



*ASOCIAȚIA PENTRU APĂRAREA DREPTURILOR
OMULUI ÎN ROMÂNIA - COMITETUL HELSINKI*

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Bălșan v. Romania (49645/09)

Domestic violence

EIN briefing to the Committee of Ministers on 28 May 2018

Summary points

- Emphasis the need for clear procedures to prevent and combat domestic violence. Towards this aim, the Romanian Police should immediately adopt working procedures concerning the implementation and supervision of the restraining orders;
- Remind that the ECtHR has emphasized that there is a limited number of shelters available nationwide for victims; and in eight counties in Romania there are no shelters at all. In this regard, the national authorities should take concrete measures to remedy this systemic deficiency;
- Note that while the ECtHR has delivered judgments in only three domestic violence cases in Romania so far, it is a systemic problem in Romania nonetheless. As such, recommend that, instead of ending the supervision process, the case of E.M v Romania should be connected to the case of Bălșan v. Romania and both addressed under enhanced supervision.
- Encourage the national authorities to take all measures, as a matter of urgency, to transpose and implement completely the Istanbul Convention and all other relevant European legislation which applies to the protection of victims of domestic violence.

In Romania, domestic violence **continues to increase**, representing a systemic problem recognized as such by the ECHR in the case of ***Bălșan v. Romania (no. 49645/09)***. Official statistics show that this 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.¹In **2017**, according to a statistic provided by

¹ Bălșan v. Romania (49645/09), 23 May 2017, para. 38.

the Romanian Police² a number of 20.531 offences related to bodily harm and other violent crimes between family members have been reported. The majority of aggressors are males (92%) while the majority of victims are female adults (76%) as well as minors. Compared to 2016, when there were 18.531 complaints registered in relation to bodily harm and other violent crimes between family members, there is an escalation of the phenomenon.

In *Bălșan v. Romania*, the Court found a violation of Article 14 of the Convention, read in conjunction with Article 3 “*the violence suffered by the applicant can be regarded as gender-based violence, which is a form of discrimination against women. Despite the adoption of the Government of a law and a national strategy on preventing and combating violence, **the overall unresponsiveness of the judicial system and the impunity enjoyed by the aggressors, indicated that there was an insufficient commitment to take appropriate action to address domestic violence***”.³ Regarding the criminal proceedings in the case, the Court concluded 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.⁴ The ECHR has also noticed the similarity of this case with *E.M v. Romania* (no. 43994/05, October 2012) in relation to which the Government has submitted on 19 April 2018 an action report, requesting the Committee of Ministries for closing supervision.

Recent developments

The Government’s action plan in the case of *Bălșan v. Romania* (19 April 2018) refers to a series of measures taken by the Government to combat domestic violence starting with 2005.⁵ They were both legislative and administrative in nature, and they also implied training activities for magistrates, police officers as well as interinstitutional instruction. Nevertheless, the same action plan acknowledges that the domestic violence phenomena has not diminished over the years, on the contrary. Therefore, these measures have brought no positive effects in practice.

Legislative changes

In 2017, **46 women have lost their lives** as a consequence of violence committed against them by former or current partners or other members of the family.⁶ Given the number of lives claimed by domestic violence, there needs to be a sense of urgency coming from the government in relation to the measures adopted to protect women. Despite the fact that immediate legislative changes need to be adopted, **the proposed draft legislation amending law 2017/2003 on preventing and combating domestic violence aiming to transpose the Istanbul Convention is currently still in parliamentary procedure (chamber of**

² At the request of FILIA, a Romanian NGO. The information was made public in February 2018 <https://violentaimpotrivaefemeilor.ro/violenta-in-familie-in-2017-conform-datelor-oficiale-ale-politiei/> on the website of the Network for Combating and Preventing Violence against Women.

³ *Bălșan v. Romania* (49645/09), 23 May 2017, para. 88.

⁴ *Idem* 3, para. 22.

⁵ Encompassed by the national strategy for preventing and combating domestic violence, amended over the years.

⁶ *Idem* 2.

deputies). Several other urgent and clear legislative amendments are needed which are not covered by this draft law.⁷

Systematic failure to effectively apply measures in practice

In its judgment, the Court also points out to the fact that the already adopted existing legislative measures are not efficiently applied in practice by the Romanian authorities⁸. As an illustrative example, in only one month, March 2018, two women have died as a consequence of domestic violence although they had obtained a restraining order against the offenders. Despite the fact that this protection measure is part of the Romanian legislation since 2012, there are no monitoring procedures for it in place. This is despite the fact that the number of restraining orders issued by courts have increased significantly over the years (from 678 in 2012 to 3332 in 2017).⁹

The Romanian police should immediately adopt working procedures concerning the implementation and supervision of the restraining orders. Sufficient resources should be allocated to this aim. In addition, the police should proactively publish official data in relation to the number of the restraining orders which have been broken and the sanctions applied. An effective monitoring of the restraining orders would also imply an electronic monitoring system (bracelets) of the offenders which does not currently exist in Romania. Breaking a restraining order results in a penalty which equals to a minimum of 1 month imprisonment to a maximum of one year. In practice nothing happens to the aggressor, so he has no incentive to refrain from breaking the restraining order. In *Bălșan* the perpetrator has been sanctioned him with an administrative fine, which had had no effect on his behaviour. Therefore, Romanian authorities consistently fail to apply sanctions with an actual deterrent effect, putting victims at a constant risk of further ill-treatment.

Systemic deficiency in providing shelters

In its judgment, the Court has emphasized that there is a limited number of shelters available nationwide for victims (62) and 8 counties in Romania had no such shelters at all. **The Government's action plan does not contain any concrete measure that will be taken in order to remedy this systemic deficiency.** It only mentions a numerical increase of the shelters (20 more until 2020), but there is no mention about whether or not they will be located in the counties where there are no such centres or somewhere else. The court has also emphasized the limited availability of support services for the victims, especially in the rural areas, in relation to which the Government has no concrete plan.¹⁰ Significant financial resources should be

⁷ The Criminal Procedure Code should also be harmonized with the provisions of the Istanbul Convention: *ex parte* - criminal investigation should continue even if the victim withdraws her complaint; *ex officio* – the obligation for authorities to observe *ex officio* cases of domestic violence (currently, the legislation provides that the prosecutor can observe *ex officio* which actually happens in exceptional cases and only in relation to situations where 90 days of medical care are needed. ⁷In practice, most physically assaulted women receive about 8-10 days of medical care.

⁸ *Bălșan v. Romania* (49645/09), 23 May 2017, para. 83.

⁹ Communication from Romania concerning the case of *Balsan v. Romania* (Application No. 49645/09), 16 April 2018, p. 15.

¹⁰ Communication from Romania concerning the case of *Balsan v. Romania* (Application No. 49645/09), 16 April 2018.

allocated by the Government from the state budget for creating new shelters, investing in the already existing ones and in additional centres for legal and psychological counselling.

APADOR-CH recalls that domestic violence is a systemic problem claiming lives in Romania, although paradoxically, the ECHR has delivered judgments in only 3 cases so far. In this regard, it encourages the **Committee of Ministries not to close the supervision in *E.M v. Romania*, but rather connect it with *Bălșan v. Romania* and have in view enhanced supervision for both.** These two cases, as well as **D.M.D v. Romania** (no. 23022/13, 3 October 2017) all have in common the consistent failure of the Romanian authorities to respond adequately to complaints made by victims of domestic violence, to conduct effective investigation and apply sanctions with a real deterrent effect. As a matter of urgency, impunity of the aggressors should no longer be tolerated.