



Court dismisses complaints against Romanian authorities over witness protection programme

In today's **Chamber** judgment¹ in the case of **A and B v. Romania** (application no. 48442/16) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 2 (right to life) of the European Convention on Human Rights.

The case concerned the applicants' complaint about the protection provided for them as witnesses in a corruption case.

The Court found in particular that the authorities had recognised that the applicants had faced a threat to their lives. However, it had taken some time – a year and four months – to formally include them in the witness protection programme. On the other hand, the police had provided protection during that time.

The Court noted disputes between the applicants and the authorities over the protection they had been offered, with the applicants in particular critical of what they saw as a lack of experience in protection by the police officers and various alleged mistakes.

Nevertheless, such issues had not justified provocative behaviour by the applicants and a repeated disregard by them of their own responsibilities towards their protection. The applicants had been uncooperative and had very often exhibited inappropriate behaviour towards the police officers.

The Court, commending the authorities for their efforts to continue protecting the applicants despite their lack of cooperation, concluded by finding that they had done all that could reasonably have been expected of them in the circumstances to protect the applicants from threat.

Principal facts

The applicants, Ms A and Mr B, are Romanian nationals who were born in 1981 and 1978 respectively and live as a couple in R.

In August 2015 the anti-corruption prosecutor's office attached to the High Court of Cassation and Justice ("the HCCJ") declared the applicants "threatened witnesses": they had worked for C, who, along with another senior official, D, was being investigated for alleged acts of corruption. The applicants were believed to have witnessed suspect transactions between C and D.

Immediate protection was provided by the Directorate General of Police ("the DGP") in B., via the Special Actions Service and their local police station. The Special Actions Service team started immediately and from February 2016 a second team was assigned to protect the applicants. The National Office for Witness Protection ("the NOWP") met the applicants and explained the conditions and requirements of the programme, which they agreed in December 2015 to join.

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.

They subsequently had discussions over the protection protocols to be used by the DGP, which described the police officers' duties and the applicants' obligations, which the applicants refused to sign. In June 2016 the prosecutor's office asked the HCCJ to lift the protection measures and exclude them from witness protection as they were no longer in any danger, but the HCCJ dismissed that request in August 2016.

The applicants were ultimately formally included in the witness protection programme run by the NOWP in January 2017, with protection provided by the police. They signed the protection protocols the same month, in which they also asked the NOWP to change their identities, move them abroad and to give them financial assistance. In March 2017 the HCCJ dismissed the applicants' requests.

According to the applicants, the police measures for their protection were ineffective. For example, the police officers admitted that they had not had any instructions for their mission, which they had said was the first of its kind. B also had disputes with the police officers as he was not happy with the way they organised the protection. He was fined several times over these disputes.

During the protection period the applicants also faced threats, for instance, two bullets were left on their doorstep and their car tyres were slashed. The applicants lodged complaints about the protection, which were mostly dismissed. The applicants left Romania in 2017.

Complaints, procedure and composition of the Court

Relying on various Articles of the Convention, the applicants complained about the organisation of the witness protection programme, arguing that it was inefficient.

The application was lodged with the European Court of Human Rights on 11 August 2016.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Jolien **Schukking** (the Netherlands),
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

[Article 2](#)

The Court decided to deal with the applicants' complaint under Article 2 (right to life) of the Convention alone.

Reiterating its case-law, in particular [Osman v. the United Kingdom](#) and [R.R. and Others v. Hungary](#), the Court noted that Article 2 of the Convention could come into play even though a person whose right to life was allegedly breached had not died.

The applicants had been classified as "threatened witnesses" and the prosecutor's office had considered that they were in danger. In applying the rules of witness protection, the authorities had accepted that there was a risk to the applicants within the meaning of the law.

The authorities had therefore known or ought to have known that there was a real and immediate risk to the applicants' life. The question was whether the authorities had done all that could reasonably have been expected of them to avoid it.

The Court noted that the authorities had placed the applicants under protection as soon as a risk had been identified, however, there had been various delays in the subsequent process: the authorities had taken six months to draft protection protocols and present them to the applicants; more than three months to secure the applicants' agreement to take part in the witness protection programme; and two months for the prosecutor to start the proper procedure for including the applicants in the witness protection programme under the relevant law.

The Court expressed concern that it had thus taken more than one year and four months, from August 2015, when the risk had first been identified, to January 2017, when the applicants had formally been included in the witness protection programme.

Nevertheless, they had not been left without protection during that time, even if, at least at the beginning, it had been mostly improvised, given a lack of regulations, which had only become applicable in July 2016. The resulting deficiencies had been corrected by the authorities and no direct attack on the applicants had taken place.

The applicants had commented on the police officers' lack of experience, but the Court did not agree, noting, for instance, that they had received similar high-risk assignments in the past. However, such experience had not been able to make up for an absence of clear instructions and a lack of adequate preparation. The police officers had sometimes been found to be unarmed or without uniforms, or had left their post before the next team had arrived.

Such omissions had risked compromising the applicants' protection, although they had been taken seriously by the authorities, which had investigated and when necessary issued reprimands.

While the Court accepted that such a situation had contributed to the escalation of the conflicts and mistrust between the applicants and the police, they did not, however, justify the applicants' provocative behaviour and disregard of their own responsibilities towards their protection.

The applicants had been fully aware of their duty to cooperate with the authorities, which had been set out by law and included in the protection protocols, which they had eventually signed. In practice, they had repeatedly failed to comply with their obligations and breached the protocols.

Among other things, they had been uncooperative and behaved inappropriately to the police officers. They had tried to elude the protection measures and obstruct the work of the officers and had allegedly made unattainable demands to the authorities concerning the obligation to find them new jobs and had refused to compromise.

Moreover, the applicants had had a presence on social media and television, which had risked compromising their protected witness status. The applicants had also refused an offer of relocation within Romania, while the HCCJ had dismissed their request to have their identities changed and be relocated abroad after careful examination and providing reasons.

Disregarding the HCCJ's decision and their obligation to comply with the protection protocols, the applicants had decided to move abroad, which had in practice ended their protection and potentially exposed them to serious risk. Even in that situation, the authorities had not withdrawn their protection but had maintained contact and had continued to offer them financial support.

The Court commended the authorities for their efforts to continue the protection despite the applicants' lack of cooperation, instead of withdrawing them from the witness protection programme, an option provided for by law.

The Court considered that the authorities had done what could reasonably have been expected of them to protect the applicants from the alleged risk to their lives. They had thus complied with the requirements of Article 2 of the Convention and there had been no violation of that provision.

The judgment is available only in English.

Press Release

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpres@echr.coe.int |

Patrick Lannin

Tracey Turner-Tretz

Denis Lambert

Inci Ertekin

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.