



Romanian authorities failed to respond to a woman's complaints of domestic violence and cyberbullying by her former husband

The case concerned allegations of domestic violence and of violation of the confidentiality of electronic correspondence by the former husband of the applicant, Ms Buturugă, who complained of shortcomings in the system for protecting victims of this type of violence.

In today's **Chamber judgment**¹ in the case of [Buturugă v. Romania](#) (application no. 56867/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life and for correspondence) of the European Convention on Human Rights on account of the State's failure to fulfil its positive obligations under those provisions.

The Court found in particular that the national authorities had not addressed the criminal investigation as raising the specific issue of domestic violence, and that they had thereby failed to provide an appropriate response to the seriousness of the facts complained of by Ms Buturugă. The investigation into the acts of violence had been defective, and no consideration had been given to the merits of the complaint regarding violation of the confidentiality of correspondence, which was closely linked to the complaint of violence.

On that occasion the Court pointed out that cyberbullying was currently recognised as an aspect of violence against women and girls, and that it could take on a variety of forms, including cyber breaches of privacy, intrusion into the victim's computer and the capture, sharing and manipulation of data and images, including private data.

Principal facts

The applicant, Gina-Aurelia Buturugă, is a Romanian national who was born in 1970 and lives in Tulcea (Romania).

In December 2013 Ms Buturugă lodged a complaint against her husband, alleging that she had been the victim of domestic violence. She alleged that he had threatened to kill her, and presented a medical certificate describing her injuries. The following month Ms Buturugă lodged a second complaint to the effect that she had received fresh threats and suffered further violence at her husband's hands aimed at inducing her to withdraw her first complaint. At the end of January 2014 the couple divorced.

In March 2014 Ms Buturugă requested an electronic search of the family computer, alleging that her former husband had wrongfully consulted her electronic accounts – including her Facebook account – and had copied her private conversations, documents and photographs. Then in September 2014 Ms Buturugă lodged a third complaint of breach of the confidentiality of her correspondence.

In February 2015 the prosecutor's office discontinued the case on the grounds that although Ms Buturugă's former husband had threatened to kill her, his behaviour had not been sufficiently

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.

serious to be designated as a criminal offence. It also decided to dismiss, as out of time, Ms Buturugă's complaint concerning the violation of the confidentiality of her correspondence. Finally, it imposed an administrative fine of some 250 euros (EUR) on the applicant's former husband. Ms Buturugă unsuccessfully appealed to the prosecutor's office against the order issued by the prosecutor, before appealing to the court of first instance.

Furthermore, on 13 March 2014 the court of first instance issued Ms Buturugă with a protection order valid for months. She alleges that the police delayed the implementation of this order and that her former husband never complied with it. The Government point out that Ms Buturugă failed to apply for the renewal of the order after the first six months had elapsed.

Moreover, Ms Buturugă alleges that her former husband stalked her in the street on 29 October 2015. The Government pointed out in its observations of July 2017 that criminal proceedings for harassment were pending.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 8 (right to respect for private and family life and correspondence), Ms Buturugă complained of the ineffectiveness of the criminal investigation into the domestic violence which she claims to have suffered. She also complained that her personal safety had not been adequately secured, and criticised the authorities' refusal to consider her complaint concerning her former husband's breach of the confidentiality of her correspondence.

The application was lodged with the European Court of Human Rights on 11 November 2015.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Georges **Ravarani** (Luxembourg),
Jolien **Schukking** (the Netherlands),

and also Andrea **Tamietti**, *Deputy Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of inhuman or degrading treatment\) and Article 8 \(right to respect for private and family life and for correspondence\)](#)

As regards the investigation into the allegations of ill-treatment, the Court noted that Ms Buturugă had had a statutory framework at her disposal to complain about the violence which she claimed to have suffered and to seek the protection of the authorities. The Court checked whether those rules and practices had been defective, and noted the following in particular.

First of all, the authorities had not addressed the facts from the domestic violence angle. Their decisions had been based on the criminal code provisions penalising violence between private individuals, and not on those laying down harsher penalties for domestic violence.

Secondly, the Court pointed out that the specific features of domestic violence as recognised in the Istanbul Convention had to be taken into account in the framework of domestic proceedings. In the present case, however, the investigation had taken no account of those features.

Thirdly, the conclusions reached by the court of first instance were questionable. The court had found that the threats to Ms Buturugă had not been sufficiently serious to qualify as offences, and that there was no direct evidence that the injuries had been caused by her former husband. Yet the investigation had failed to identify the individual responsible for the injuries, whose reality and severity had not been contested.

Fourthly, in view of the fact that the protection order had been issued for a period subsequent to the impugned incidents, its effects had had no impact on the effectiveness of the criminal investigation.

As regards the investigation into the breach of confidentiality of the applicant's correspondence, the Court observed that the Romanian Penal Code explicitly penalised the offence of violating the confidentiality of correspondence of which Ms Buturugă had complained during the criminal proceedings.

In that regard, the Court pointed out in particular that cyberbullying was currently a recognised aspect of violence against women and girls, and could take on a variety of forms, including cyber breaches of privacy, intrusion into the victim's computer and the capture, sharing and manipulation of data and images, including private data. In the context of domestic violence, cybersurveillance was often carried out by the person's partner. Consequently the Court accepted Ms Buturugă's argument that acts such as illicitly monitoring, accessing or saving one's partner's correspondence could be taken into account by the domestic authorities when investigating cases of domestic violence.

In the present case, however, the domestic authorities had failed to consider the merits of Ms Buturugă's criminal complaint of violation of the confidentiality of her correspondence. Her request for an electronic search of the family computer had been dismissed on the grounds that any facts liable to be ascertained by this means would have no relation to the former husband's alleged threats and violence. Her criminal complaint of violation of the confidentiality of her correspondence had been dismissed as out of time. The Court took the view that the investigating authorities had been overly formalistic in adopting that stance, particularly since under the new Penal Code the investigating authorities could intervene automatically in the event of the wrongful interception of a conversation conducted by any electronic means of communication, whereby the condition of a prior complaint had to be fulfilled solely for the improper opening, removal, destruction or detention of correspondence addressed to someone else.

Furthermore, the court of first instance had ruled that Ms Buturugă's complaint concerning the alleged violation of the confidentiality of her correspondence had been unrelated to the subject matter of the case, and that data published on the social networks were public. Such allegations required the authorities to conduct an examination on the merits in order comprehensively to apprehend the phenomenon of domestic violence in all its forms. Indeed, Ms Buturugă had alleged that her former husband had wrongfully consulted her electronic accounts, including her Facebook account, and that he had made copies of her private conversations, documents and photographs. The Court deduced that Ms Buturugă had been referring to a whole set of electronic data and documents which had not been confined to the data which she had published on the social networks. Consequently, the finding by the court of first instance that the data in issue had been public was problematic to the extent that the domestic authorities had not conducted an examination on the merits of the applicant's allegations in order to determine the nature of the data and communications in question.

Consequently, the Court concluded that the applicant's allegations to the effect that her former husband had improperly intercepted, consulted and saved her electronic communications had not been examined on the merits by the national authorities. They had not adopted procedural measures to gather evidence to establish the veracity of the facts or their legal classification. The authorities had therefore been overly formalistic in dismissing any connection with the domestic

violence which Ms Buturugă had already reported, and had thus failed to take into consideration the many forms taken on by domestic violence.

The State had therefore failed in its positive obligations under Articles 3 and 8 of the Convention, prompting the Court to find a violation of those provisions.

Just satisfaction (Article 41)

The Court held that Romania was to pay Ms Buturugă 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 457 in respect of costs and expenses.

The judgment is available only in French.

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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.