



Absent witnesses in Romanian massage-parlour trial did not breach defence rights

In today's Chamber judgment¹ in the case of [Vasile Pruteanu and Others v. Romania](#) (application no. 9308/18) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 §§ 1 and 3 (d) (right to a fair trial/right to obtain attendance and examination of witnesses) of the European Convention on Human Rights.

The case concerned proceedings brought against a couple and their son, who owned three massage parlours in Romania, for pimping and human trafficking. They alleged that their convictions had not been fair because key witnesses – women they had recruited in the Republic of Moldova – had never been examined directly in the Romanian courts.

The Court found that there had been sufficient counterbalancing factors to compensate for the lack of opportunity to directly examine certain witnesses at trial. In particular, there had been other evidence corroborating the fact that the applicants had facilitated sexual acts in their massage parlours, notably that they had transported their Moldovan victims to Romania under the pretence of lawful employment and threatened them into prostitution. Moreover, the national courts' decisions to accept absent-witness statements had been thorough, and based on an exhaustive examination of the evidence and of all the arguments raised. Overall, the proceedings against the couple and their son had been fair.

Principal facts

The applicants are three Romanian nationals: Vasile and Tatiana Pruteanu, born in 1960 and 1965, and their son, Vasile Pruteanu, born in 1987. They live in Braşov and Săcele (Romania).

The applicants owned three massage parlours in Romania. In February 2013 they were tried on charges of pimping and human trafficking. They were suspected of facilitating erotic massages and sexual intercourse, involving in particular masseuses recruited in the Republic of Moldova.

Ultimately, in a decision of June 2016, the courts found that the applicants had recruited women in the Republic of Moldova, promising them jobs, food, lodging and help with obtaining visas, and had then made them work as masseuses in their parlours, putting them under pressure to have sexual intercourse with clients. The applicant couple were sentenced to three years' imprisonment, while their son was given a two-year suspended sentence.

The courts based their findings on witness statements given in court by two Moldovan masseuses who had become civil parties to the proceedings, some 20 other – mainly Romanian – masseuses, as well as 11 clients of the parlours. Other evidence included: advertisements in Moldovan and Romanian newspapers; transcripts of the applicants' telephone conversations; social media discussions between clients of the massage parlours; reports written by undercover police officers; and items seized from the massage parlours, notably condoms and sex toys.

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.

Statements made by three other Moldovan masseuses (also civil-party witnesses) and a protected witness referred to as “Maria”, who had all in the meantime left Romania, were also used in the court proceedings against the applicants.

The applicants argued on appeal that those four witnesses had not been heard in person by the trial court. One of the three absent civil-party witnesses was eventually interviewed, at the court of appeal’s request, by a court in the Republic of Moldova, but the other two could not be interviewed as their whereabouts were unknown. The appeal court repeatedly summoned “Maria”, however she submitted statements saying that her health did not permit her to relive the trauma she had suffered at the hands of the applicants.

The Court of Appeal stated in particular that it was satisfied that its decision to accept absent witness statements had complied with the obligation to protect victims of sexual offences. It relied on an EU directive and bore in mind the vulnerability of victims of human trafficking and the need to avoid secondary victimisation. It found, moreover, that the evidence those witnesses had given was consistent with the statements made by the other women who had worked for the applicants.

As concerned the two absent civil-party witnesses who could not be found, the appeal court pointed out that their statements had been given to a Moldovan prosecutor, and presented the same situation as recounted by “Maria” and in the remaining evidence.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial/right to obtain attendance and examination of witnesses) of the European Convention, the applicants notably complained that the proceedings leading to their convictions had not been fair as three key witnesses against them had never been examined directly in court, and another witness had been examined by the Moldovan and not Romanian courts.

The application was lodged with the European Court of Human Rights on 31 January 2018.

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

Lado Chanturia (Georgia), *President*,
Tim Eicke (the United Kingdom),
Lorraine Schembri Orland (Malta),
Anja Seibert-Fohr (Germany),
Ana Maria Guerra Martins (Portugal),
Anne Louise Bormann (Denmark),
Sebastian Rădulețu (Romania),

and also **Simeon Petrovski**, *Deputy Section Registrar*.

Decision of the Court

Firstly, the Court found that there had been good reasons for the four witnesses not attending the court proceedings. All were former employees of the applicants’ massage parlours and in need of protection as alleged victims of human trafficking and sexual exploitation. Indeed, the reason for “Maria” not attending the trial had been mental and physical health problems resulting from the trauma of her experience in Romania.

Although the statements of those witnesses had contributed to the applicants’ conviction, they had not been the sole or decisive evidence in the case. The courts had had a number of other pieces of evidence allowing them to conclude that the applicants had facilitated sexual acts in their massage parlours. Furthermore, the evidence showed that the applicants had transported their Moldovan

victims to Romania under the pretence of lawful employment, leaving some without identity papers, and had then monitored them and threatened them into prostitution.

The Court also went on to note that there had been sufficient counterbalancing factors to allow for a fair and proper assessment of the untested evidence.

Notably, the courts had approached the statements made by the absent witnesses with caution, only relying on them when it had become clear that the witnesses' presence in court could not be ensured and after finding that their statements had been corroborated by other evidence. The courts had also verified the reliability of the statements by the two witnesses who could not be found, and had placed them in context in deciding whether to accept them. Moreover, the courts had recognised the validity of the absent witness statements in the context of Romania's international obligations to protect the victims of sexual offences.

Furthermore, the courts had taken sufficient procedural measures to compensate for the lack of opportunity to directly examine the witnesses at trial. The absent witness statements had been available in the case file, which the applicants and their counsel had been able to challenge in court. More generally, the applicants and their counsel had been present and had actively participated in the court proceedings. The applicants had thus been able to present their defence, giving their own version of the facts.

Lastly, the national courts' reasoning behind the decisions to accept absent witness statements had been thorough. Their decisions had been based on an exhaustive examination of the evidence and of all the arguments raised.

Consequently, the Court found that, overall, the proceedings had been fair and the defence rights had not been restricted to the extent that it would find a breach of the guarantees, notably equality of arms, under Article 6 of the Convention. There had therefore been no violation of Article 6 §§ 1 and 3 (d).

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.