



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

Information Note on the Court's case-law 265

August 2022

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**C. v. Romania - 47358/20**

Judgment 30.8.2022 [Section IV]

**Article 8**

**Positive obligations**

**Article 8-1**

**Respect for private life**

Significant flaws in criminal investigation concerning alleged sexual harassment at the workplace: *violation*

*Facts* – The applicant was employed in a cleaning company which provided services to a railway station belonging to a State-owned railway company. She filed a criminal complaint against the station manager (C.P.) for sexual harassment. After an investigation, the prosecutor's office closed the case on the grounds that the acts committed did not meet the requirements provided for by the criminal law to constitute the offence of sexual harassment. This decision was upheld by the chief prosecutor of the same office and then by a District Court. The main reason permeating both the first decision and that of the court was the absence of humiliation of the applicant by the acts in question, an element required by domestic law in order for the acts to constitute the said offence.

*Law* – Article 8:

(a) *Applicability* – The facts underlying the application concerned the applicant's psychological integrity and her sexual life, both of which fell within the personal sphere protected by Article 8. Bearing in mind the severity of the acts concerned and, more generally, what was at stake for the applicant, who had alleged an attack on her sexual integrity, the Court found that the treatment complained of by her reached the threshold of applicability of that provision.

(b) *Merits* – The case concerned the application of the system put in place to protect against sexual harassment in the workplace. Its facts fell within a category of acts for which the Court had already found in its case-law that an adequate legal framework affording protection did not always require that an efficient criminal-law provision covering the specific act be in place.

The railway company, being State-owned, represented a public authority whose acts might engage the State's responsibility under the Convention. Although it had been informed of the applicant's sexual harassment allegations it had done little in response and it appeared that no internal inquiry had taken place. It was thus 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. This, in itself, might run counter to the

requirements of Article 8. In this regard, the Court reiterated that relevant EU instruments unequivocally condemned sexual harassment urging States to take preventive measures against it. They had also acknowledged that harassment in the workplace was a matter of health and safety and should be treated and prevented as such and called for further measures to effectively prevent and end sexual harassment in the workplace and elsewhere.

Nevertheless, as the main focus of the applicant's complaint was the deficient response given to her complaints by the prosecutors and courts, the Court examined the mechanisms that the State authorities had put in place and that the applicant had been able to use in order to seek redress for her grievances.

Under domestic law sexual harassment was criminalised and was considered to be the most serious form of harassment, carrying a harsher sentence than other forms of prohibited harassment. Indeed, in the present case, the police and prosecutor had considered that a criminal investigation had been required. The applicant had thus no reason to doubt that the criminal investigation would be effective and capable of providing redress. If deemed effective, criminal-law remedies would by themselves be capable of satisfying the procedural obligation of Article 8. Accordingly, and bearing in mind the conclusion of both the prosecutor's office and court that she had not been humiliated by C.P. as she had alleged, the applicant could not be required to have tried other remedies, such as a civil action, that had also been available but probably no more likely to be successful.

Consequently, the question was whether, in the criminal proceedings concerning the allegations of sexual harassment perpetrated against the applicant, the State had sufficiently protected her right to respect for her private life, in particular her personal integrity.

The investigation into the complaint had started promptly and it had been confirmed by all the domestic decisions that C.P. had committed the alleged acts. However, there was nothing in those decisions allowing the Court to ascertain how the authorities had reached their final conclusion. The prosecutor's office had only described in detail the evidence submitted, without explaining how this supported its decision. It also appears that it had not placed the applicant's statements into context or considered them as pertinent evidence. In this regard, the Court reiterated that, like domestic violence, cases of sexual harassment did not always surface as they continued to be significantly underreported – it often took place within personal relationships and behind closed doors, which made it even more difficult for victims to prove. Those lacunae had not been fixed by the subsequent decisions which did not contain reasons capable of explaining the manner in which the law had been interpreted and applied to the facts of the case. Moreover, neither the prosecutors' office nor the court had given an explanation for their finding that the applicant had not felt humiliated and had not tried to place into context evidence before them as to her feelings after her encounters with C.P., for instance by assessing the relationship of power and subordination between them or the threats allegedly made by him against her.

The authorities had made no attempt to relate their findings to domestic law even though respect for dignity was a prominent feature in the domestic legislation, nor had they taken active steps to ascertain the consequences that C.P.'s actions had had on the applicant. [Bearing in mind the relevance that the element of victim's intimidation or humiliation had for establishing the existence of the crime of sexual harassment, the authorities could have ordered a psychological assessment of the applicant for a specialist analysis of her reactions after the encounters with C.P. and the possible psychological consequences. They could have also verified whether any reasons existed for the applicant to have made false accusations against C.P., as that had been hinted at by some of the witness statements.

In addition, the Court noted with concern the inclusion in the prosecutor's office's decision of a detailed account of the insinuations made by C.P. in his statements about the applicant's private life and the alleged motives for her actions and accusations. While reference to certain aspects of those statements might have been necessary, it was difficult to see which purpose for the examination of the criminal offence was served by their extensive reproduction in that decision. Besides being insensitive and irreverent towards the applicant, their presence stigmatised her and might be seen as an infringement of her rights guaranteed by Article 8. Similarly, no explanation had been given by the prosecutor as to the necessity of the witness confrontation that had taken place between her and the head of passenger safety of the company's regional branch concerning the meeting in his office with C.P. and its impact on the applicant. In this connection, the Court reiterated that the necessity of a confrontation had to be carefully weighed by the authorities, and that the victim's dignity and sensitivity had to be considered and protected.

In the international arena, sexual harassment was unequivocally condemned and States were urged to effectively punish perpetrators and thus put an end to impunity. At the same time, international instruments required the Contracting Parties to take the necessary legislative and other measures to protect the rights and interests of victims. Such measures involved, *inter alia*, protection from secondary victimisation, a duty that the authorities had failed to perform in the present case.

Lastly, even after the railway company had become aware of the claims of sexual harassment, the applicant had continued to suffer its consequences as she had been eventually forced to leave her employment. This element, which undoubtedly had added to her distress and feelings of powerlessness, had had no bearing on the manner in which the authorities had assessed her grievances.

For those reasons, the Court found that the investigation of the applicant's case had had such significant flaws as to amount to a breach of the States' positive obligations under Article 8.

*Conclusion:* violation (unanimously)

Article 41: EUR 7,500 in respect of non-pecuniary damage.