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

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# Swiss authorities failed to comply with their positive obligation to protect a woman's life from violence inflicted by her partner

In today's **Chamber** judgment[1] in the case of N.D. v. Switzerland (application no. 56114/18) the European Court of Human Rights held, by a majority, that there had been:

**a violation of Article 2 (protection of the right to life)** of the European Convention on Human Rights.

The case concerned the violence suffered by a woman at the hands of her partner; she had not been aware of the danger he posed or the fact that he had a criminal record.

The applicant was kidnapped from her home in 2007 after informing her partner that she was ending their relationship. She was then falsely imprisoned by him over an 11-hour period and subjected to rape and ill-treatment. She complained that the Swiss authorities had failed to take the necessary measures to protect her life.

The Court noted, first, that the various domestic authorities involved in the case had been aware both of the applicant's relationship with her partner and of his background and the real and imminent nature of the danger he was likely to pose. It also noted that a police officer had attempted, on his own initiative, to inform the applicant, to the maximum extent possible given the information in his possession and the legal constraints on him, of the dangerous situation she was in. The Court noted in this connection that the applicant had neither lodged a complaint nor requested assistance, which could be explained by the fact that she had not been fully aware of the danger to which she was exposed at the time.

Given the vulnerability of the applicant, who had been unaware of the factual elements in the possession of the various authorities, the Court concluded that this imbalance in the information available, which was known to those same authorities, ought to have been counterbalanced by increased vigilance on their part, leading to a thorough and up-to-date assessment of the seriousness of the risk to which she was exposed.

The Court found that the various national authorities involved in the case had not done all that could reasonably have been expected of them to avert the real and immediate risk to the applicant's life, of which they had or ought to have been aware. While commending the police officer's spontaneous initiative, it noted, among other points, that there had been neither an adequate assessment of the risk to the applicant's life nor operational measures which might have had a real chance of altering the course of events or mitigating the damage caused. In view of the lack of sufficient coordination between the various services and the shortcomings in the domestic law in force at the time, the authorities had failed to comply with their positive obligation to protect the applicant's life.

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

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.

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## Principal facts

The applicant, N.D., is a Swiss national who was born in 1969. In 2006 she began an intimate relationship with X, unaware that he had a criminal record and psychological issues.

In 1995 X was sentenced to 12 years' imprisonment for murder and rape. In 2001 he was released on licence. In 2006 further criminal proceedings were brought against him, on this occasion for threatening behaviour, coercion and misuse of a telecommunications system, and defamation of his then partner. He was placed in pre-trial detention, then released the following month with an obligation to report to the police station and to undergo psychotherapy. He was also prohibited from contacting his then partner. A psychiatric report concluded that, because of his limited ability to deal appropriately with difficult situations, threatening behaviour on his part was to be expected: mainly verbal, but also more serious violent acts, in particular against persons with whom he had an intimate relationship and, potentially, against the authorities.

Subsequently, X met N.D.

In 2007, owing to X's behaviour, N.D. contacted his family doctor, who, without giving any details, recommended that she end her relationship with him, but advised that she avoid doing so abruptly. He informed the police of that conversation, with N.D.'s consent.

The next day, Officer A contacted N.D. by telephone on his own initiative. N.D. told him that she saw no future in her relationship with X and she wished to end it, but that X did not seem willing to accept this and was constantly harassing her by telephone and SMS.

Officer A questioned her about the extent of the harassment and whether she needed police assistance. He told her that it was better for her to end the relationship and informed her of the possibility of lodging a criminal complaint or contacting the victim-support services. N.D. replied that she still wished to give X some time before leaving him. The police officer, who did not know the content of the psychiatric reports about X, made no mention of his criminal record. However, he told the applicant that X could be dangerous.

A few weeks later (at around 10 p.m. on 19 September 2007), the applicant sent X an email in which she put a final end to their relationship. She subsequently received several telephone calls from him, which she did not answer. Then, at about 10.30 p.m., X arrived at the applicant's home, but she refused to open the door. However, he managed to break into the flat and forced her to accompany him to his home where, after trying to suffocate her for two hours in the garage, he raped her on the bonnet of his car. He then took a crossbow and fired three shots into the applicant's chest. Finally, he handcuffed her by the hands and feet, put her in the boot of his car and drove around for several hours.

The following day (at around 3.30 a.m. on 20 September 2007), X returned with N.D. to his flat, where he continued to threaten her with a knife. At about 9 a.m. he called his psychologist, and N.D. managed to alert that individual that something serious had happened. The psychologist arrived on the scene at about 9.30 a.m., followed by an ambulance and the police. At about 10 a.m., N.D., who was seriously injured, was taken to Lucerne Cantonal Hospital. X took his own life two days later while in police custody.

In 2015 N.D. brought an action for damages against the Canton of Lucerne, complaining that the authorities had not informed her of X's criminal record or the danger that he posed. However, this was dismissed by the domestic courts. The Federal Supreme Court noted, among other points, that the police officer who had telephoned the applicant had not been aware of the forensic psychiatrist's report concerning X. It upheld the cantonal court's finding that there had been no causal link between the advice to end the relationship given by the police officer during that telephone conversation and the acts committed by X on 19 and 20 September 2007.

N.D. continues to suffer from the psychological after-effects of the treatment inflicted on her by X during her false imprisonment, and is in receipt of social-security benefits.

## Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicant complained that the Swiss authorities ought to have informed her about her partner's previous criminal conduct, and that they had failed to take the necessary measures to protect her life.

The application was lodged with the European Court of Human Rights on 21 November 2018.

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

Mattias **Guyomar** (France), *President*,
María **Elósegui** (Spain),
Armen **Harutyunyan** (Armenia),
Stéphanie **Mourou-Vikström** (Monaco),
Gilberto **Felici** (San Marino),
Kateřina **Šimáčková** (the Czech Republic) and,
Nicolas **von Werdt** (Switzerland)*, ad hoc Judge*,

and also Victor **Soloveytchik**, *Section Registrar.*

## Decision of the Court

Having regard to the fact that, throughout his life, X had recurrently committed violent acts against his successive partners, including a femicide in 1993, the Court considered that his actions against N.D. could be categorised as violence against women.

It noted that the various national authorities involved in the case had been aware of the applicant's relationship with X, his background and the real and imminent nature of the danger he was likely to pose.

It considered that, at the latest, the domestic authorities had been aware of the existence of a risk to the applicant when X's doctor had approached the police in 2007. It was this link in the chain of events that had given rise to an obligation to protect N.D.'s right to life with a greater degree of vigilance, even in the absence of a complaint.

It also noted that Officer A had attempted, on his own initiative, to inform the applicant – to the maximum extent possible given the information in his possession and the legal constraints on him – of the dangerous situation in which she found herself.

However, no follow-up had been given to the telephone conversation between the applicant and Officer A, thus revealing, at the very least, a lack of communication and coordination that was likely to hinder the efforts required in such a situation.

The obligation to take preventive operational measures where this was called for by the existence of a risk included a requirement to assess the nature and level of the risk as soon as the authorities became aware of it.

The Government had not shown, however, that – from the point at which the police were contacted by X's doctor, or after the extract from the police register had been uploaded to the computer system – the authorities had carried out a risk assessment that met the requirements of Article 2 of the Convention.

Admittedly, the applicant had neither lodged a complaint nor requested assistance, which could be explained by the fact that she had not been fully aware of the danger to which she was exposed at the

time. The Court emphasised, however, that she had not been aware of X's previous conduct or of the content of the psychiatric reports about him.

Given the vulnerability of the applicant, who had been unaware of the factual elements in the possession of the various domestic authorities involved in the case, the imbalance in the information available, which was known to those authorities, ought to have been counterbalanced by increased vigilance on their part, leading to a thorough and up-to-date assessment of the seriousness of the danger to which she was exposed.

In conclusion, the Court found that the different authorities involved in the case had not done all that could reasonably have been expected of them to avert the real and immediate risk to the applicant's life, of which they had or ought to have been aware. While commending Officer A.'s spontaneous initiative, the Court noted that there had been neither an adequate assessment of the risk to the applicant's life nor operational measures which might have had a real chance of altering the course of events or mitigating the damage caused. It followed that, in view of the lack of sufficient coordination between the various services and the shortcomings in the domestic law in force at the time, the authorities had failed to comply with their positive obligation to protect the applicant's life under Article 2 of the Convention. There had therefore been a violation of that provision.

### Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicant 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 22,000 in respect of costs and expenses.

## Separate opinions

Judge Elósegui expressed a concurring opinion. Judges Felici and Šimáčková expressed a joint concurring opinion. *Ad hoc* Judge von Werdt, joined by Judge Mourou Vikström, expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available only in French.*

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