



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

FOURTH SECTION

CASE OF BĂLȘAN v. ROMANIA

(Application no. 49645/09)

JUDGMENT

STRASBOURG

23 May 2017

FINAL

23/08/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bălșan v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President*,

Vincent A. De Gaetano,

Paulo Pinto de Albuquerque,

Faris Vehabović,

Egidijus Kūris,

Iulia Motoc,

Carlo Ranzoni, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 2 May 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 49645/09) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Ms Angelica Camelia Bălșan (“the applicant”), on 4 September 2009.

2. The applicant was represented by Ms E. Medveș, a lawyer practising in Petroșani. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged that she had been subjected to violence by her husband and that the State authorities had done little to stop or prevent it from happening again.

4. The application was communicated to the Government on 20 March 2014. The respondent Government and the applicant each filed written observations. On 12 May 2016 the President of the Section to which the case had been allocated decided under Rule 54 § 2 (c) of the Rules of Court to ask the parties to submit further observations on whether there had been a violation of Article 14 of the Convention, read in conjunction with Article 3, owing to alleged discrimination against women in matters concerning domestic violence.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Petroșani.

6. She married N.C. in 1979 and they had four children, born in 1980, 1988, 1992 and 1999. According to the applicant, N.C. was violent towards her and their children on numerous occasions throughout their marriage. In 2007, assaults against the applicant intensified during their divorce proceedings. The divorce was finalised on 6 December 2008.

A. Events of 24 June, 3 and 8 September 2007

7. On 24 June and 3 September 2007 the applicant was physically assaulted and threatened by her husband.

8. According to a forensic medical certificate issued on 28 June 2007, the applicant had numerous bruises on her face, arms, back and thorax, which required five to six days of medical care. A second forensic medical certificate, issued on 6 September 2007, stated that the applicant had an excoriation (scratches) on her ear lobe and several bruises on her arm and thighs. It was possible the injuries had been caused on 3 September. They required two to three days of medical care.

9. On 8 September 2007 the applicant was again physically assaulted by her husband. After the arrival of the police, she was taken to hospital by ambulance. She was diagnosed with an open facial trauma and a contusion of the nasal pyramid. According to a forensic medical certificate issued on 13 September 2007, the injuries might have been caused by impact with or on a hard object and required nine to ten days of medical care.

10. In their duty reports for the above dates, the police officers called by the applicant noted that she had been injured in a domestic dispute and that they had informed her that she could lodge formal complaints against N.C. In the report drafted on 24 June 2007, the police officer on duty also mentioned that when he had arrived at the scene of the incident he had found that N.C. had locked the applicant out of their joint residence.

B. Criminal proceedings concerning the events of 24 June, 3 and 8 September 2007

11. On 3 August and 2 October 2007 the applicant lodged complaints with the prosecutor's office attached to the Petroșani District Court, alleging that she had been physically assaulted by her husband in their home, in the presence of their children, on 24 June, and 3 and 8 September 2007. She attached copies of the medical certificates drawn up after the incidents.

12. On 28 August 2007 the applicant also sent a letter to the Hunedoara County police chief, in which she alleged that she had been the victim of repeated acts of violence by her husband, who often assaulted her in the presence of their children. She mentioned that on several occasions he had locked her out of their home and asked for help from the police in solving these problems.

13. On 11 September 2007 the applicant gave a detailed statement describing the three assaults to the policeman in charge with the investigation. She stated that on 24 June 2007 her husband had come home around noon and had started punching her in the face and head and threatened to kill her. She had managed to flee, but when she had returned an hour later her husband had refused to let her back into the apartment. She also mentioned that he had told the children not to speak about it.

14. In statements dated 12 September 2007, the applicant's mother and brother told the police that throughout 2007 the applicant had very often come to their house, complaining that N.C. had beaten her, threatened to kill her or that he had locked her out of their apartment.

15. On 15 November 2007 the applicant's and N.C.'s adult daughters, C.B.A. and C.C.A., told the police that the applicant used to drink and that she became aggressive when she got drunk. They also stated that their father had not hit their mother. C.C.A. mentioned that although she earned her own living, her father had always given her money. Her mother, on the other, had constantly been short of money and had debts to banks.

16. On 19 November 2007 N.C. was questioned by the police. He stated that he had argued with the applicant over their divorce, but had not laid a hand on her. He added that the applicant had not been cleaning the house properly and had a drinking problem. He also stated that "I did not hit her so hard as to cause her injury" and that "she may have fallen in the bathroom". He alleged that the medical certificates submitted by the applicant had been forged.

17. On 13 and 19 December 2007 the applicant wrote to the head prosecutor of the prosecutor's office attached to the Petroșani District Court, complaining that N.C., who had moved out of their apartment and had taken two of the children with him, had threatened to kill her when they had accidentally met on the street a week before. She stated that she feared for her life and asked for the proceedings to be speeded up and for protection from N.C.

18. On the same date, the prosecutor's office attached to the Petroșani District Court decided not to press criminal charges against N.C. and imposed an administrative fine of 200 Romanian lei (RON) (approximately 50 euros (EUR)) on him. The prosecutor held that the applicant had provoked the disputes after drinking alcohol and referred to N.C.'s statements and those of the applicant's two adult daughters. As regards the

alleged threats, it was considered that the applicant had failed to prove her accusations.

19. The prosecutor concluded that, although N.C. had committed the crime of bodily harm, his actions had not created any danger to society, because he had been provoked by the victim, had no previous criminal record and was a retired person (*pensionar*).

20. The applicant's complaint against that decision was rejected as ill-founded on 25 March 2008 by the superior prosecutor.

21. On 21 April 2008 the applicant lodged a complaint against the prosecutors' decisions of 19 December 2007 and 25 March 2008 with the Petroșani District Court, asking that N.C. be charged with bodily harm, be convicted and ordered to pay non-pecuniary damages for the suffering she had endured. She alleged that the administrative fine, which N.C. had refused to pay, had not had a deterrent effect on him as he had continued to assault her after the prosecutor's decision of 19 December 2007. She also asked the court to impose criminal sanctions on him and requested permission to submit a recording of a conversation with N.C. in order to prove that she had been assaulted and threatened by him in September 2007. In the last paragraph of her submission, the applicant stated that she feared for her life and asked the court to "punish [N.C.] as provided for by law ... to forbid him from entering the apartment ... and to forbid him from coming near [her] ...".

22. At the second hearing before the Petrosani District Court, the applicant applied to be given a court-appointed lawyer because she did not have the financial means to hire one. The court dismissed the application, holding that the subject matter of the case did not require representation by a lawyer.

23. By an interlocutory judgment of 23 June 2008, the Petrosani District Court decided to partially quash the prosecutor's decision of 19 December 2007 in respect of the crime of bodily harm and the penalty imposed for it and to examine that part of the case on the merits. The prosecutor's findings in respect of the threats were upheld. The recording was not admitted as evidence because the court considered that it had no relevance to the case.

24. The applicant and N.C. gave statements before the court. N.C. explained that on 8 September 2007 the applicant had been drunk and had threatened him with a knife. In order to defend himself, he had pushed her but he denied having ever hit the applicant.

25. On 10 February 2009 the court heard a statement from the applicant's daughter, C.B.A., who testified as follows:

"My father used to hit my mother [the applicant] and us, the children, many times. He used to do it when he had not come home at night and my mother asked him where he had been. Then he would get angry and hit her. The main reason he got angry was lack of money ... Even after July 2007, when I moved out of my parents' apartment, my mother continued to be hit by my father; I saw some of these

incidents personally. Before 2007, my mother used to drink alcohol, but it was within normal limits, and in 2007 she stopped drinking.

I retract the statement I gave during the criminal proceedings because I gave it after threats from my father.”

26. On 17 February 2009 the Petroşani District Court decided to acquit N.C. of the crime of bodily harm. The court considered that C.B.A.’s statement could not be taken into consideration, without mentioning any reasons for that decision. The court concluded as follows:

“The injured party [the applicant] has not proved her allegations that on 24.06.2007, 3.09.2007 and 8.09.2007 ... she was physically assaulted by the defendant. The court considers, also in view of the evidence collected during the criminal investigation, that such assaults by the defendant took place principally because of the injured party’s alcohol consumption and because she was not taking adequate care of her four children. The defendant’s acts are not so dangerous to society as to be considered crimes and he shall therefore be acquitted of the three counts of bodily harm and shall pay an administrative fine of RON 500.”

27. The court further dismissed the applicant’s claims for damages as ill-founded, without giving reasons. No mention was made in the judgment of the applicant’s request for protective measures made in her complaint of 21 April 2008 (see paragraph 21 above).

28. The applicant lodged an appeal on points of law (*recurs*) against that judgment. She alleged, among other arguments, that N.C. was a violent person who continued to assault her, even after being punished with an administrative fine by the prosecutor on 19 December 2007.

29. On 12 May 2009 the Hunedoara County Court dismissed as ill-founded the applicant’s appeal on points of law and upheld the decision of 17 February 2009. The court held that the acts of violence committed by N.C. had been provoked by the applicant and had therefore not reached the level of severity required for them to fall within the scope of the crime of bodily harm. For the same reason, an award for damages was not justified.

C. Events during 2008

30. Between 19 February and 21 April 2008 the applicant made five complaints to the Petroşani police concerning new incidents of assault or threats by N.C. to which she attached medical reports.

31. In the meantime, on 27 March 2008, the applicant asked the Hunedoara County police to apply the measures provided by law in order to stop the constant assaults she was being subjected to by N.C. She stressed that she felt that her life was in danger. A similar request was sent by the applicant to the police on 11 April 2008.

32. On 29 September 2008 the prosecutor’s office attached to the Petroşani District Court decided not to press charges against N.C. for the

five incidents described by the applicant. He was however punished with an administrative fine of RON 100 (approximately EUR 25).

33. The applicant's letter of 27 March 2008, requesting the police to take the necessary measures in order to stop the constant assaults against her, was not taken into consideration. The prosecutor found that it could not be considered a formal complaint because, unlike the other complaints, it did not refer to a specific assault.

34. The applicant did not lodge any further complaints against the above-mentioned decision.

II. RELEVANT DOMESTIC LAW

35. The relevant provisions of the Romanian Criminal Code in force at the time are as follows:

Article 91

Administrative sanctions

In cases where there is no criminal responsibility, one of the following administrative sanctions may be applied:...

c) a fine between RON 10 and 1,000.

Article 180

Bodily harm

“(1) Injuries or any other violent actions which cause physical pain are subject to imprisonment of between one and three months or a fine.

(1¹) If the actions provided for in paragraph 1 are committed against family members the penalty is imprisonment of between six months and one year or a fine.

(2) Violent actions that have caused injuries needing medical care of up to twenty days for recovery are punishable by imprisonment of between three months and two years, or by a fine”.

(2¹) If the actions provided for in paragraph 2 are committed against family members the penalty is imprisonment of between one and two years or a fine.

(3) A criminal case shall be initiated upon complaint by the injured party. In the situations provided for in paragraphs 1¹ and 2¹ the criminal case may be initiated of the authorities' own motion.”

Art. 193

Threats

“Any threat that a criminal offence shall be committed against a person or against the person's husband/wife or close relative, if it has the effect of causing that person acute distress, is punishable by imprisonment of between three months and one year,

or by a fine. The penalty applied shall not exceed the sanction provided by the law for the offence which was the object of the threat.”

36. Law no. 217/2003 on preventing and combating domestic violence entered into force on 29 May 2003. In the version in force at the time of the events, Article 26 of the law provided for measures to protect victims of domestic violence. One measure was to offer shelter in special centres, while the courts also had the power to order the aggressors to be held in a psychiatric institution or undergo medical treatment, or to ban them from entering the family home. Protective measures could be taken at the request of the victim, or by the authorities or courts of their own motion. The law also provided that personnel specialised in investigating cases of domestic violence had to be appointed at local level by ministries and other public administration authorities. A possibility for the courts to issue a protection order was only included in the law from 12 May 2012.

Further relevant provisions of the law, as in force at the time of the events in the current case, are as follows:

Article 2

“(1) Domestic violence is any intentional physical or verbal act committed by a member of a family which causes physical, psychological, sexual or pecuniary damage to another member of the same family.

(2) Domestic violence includes restricting the rights and fundamental freedoms of a woman.”

Article 16

“(1) The authorities responsible for investigating cases of domestic violence have the following main tasks:

a) to monitor domestic violence cases ... ; to collect and store information on those cases; to ensure access to this information for the judicial authorities ... ;

c) to identify situations of risk and to guide the parties involved in a conflict towards specialist services;

e) to guide the parties into mediation; ...

(2) In cases of domestic violence the police shall intervene at the request of the victim, of another member of the family, of an authority or of their own motion.

(3) The police shall immediately notify the competent local authority about the victim’s situation.”

37. Government Decision no. 1156/2012 on adopting a national strategy for preventing and combating domestic violence, covering the period 2013 to 2017, was published in the Official Journal of 6 December 2012. A general information chapter included official statistics showing that Romanian citizens perceived domestic violence as normal and that 60% saw it as justified in certain circumstances. Furthermore, police statistics showed that 82,000 incidents of domestic violence and 800 deaths

caused by domestic violence had been registered over the seven years between 2004 and 2011. However, the document concluded that the numbers were in fact much higher since such incidents went largely unreported. The same statistics showed that the number of incidents of domestic violence had increased each year between 2003 and 2008 and that over 1.2 million women a year were victims of it in Romania. The document also stated that only 22.61% of the total number of incidents reported to the police in 2011 had led to the opening of criminal investigations by prosecutors.

38. Information published on the website of the National Agency for Equal Opportunities for Women and Men shows that Romania had sixty-two shelters for victims of domestic violence in 2017. Eight of the country's forty-one counties had no shelter while most counties had only one or two. Four counties had three shelters, one had four while Bucharest had six, although they were not present in all of the capital's six districts.

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. The United Nations

39. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the United Nations General Assembly and ratified by Romania on 7 January 1982.

40. The CEDAW defines discrimination against women as "... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." As regards the States' obligations, Article 2 of the CEDAW provides, in so far as relevant, the following:

"States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

...

(e) to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;

(f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women ..."

41. In its thirty-fifth session held between 15 May and 2 June 2006 the United Nations Committee on the Elimination of Discrimination against

Women (“the CEDAW Committee”) made the following remarks in its concluding comments in respect of Romania:

“5. The Committee commends the State party on the range of recent laws, strategies and action plans aimed at eliminating discrimination against women and promoting gender equality and at achieving compliance with the obligations under the Convention. ...

12. While commending the State party for the extensive legal and policy framework developed in the recent years for the promotion of equality between women and men and the elimination of discrimination against women, the Committee is concerned that it may not be sufficiently known by the general population. It is concerned that women themselves might not be aware of their rights, or lack the capacity to claim them as indicated in the low number of cases related to discrimination against women investigated by the National Council for Combating Discrimination since its creation in 2003.

20. While welcoming the legislative and other measures taken by the State party to prevent and eliminate domestic violence, including the introduction, by the Ministry of Justice, of a statistical indicator to monitor cases of domestic violence pending before the courts, the Committee expresses concern about the insufficient implementation of those measures, including limited availability of protection and support services for victims, in particular in rural areas. The Committee is concerned that the State party was able to provide only limited information about the prevalence of domestic violence

21. The Committee urges the State party to enhance the effective enforcement of its domestic violence legislation so as to ensure that all women who are victims of violence, including those living in rural areas, have access to immediate means of redress and protection, including protection orders, access to a sufficient number of safe shelters funded by the Government within a sufficiently wide geographical distribution, and to legal aid. The Committee calls upon the State party to provide adequate funding for such efforts, as well as for the establishment of a free hotline operating 24 hours a day/7 days a week....”

B. The Council of Europe

42. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“the Istanbul Convention”) was ratified by Romania on 16 March 2016 and entered into force on 1 September 2016.

The relevant parts of the Convention provide as follows:

Article 3 – Definitions

“For the purpose of this Convention:

a). “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life; ...”

Article 49 – General obligations

“1. Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.

2. Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.”

Article 54 – Investigations and evidence

“Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary.”

Article 56 – Measures of protection

“1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

(a) providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;

(b) ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;

(c) informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;

(d) enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;

(e) providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;

(f) ensuring that measures may be adopted to protect the privacy and the image of the victim;

(g) ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;

(h) providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;

(i) enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.”

C. The European Union

43. On 8 December 2008 the Council of the European Union adopted EU guidelines on violence against women and girls. The document describes violence against women as one of the major human rights violations of today and focuses on reminding States of their dual responsibility to prevent and respond to violence against women and girls.

The guidelines also highlight the following:

“The EU will emphasise that it is essential for States to ensure that violence against women and girls is punished by the law and to see that perpetrators of violence against women and girls are held responsible for their actions before the courts. States must in particular investigate acts of violence against women and girls swiftly, thoroughly, impartially and seriously, and ensure that the criminal justice system, in particular the rules of procedure and evidence, works in a way that will encourage women to give evidence and guarantee their protection when prosecuting those who have perpetrated acts of violence against them, in particular by allowing victims and their representatives to bring civil actions. Combating impunity also involves positive measures such as the training of police and law enforcement officers, legal aid and proper protection of victims and witnesses and the creation of conditions where the victims are no longer economically dependent on the perpetrators of violence.”

44. According to an EU-wide survey carried out between March and September 2012 by the European Union Agency for Fundamental Rights (FRA) 30% of Romanian women stated having suffered physical and/or sexual violence from a partner or a non-partner, while 39% of Romanian women stated having suffered some form of psychological violence by a partner. The report concluded that throughout Europe most violence against women is carried out by a current or former partner, with 22% of women in relationships reporting partner abuse.

IV. OTHER MATERIALS

45. In its 2016/2017 annual report on Romania, Amnesty International stated:

“According to General Police Inspectorate data, 8,926 cases of domestic violence were registered in the first six months of 2016 – 79% of the victims were women and 92.3% of the aggressors were men. National NGOs reported that the actual number of cases was much higher. In July, NGOs requested that the government expedite the adoption of measures to combat violence against women and domestic violence.”

46. In a communication submitted in the context of the supervision of the execution of the Court’s judgment in the case of *E.M. v. Romania* (no. 43994/05, 30 October 2012), the Network for Preventing and Combating Violence Against Women (VAW), an informal grouping of twenty-four organisations active in the field of promoting women’s rights in

Romania, stated that 91% of requests for a protection order between 2012 and 2015 had been made by women. In 2014 alone there had been 155 victims of homicide in situations of domestic violence, an increase of 32.5% on the period between 2004 and 2012.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. Relying on Article 6 of the Convention, the applicant complained that the domestic authorities had failed to protect her from repeated acts of domestic violence and to hold the perpetrator accountable.

48. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case and it does not consider itself bound by the characterisation given by an applicant. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Guerra and Others v. Italy [GC]*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). Therefore, having regard to the nature and the substance of the applicant's complaints in this particular case, the Court finds that they fall to be examined under Article 3 of the Convention (see *E.M. v. Romania*, no. 43994/05, § 51, 30 October 2012; and *M.G. v. Turkey*, no. 646/10, § 62, 22 March 2016).

Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

49. At the outset the Government maintained that the treatment to which the applicant had been subjected by N.C. had not attained the minimum level of severity necessary to fall within the scope of Article 3 of the Convention. As regards the seriousness of the injuries sustained by the applicant and the effects of the treatment to which she had been subjected, the Government noted that forensic experts had established that the applicant had suffered minor bodily harm that had not constituted serious psychological or physical violence (contrast *B. v. the Republic of Moldova*, no. 61382/09, § 47, 16 July 2013) or repeated acts of violence over a short period of time (contrast *Valiulienė v. Lithuania*, no. 33234/07, § 68, 26 March 2013). When assessing the severity of the violence inflicted upon the applicant in the current case, they asked the Court to take into account the fact that the domestic courts had established that the applicant herself had provoked the violent incidents and had considered that the acts complained

about had not attained the minimum level of severity to be classed as criminal.

50. The Government further contended that the applicant had failed to exhaust domestic remedies. Firstly, she had failed to make use of the provisions of Law no. 217/2003, which provided adequate protection for victims of domestic violence, since she had omitted to request the application of protective measures. Secondly, she had not filed a complaint with the courts against the prosecutor's decision of 29 September 2008, as provided by the Code of Criminal Procedure.

51. The applicant contested the above arguments and argued that domestic remedies had proven to be ineffective given the failure of the authorities to protect her and prevent her husband from inflicting further ill-treatment on her.

52. The Court observes that the arguments raised above are linked to the merits of the current case. The main issue with regard to the question of exhaustion of domestic remedies is inextricably linked to the question of their effectiveness in providing sufficient safeguards for the applicant against domestic violence. Accordingly, the Court joins these questions to the merits and will examine them under Article 3 of the Convention (see *Opuz v. Turkey*, no. 33401/02, § 116, 9 June 2009).

53. In view of the above, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

54. The applicant argued that the State had failed to put in place adequate measures to protect her from domestic violence and to prevent the recurrence of such violence. The authorities had been informed of N.C.'s actions and her allegations had been supported by medical evidence. However, they had only sanctioned him with an administrative fine, which had had no effect on his behaviour. Therefore, the authorities' failure to respond adequately to her complaints, to conduct an effective investigation and apply sanctions with an actual deterrent effect, had put her at a constant risk of further ill-treatment. The tolerance shown by the authorities in the face of domestic violence had made her feel debased and helpless.

(b) The Government

55. The Government submitted that the domestic legal system had provided adequate protection for victims of domestic violence such as the applicant.

56. They also stressed that the investigation of the applicant's complaints had been prompt, thorough and had been finalised by sanctioning the perpetrator with an administrative fine. Even if that type of fine was not considered a criminal sanction by the domestic law, it had been, however, put on the perpetrator's criminal record. Therefore, it could be concluded that the investigation in the current case had been in compliance with the requirements of Article 3 of the Convention.

2. The Court's assessment

(a) General principles

57. The Court reiterates that Article 1 of the Convention, taken in conjunction with Article 3, imposes on the States positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such treatment is administered by private individuals. The Court has also acknowledged the particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection. Those positive obligations, which often overlap, consist of: (a) the obligation to take reasonable measures designed to prevent ill-treatment of which the authorities knew or ought to have known and (b) the (procedural) obligation to conduct effective official investigation where an individual raises an arguable claim of ill-treatment. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Dorđević v. Croatia*, no. 41526/10, §§ 138 and 139, ECHR 2012; and *M. and M. v. Croatia*, no. 10161/13, § 136, 3 September 2015). In addition, the Court has held that States have a positive obligation to establish and apply effectively a system punishing all forms of domestic violence and to provide sufficient safeguards for the victims (see *Opuz*, cited above, § 145).

58. Moreover, under Article 19 of the Convention and under the principle that the Convention is intended to guarantee not theoretical or illusory, but practical and effective rights, the Court has to ensure that a State's obligation to protect the rights of those under its jurisdiction is adequately discharged (see *Opuz*, cited above, § 165).

(b) Application of the above principles to the case

59. Turning to the circumstances of the instant case, the Court notes that the physical violence suffered by the applicant was documented in forensic medical reports as well as in police reports. The medical documents recorded that the applicant had sustained injuries on three occasions, requiring medical care for periods ranging from two to five days to a maximum of nine to ten days.

60. The Government argued that the treatment to which the applicant had been subjected had not attained the minimum level of severity necessary to fall within the scope of Article 3 of the Convention. However, the Court considers that the ill-treatment of the applicant, which on three occasions caused her physical injuries, combined with her feelings of fear and helplessness, was sufficiently serious to reach the required level of severity under Article 3 of the Convention and thus impose a positive obligation on the Government under this provision (see *E.M. v. Romania*, cited above, § 57; and *Milena Felicia Dumitrescu v. Romania*, no. 28440/07, § 54, 24 March 2015).

61. Therefore, the Court must next determine whether the national authorities have taken all reasonable measures to prevent the recurrence of the assaults against the applicant's physical integrity.

62. The Court considers that the authorities were well aware of N.C.'s violent behaviour because the applicant, for over a period of almost one year – from 24 June 2007 to 11 April 2008 – had asked for their assistance by way of emergency calls to the police, formal criminal complaints and even petitions to the head of police. The complaints made by the applicant were always accompanied by medical documents proving the extent of the violence against her. Moreover, the findings of the medical documents have never been contested. The Court thus concludes that the Romanian authorities were under an obligation to act upon the applicant's complaints.

63. The criminal law in force at the relevant time in Romania punished the infliction of bodily harm and, moreover, provided for a harsher sentence for bodily harm committed against family members. Criminal investigations in such cases could be opened at the victim's request or of the authorities' own motion (see paragraph 35 above). In addition, Law no. 217/2003 had additional regulations to ensure a minimum of protection for victims of domestic violence (see paragraph 36 above). The Court therefore considers that the applicant had at her disposal a legal framework allowing her to complain about the domestic violence and to seek the authorities' protection (see *E.M. v. Romania*, cited above, § 62).

64. The Court will now examine whether or not the domestic authorities' compliance with the relevant procedural rules, as well as the manner in which the criminal-law mechanisms were implemented in the instant case, were defective to the point of constituting a violation of the respondent State's positive obligations under Article 3 of the Convention.

65. On 3 August 2007 the applicant lodged an initial criminal complaint of bodily harm against N.C. but the investigation started with significant delays. More than one month later, after she had been assaulted again by her husband on two occasions, it was the applicant who was called in first by the police for questioning. Although she stressed in her statement of 11 September 2007 that her husband had also threatened to kill her, N.C. was questioned by the police only on 19 November 2007. The investigation concluded one month later that the crime of bodily harm had indeed been committed. However, since it had been provoked by the applicant, it had not been serious enough to require criminal sanctions, only an administrative fine.

66. The Court further notes that the applicant's complaint against that decision was dismissed by the domestic courts. The Petroşani District Court decided to acquit N.C. of all the charges of bodily harm, considering, along with the prosecutor, that he had been provoked by the applicant and that his acts were not so dangerous to society. The fact that one of the applicant's daughters had withdrawn her statement to the prosecutor, explaining that it had been given after threats by N.C., was not taken into consideration by the court. Despite the Government's statements to the contrary (see paragraph 50 above), the applicant also asked the domestic courts to order protective measures for her, specifically, to forbid N.C. from entering their apartment or coming near her (see paragraph 21 above). However, the courts did not respond to that request. Lastly, the only sanction imposed on N.C. was a slightly increased administrative fine. The Court observes that that measure did not have the deterrent effect necessary to be considered as a sufficient safeguard against further ill-treatment of the applicant in the current case because N.C. continued to assault her even after the adoption of such a measure by the prosecutor.

67. Regarding the criminal proceedings in the current case taken as a whole, the Court concludes with concern that both at the investigation level and before the courts the national authorities considered the acts of domestic violence as being provoked and regarded them as not being serious enough to fall within the scope of the criminal law. Moreover, the applicant was denied the services of a court-appointed lawyer because the courts considered that legal representation for the victim was not necessary in such cases (see paragraph 22 above). On this point, the Court has held that in certain circumstances the State's procedural obligations to ensure the effective participation of the victims in the investigation of their complaints of ill-treatment may extend to the issues of providing effective access to free legal representation (see *Savitskyy v. Ukraine*, no. 38773/05, § 117, 26 July 2012). The Court reiterates that it is not its task to take the place of the domestic courts and that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Söderman v. Sweden*, no. 5786/08, § 102, 12 November 2013). However, an

approach such as the one taken by the authorities in the current case – where the existence of acts of domestic violence had not been contested – deprived the national legal framework of its purpose and was inconsistent with international standards with respect to violence against women and domestic violence in particular.

68. The Government criticised the applicant for not making use of the provisions of Law no. 217/2003. The Court notes that the applicant made use of the provisions of this law, but to no avail (see paragraph 27 above). However, the Court considers that what is at the heart of this case is the question of impunity for the acts of domestic violence, which is a matter to be addressed by the criminal courts (see *Valiulienė*, cited above, § 71). The applicant made full use of the remedy provided by criminal procedure but the national authorities, although aware of her situation, failed to take appropriate measures to punish the offender and prevent further assaults.

69. Lastly, the Court notes that the violence suffered by the applicant continued throughout 2008 and that the authorities continued to be inactive. In this connection, the Court points out that six more criminal complaints and requests for protection were lodged by the applicant with the competent authorities in the first part of 2008. Some of these attacks were documented in medical reports. However, no concrete measures were taken by the authorities and the applicant's complaints were dismissed for lack of evidence against N.C. or, again, for not reaching the level of severity required for criminal sanctions to be imposed.

70. Therefore, having regard to the above findings as to the overall ineffectiveness of the remedies suggested by the Government in the current case, the Court also dismisses the Government's objection of non-exhaustion of domestic remedies.

71. The foregoing considerations are sufficient to enable the Court to conclude that the manner in which the applicant's complaints were dealt with by the State's authorities did not provide her adequate protection against the acts of violence by her husband.

There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 3

72. Having regard to the particular circumstances of this case and the nature and substance of the applicant's complaints, the Court considered it appropriate to communicate of its own motion a complaint under Article 14 of the Convention read in conjunction with Article 3.

Article 14 of the Convention reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. Admissibility

73. The Court notes that this complaint, which is linked to the one examined above, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible (see *M.G. v. Turkey*, cited above, § 111).

B. Merits

1. The parties' submissions

74. In her observations on the admissibility and merits of the complaint the applicant submitted that she had been discriminated against on the basis of her gender and that the respondent State's domestic law failed to provide proper protection for the real victims of domestic violence.

75. The Government contended that the applicant had failed to prove to the Court that the domestic authorities had discriminated against her because of her gender.

76. As regards the general context of the issue of domestic violence in Romania, the Government submitted that a national strategy for preventing and combating domestic violence had been adopted and was periodically updated and that victims of domestic violence could find information on the website of the National Agency for Equal Opportunities for Women and Men. In addition, three booklets for professionals dealing with domestic violence had been published and one of them had been available on the website of the highest prosecutor's office since 2008. In addition, training had been provided for judges, prosecutors and police officers as part a project that took place between June 2014 and April 2016 to reinforce their capacity to prevent and combat domestic violence. The Government further noted that as of 2013 Romania had twenty centres for preventing and combating domestic violence nationwide, fifty-nine shelters for victims and three centres offering social services for the perpetrators of such violence. The Government also submitted that the number of incidents of domestic violence reported to the police had steadily increased in recent years, a trend which might imply that victims had more confidence in the authorities. The number of people indicted for crimes connected to domestic violence (homicide, bodily harm, abandoning the family and so forth) had increased from 1,080 in 2003 to 1,368 in 2015. In addition, training had been provided for judges, prosecutors and police officers as part of a project that took place between June 2014 and April 2016 to reinforce their capacity to prevent and combat domestic violence.

77. The Government concluded by stating that the legal framework existing at the time of the events of the current case and the way it had developed subsequently, showed that national mechanisms for the protection of women from domestic violence were sufficient and that the domestic authorities were fulfilling their obligation to ensure effective protection for victims.

2. *The Court's assessment*

78. The Court has already held that failure by a State to protect women against domestic violence breaches their right to equal protection under the law and that this failure does not need to be intentional (see, for recent examples, *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 57, 28 January 2014, and *M.G. v. Turkey*, cited above, § 115).

79. When considering the definition and scope of discrimination against women, the Court has also found that it must have regard, in addition to the more general meaning of discrimination as determined in its case-law, to the provisions of more specialised legal instruments and the decisions of international legal bodies on the question of violence against women (see *Opuz*, cited above, § 185). In that context it must be stressed that the Istanbul Convention defines for its purposes violence against women as a form of discrimination against women (see paragraph 42 above).

80. Turning to the current case, the Court notes that the applicant's husband repeatedly subjected her to violence and allegedly threatened to kill her (see paragraphs 8, 9, 17 and 30 above) and that the authorities were well aware of what was going on (see paragraph 62 above).

81. The Court also reiterates that it has concluded that the domestic authorities have deprived the national legal framework of its purpose by their finding that the applicant provoked the domestic violence against her, that the violence did not present a danger to society and therefore was not severe enough to require criminal sanctions, and by denying the applicant's request for a court-appointed lawyer. In doing so, the domestic authorities have also acted in a way that was inconsistent with international standards on violence against women and domestic violence in particular (see paragraph 67 above).

82. The authorities' passivity in the present case is also apparent from their failure to consider any protective measures for the applicant, despite her repeated requests to the police, the prosecutor (see paragraphs 17 and 31 above) and the courts (see paragraph 21 above). Bearing in mind the particular vulnerability of victims of domestic violence, the Court considers that the authorities should have looked into the applicant's situation more thoroughly (compare *T.M. and C.M. v. the Republic of Moldova*, cited above, § 60).

83. As regards the general approach to domestic violence in Romania, the Court notes that official statistics show that that type of violence is

tolerated and perceived as normal by a majority of people and that a rather small number of reported incidents are followed by criminal investigations (see paragraph 37 above). Moreover, the number of victims of such violence has increased every year, the vast majority of them being women (see paragraphs 37 and 46 above). Official data shows that as of 2017 a limited number of shelters was available nationwide for victims but that eight counties had no such shelter at all (see paragraph 38 above). The Court notes that these considerations are in line with previous findings by the CEDAW Committee, which found in 2006 that the general population might not be sufficiently aware of the extensive legal and policy framework developed by Romania for the elimination of discrimination against women and that women themselves might not be aware of their rights. The Committee also expressed concern about the limited availability of protection and support services for victims, in particular in rural areas, about the limited information the Romanian Government was able to provide about the prevalence of domestic violence as well as about the insufficient implementation of the legislative and other measures adopted in the field (see paragraph 41 above).

84. The Government argued that the legal framework in the field of domestic violence provided effective protection for victims. However, the Court has already observed in the current case that the authorities failed to apply the relevant legal provisions (see paragraphs 66 and 68 above). The lack of effective implementation of the above-mentioned legal framework was also pointed out by the Court in *E.M. v. Romania* (cited above, § 70), a similar case to this one. Moreover, besides police statistics and a description of various activities, the Government failed to submit any data on monitoring the impact of those activities or the effects of implementing Law no. 217/2003 on preventing and combating domestic violence or the national strategy for preventing and combating domestic violence.

85. In the Court's opinion, the combination of the above factors demonstrates that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in Romania and that their actions reflected a discriminatory attitude towards the applicant as a woman (see *T.M. and C.M. v. the Republic of Moldova*, cited above, § 62).

86. In the light of the foregoing, the Court considers that there is *prima facie* evidence that domestic violence mainly affected women and that the general and discriminatory passivity of the authorities created a climate that was conducive to domestic violence (compare *Opuz*, cited above, § 198).

87. The Court has established that the criminal-law system, as operated in the instant case, did not have an adequate deterrent effect capable of ensuring the effective prevention of unlawful acts by N.C. against the personal integrity of the applicant and thus violated her rights under Article 3 of the Convention (see paragraph 71 above).

88. Bearing its above findings in mind (see paragraph 85 above), the Court considers that the violence suffered by the applicant can be regarded as gender-based violence, which is a form of discrimination against women. Despite the adoption by the Government of a law and a national strategy on preventing and combating domestic violence, which the Court appreciates, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors, as found in the instant case (see also *E.M. v. Romania*, cited above, § 69), indicated that there was an insufficient commitment to take appropriate action to address domestic violence.

89. In view of the above, the Court concludes that there has been a violation of Article 14 of the Convention, read in conjunction with Article 3 in the instant case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

91. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. She stated that the continual acts of violence perpetrated by her husband had caused her physical and psychological trauma.

92. The Government contested the claim, arguing that it was excessive and unsubstantiated.

93. The Court notes that the applicant has undoubtedly suffered anguish and distress on account of the authorities’ failure to take sufficient measures to prevent the acts of domestic violence perpetrated by her husband and to give him a deterrent punishment (see *Opuz*, cited above, § 210). Ruling on an equitable basis, the Court awards the applicant EUR 9,800 in respect of non-pecuniary damage.

B. Costs and expenses

94. The applicant did not claim costs or expenses. Accordingly, the Court does not make any award under this head.

C. Default interest

95. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 3;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,800 (nine thousand eight hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President