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

FOURTH SECTION

DECISION

Application no. 54773/19
R.Ș.
against Romania

The European Court of Human Rights (Fourth Section), sitting on 14 September 2021 as a Committee composed of:

Gabriele Kucsko-Stadlmayer, *President,*
Iulia Antoanella Motoc,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to the above application lodged on 7 October 2019,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr R.Ș., is a Romanian national who was born in 2006 and lives in Brașov. The President decided that the applicant's identity should not be disclosed to the public (Rule 47 § 4). The applicant was represented before the Court by Mr N. Vasilescu, a lawyer practising in Brașov.

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

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Family situation

4. In December 2017 the applicant's parents separated and his mother (hereinafter "X") decided to leave the family home. The applicant and his sister (hereinafter "Z"), who were aged eleven and thirteen at that time, were initially meant to live with their mother after the parents' separation. On 11 December 2017 the family went before the Braşov Directorate General for Social Welfare and Child Protection ("the child protection authority") so that a decision could be made about residence arrangements. Contrary to the initial plans, the children expressed their wish to remain with their father (hereinafter "Y") in the family home. They explained that they did not want to go and live with their mother and their maternal grandparents, as they had all occasionally been violent towards them in the past. According to Y and the children, the family left the authority's headquarters in the same car, driven by Y. On their way home X became aggressive towards the children, dissatisfied with their change of heart.

5. On 15 December 2017, in the family home, X asked the children to accompany her to the child protection authority to change their statements about the residence arrangements. According to the applicant, X started hitting Z and then also him, when he tried to intervene to protect his sister.

6. On 5 March 2018 X filed a petition for divorce with the Braşov District Court, after failed attempts by the parents to conclude the divorce before a notary public.

7. On 11 April 2018 X went to the children's school and tried to convince them to leave with her. According to the applicant, she became violent when they refused to go with her, trying to take the applicant by force and pull him by his hair. She only succeeded in scratching his neck. Z called the emergency number to report the incident, and a team of gendarmes intervened in front of the school. A report was drafted about the incident, mentioning that no criminal activity had taken place.

2. Protective order

8. On 12 April 2018 Y requested, on behalf of the applicant, a protective order against X, under the provisions of Law no. 217/2003 on preventing and combating domestic violence (see *Bălşan v. Romania*, no. 49645/09, § 36, 23 May 2017). On 13 April 2018 the father obtained a medical forensic certificate attesting that the applicant had been left with three scratches on his neck which had necessitated one to two days of medical care. Further evidence, including witness testimony, was adduced by the parties.

9. On 23 April 2018 the Braşov District Court issued a protective order in the applicant's favour, forbidding his mother from coming within 100 metres of his home or school for a period of four months. The mother was also prohibited from contacting the applicant in any manner, including

on the telephone. Through the same order, the court evicted X from the family home. The order was granted with immediate effect.

10. In a final decision of 7 June 2018 the Bucharest County Court reduced the duration of the protection order to a period of two months.

3. Criminal proceedings against X for domestic violence

11. On 6 March and 23 April 2018 Y lodged criminal complaints against his wife, accusing her of domestic violence towards the applicant and his sister.

12. The prosecutor's office attached to the Brașov District Court started an investigation into three incidents of alleged violence: that of 11 December 2017 (see paragraph 4 above); the incident of 15 December 2017 (see paragraph 5 above) and that of 11 April 2018 (see paragraph 7 above).

13. The prosecutor interviewed Y on two occasions: on 26 March and 13 June 2018. The prosecutor also interviewed the applicant and his sister on 25 May and 24 August 2018. In addition, the prosecutor interviewed X and two witnesses, and examined a report on a psychological evaluation of the children, the forensic medical certificate of 13 April 2018 concerning the applicant's injuries (see paragraph 8 above), and the gendarmerie's report on the incident of 11 April 2018 (see paragraph 7 above, *in fine*).

14. On 13 December 2018 the prosecutor's office discontinued the prosecution, as it considered that there was no public interest in continuing with the investigation, having regard to the lack of severity of the acts committed and the injuries inflicted. The prosecutor considered that the incidents reported by the children had been isolated and had occurred because of the intense emotions felt by the mother in connection with the breakdown of the family. Under Article 318 § 6 (d) of the Code of Criminal Procedure, the prosecutor's office ordered X to undergo psychological counselling to learn how to deal with her emotions.

15. The prosecutor considered that it had not been established beyond reasonable doubt that X, who had denied all allegations made against her, had been violent towards the children on 11 December 2017. In addition, on the basis of the evidence in the file, the prosecutor established that on 15 December 2017 Y had confronted his wife in front of the children about an alleged extramarital affair she was having, and had tried to convince the children to take his side. As X had denied the accusations, her daughter Z had become angry and physically violent towards her. At the father's instigation, they had all become violent towards X. The prosecutor considered that Y had made a mistake in telling the children about their mother's alleged infidelity, and considered that he had done so only to attract their sympathy and approval.

16. As for the incident of 11 April 2018, on the basis of the evidence in the file, including the statements made by an eyewitness, the prosecutor concluded that no criminal activity had taken place.

17. The prosecutor also dismissed as ill-founded other allegations of ill-treatment, such as allegations that X would leave the children to wait for her outside in cold weather when she was occasionally late in picking them up from their activities. The prosecutor found no evidence that she had done that on purpose with an intention to harm the children.

18. All parties lodged objections to the prosecutor's decision. The chief prosecutor from the prosecutor's office attached to the Braşov District Court re-examined the file and on 3 June 2019 decided to drop the criminal charges on the grounds that there was no public interest in continuing the investigation (*renunţarea la urmărirea penală*).

19. The parties contested the prosecutors' decisions before the Braşov District Court. The court examined the children's statements, witness statements and other evidence from the prosecution file, but also examined evidence from the other civil actions between the parties (notably the divorce proceedings and interim applications lodged by X for custody and contact rights). It concluded, in a final decision of 3 July 2019, that it could not be established beyond reasonable doubt that the mother had committed the offences of which she had been accused, and for that reason it decided to end the investigation.

4. Developments in the divorce proceedings

20. On 29 May 2018, while the divorce proceedings were ongoing (see paragraph 6 above), and following applications lodged by both parents, the Braşov County Court granted an interim order determining that the children should reside with their father and setting out a contact schedule in X's favour; that order was to last until the end of the divorce proceedings. The court found that several violent incidents had occurred between the parents in the children's presence, as well as one incident of violence between X and the applicant. However, it considered that those incidents did not amount to abusive behaviour towards the children which could justify the withdrawal of X's parental authority. The court also found that the father had influenced the children and turned them against their mother, and the children's resentment towards X was not caused by her behaviour towards them, but by their perception of the wrongs she had allegedly done to their father.

21. On 11 February 2019 the Braşov District Court dissolved the parents' marriage, shared parental authority between the parents, determined that the children should reside with their father, and set out a contact schedule in X's favour. The court noted that the children had drifted away from their mother, whom they believed was responsible for the divorce. It reiterated that it was in the children's best interests to maintain contact with

both parents, despite the occasional episodes of violence which had occurred in the past.

B. Relevant domestic law

22. The relevant domestic provisions and international standards concerning the protection of children against domestic violence are described in *D.M.D. v. Romania* (no. 23022/13, §§ 21-22, 25-34, 3 October 2017), *E.M. v. Romania* (no. 43994/05, §§ 43-49, 30 October 2012), *Buturugă v. Romania* (no. 56867/15, §§ 32-42, 11 February 2020) and *Bălşan v. Romania* (no. 49645/09, §§ 36-44, 23 May 2017).

COMPLAINT

23. The applicant complained under Article 6 of the Convention that the domestic authorities had failed to correctly identify and prosecute the abuse committed by X as a form of domestic violence aimed at pressuring him into changing his statements and moving in with his mother. He also argued that the prosecutor's office had been too lenient with X, as in other similar cases, the perpetrators of minor acts of domestic violence had been put in detention pending trial.

THE LAW

24. The applicant complained that the authorities had failed to adequately prosecute the abuse he had suffered at the hands of his mother. The Court, which is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), will examine the complaint from the standpoint of Articles 3 and 8 (see, for example and *mutatis mutandis*, *D.M.D. v. Romania*, no. 23022/13, §§ 52-53, 3 October 2017; *C.A.S. and C.S. v. Romania*, no. 26692/05, § 83, 20 March 2012; and *Eremia v. the Republic of Moldova*, no. 3564/11, §§ 67-68, 28 May 2013).

25. Article 3 reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

26. Article 8 reads as follows:

> "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."

A. The parties' submissions

27. The Government argued that the system of protective measures for victims of domestic violence provided by Romanian legislation offered effective and swift protection to persons in the applicant's situation. Moreover, it had been correctly applied in practice, as soon as an allegation of abuse had been brought to the authorities' attention. The applicant had been protected by a restraining order, and the criminal investigation had been started. That investigation had been effective, despite it not leading to a criminal conviction. On this point, they also argued that the treatment suffered by the applicant, notably three scratches on his neck requiring one to two days of medical care, did not pass the threshold of severity required in order to fall within the scope of Article 3.

28. Moreover, the Government pointed out that the prosecutor's office had been mindful of the children's best interests when it had indicated that the mother should undergo psychological counselling: that measure had been aimed at ensuring that the children would be able to safely maintain contact with both parents.

29. The applicant contested the Government's position. He argued that the acts of violence committed by his mother had been severe, and their consequences had been long-lasting. Because of that, he did not want any further contact with X to be imposed on him.

B. The Court's assessment

1. Preliminary remarks

30. Although the applicant complained about the criminal proceedings, the Court considers at the outset that its examination must take into account not only those proceedings, but also the broader response provided by the authorities to the allegations of violence made by the applicant against his mother. In other words, the Court must make an overall assessment of whether the State has complied with its positive obligations to protect the applicant against domestic violence (see *N.P. and N.I. v. Bulgaria* (dec.), no. 72226/11, § 87, 3 May 2016).

31. Furthermore, the Court considers that it is not necessary to assess whether Article 3 of the Convention is applicable to the facts of the present case (see paragraph 27 above *in fine*), in so far as the application, which raises at least an issue with respect to the protection of the applicant's right to respect for his private life (see *Eremia*, cited above, §§ 67-68), is inadmissible in any event for the reasons explained below.

2. General principles

32. The relevant principles concerning the State's positive obligation inherent in Articles 3 and 8 of the Convention to investigate cases of ill-treatment, and in particular domestic abuse committed against children, are set out in *D.M.D. v. Romania* (cited above, §§ 40-41), *C.A.S. and C.S. v. Romania* (cited above, §§ 68-72) and *Söderman v. Sweden* ([GC], no. 5786/08, §§ 78-85, ECHR 2013). In particular, regarding the protection of the physical and psychological integrity of an individual from other persons, the Court has held that the authorities' positive obligations – in some cases under Articles 2 or 3 of the Convention, and in other instances under Article 8 taken alone or in combination with Article 3 – may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see *Söderman*, cited above, § 80, with further references).

3. Application of those principles to the facts of the present case

33. The Court has already had the opportunity to examine the mechanism put in place by the respondent State to combat domestic violence. In a previous case, it noted that the law allowed victims to bring their grievances before the domestic authorities and obtain their protection, and that the system was functional (see *E.M. v. Romania*, cited above, § 62).

34. In the present case, the Court notes that the applicant's father complained to the authorities about the mother's behaviour (see paragraph 11 above), and those claims were investigated by the prosecutor's office. The prosecutor interviewed the parties concerned and examined evidence (see paragraph 13 above). Moreover, all allegations were investigated and explained, and extensive reasons were given for the prosecutor's decision; solutions were also proposed for dealing with the underlying cause of the family issues brought to the prosecutor's attention, in the light of the children's best interests (see paragraphs 14 to 17 above). That decision was also subject to judicial control (see paragraph 19 above).

35. The Court does not find any indication that the authorities disregarded the seriousness of the allegations made by the applicant, or that they carried out their duties in a perfunctory manner (see, in contrast, *Eremia,* cited above, § 89).

36. The Court further notes that a protective order was issued in the applicant's favour, albeit rather late – eleven days after the date when it had been requested (see paragraphs 8 and 9 above) – considering the urgency of the matter at hand. Be that as it may, the Court cannot but observe that no other incidents of violence were reported by the applicant after the one which warranted the granting of the protective order (see paragraph 7 above), and it appears that X fully complied with the measures imposed by the order.

37. The Court also notes that the allegations of violence and the effects which that violence had on the applicant and his sister were taken into account by the courts when they decided on other measures concerning the applicant's well-being, such as the determination of residence and contact rights both during and after the divorce proceedings (see paragraphs 20 and 21 above). In reaching those decisions, the courts relied consistently on the children's best interests.

38. In the light of the above, the Court concludes that the mechanism put in place for the protection of victims of domestic violence, when examined overall, and in so far as the applicant made use of it, was effective in practice. The authorities have therefore complied with their positive obligations in this regard.

39. Accordingly, this application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 October 2021.

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Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President