



## Serious flaws in investigation into sexual harassment in the workplace

In today's **Chamber** judgment<sup>1</sup> in the case of [C. v. Romania](#) (application no. 47358/20) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.**

The case concerned allegations of sexual harassment in the workplace following a criminal complaint lodged by the applicant, a cleaning lady in a railway station, against the railway station manager, accusing him of repeatedly trying to force himself on her, and the State's alleged failure to deal with the matter.

Without expressing an opinion as to whether the station manager was guilty of sexual harassment, the Court found in particular that the investigation had been significantly flawed, which amounted to a breach of the State's obligations under Article 8 of the Convention.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicant, C., is a Romanian national who was born in 1970 and lives in Fibiş (Romania).

In 2014-17, whilst employed in a cleaning company, C. was assigned to work as a cleaner at Timișoara East railway station, which belonged to the State-owned railway company CFR Călători. In 2017, she lodged a criminal complaint with the local prosecutor's office against C.P., the railway station manager, accusing him of repeatedly trying to coerce her into having sexual intercourse with him over a period of two years. She alleged that, faced with her refusals, he had become verbally aggressive, refusing to give her the cleaning supplies she needed to perform her tasks and then accusing her of not doing her job properly.

Prior to lodging a criminal complaint, she had told her manager in the cleaning company about C.P.'s behaviour, explaining that she had not reported C.P. earlier because she was afraid of him and he often taunted her, saying that no-one would believe her, as she was just a cleaning lady. Subsequently, she, her manager and the railway company employee overseeing the contract with the cleaning company, had met the head of passenger safety at the Timișoara regional branch of the railway company to discuss C.P.'s inappropriate behaviour. Five days later, the head of passenger safety had summoned her, C.P., and the employee overseeing the cleaning contract to his office. When confronted, C.P. had apologised.

That turned out to be the last day of C.'s employment at Timișoara East railway station. On 1 October 2017 she was forced to take her annual leave and, upon her return three weeks later, she was given the choice of working at another railway station or resigning. She chose to resign.

On 27 November 2017 the prosecutor's office began a criminal investigation into her allegations and listened to transcripts of private recordings she had made of her interactions with C.P. Fellow

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

workers at the railway station confirmed that, although they had not personally seen C.P. making sexual advances towards C., they had sometimes seen her upset at work and that she had eventually told them that C.P. had been harassing her. The head of passenger safety stated that he had not investigated her allegations in detail as that did not fall within his work remit, but that he had encouraged her to go to the police if she considered that a criminal offence had been committed. He explained that during the meeting in his office, C.P. had apologised in general terms, without admitting to the facts alleged by the applicant. It appears that the railway company had not taken the matter further.

When interviewed by the prosecutor's office, C.P. asserted that he had had sexual intercourse with the applicant once, in 2014, and that he had avoided her afterwards for fear that his wife would find out. He also said that, he had started pursuing her in 2016 and touching her inappropriately at that time.

The prosecutor's office decided not to prosecute C.P. and to end the investigation, on the grounds that the acts committed did not constitute a crime prohibited by law. The decision contained a full description of the statements given by the applicant and witnesses which were cited in quotation marks. The chief prosecutor of the same prosecutor's office upheld the decision without reassessing the evidence in the case file.

C. complained about the prosecutors' decisions to the Timișoara District Court but, in a final decision, it upheld them, finding that C.P. had asked for sexual favours from C., but that C. had not felt threatened in her sexual freedom or humiliated, elements required by law for the acts to constitute a criminal offence.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing) of the Convention, the applicant complained that the manner in which the authorities, and notably the prosecutors and the courts, had reacted to and examined the humiliating and embarrassing situation in which she had been placed had deprived her of a fair resolution of her complaints and had had negative consequences on her private life, her relationship with her work colleagues and her health in general.

The application was lodged with the European Court of Human Rights on 8 October 2020.

The Court examined the complaint from the standpoint of Article 8 (right to respect for private and family life) of the Convention.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,  
Tim **Eicke** (the United Kingdom),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Iulia Antoanella **Motoc** (Romania),  
Yonko **Grozev** (Bulgaria),  
Armen **Harutyunyan** (Armenia),  
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

## Decision of the Court

The Court noted that the railway company was owned by the State and thus represented a public authority. However, little seemed to have been done by the railway company in response to the allegations of sexual harassment by one of its employees. Despite the existence of an internal policy

prohibiting any behaviour that breached a person's dignity and encouraging the reporting of such behaviour to the management, the head of passenger safety who had been informed of the situation and had heard the parties involved, had refused to look into C.'s case and had advised her to go to the police if she felt it necessary. Equally important, without any apparent prior warning, he had subjected C. to a confrontation with C.P. in his office. Furthermore, there was no sign that he had directed her towards anyone else in the company who could have helped to deal with her grievances, or that he himself had brought the matter to the attention of the appropriate person(s) within the railway company. In fact, it appeared that no internal inquiry had taken place at all. In such a context, it was impossible for the Court to assess whether any mechanisms had been put in place at employer level to deal with sexual harassment in the workplace.

However, the Court noted that the main focus of C.'s complaint was the response given by the prosecutors and courts to her complaints of sexual harassment. It therefore examined whether, in the criminal proceedings concerning the allegations, the State had sufficiently protected C.'s right to respect for her private life, in particular her personal integrity.

In so doing, the Court observed that C. had lodged a criminal complaint against C.P. for sexual harassment, that the investigation had started promptly and that both the prosecutor's office and the District Court had acknowledged that C.P. had behaved in the way alleged by C. but considered that that had not constituted the criminal offence of sexual harassment. The decisions adopted in the case found either that C.P. had not been criminally liable for the alleged criminal offence or that C. had not felt humiliated by his behaviour, an element required by domestic law in order for such behaviour to be classed as sexual harassment.

However, nothing in the domestic decisions showed how the authorities had reached their conclusion. The prosecutor's office had simply described in detail the evidence submitted and had not attempted to assess the coherence and credibility of C.'s statements or placed them in context. For instance, no assessment of the relationship of power and subordination between C. and C.P., or the threats allegedly made by him against her, had been undertaken. Moreover, they had not looked into whether C.P.'s actions had had any possible psychological consequences on C. or whether any reasons existed for C. to make false accusations against C.P., as had been hinted at by some of the witness statements.

In addition, the Court noted with concern that the prosecutor's office's decision had contained a detailed account of the insinuations made by C.P. in his statements about C.'s private life and the alleged motives for her actions and accusations – in the Court's eyes, constituting secondary victimisation – whereas, they might have been no more than a smokescreen. In the same vein, during the criminal investigation, the applicant had had to undergo a witness confrontation with the head of passenger safety. No explanation had been given by the prosecutor as to the necessity of that confrontation and its impact on the applicant. Lastly, C. had been forced to leave her place of employment, whereas that element had not been taken into account in the authorities' assessment of her grievances.

Therefore, without expressing an opinion as to whether C.P. was guilty of sexual harassment, the Court found that the investigation of the case had contained significant flaws amounting to a breach of the State's duty under Article 8 of the Convention.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Romania was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in English.*

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