diligence in conducting the case or lead to a conclusion that the investigation into allegations of ill-treatment of a vulnerable child was effective.

The majority, however, decided to outline additional reasons for finding a violation of the procedural limb of Article 3. These reasons are developed in paragraphs 47 to 51 of the judgment. According to their first argument, the authorities failed to offer any compensation to the applicant for the excessive length of the proceedings, while the perpetrator received a reduced sentence for that same reason. Yet one can hardly imagine any form of compensation for a victim within criminal proceedings for the excessive length of those same proceedings. Such compensation can possibly be sought and awarded in separate proceedings, but these have never been initiated by the applicant. I do not believe that Article 3 of the Convention, under its procedural limb, requires the High Contracting Parties to award damages for possible excessive length of criminal proceedings within those proceedings themselves.

Furthermore, the majority are of the opinion that the applicant should have received compensation for the abuse in order to counterbalance the excessive length of the proceedings and to comply with the standards of an effective investigation (see paragraph 48 of the judgment). The fact that the applicant did not receive compensation for the abuse is dealt with separately, under his Article 6 complaint, and it might not be considered fully appropriate to penalise the respondent State twice, under two different Convention provisions, for the same omission. Be that as it may, together with judges Yudkivska and Ranzoni, I have expressed my dissent with the majority's view that the national courts in the present case were under a Convention obligation to award damages to the applicant in this respect. I believe that those arguments (especially the fact that the applicant's mother, acting on his behalf, expressly waived any claim for damages) are also pertinent to the issue of a violation of Article 3.

Finally, after citing international documents in paragraph 50, the majority emphasise in paragraph 51 that respect for children's dignity cannot be ensured if the domestic courts were to accept any form of justification for acts of ill-treatment, and that the Member States should strive to expressly and comprehensively protect children's dignity by adopting an adequate legal framework. While one cannot but agree, it is hard to understand why these principles speak for finding a violation in the particular case. In particular, the domestic courts did in fact convict the perpetrator, thereby apparently finding no justification for his acts. On the legislative level, the respondent State has adopted The Protection and Promotion of Children's Rights Act, which in its relevant provisions guarantees the right to respect for a child's personality and expressly prohibits physical punishment or humiliating or degrading treatment (see paragraph 21 of the judgment). It might be fair to say that on the abstract level, the Respondent State complied with these requirements. Inexplicable and excessive delays, as they occurred in the present case, do not seem to be a result of a possibly deficient legal framework.

When finding a violation of any Article of the Convention, the Court is required to send a clear message to the national authorities as to which particular action or omission on their part was incompatible with the Convention requirements. I believe that the arguments as outlined in paragraphs 47-51 lack the clarity, strength and persuasiveness which are necessary to prevent violations from reoccurring in future.

JOINT PARTLY DISSENTING OPINION OF JUDGES YUDKIVSKA, RANZONI AND BOŠNJAK

To our regret, we cannot share the majority's reasoning and conclusion under Article 6 concerning the fairness of the proceedings in the applicant's case.

First, we find that the majority failed to address properly the Government's plea of non-exhaustion of domestic remedies. In paragraph 69, after finding that Article 6 had been violated, they merely stated that the non-exhaustion objection was "consequently" dismissed. However, an inadmissibility plea cannot be rejected because a violation has been found on the merits; otherwise, the subsidiarity principle is ignored and the whole logic of Article 35 is subverted. The Court may deal with the matter only *after* all domestic remedies have been exhausted.

Some explanation of this approach can be found in paragraph 63. According to the majority, the proceedings in question went beyond mere litigation between private individuals, thus engaging the State's responsibility with respect to Article 6 § 1 of the Convention; therefore, presumably, the State should act *proprio motu* and the applicant did not have to seek damages during the criminal proceedings or lodge a separate civil claim as the Government argued.

Regrettably, we do not agree with this interpretation of States' positive obligations under Article 6. It is true that the Contracting Parties should ensure effective protection of children and other vulnerable persons against ill-treatment (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 144, ECHR 2014 (extracts)). However, this positive obligation under Article 3 of the Convention cannot, in our view, be extended to Article 6, which provides for minimum procedural guarantees in the determination of civil rights and obligations or of any criminal charge against a person. For example, a State has an obligation to provide a vulnerable victim of torture with free legal assistance in order to ensure his or her effective participation in the relevant domestic proceedings, but this is an obligation under Article 3 of the Convention and not under Article 6 (see *Savitskyy v. Ukraine*, no. 38773/05, § 119, 26 July 2012).

It should be noted at the outset that the applicability of Article 6 in the present case is doubtful, given that the applicant never submitted any civil claim in the proceedings in question (compare *Hamer v. France*, 7 August 1996, §§ 68-79, *Reports of Judgments and Decisions* 1996-III). Furthermore, the State's positive obligations to protect a minor, including the requirement to offer compensation for abuse, were sufficiently addressed in the Court's findings under Article 3 of the Convention (see, in particular, paragraph 47 of the judgment). Article 6 and the fair trial requirements are of a different nature. The scope of the concept of fairness of the proceedings should not be broadened to include a requirement to

award compensation *proprio motu*, not even to the most vulnerable party to the proceedings.

The majority then proceeded to conclude that "the Court of Appeal's reasoning had no legal foundation", because "[i]n the light of the unequivocal wording of the obligation enshrined in Article 17 of the CCP, the Court of Appeal should have examined on the merits the right to compensation, deciding whether or not the applicant was entitled to an award."

In so finding the majority overstepped the limits set out in the Convention for the purposes of examining national procedural law, acting as a "fourth instance" court in circumstances where the domestic courts cannot be found to have acted in an arbitrary manner.

Article 17 of the CCP required the court to *ask* the person concerned, through his or her legal representative, "to explain the situation concerning the pecuniary and non-pecuniary damage". It also provided that the court had to "*examine* on its own initiative the matter of compensation ... even without a formal request for compensation from the victim" (see paragraph 24 of the judgment).

According to the Government, the applicant's mother, as his legal representative, clearly stated during the proceedings that "she [did] not request moral damage" from the defendant (see paragraph 60 of the judgment). This was not disproved by the applicant. It thus cannot be said that the domestic judicial authorities ignored the above-mentioned requirement set out in Article 17 to *ask* the person concerned to state his or her position on the damage. This provision further obliged the court to *examine* the matter of compensation, but it did not say that it must *award* compensation. Given the above position of the applicant's representative, it cannot be said that there was no legal foundation for the Court of Appeal's decision not to award compensation, and that decision does not appear to be arbitrary.

Thus, the present case cannot be compared to two cases referred to in the present judgment, namely *Anđelković v. Serbia* (no. 1401/08, 9 April 2013), where the court's explicit reasoning on the subject-matter of the case "was based on what appears to be an abstract assertion quite outside of any reasonable judicial discretion", or to *Bochan v. Ukraine (no. 2)* ([GC], no. 22251/08, ECHR 2015), where the Supreme Court of Ukraine deliberately misinterpreted this Court's judgment.

Whilst the Court of Appeal remained silent on the issue of compensation, this omission does not amount, in our view, to a denial of justice as the majority concluded.