



Court finds that there is a lack of commitment in Romania to address domestic violence

The case **Bălșan v. Romania** (application no. 49645/09) concerned an allegation of domestic abuse. Ms Bălșan, the applicant, alleged that the authorities had failed to protect her from her husband's violent behaviour and to hold him accountable, despite her numerous complaints.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights because of the authorities' failure to adequately protect Ms Bălșan against her husband's violence, and

a violation Article 14 (prohibition of discrimination) read in conjunction with Article 3 of the European Convention because the violence had been gender-based.

The Court found in particular that Ms Bălșan's husband had subjected her to violence and that the authorities had to have been well aware of that abuse, given her repeated calls for assistance to both the police as well as the courts. Furthermore, although there was a legal framework in Romania with which to complain about domestic violence and to seek the authorities' protection, which Ms Bălșan had made full use of, the authorities had failed to apply the relevant legal provisions in her case. The authorities even found that Ms Bălșan had provoked the domestic violence against her and considered that it was not serious enough to fall within the scope of the criminal law. Such an approach had deprived the national legal framework of its purpose and was inconsistent with international standards on violence against women. Indeed, the authorities' passivity in the current case had reflected a discriminatory attitude towards Ms Bălșan as a woman and had shown a lack of commitment to address domestic violence in general in Romania.

Principal facts

The applicant, Angelica Camelia Bălșan, is a Romanian national who was born in 1957 and lives in Petrosani (Romania).

Ms Bălșan married in 1979 and had four children. According to Ms Bălșan, her husband was violent towards her and their children throughout their marriage. The violence intensified in 2007 during their divorce proceedings and continued into 2008 when the divorce was finalised. She was assaulted by her husband in total eight times in this period, and sustained injuries recorded in medical reports as requiring between two to a maximum of ten days' medical care.

In the period 2007-2008 Ms Bălșan asked for assistance by way of emergency calls to the police, petitions to the head of police for protection and formal criminal complaints. As concerned the latter, it was considered, both at the investigation level and before the national courts, that she had provoked the domestic violence and that it was not serious enough to come under the scope of the criminal law. Thus, as concerned the three incidents which occurred in 2007 the courts ultimately

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.

decided to acquit her husband of bodily harm; and as concerned the five incidents in 2008, the prosecuting authorities decided not to press charges. Her husband was given an administrative fine following each of these decisions. During the criminal investigations and the court proceedings Ms Bălşan continued to bring to the authorities' attention her husband's abuse, warning them that she feared for her life. No concrete measures were however ever taken and her requests that the courts order protective measures went unanswered.

Complaints, procedure and composition of the Court

Ms Bălşan alleged that the authorities had failed to protect her from repeated domestic violence and to hold her husband accountable, despite her numerous complaints. She also submitted that the authorities' tolerance of such acts of violence had made her feel debased and helpless. The case will be examined under Article 3 (prohibition of inhuman and degrading treatment) and Article 14 (prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 4 September 2009.

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

Ganna **Yudkivska** (Ukraine), *President*,
Vincent A. **De Gaetano** (Malta),
Paulo **Pinto de Albuquerque** (Portugal),
Faris **Vehabović** (Bosnia and Herzegovina),
Egidijus **Kūris** (Lithuania),
Iulia **Motoc** (Romania),
Carlo **Ranzoni** (Liechtenstein),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of inhuman and degrading treatment\)](#)

The Court considered that the physical violence to which Ms Bălşan had been repeatedly subjected by her husband and her resulting injuries, as documented in medical and police reports, had been sufficiently serious to reach the required level of severity under Article 3 of the Convention.

The Romanian authorities had moreover to have been well aware of that abuse, given Ms Bălşan's repeated calls for assistance to both the police as well as the courts. The authorities had therefore been under an obligation to take all reasonable measures to act upon her complaints and prevent the assaults from happening again. Indeed, there was a legal framework in Romania with which to complain about domestic violence and to seek the authorities' protection, and Ms Bălşan had made full use of it.

However, the Court concluded with grave concern that the authorities had found that Ms Bălşan had provoked the domestic violence against her and considered that it was not serious enough to fall within the scope of the criminal law. Such an approach, taken in a case where the domestic violence had not been contested, had deprived the national legal framework of its purpose and was inconsistent with international standards on violence against women and domestic violence in particular.

Furthermore, despite the fact that Ms Bălşan had continued to complain of further abuse throughout the related proceedings, the authorities had not apparently taken any measures to protect her. The only sanctions imposed, administrative fines, had been an ineffective deterrent against further abuse.

The Court therefore found that the manner in which Ms Bălșan's complaints had been dealt with by the authorities had not provided her with adequate protection against her husband's violence, in violation of Article 3.

Article 14 (prohibition of discrimination)

The Court noted official statistics showing that domestic violence in Romania was tolerated and perceived as normal by a majority of people. Furthermore, the general population might not be sufficiently aware of the extensive legal and policy framework in Romania for the elimination of discrimination against women and women themselves might not be aware of their rights. Nor apparently did the authorities fully appreciate the seriousness and extent of domestic violence in Romania, as borne out in the current case by their failure to apply the relevant legal provisions. That passivity reflected a discriminatory attitude towards Ms Bălșan as a woman.

The Court therefore considered that the violence to which Ms Bălșan had been subjected had been gender-based violence, which is a form of discrimination against women. Despite the Government's adoption of a law and national strategy on preventing and combating such abuse, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors, as found in Ms Bălșan's case, indicated that there had been insufficient commitment to address domestic violence in Romania.

Consequently, there had been a violation of Article 14, read in conjunction with Article 3.

Article 41 (just satisfaction)

The Court held that Romania was to pay Ms Bălșan 9,800 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.