

Authorities' treatment of non-consensual publication of intimate images online was inadequate

In today's **Chamber** judgment¹ in the case of [M.Ş.D. v. Romania](#) (application no. 28935/21) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned events following the breakup of a relationship in 2016, when M.Ş.D. was 18 years of age. Her ex-boyfriend, V.C.A., among other allegations, sent intimate pictures of her to family members and others, and posted the pictures, along with her personal details, on escort websites. The applicant promptly complained to the authorities about V.C.A.'s actions, but the criminal investigation and the related court proceedings remained pending for a long time, until even the statute of limitations for criminal liability expired. Most of the charges against V.C.A. were ultimately dropped.

The Court found in particular that the legal framework had been inadequate – failing to protect M.Ş.D. from online violence – and that the investigation into her allegations had been ineffective, owing to excessive delays, the conduct of the authorities who have assigned part of the blame to M.Ş.D. thus contributing to her "revictimisation", as well as the express refusal of the prosecutor's office to comply with the court's orders.

Principal facts

The applicant, Ms M.Ş.D., is a Romanian national who was born in 1997 and lives in Craiova (Romania).

In the middle of 2016, at the age of 18, M.Ş.D. met a then 20-year-old man, V.C.A., on a social-network website. They developed a relationship which ended in October of that year. After their relationship ended, V.C.A. sent intimate photographs of M.Ş.D. to her family and her brother's friends from fake social-media accounts that were set up to look like her friends' accounts. He then put the same photographs, along with her contact details, on escort websites. She received calls afterwards from people seeking sexual services.

M.Ş.D. also alleges that V.C.A. behaved aggressively towards her, pushed her, and threatened to print the photos and display them at her university.

On 31 October 2016 M.Ş.D. complained to the police. An investigation was opened, without a designated suspect, for the offences of threatening behaviour (*ameninţare*) and violation of private life (*violarea vieţii private*). When he was interviewed V.C.A. denied violence, but admitted disseminating the intimate images of M.Ş.D. on escort websites and to her family.

On 11 December 2018 M.Ş.D. complained to the prosecutor's office attached to the Bucharest District Court about police officer I.T.A., alleging partiality and unprofessionalism. She stated that he

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.

had called her repeatedly and that one evening he had even cut in front of her in his car as she had been walking along the street and had threatened that he would either close the investigation or fine her if she refused to comply with the summons. He discouraged her from engaging a lawyer and tried to persuade her to withdraw her complaint. When she arrived at the police station, V.C.A., who had also been summoned, was there, even though she had specifically asked Officer I.T.A. not to have them there at the same time.

On 14 December 2018 an online article entitled “The supreme humiliation” (*Umiliința supremă*) was published concerning M.Ș.D.’s alleged ordeal. A public protest was organised in support of her.

The investigation was transferred to the Criminal Investigation Service of the General Directorate of the Bucharest Police. M.Ș.D. successfully complained before the courts about the length of the investigation. In June 2020 the investigation against V.C.A. in respect of the offence of violation of private life was closed (*clasată*) because his alleged acts had not constituted an offence under criminal law; in respect of the offence of computer-related forgery, the charges were dropped (*renunțare la urmărirea penală*); and the harassment and threatening behaviour investigation was closed because, in particular, the constituent elements of the offence of harassment had not been present.

Among other things, the prosecutor stated that by sending photographs of herself in “indecent poses” to V.C.A. willingly, M.Ș.D. herself had contributed substantially to transforming her relationship with V.C.A. into one that had been “centred on an exacerbated sexuality” (*sexualitate exacerbată*), and that an indictment had constituted an excessive “penalisation” of V.C.A.’s acts, which had been motivated by childish vengeance and jealousy. The prosecutor concluded that community service and a public apology would be sufficient redress.

M.Ș.D. challenged the decision before a senior prosecutor and subsequently before a court. The latter allowed her challenge and ordered the investigation in respect of the offence of computer-related forgery to be resumed. The prosecutor’s office criticised the solution of the court and once again decided to close the case, a solution that could no longer be overruled by the court because the statute of limitations for criminal liability had taken effect.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect to private and family life) separately and in conjunction with Article 14 (prohibition of discrimination), M.Ș.D. alleged a failure on the part of the authorities to protect her right to respect for private life, and that the reasons for the failure had resulted from discriminatory treatment.

The application was lodged with the European Court of Human Rights on 26 May 2021.

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

Lado **Chanturia** (Georgia), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Tim **Eicke** (the United Kingdom),
Jolien **Schukking** (the Netherlands),
Lorraine **Schembri Orland** (Malta),
Ana Maria **Guerra Martins** (Portugal),
Sebastian **Rădulețu** (Romania),

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

Decision of the Court

Article 8

The Court found that M.Ş.D. had suffered as a result of V.C.A.'s actions, with the motive essentially being revenge, as had been confirmed by the Romanian courts. The investigating authorities had qualified these actions as "reprehensible", at least in part. The District Court had branded them "highly dangerous". The Court held that those actions had been serious and had required criminal sanction. Furthermore, it was in the public interest and the interests of victims to have a remedy enabling a perpetrator of such intrusions to be identified and brought to justice.

M.Ş.D. submitted that the national legal system had not effectively prohibited all forms of online harassment, in particular, the non-consensual dissemination of intimate images had been obtained lawfully. In addition, she argued that the national authorities had failed to provide her with effective protection in respect of the online harassment and that they had ineffectively conducted the investigation into her case.

The authorities had argued that the relevant law (Article 226 § 2 of the Criminal Code) could not be applied as she had sent the photographs to V.C.A. willingly. The Court, however, noted the State's subsequent changes to the law to protect victims of "revenge pornography", which had entered into force too late to protect M.Ş.D. Noting that no other provisions in force could have protected her rights, it therefore concluded that the legal framework in Romania at the time had been inadequate.

Regarding the criminal investigation, the Court reiterated that under the Convention investigations had to be prompt and thorough. In this case, the investigation had been opened more than six months after M.Ş.D. had made her complaint; V.C.A. had been questioned more than 15 months after that; the criminal investigation against him had been opened two years and five months after the complaint and seven months after he had admitted his acts. The Court was not persuaded by the Government's arguments that M.Ş.D. had been responsible for the delays. The authorities had failed to take measures to protect her from potential further abuse and violence on the part of V.C.A., and to secure the necessary evidence.

After questioning V.C.A. and M.Ş.D. the authorities had still remained inactive. The transfer to the Criminal Investigation Service had only taken place after allegations of misconduct on the part of the authorities had appeared in the press. The European Court noted the District Court's criticism of the lack of speed on the part of the prosecution, and its "incomprehensible" reasons for dropping the charge of computer-related forgery.

Overall, the Court was concerned that there had been a lack of impartiality and objectionable disdain towards M.Ş.D. on the part of the prosecutor's office, which had led to her being victimised again. The investigations into some charges had been closed owing to the statute of limitations, and the Court held that the authorities had failed to comply with their obligation to conduct an investigation before those limitations had expired. The investigation, taken as a whole, had not been effective.

Given the inadequate legal framework which had failed to protect M.Ş.D. from online violence and the ineffective investigation into M.Ş.D.'s allegations, the Court found a violation of Article 8.

Article 14

The Court noted that the allegations were closely connected to those under Article 8, and so given its finding as regards the right to respect for private life, it considered it was not necessary to examine these facts from the standpoint of Article 14.

Just satisfaction (Article 41)

The Court held that Romania was to pay M.Ş.D. 700 euros (EUR) in respect of pecuniary damage, EUR 7,500 in respect of non-pecuniary damage and EUR 125 in respect of costs and expenses.

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.