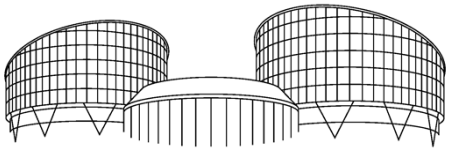

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ACHIM v. ROMANIA

(Application no. 45959/11)

JUDGMENT
(Extracts)

STRASBOURG

24 October 2017

FINAL

24/01/2018

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

In the case of Achim v. Romania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 3 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 45959/11) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Romanian nationals, Ms Angela Achim ("the first applicant") and Mr Nicolae Achim ("the second applicant"), on 1 July 2011.

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

3. The applicants alleged that they had been subjected to a breach of their right to respect for their family life as a result of the placement of their children in care and the domestic courts' refusal to discontinue that placement in spite of the improvement in the family's material living conditions.

4. On 12 March 2013 the application was communicated to the Government. On 14 November 2016 the Government were invited to submit additional written observations on the admissibility and merits of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, who belong to the Roma ethnic group, were born in 1970 and 1957 respectively and live in Mănăstirea (Călărași).

6. At the relevant time they were living together in a *de facto* partnership and were the parents of seven children:

– E. and E.S., a boy and a girl, twins, born on 27 March 2004;
– T., a boy, born on 7 March 2005;
– A.-M., a girl, born on 31 March 2006;
– S., a girl, born on 15 June 2007;
– E.L., a girl, born on 29 June 2008;
– I., a boy, born on 8 October 2009.

7. The second applicant has been classified as suffering from second-degree permanent disability on account of psychological disorders.

8. On 3 October 2013 the applicants married.

A. Background to the case

9. In August 2010 the first applicant sent a complaint to the Romanian president, claiming that her father had subjected her to abuse; she stated that he had raped her and threatened her children. She attached to her complaint a medical certificate attesting that in 2008 one of her children had sustained injuries necessity seven to eight days of medical treatment.

10. Following an investigation, the authorities dealing with the matter established that the first applicant's allegations had no basis in fact and that the complaint had been drawn up in the context of a conflict between the first applicant and the representative of the religious organisation in her village, who had allegedly excluded her from that community.

11. The first applicant's complaint was then transmitted to the authority responsible for monitoring the situation of maltreated or abandoned children, namely the Călăraşi Directorate-General of Social Assistance and Child Welfare ("the DGASPC", paragraph 12 below), in order to verify the circumstances of the applicants' children. On 16 September 2010 the DGASPC asked the Social Services Department of the Mănăstirea municipality ("the SPAS") to look into the education provided to the family's seven children, verify their welfare situation and their health, and to provide it with all relevant information (see paragraph 12 below).

12. In September 2010 the SPAS visited the applicants' home. It noted that the family lived in an insalubrious house provided by the first applicant's father and that the applicants took no interest in their children's health or education. The family's monthly income amounted to 774 Romanian lei (RON) and this sum was composed of the second applicant's disability allowance, child allowances and an allowance paid to the first applicant as a single parent. The SPAS's report also mentioned that the applicants refused to enrol their children in school or with a doctor, and that they restricted their access to outdoor activities and any other activity which could potentially stimulate their integration or adaptation to life within the community. According to the SPAS, the applicants had refused

assistance from social-service employees who wished to advise them about their responsibilities towards their children.

13. Based on the SPAS's findings (see paragraph 12 above), on 20 September 2010 the DGASPC sent the applicants a letter informing them that, as parents, they had a duty to provide the minimum conditions necessary for their children's development and also to ensure that they did not neglect them. The DGASPC recommended that the applicants take the following measures:

> " – provide [their children] with an appropriate level of physical cleanliness and clean clothes, [and guarantee the cleanliness] of the house and a proper diet;
>
> – sign up all the children with a family doctor, have them vaccinated and follow any recommended treatment;
>
> – enrol the children aged from three to seven years in a nursery school;
>
> – allow the children to create relationships with [the other children/] ([through] walks, games);
>
> – refrain from subjecting the children to physical and/or verbal violence and from giving them emotionally traumatising messages (do not create [feelings of] fear, isolation, [do not create in them a] lack of confidence)."

14. In the same letter, the DGASPC informed the applicants:

> "The manner in which you fulfil these obligations will be monitored by ... the DGASPC.
>
> Should the neglect of the children persist, and if this affects their safety within the family and [if] there is a breach of certain of their rights, urgent protection measures will be taken in respect of the children, even without [your] agreement, in accordance with sections 64, 65 and 66 of Law no. 272/2004 (the Protection of Children's Rights Act). ..."

B. Monitoring of the applicants' family

15. A schedule was drawn up to ensure regular monitoring of the applicants' family by the social services. On 11 October 2010 the committee responsible for providing support to the Mănăstirea municipal guardianship and welfare office visited the applicants' home. It submitted a report stating that the applicants claimed not to have signed up their children with a doctor and had no intention of doing so; in addition, although they had enrolled one of the children in nursery school, they did not take him there for fear he would be kidnapped. The committee's report also noted that the house was made up of two rooms, an entrance corridor and a kitchen, where clothes and wood were piled up together. It added that the house was heated and clean, and that a meal had been prepared.

16. It further indicated that the second applicant had become anxious and begun raising his voice to complain that he was not receiving allowances for all of his children. Informed that the monitoring of his family

would last for several months, the second applicant apparently became agitated and informed the municipal employees that they were not to return to his home. The committee proposed in its report that the monitoring of the applicants' family should continue.

17. On 22 December 2010 and 18 January 2011 the SPAS went to the applicants' home in order to assess the children's situation and advise the applicants about the measures to be taken in order to meet the DGASPC's recommendations (see paragraph 13 above). According to the SPAS, the second applicant was very recalcitrant, insulted the social-service employees, refused access to the children and declined to provide them with information about the children. In the reports drawn up after these two visits, the SPAS mentioned that the house was still poorly maintained, that the windows were covered with plastic tarpaulins, and that the door was damaged. It indicated that the children's situation did not seem to have improved since the monitory of the family had begun, and emphasised the applicants' refusal to cooperate with the social services and their failure to fulfil their parental obligations. In view of these findings, it suggested that a protective measure be imposed in respect of the children.

18. On 28 January 2011 a set of measures was prepared in the context of protecting the applicants' children, "as a result of the parents' lack of investment in their role, consisting in providing the minimal conditions necessary to raise [their children], care for them, oversee their satisfactory development, educate them and monitor their health". The SPAS continued to monitor the children's situation and ensure that welfare benefits were paid to the applicants.

19. A new report, drawn up on 25 February 2011, indicated that the applicants' family had little contact with others and that the parents were not collaborating with the social services in respect of the monitoring of their children; their neighbours alleged that they behaved aggressively and that their children were still neglected. This report recommended that a protective measure be adopted in respect of the children.

C. The temporary placement in care of the applicants' children

1. The children's emergency placement

20. On 16 and 17 March 2011 the DGASPC drew up two reports about the applicants' children. These noted the unsanitary conditions in the house, the very poor hygiene conditions and the applicants' neglect of their children. With regard to this last aspect, the DGASPC noted that the applicants took little interest in their children's health and refused to send them to school, to participate in social activities and to have contact with others. In its view, the applicants were refusing to cooperate with the authorities in improving the children's situation. The reports concluded that,

given the seriousness of the state of neglect faced by the children and the parents' lack of agreement to protective measures, emergency placement of the underage children was recommended.

21. On 21 March 2011 the DGASPC drew up individual protection plans for the applicants' children, specifying their needs, the persons responsible for them and the support to be provided to the family.

22. At the DGASPC's request, in two separate judgments of 6 April 2011 the Călăraşi County Court (the "county court") ordered the children's emergency placement and transferred parental rights in their respect to the president of the Călăraşi County Council.

23. In the absence of appeals, these judgments became final.

24. On 4 August 2011, in spite of the applicants' objections, employees of the DGASPC, assisted by a bailiff, police officers and a psychologist gave effect to the judgments of 6 April 2011 (see paragraph 22 above). In consequence, the youngest child, I., was placed with a child-minder in Călăraşi, a town situated about 38 km from the village in which the applicants lived; the oldest children were placed together in a residential centre situated about 88 km from the applicants' home.

2. The children's temporary placement

25. The children underwent psychological and medical tests after being taken into care by the authorities. The test report noted that serious deficiencies had been observed in the children, "resulting from neglect by the parents". Thus, according to the report, I. was suffering from "recent cerebral paroxysmal events, microcytic hypochromic anaemia and weight-related hypotrophy", as a result of which she had been admitted to hospital urgently. As to the children's intellectual development, the report noted "slight delayed development ... in all the children; speech issues, a limited vocabulary, a minimal level of socialisation, [and] a tendency to withdraw from others".

26. On 5 August 2011 the DGASPC drew up a report on the six oldest children, noting as follows:

> "... The conclusions of the social services' report indicate shortcomings in the place of residence (the dwelling belongs to C.G.; ..., the habitable area is insufficient and it is furnished and equipped to a minimal standard; the hygiene conditions are precarious, there are significant shortcomings [in housework and in maintaining] cleanliness in the house and also in terms of personal hygiene, clean clothing and food hygiene); financial [difficulties] – [the family's income] is made up of an allowance for a person with second-degree disability [on account of a] psychological disorder, amounting to 234 [RON], and of State child benefit, amounting to 540 [RON]. It should be noted that although both parents live in the village of Mănăstirea, [the second applicant] has never taken steps to be registered as resident in this municipality... [The first applicant] did not attend school and is not in any paid employment.

> ... the parents' conduct was found to be negligent...: [they] did not look after or take elementary steps to provide for [their children's] health (none of the children was registered with a doctor); provided no educational stimulation to their children, had not registered them in nursery school and had limited their right [to take part in] socialisation [activities]. In this context, [the social inquiry report has indicated] language difficulties in six of the children and anxious behaviour (dread, remaining on the side-lines, retreating from strangers, lack of confidence) on account of [their fear] of being kidnapped for organ trafficking.
>
> ... [The applicants] are known in the community as individuals who generate conflict and tensions, and who frequently accuse, criticise and insult the local authorities and their neighbours for financial reasons (they ask for additional benefits, etc.)...
>
> Similar tensions exist in the relationship between the [applicants] and members of their extended family ... The latter have stated that they are unwilling and unable to take care of [the applicants'] children, with whom they have no contact. Although [the applicants have] received psychological and educational assistance to help them fulfil their role, meet their parental obligations and to make conscious provision for the [essential] needs in raising [the children], overseeing their satisfactory development and educating them, their case has continued to be monitored by the SPAS representatives; [however,] they have been unable to enter the [applicants'] home, as communication has always been difficult and accompanied by accusations and threats.
>
> [The applicants] have been informed of the effect of neglect on the children's development and about the option [that is available to the authorities] to limit their parental rights where cases of abuse through negligence are found. The protection measures available have been described to them, including maintaining normal relationships with the children throughout the period of separation from the family. The parents have vehemently rejected the appropriate protection measures and have refused to accept the intervention of specialised authorities."

27. Also on 5 August 2011, I. was examined by a DGASPC psychologist. It was established on that occasion that the child suffered, among other problems, from delayed motor development and language acquisition, and emotional shortcomings. The psychologist recommended cognitive stimulation, particularly in terms of language. Having regard to the findings of this report, the family's precarious financial position and the parents' lack of cooperation in spite of the psychological and educational advice provided by the social services, the DGASPC considered that it was necessary to replace the emergency placement measure in respect of I. by a temporary placement order.

28. The DGASPC submitted two requests to the county court, seeking to have the emergency placement measure replaced by a temporary placement order. It presented the children's situation as described in the reports of 5 August 2011 (see paragraphs 26 and 27 above) and indicated that no alternative form of care by a family member had been identified.

29. The applicants, who were present at the hearing and represented by a lawyer acting *pro bono*, called for the action brought by the DGASPC to be dismissed. They submitted that, in spite of their lack of resources, they were bringing up their children satisfactorily and that the children were not ill.

30. In two judgments of 7 September 2011 the country court, basing its decision essentially on section 66 of Law no. 272/2004, ordered that the children be temporarily placed in care: by an initial judgment, I. was placed with a child-minder; by the second judgment, the six other children were placed in a special residential centre. Parental rights in respect of all the children were assigned to the president of the Călăraşi County Council.

31. In reaching this conclusion, the county court noted in its two judgments that the evidence in the case-file indicated that the applicants' home was not a suitable place to bring up children, as the floor space was too small and poorly equipped, and there was no guarantee that it was clean. It also noted that serious shortcomings had been observed with regard to the personal hygiene and diet of family members. It noted the parents' negligence with regard to the children's health and their refusal to send them to school or allow them to take part in social activities. It also noted that, according to the documents in the files, the children's language development was delayed; they displayed anxiety-related behaviours which, in the county court's view, had been transmitted by their parents; and there were delays in the development of I.'s motor skills.

32. The county court added that although the applicants had received psychological and pedagogical advice to help them fulfil their parental duties, they had difficulties in grasping the children's needs and, through their conduct, still demonstrated negligence towards the underage children. It held that, for the time being, the applicants were not providing the necessary conditions for their children's satisfactory development and that it was in the children's best interests to be placed in care on a temporary basis.

33. The applicants lodged appeals against those judgments. They asked for the action brought by the DGASPC to be dismissed and submitted written evidence.

34. On 22 and 23 September 2011 the applicants' six oldest children underwent individual psychological tests. These revealed that all of the children were slightly behind their age cohorts in terms of social and educational development and indicated that they required cognitive and educational stimulation. The children began attending school.

35. By a final judgment of 7 November 2011, the Bucharest Court of Appeal ("the appeal court") dismissed the applicants' appeal against the judgment of 7 September 2011 concerning their six oldest children. It held that the placement measure was justified by the precarious nature of the applicants' living conditions and by their attitude towards their children. It noted the temporary nature of the measure, which was due to be lifted once the applicants had submitted the necessary financial and non-financial guarantees with regard to raising their children.

36. By a final judgment of 28 November 2011, the appeal court dismissed the applicants' appeal against the judgment of 7 September 2011 in respect of I.'s placement. After endorsing the reasoning set out in the

first-instance judgment, the appeal court considered that the lawfulness of its findings was confirmed by other evidence added to the case file, such as, for example, the medical report in respect of this child (see paragraph 22 above).

D. The applicants' applications to have the children returned to the family

1. The social inquiry visits to the applicants' home

37. Following the temporary placement of their children in care, the applicants had work done on the house to improve their living conditions.

38. At their request, on 10 January 2012 the DGASPC carried out a social inquiry visit to their home. In its subsequent report, it was noted that the applicants had improved their living conditions by furnishing the house to a minimum level and that they now had electricity and access to drinking water. However, the DGASPC noted that the toilet area was not equipped in such a way as to permit privacy and that various sections of the roof had been visibly damaged by storms. After drawing attention to the family's income, it noted that the applicants had made efforts to maintain contact with their children, whom they had visited on two occasions since they were placed in care, and that the first applicant, at her initiative, had accompanied one of the children to hospital when he was ill. It added that the applicants had stated that they could not afford to travel more frequently to visit the children.

39. The above-mentioned report further indicated that the municipal authorities, through their representative, had contacted the applicants to propose assistance, which the second applicant had refused. However, the applicants had apparently begun to cooperate with the authorities and to show an interest in maintaining contact with their children and in what they had to do so that the placement measures could be ended. In this connection, the local authorities had encouraged the second applicant to register his residence at the first applicant's address so that they could receive financial assistance from the municipality, and had informed him of the formalities to be completed. They had been offered psychological testing with a view to joining, as appropriate, a family-support programme to develop and consolidate their parenting skills. The applicants had apparently refused to undergo this testing.

40. Having regard to those factors, the DGASPC concluded that, for the time being, the conditions for ensuring the children's safe return to the applicants had not been met: it emphasised the lack of fuel for heating the house and the second applicant's lack of cooperation with the authorities. It explained that it would be better to delay the children's return to their family and that the parents needed to achieve a certain level of progress,

under the SPAS's supervision, to acquire the necessary skills to ensure their children's safety and to be informed of the potential risks to the children. It added that the children's return to their family in the near future was not to be ruled out; in its view, however, given the need to improve certain conditions so as to ensure their safety, the applicants' fluctuating attitude in their communication with the authorities and the applicants' difficulties in grasping and responding to the children's needs, the placement measure ought to be maintained for the time being.

41. On 17 January 2012 the DGASPC asked the SPAS to continue to monitor and advise the applicants' family and to indicate to it those aspects that it still considered deficient in the visit that had been carried out on 10 January 2012 (see paragraphs 38 to 40 above). It also asked the SPAS to inform it of the measures taken to improve the applicants' living conditions.

42. On 14 February 2012, following the DGASPC's request (see paragraph 41 above), the SPAS made another visit to the applicants' home. On this occasion, it was noted that the applicants were maintaining contact with their children by telephone, since it was difficult for them to travel to the residential centre on account of the wintery weather conditions. The visit report established that the applicants' physical living conditions had improved and that they had had work done to clean the house. The applicants had promised to enrol the children in school, register them with a doctor, and cooperate with the authorities. The SPAS concluded that the applicants' living conditions had improved in comparison with those existing when their children were placed in care and that the return of all the children to their family could be envisaged.

2. The proceedings before the domestic courts

43. In the meantime, on 11 January 2012 the applicants had brought an action against the DGASPC before the county court. They requested that the emergency placement order in respect of their seven children be lifted and that they be returned to the family home. They argued that their living conditions were of a satisfactory standard for raising their children, and submitted to the case file a copy of the agricultural register showing that they had free accommodation, and also an electricity bill, evidence of their income and documents stating that three of their seven children were enrolled in school. They added that the children were not being cared for properly in the residential centre.

44. The DGASPC did not follow the SPAS's recommendation (see paragraph 42 above) and asked for the action to be dismissed on the grounds that, although the material living conditions in the applicants' home had improved, this aspect was not sufficient to ensure the children's safety. Nonetheless, the social inquiry report on the SPAS's visit of 14 February 2012 (see paragraph 42 above) was included in the case file.

45. By a judgment of 15 February 2012, the county court dismissed the applicants' action on the ground that, in spite of the improvement in their living conditions, they had no other income apart from the allowances they received for their children and that there was no guarantee that these were used exclusively to care for the children. The court stated that those allowances had to cover the needs of the whole family.

46. The applicants lodged an appeal. They argued that they provided appropriate living conditions to ensure their children's physical, intellectual and moral development. In addition, the county court had wrongly concluded that their only source of income was from the child allowances, whereas, in their submission, the second applicant was in receipt of two allowances and of income for day-work carried out for various inhabitants of the village. They added that they believed that the family's income ought to benefit the parents, but more especially the children.

47. The DGASPC requested that the temporary placement measure be maintained.

48. No new evidence was added to the case file.

49. By a judgment of 20 March 2012, the appeal court dismissed the applicants' appeal. Referring to sections 2, 66 and 68 § 2 of Law no. 272/2004, it considered that the circumstance which had led to the children's temporary placement in care had changed only in part, and held that the contested measure was to be maintained.

50. In its judgment, the appeal court began by setting out the reasons justifying the temporary placement measure (see paragraphs 31 and 32 above) and stated that since the children had been placed in care the applicants had visited their six children in the residential centre twice and had visited I. once.

51. It further noted that, since being placed in care, the children had been examined and treated by a doctor and had joined nursery or primary schools, depending on their age. It noted that the children were all receiving assistance in school from a specialised educator who was monitoring each child's situation and involving them in specially selected activities to enable them to catch up in those areas where academic delays had been observed when they were placed in care. It stated that, on the basis of the documents in the case file, the children had progressed in terms of independence, personal hygiene and diet since being placed in care and were developing positively.

52. The appeal court then described the first meeting that had taken place in November between the applicants and the six children who were housed in the residential centre. After describing the children's reactions, it concluded that the meeting had proceeded normally; the applicants had eaten a meal and played with the children. It noted that the applicants had not expressed any dissatisfaction to the staff about their children's condition. It further noted that, since that meeting, the applicants had

contacted the children by telephone and continued to express their fear that their children would be kidnapped for organ trafficking. However, it noted that the second applicant had refused to give his personal telephone number to the child-care staff so that he could be informed about any issue concerning the children, and that communication was possible only when he himself called the residential centre.

53. The appeal court then compared the conditions considered necessary by the DGASPC for the children to be returned to their family (see paragraphs 38 and 39 above) with the SPAS's findings during the social inquiry visit of 14 February 2012 (see paragraph 42 above). It noted that although the applicants had satisfied certain of the conditions imposed by the DGASPC, there remained room for improvement. It held:

> "The conditions for the children's reintegration [into the family] have not been met, given that the other criteria laid down by the DGASPC to ensure the children's safety are not fulfilled: [namely,] the parents' involvement and cooperation...; the repair of the roof; registration of the [second] applicant's home in Mănăstirea in order to be able to receive welfare payments; maintenance of links with the children by increasing the regularity of visits; acceptance of their parental responsibilities (registering the children with a doctor, enrolling them in primary and nursery school); the fact of finding employment; improved relations with the other members of the community; undergoing the psychological tests proposed by the DGASPC's specialists to ascertain their level of parental skills, so as to be able to include them, if appropriate, in a parental support programme and thus develop and consolidate their parental skills; the prevention of major risks to the underage children by accepting monitoring by the Mănăstirea SPAS.
>
> ....
>
> At the same time, the appeal court notes that it has not been conclusively shown that the applicants have sufficient financial resources to support all of their children and to request [the latter's] return to their family. The two allowances ... received by the [second] applicant, amounting to a total of 646 RON per month, do not represent a source of income that is sufficient to raise and educate seven children, who currently live in better conditions that those that their parents could provide them with. In addition, no evidence has been submitted proving that the applicants have received additional income through day-work carried out in the municipality by the second applicant ...."

54. The appeal court concluded that, in any event, the improvements in the applicants' living conditions noted in the social inquiry report which had been added to the case file (see paragraph 42 above) was not the only condition that the applicants had to fulfil before being able to request their children's return. According to the appeal court, the applicants had still to fulfil the other conditions laid down by the DGASPC, which were intended to ensure that the children's best interests were protected.

E. Subsequent developments in the case and the children's return to their family

55. A social inquiry report drawn up on 2 April 2012 noted that the family's material conditions had improved, that the applicants were maintaining contact with their children by telephone and that they visited them once a month, the municipal authorities having provided them with fuel for these journeys. The report stated that the family's monthly income consisted in two allowances received by the second applicant, amounting to a total of RON 646. It was suggested that the municipal authorities make an emergency payment of RON 1,800 to the applicants for repair of the house's roof and the installation of toilets.

56. By a decision of 4 April 2012, the municipal council granted the first applicant the above-mentioned RON 1,800 in emergency aid.

57. On 10 April 2012 the applicants had a confidential interview with a psychologist from the DGASPC. Having been informed of the purpose of the interview, namely to assess their parental skills with a view to the children's return to the family, the applicants replied to questions. The report drawn up after this interview indicated that the applicants had low parenting skills: they met only their children's basic needs and were unaware of the effects that their conduct could have on the children's development. It suggested that the applicants be included in a psychological support programme so as to develop and consolidate their parental skills, inform them about how to exercise their rights, put their parental responsibilities into practice and improve their skills in developing relationships with the wider community.

58. On 17 April 2012 the second applicant registered his home address at the first applicant's home.

59. A visit to the applicants' home by social services on 26 April 2012 revealed that their living conditions had improved, that the applicants had cooperated with the authorities and that they had begun to take the steps recommended to them for the children's well-being. The DGASPC suggested that the six children who had been placed in the residential centre be reintegrated into their family.

60. In May 2012 the children underwent psychological tests, which revealed an improvement in their general condition since they had been placed in care.

1. I.'s return to the family

61. By a report of 5 May 2012, the DGASPC noted that the family's situation had improved, that the applicants had visited their son regularly, shown an interest in his health and displayed affection towards him. It also indicated that meetings had been organised not only between I. and his parents but also with his brothers and sisters. Emphasising the clear interest shown by the applicants towards their child, the DGASPC proposed that the placement measure be ended.

62. On 7 May 2012 the DGASPC brought an action before the county court requesting that I. be returned to the applicants' home.

63. By a judgment of 23 May 2012, the county court decided that it was in I.'s best interests to be returned to his family, especially as the conditions for his satisfactory development had been met and his relationship with his family was very strong.

64. On 21 June 2012 I. was returned to the applicants' home.

2. The return of the six other children to the family

65. On 7 May 2012 the DGASPC and the applicants brought an action before the county court requesting that the temporary placement order in respect of the six other children be lifted.

66. By a judgment of 23 May 2012, the county court dismissed the action. The applicants and the DGASPC lodged an appeal against that judgment.

67. While that appeal was still pending, the six children spent the summer holiday at the applicants' home, at their parents' request. On 10 July 2012 the social services visited the applicants' home, in the presence of the children. This visit indicated that the children would be able to live and develop in satisfactory conditions in the home. The report on this visit was added to the case file before the appeal court.

68. By a final judgment of 22 August 2012, the appeal court set aside the first-instance judgment and ordered that the children be returned to their family. It pointed out that Law no. 272/2004 sought to protect the best interests of the child and that the public authorities were required to help ensure that children developed and were raised within their families, and explained:

> "... although the provision of a certain level of material comfort is an essential element for minors' development, [it is nevertheless the case that] an inadequate income does not in itself represent an insurmountable obstacle to the children's return to their family, provided that the parents show a genuine interest in raising the children themselves...".

69. The appeal court held that, given the improvement in the applicants' living conditions through assistance from the public authorities, and the change in their conduct towards their children, it was in those children's best interests to re-join their family.

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

77. The applicants complained, firstly, that their children had been placed in care unjustifiably, and, secondly, by a letter of 12 April 2012, that they had been unable to obtain the children's return to their family, given the dismissal of their action by the Bucharest Court of Appeal in a final judgement of 20 March 2012. They relied in essence on Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

...

B. Merits

1. The parties' observations

(a) The applicants

83. The applicants submitted that their children had been placed in care on unlawful grounds, although they were providing the necessary conditions for the children's upbringing. They complained that, in spite of the improvement in their situation, the domestic authorities had dismissed their request for the children to be returned to the family home. They refereed in this connection to the decisions delivered by the domestic courts in the context of their request that the children be reunited with the family (see paragraphs 41 to 54 above).

(b) The Government

84. The Government accepted that the children's placement in care amounted to an interference in the applicants' exercise of their right to respect for their private life. That being said, they considered that this interference had been justified.

85. In this connection, they noted, firstly, that the decision to seek an emergency placement order had been taken by the domestic authorities following a complaint by the first applicant herself (see paragraph 9 above). The relevant authorities had subsequently examined the situation of the applicants' family and decided to monitor it regularly by means of social

inquiry reports, the conclusions of which had, in the Government's view, been of concern (see paragraphs 12 to 19 above). They further indicated that, prior to the order placing the children in care, the applicants had received psychological and educational advice to assist them in fulfilling their parental obligations, and that the parents had been informed of the consequences of neglect on the children's development and about the possibility that their parental rights would be restricted if abuse or neglect were found. In spite of these measures, no improvement in the children's situation had been noted, and the domestic courts had then ordered that the children be placed in care.

86. With regard to the dismissal of the applicants' action seeking to have the children returned to the family, the Government submitted that the domestic courts had been required to examine the shortcomings which had justified the children's placement in care and the manner in which the applicants had addressed those shortcomings. In dismissing the applicants' request, the domestic courts had based their decision not only on the applicants' material situation, but also on other factors, such as their psychological and educational abilities and the developmental progress made by the children while in care. They considered that it was clear from the wording of the judicial decisions that the domestic courts had been guided by the best interests of the children.

87. The Government stressed the temporary nature of the placement measure and indicated that, as soon as it was introduced, the applicants had been encouraged to maintain relationships with their children and been informed of the steps to be taken in order to secure the children's return to the family. They submitted that the family's reunification had always been a priority for the authorities and that, once they had observed that the family conditions were conducive to the children's development, the authorities themselves had applied for the children's return to their parents.

2. The Court's assessment

(a) General principles

88. The Court reiterates that for a parent and child the fact of being together is a fundamental aspect of family life (see *Kutzner v. Germany*, no. 46544/99, § 58, ECHR 2002-I): domestic measures which hinder such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see *K. and T. v. Finland* [GC], no. 25702/94, § 151, ECHR 2001-VII). Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being "in accordance with the law", pursuing one or more of the legitimate aims listed therein, and being "necessary in a democratic society" in order to achieve the aim or aims concerned (see *Gnahoré v. France*, no. 40031/98, § 50, ECHR 2000-IX). The notion of "necessity" implies that an

interference corresponds to a pressing social need and, in particular, is proportionate to the legitimate aim pursued (see *Couillard Maugery v. France*, no. 64796/01, § 237, 1 July 2004).

89. In order to determine whether the impugned measure was "necessary in a democratic society" the Court must consider whether, in the light of the case as a whole, the reasons adduced to justify it were relevant and sufficient for the purposes of Article 8 § 2 (see *Soares de Melo*, cited above, § 88). The Court takes into consideration the fact that it is an interference of a very serious order to split up a family. Such a step must be supported by sufficiently sound and weighty considerations in the interests of the child (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 148, ECHR 2000-VIII). The removal of a child from the family setting is an extreme measure to which recourse should be had only as a very last resort (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 136, ECHR 2010).

90. That being stated, the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see *Wallová and Walla v. the Czech Republic*, no. 23848/04, § 70, 26 October 2006, and *Couillard Maugery*, cited above, § 242).

91. In this context, the Court reiterates that the fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the "necessity" for such an interference with the parents' right under Article 8 of the Convention to enjoy a family life with their child (see *K. and T. v. Finland*, cited above, § 173, and *Kutzner*, cited above, § 69). There may in addition be positive obligations inherent in an effective "respect" for family life. Thus, where a family tie has been established, the State must in principle act in such a way as to allow the relationship to develop and take any measures that might be appropriate to reunite the parent and child concerned (see *Kutzner*, cited above, § 61).

92. The Court also reiterates that, while the boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition, the applicable principles are nonetheless similar. In particular, in both cases, the decisive issue in this area is whether a fair balance between the competing interests at stake – those of the child, of the two parents, and of public order – has been struck, within the margin of appreciation afforded to States in such matters (see *Maumousseau and Washington v. France*, no. 39388/05, § 62, ECHR 2007-XIII), taking into account, however, that the best interests of the child must be of primary

consideration (see, to this effect, *Gnahoré*, cited above, § 59) and may, depending on their nature and seriousness, override those of the parents (see *Sahin v. Germany* [GC], no. 30943/96, § 66, ECHR 2003-VIII). It is for each Contracting State to equip itself with adequate and effective means to ensure compliance with its positive obligations under Article 8 of the Convention, and it is for the Court to ascertain whether the domestic authorities, in applying and interpreting the applicable legal provisions, secured the guarantees set forth in Article 8 of the Convention, particularly taking into account the child's best interests (see *Soares de Melo*, cited above, § 92).

(b) Application of those principles to the present case

93. In the present case, it was not disputed before the Court that the order for the temporary placement in care of the applicants' seven children, the continuation of that measure and the fact of removing the applicants' parental authority in respect of all of their children amounted to "interference" in the applicants' exercise of their right to respect for their family life. Based as they were on sections 66 and 68 of Law no. 272/2004, the impugned measures were "in accordance with the law".

94. The grounds set out by the domestic courts also show that the decisions complained of by the applicants were taken in order to protect the children's interests. The interference complained of thus pursued legitimate aims under Article 8 § 2 of the Convention, namely the protection of the rights and freedoms of others.

95. It remains to be determined whether the measures were "necessary in a democratic society" to achieve the legitimate aim pursued in the particular circumstances of this case.

96. In the present case, the Court will first examine the grounds which, according the domestic courts, justified the children's temporary placement in care and the extension of that measure, before considering the authorities' actions to reunite the parents and their children.

i. On the order to place the applicants' children in care and its extension

97. The Court considers that it must examine the contested measure in the more general context of the case, taking into account the events which both preceded and followed the placement order and which resulted in the children's return to their family.

98. In this connection, it notes that the applicants' family was first reported to the DGASPC in September 2010 (see paragraph 11 above) following a complaint submitted by the first applicant to the President of Romania, a complaint which proved to be unfounded (see paragraphs 9 and 10 above). It observes that the DGASPC, supported by the SPAS, subsequently assessed the family's situation and drew up recommendations that the applicants were to follow in order to prevent neglect of their

children (see paragraph 13 above). It added that the DGASPC simultaneously informed the applicants about the possible legal measures that could be imposed, in accordance with the law, to protect the children's interests (see paragraph 14 above). The Court attaches significance to the fact that, from the start of the monitoring, the social services identified the family's material deprivation and treated it as distinct from the parenting issues (see paragraphs 13 and 26 above; see, on the contrary, *Saviny v. Ukraine*, no. 39948/06, § 58, 18 December 2008).

99. The Court further notes that periodic monitoring of the applicants' family was introduced in order to observe how the applicants would comply with the DGASPC's recommendations and to provide them with advice regarding their parental responsibilities. It notes that the SPAS extended its investigation to the applicants' wider family and did not base its reports exclusively on the social services' findings and on the interactions between those services and the applicants (see paragraph 19 above; for a different situation, see *Saviny* cited above, § 56, where the Court highlighted the fact that the conclusions about the children's situations had been based solely on the findings of the local authorities, without being corroborated by other evidence). In the absence of practical action on the applicants' part or collaboration with the authorities, and at the DGASPC's request, the court ordered the children's emergency placement in care in two judgments of 6 April 2011 (see paragraph 22 above); the children were effectively removed from their parents on 4 August 2011 (see paragraph 24 above).

100. The Court notes that the order to place the children in emergency care was replaced by temporary placement orders through two country court judgments of 7 September 2011 (see paragraph 30 above); this measure was extended by the appeal court's final judgment of 20 March 2012 (see paragraph 49 above).

(α) The reasons justifying the children's temporary placement in care

101. The Court notes that, as part of the proceedings which resulted in the children's temporary placement in care (see paragraphs 30 to 32 above), the domestic courts had accused the applicants of failing to provide adequate living conditions for their children. It observes that the domestic courts had also noted that the applicants were negligent with regard to the children's health and their education and social development and, lastly, that they had accused the applicants of failing to cooperate with the social services.

102. With regard to the applicants' state of destitution, an argument regularly put forward both by the DGASPC and by the national courts to justify the need to place the children temporarily in care, the Court reiterates that this ground cannot form the sole reason on which the decision of the domestic courts is based (see *R.M.S. v. Spain*, no. 28775/12, § 84, 18 June 2013).

103. The Court further notes that in the present case the applicants' ability to raise and educate their children, and the manner in which they fulfilled their duty to ensure their children's safety, were questioned. The social services, which monitored the family on a regular basis, drew attention in their reports to the slightly delayed development and speech issues in all the children. These developmental delays and problems had allegedly been caused by a lack of cognitive stimulation and by limited contact with others (see paragraphs 26 and 34 above). The reports in question also described anxiety-related behaviours on the part of the children (see paragraphs 25 and 26 above); this anxiety had been transmitted to them, in the county court's view, by their parents (see paragraph 31 above). Equally, the health of the youngest child was a matter of concern when he was taken into care by the authorities (see paragraph 25 above). Having regard to these conclusions, reached by specialists following a close examination of the children, the Court acknowledges that in the present case the authorities could have had legitimate fears about the children's lack of adequate developmental and educational progress, as observed by the social services.

104. It also notes that, before proposing that the children be placed in care, the social services monitored the applicants' family and attempted to advise the adults about the measures to be taken in order to improve their situation and that of the children. However, according to the relevant reports, the applicants displayed a certain hostility towards the social workers, which had undermined the cooperation between them and the social services (see paragraph 26 above; for a contrasting situation, see *Saviny*, cited above, §§ 14-16, where the applicants themselves unsuccessfully requested assistance from the authorities). The Court emphasises that, admittedly, in seeking to protect children, it is always preferable to envisage less extreme measures than separation from their parents. That being stated, it considers that, in the present case, taking into account the lack of cooperation from the parents, it was difficult for the authorities to monitor the children's situation and to provide them with the necessary support.

105. The Court therefore notes that, in the present case, the domestic courts' decisions regarding the children's temporary placement in care were not based exclusively on the findings of material deprivation on the applicants' part. In those circumstances, and in view of the clearly paramount interests of the children, the Court considers that the temporary placement order cannot be challenged under Article 8 of the Convention.

(β) The extension of the temporary placement order

106. Following the children's temporary placement in care, and at the applicants' request, the relevant courts reviewed the need to maintain the measure in question six months after its introduction (see paragraph 43

above). The DGASPC stressed the need to maintain the measure, while taking into account the improvements observed in the applicants' situation; it explained the reasons why, in its view, the measure was justified (see paragraphs 40 to 44 above). By a judgment of 20 March 2012, the appeal court maintained the temporary placement order, still in the children's interest, although the applicants submitted evidence of improvements in their material living conditions and had begun to cooperate with the authorities (see paragraphs 38 and 39 above).

107. The Court notes at the outset that the applicants are not claiming that there has been any breach of the procedural guarantees in the proceedings which resulted in the maintenance of the placement order.

108. In the context of these proceedings, new and updated reports describing the situation of the applicants, who had attempted to improve their material conditions after the removal of their children, were added to the case file (see paragraphs 38 and 42 above).

109. Admittedly, according to the wording of the county court's judgment, that instance essentially based its decision on the applicants' material deprivation and their financial difficulties (see paragraph 45 above). However, the county court judgment was supplemented by that of the appeal court, which provided a full explanation of why it was necessary to maintain the placement order (see paragraphs 49 to 54 above). In issuing its judgment, the appeal court considered the entirety of the facts before it; further, it compared the family's situation when the children were placed in care with that of the applicants when the case was examined, both in terms of the latter's material living conditions and with regard to developments in the relationships between the applicants and their children and the applicants' collaboration with the social services (see paragraphs 50 et seq. above, and, in contrast, *Soares de Melo*, cited above, § 115).

110. The appeal court took into consideration the positive changes in the condition of all the children since they had been placed in care (see paragraph 51 above), the fact that contact had been maintained between the applicants and their children and the applicants' efforts to visit their children (see paragraph 52 above). After having noted that the applicants had improved their material situation, the appeal court held that further progress ought to be made in this area (see paragraph 53 above). However, as with the order to place the children temporarily in care, in these proceedings the applicants' material deprivation was not the only aspect taken into account by the appeal court in deciding that it was necessary to maintain the placement. It also examined how the collaboration between the applicants and the social services had developed with regard to the applicants' parental responsibility (see paragraph 53 above).

111. The Court observes that, in its report of 14 February 2012 (see paragraph 42 above), the SPAS proposed to the DGASPC that the children be returned to the family and that the DGASPC did not follow this

recommendation. Nonetheless, it is appropriate to note that the report of 14 February 2012 was added to the case file before the domestic courts, which were able to reach their decision in the light of all the material in their possession: the appeal court clearly noted an improvement in the applicants' material living conditions, but nonetheless held, on the basis of the evidence and the updated reports, that the applicants had not yet complied with all of the DGASPC's recommendations and that their behaviour did not imply that they had fully shouldered their responsibility to raise their children in a completely safe environment. Thus, the appeal court set out the reasons behind its decision to adhere to the DGASPC's position rather than to that of the SPAS (see paragraph 53 above).

112. The Court accordingly considers that it is clear from the facts of the case that both the DGASPC and the domestic courts had given consideration not only to the improvement in the family's material conditions, but also to the applicants' awareness of their parental role. In consequence, the Court considers that there were "relevant and sufficient" reasons for extending the temporary placement order.

ii. The necessary measures to reunite the family

113. The Court reiterates, in the first place, that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (see *K. and T. v. Finland*, cited above, § 178).

114. By way of introduction, the Court observes that the measure ordered in the present case was intended as a temporary means of providing for the applicants' children. In addition, the six oldest children were placed together in the same residential centre in order to maintain the sibling ties (see, for a different situation, *Saviny*, cited above, § 59, where the children were separated and placed in different care centres). In view of his age, the youngest child was placed, in accordance with the applicable legal norms, with a professional child-minder (see paragraphs 24 ... above).

115. The Court further highlights that it is clear from the case file that the children's development and health improved over the period that they were in care (see paragraphs 51 and 60 above) and that their situation was monitored closely and regularly by the social services.

(α) The contacts between the applicants and their children

116. The Court notes that, according to the evidence in the case file, the applicants in the present case were not forbidden from visiting their children throughout the duration of the placement. Furthermore, it notes that need to preserve the ties between the applicants and their children was a constant concern to the authorities and that the development of their relationship was an element taken into consideration by the national courts (see paragraphs 52, 63 and 69 above) and the social services (see paragraphs 25 and 26 above) in their decisions to order and extend the temporary placement measure.

117. The Court further observes that the domestic authorities took the necessary measures to ensure that the visits between the applicants and their children took place in an atmosphere that was conducive to the development of family ties (see paragraph 52 above). With regard to the regularity of those visits, the Court notes that, during the social inquiry visit of January 2012, the applicants informed the DGASPC that they did not have sufficient resources to visit their children more frequently (see paragraph 38 above). They subsequently referred to poor weather conditions in explaining that it had been impossible to visit their children (see paragraph 42 above). In any event, the Court notes that, after being instructed to continue monitoring the applicants' situation, the municipal authorities provided them, from April 2012 onwards, with the necessary fuel for travel, so that they could visit their children every month (see paragraph 55 above).

118. The Court notes that telephone contacts were maintained, and that calls took place at the applicants' initiative (see paragraphs 52 and 55 above).

119. Lastly, the Court observes that the social services took steps to prepare the children's return to their parents by organising a meeting between the youngest child and his siblings and parents (see paragraph 61 above). Equally, they allowed the older children to spend the summer holidays with the family (see paragraph 67 above).

120. The Court therefore considers that the authorities constantly made genuine efforts to maintain the ties between the children and their parents.

(β) The measures aimed at improving the applicants' situation

121. The Court notes that the social services attempted to monitor the applicants' situation and to advise them on the steps to be taken to improve their financial position and enhance their parenting skills.

122. With regard to financial support, it notes that the social services attached to the municipal council recommended to the second applicant that he take the necessary steps to register his residence in Mănăstirea, so that the relevant local authorities could assess his situation and propose allowances. They also provided the first applicant with financial assistance to have the roof of the house repaired and toilets installed (see paragraphs 55 and 56 above), aspects that the appeal court had found in its

judgment of 20 March 2012 to be unsatisfactory and dangerous in terms of the children's safety in the home (see paragraph 53 above). In addition, as already indicated above, they provided the applicants with the necessary fuel in order to visit their children on a regular basis (see paragraph 55 above).

123. As regards securing an improvement in the applicants' parental skills, the Court notes that the social services regularly attempted to advise the applicants about their obligations to provide for their children's development and education. They insisted on carrying out an assessment of the applicants' needs so as to understand the situation and provide for the children's needs, and offered the applicants appropriate support (see paragraphs 39 and 57 above).

124. Thus, the Court notes that the national authorities made efforts to facilitate the children's return to their parents: they monitored the situation of the family, and, as soon as the applicants had indicated their willingness to cooperate, tangible measures were rapidly put in place to comply with the conditions imposed by the DGASPC for the children's return. The domestic authorities adopted a constructive attitude as soon as there were signs of improvement in the applicants' situation and proposed that the children be returned to the family.

125. In those circumstances, the Court cannot but conclude that the authorities did everything that could reasonably have been expected of them to facilitate the children's return to their parents.

(c) Conclusion

126. In the present case, the Court is satisfied that the temporary placement in care of the applicants' children was based on reasons which were not only relevant but also sufficient for the purposes of Article 8 § 2 of the Convention. Equally, it is clear from the entire case file that the placement order was intended from the outset to be temporary in nature. The Court considers that, by closely monitoring the situation of the children and the applicants, the relevant authorities endeavoured at all times to safeguard the children's interests, while attempting to strike a fair balance between the applicants' rights and those of the children.

127. In consequence, the Court concludes that the interference with the applicants' rights was "necessary in a democratic society" and that there has been no violation of Article 8 of the Convention in the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

...

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in French, and notified in writing on 24 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President