

Submission by the Council of Europe Commissioner for Human Rights

under Rule 9.4 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

in the case of

***Bălșan v. Romania* (application no. 49645/09, judgment of 23 May 2017)**

Introduction

1. This submission by the Council of Europe Commissioner for Human Rights (hereinafter, “the Commissioner”) is addressed to the Committee of Ministers of the Council of Europe, in accordance with Rule 9.4 of the Rules of the Committee of Ministers,¹ in the context of the supervision of the execution of the judgment of the European Court of Human Rights (hereinafter, “the Court”) in the case of *Bălșan v. Romania* (application no. 49645/09).
2. In this case, the Court found a violation of Article 3 of the European Convention on Human Rights (prohibition of torture and inhuman or degrading treatment) on account of the authorities’ failure to protect the applicant from repeated acts of domestic violence inflicted by her former spouse in 2007 and 2008. The Court also found a violation of Article 14 of the European Convention on Human Rights (prohibition of discrimination) read in conjunction with Article 3, on account of the investigation, prosecution and judicial authorities’ discriminatory attitude towards the applicant as a woman.
3. According to her mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the European Convention on Human Rights; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.²
4. Women’s rights and gender equality have been priority issues for the Commissioner and have been addressed extensively in the framework of both her country visits and thematic work. Preventing and combating domestic violence and other forms of gender-based violence is an essential component of member states’ obligations to respect and guarantee women’s rights and advance gender equality.
5. The present submission aims to assist the Committee of Ministers in its examination of this case and to draw attention to the continuing problems regarding the protection of women from gender-based violence in Romania and the need for a stronger commitment of the authorities to effectively protecting the right of women to live free from domestic violence, which affects women disproportionately. The submission is based on the Commissioner’s work on Romania, in particular her February 2019 report following her visit to Romania in November 2018.³ It also draws on her ongoing work to promote the fulfilment of women’s rights and gender equality⁴ across the Council of Europe countries and her continuous monitoring of the human rights situation in Romania.
6. Section I of the present written submission focuses on remaining obstacles in access to justice for women victims of domestic violence in Romania. In Section II, the Commissioner addresses the availability and accessibility of certain support measures for victims of domestic violence, particularly shelters. In Section III, the Commissioner provides her observations on the need to strengthen prevention measures and to promote gender equality. The three sections are followed by the Commissioner’s conclusions.

I. Obstacles in access to justice for women victims of domestic violence

7. In the past few years, Romania has taken steps to develop its national legislation concerning domestic violence, notably with a view to bringing it in line with the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic

¹ [Rules of the Committee of Ministers](#) for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006 and [amended on 18 January 2017](#)).

² [Resolution](#) (99)50 on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

³ [Report](#) by Dunja Mijatović, Commissioner for Human Rights of the Council of Europe, following her visit to Romania from 12 to 16 November 2018, CommDH(2019)5, 28 February 2019.

⁴ Information on the Commissioner’s work in this area is available on her webpage on [Women’s Rights and Gender Equality](#).

violence (the Istanbul Convention) that it had ratified in 2016. However, significant problems remain in particular with respect to the scope of criminal legislation on domestic violence as well as its implementation.

8. Currently, the Criminal Code includes over 30 offences covering conduct that states parties are required to criminalise in accordance with the Istanbul Convention, including various forms of physical assault, rape, sexual assault, sexual harassment, murder, and threats. Article 199 of the Criminal Code (*Family violence*) establishes as an aggravating circumstance, for some offences, the commission of the offence against “family members”. However, unlike in civil law,⁵ the Criminal Code contains a restrictive definition of “family members” and only covers current - but not former - spouses and partners. Moreover, under the Criminal Code, partners and persons having relations similar to those between parents and children are considered family members only if they share the same residence.⁶ In this respect, in 2017 the United Nations Committee for the Elimination of Discrimination against Women (CEDAW) expressed concern at the limited scope of the legislation on gender-based violence against women, noting, *inter alia*, that it excluded violence committed outside the home.⁷
9. The Commissioner also finds problematic the practice developed by some courts of requiring victims to provide forensic proof of the violence suffered when requesting a protection order.⁸ In the Commissioner’s view, this requirement does not only impose a high evidentiary threshold, which is not conducive to providing victims with the immediate protection that they need, but also represents a significant financial burden for many victims. The Commissioner has also received information that while local authorities are required by law to cover the expenses incurred by victims with the issuance of forensic certificates, this only applies to those victims who are registered users of public support services.⁹ Moreover, at the time of the Commissioner’s visit to Romania, not all county and local authorities had the necessary budgetary resources to cover such expenses.
10. Another problem is the low enforcement rate of protection orders. Official data show that in 2016, 743 out of 2170 issued protection orders were breached, in 2017, 1011 out of 2894, and in the first half of 2018, 674 out of 1840.¹⁰ Although such breaches constitute an offence punishable by imprisonment of up to a year, according to the information received by the Commissioner, offenders are rarely sanctioned, or their sentences are suspended. The Commissioner also took note of the opinion expressed by civil society members that the lack of effective and dissuasive sanctions encourages perpetrators to persist in their violent behaviours.
11. Beyond these issues, the Commissioner is deeply concerned about the discriminatory practices prevailing among law enforcement forces and the judiciary, which not only lead to the secondary victimisation of women subjected to domestic violence, but ultimately render their access to justice ineffective. The Commissioner notes that a series of measures were taken by the Romanian authorities as part of the execution of the Court’s judgment in this case, including capacity-building programmes for police agents, prosecutors and judges. However, the Commissioner observed during her visit to Romania that these measures were not sufficient to guarantee an adequate response from the authorities to the institutional discrimination faced by women victims seeking protection from domestic and other forms of gender-based violence.

⁵ Under Article 5 of Law no. 217/2003 on preventing and combating domestic violence (as amended by Law no. 174/2018), the notion of “family members” includes, among others, former and current spouses and partners, as well as persons who have established relations similar to those between parents and children, whether or not the perpetrator shares or has shared the same residence with the victim.

⁶ Commissioner’s 2019 report (fn. 3 above), paragraph 77.

⁷ CEDAW, [Concluding observations](#) on the combined seventh and eighth periodic reports of Romania, 2017, CEDAW/C/ROU/CO/7-8, paragraph 18(b).

⁸ *Idem*, paragraph 18(e) and the Commissioner’s 2019 report (fn. 3 above), paragraph 74.

⁹ Article 13 (1) (h) of Law no. 217/2003 on preventing and combating domestic violence (as amended by Law no. 174/2018); see Commissioner’s 2019 report (fn. 3 above), paragraph 74.

¹⁰ National Agency for Equal Opportunities for Women and Men, [Monitoring report](#) on the implementation of the Action Plan for the implementation of the National strategy for promoting equal opportunities for women and men and combating domestic violence 2018-2021, 15 February 2019, Chapter “Overview”, section B, “Statistical data in the field of domestic violence in Romania”.

12. During her visit, NGOs she met stressed that, especially in rural areas, police agents are often reluctant to register or process women's complaints, advise women not to submit complaints, and blame them for their situation. This is a long-standing problem which is yet to be successfully addressed. Regarding Roma women, the Commissioner was informed that acts of violence committed against them are routinely ascribed to "cultural practices" specific to their communities and ignored on that ground. In addition, NGOs brought to the Commissioner's attention the difficulties faced by many women in accessing legal aid.
13. The Commissioner also notes that the number of individuals committed for trial remains very low compared to that of the reported domestic violence-related offences. While in 2018, the National Agency for Equal Opportunities for Women and Men (hereinafter "the Equal Opportunities Agency") recorded 13 182 cases of domestic violence, preliminary data issued by the prosecution authorities for the same year showed a number of 1 360 aggressors committed for trial.¹¹ During the Commissioner's visit to Romania, the authorities generally explained the low number of trials (as well as convictions) simply by reference to the fact that women tended to reconcile with the aggressors or to withdraw their complaints, such options being available to victims in cases of offences deemed of lesser gravity (minor offences), investigated *ex parte*. Moreover, the Commissioner noted that there was a strong focus on "keeping families together", at the expense of the obligation to protect women from violence, as well as a widespread perception that no particular concerns existed in this respect, as Romanian legislation protects victims regardless of their gender.¹² The Commissioner wishes to reiterate her view already expressed in her 2019 report on Romania that it is not enough for the authorities to adopt legislation protecting all victims of violence. It is also necessary that they implement it systematically, and in a gender-sensitive and non-discriminatory manner.¹³

II. Availability and accessibility of support measures for victims of domestic violence

14. The Commissioner further notes the limited availability of support services, notably shelters, in some regions of Romania. At the time of her visit to Romania, shelters for victims of domestic violence were concentrated in urban areas, making it difficult for victims from rural or isolated areas to access them. Moreover, although the law required all county authorities to provide social assistance to victims of domestic violence, in some counties public shelters were lacking and the authorities failed to consistently allocate financial resources to shelters operated by NGOs. The Commissioner was informed that shortly before her visit, the Equal Opportunities Agency had launched a four-year project supported by EU funds, with a view to establishing a network of 42 shelters of adequate geographical distribution, covering all counties of Romania and the municipality of Bucharest. While progress has been reported in this respect, the information received by the Commissioner indicates that for many women, access to shelters remains out of reach. According to civil society reports, pre-existing difficulties in accessing shelters have become even more evident in the context of the COVID-19 pandemic.
15. Another problem noted by the Commissioner during her visit was the lack of specific quality standards in force for services provided by shelters. Various interlocutors highlighted that county and local authorities applied different policies concerning the admission of victims to the shelters, restrictions on access being determined principally by the financial resources available at local level. The Commissioner was informed that since her visit, the authorities have adopted specific quality standards for services provided by shelters.¹⁴ In this regard, in light also of the accessibility problems noted, the Commissioner considers it critical that the authorities support the implementation of these standards through adequate financial allocations.

¹¹ Equal Opportunities Agency, 2019 Monitoring report (fn. 10 above), Chapter "Overview", section B, "Statistical data in the field of domestic violence in Romania".

¹² Commissioner's 2019 report (fn. 3 above), paragraphs 81-82.

¹³ *Idem*, paragraph 83.

¹⁴ Order no. 28/2019 of the Minister of Labour and Social Justice approving minimum quality standards for the accreditation of social services for the prevention and combating of domestic violence.

III. The need to strengthen the promotion of gender equality in Romania

16. The Commissioner considers that the issues raised in the previous two sections can only be effectively addressed in the context of a broader effort to tackle the widespread phenomenon of domestic violence in Romania and the persisting prejudices and tolerance of domestic violence in Romanian society. In the Commissioner's view, a series of structural changes are necessary to achieve this. They should include adequate data collection; sufficient allocation of resources; more efficient inter-institutional coordination and co-operation; and enhanced focus on prevention measures, in particular those aimed at fighting prejudices and increasing awareness and understanding among the general public of the various forms of violence against women, including domestic violence, their consequences and the need to prevent such violence.
17. As observed in the Commissioner's report, Romania does not have an integrated system of data collection concerning domestic violence and other forms of violence against women.¹⁵ Various authorities, including the police, the prosecution authorities, the judiciary and the Equal Opportunities Agency collect separate data, which are not centralised to provide a comprehensive picture of the phenomenon of domestic violence. This situation results also from the latest monitoring report (2019) of the Equal Opportunities Agency.¹⁶
18. Regarding the allocation of resources, the Commissioner observed during her visit that the Equal Opportunities Agency was understaffed, and a number of programmes proposed by this Agency for the years 2017-2019, including the establishment of new shelters for victims of domestic violence, had not been allocated funds from the state budget. Insufficient resources combined with a lack of technical capacity at county and local levels were also at the root of the scarcity and inconsistent quality of support services provided to victims in various regions of the country.
19. Furthermore, several of the Commissioner's interlocutors have highlighted the difficulty of implementing the existing Domestic Violence Strategy¹⁷ in an environment of weak inter-institutional coordination and co-operation. They stressed in particular the unresponsiveness of some ministries to the efforts of the Equal Opportunities Agency and the poor co-operation between authorities at county and local levels. The Commissioner's discussions with various interlocutors also revealed that despite the existing collaboration protocols, there was often a lack of common ground among authorities concerning the level of participation expected from them. The 2019 monitoring report of the Equal Opportunities Agency reveals in this respect the lack of awareness of several relevant institutions of the government decision approving the Domestic Violence Strategy; the failure of some institutions to report about the measures taken for the implementation of the strategy; and the failure of some institutions to take any of the measures included in the Action plan for the implementation of the strategy.¹⁸
20. Last but not least, the Commissioner recalls the Court's findings that official statistical data showed that violence against women is tolerated and perceived as normal by a majority of people, and that the authorities themselves did not fully appreciate the seriousness and extent of the problem of domestic violence.¹⁹ She also recalls that the high level of social tolerance of

¹⁵ Commissioner's 2019 report (fn. 3 above), paragraph 63.

¹⁶ Equal Opportunities Agency, 2019 Monitoring report (fn. 10 above), Chapter "Overview", section B, "Statistical data in the field of domestic violence in Romania".

¹⁷ Government decision no. 365/2018 approving the National Strategy for the promotion of equal opportunities for women and men and the prevention and combating of domestic violence 2018-2021 and the Action plan for the implementation of the Strategy.

¹⁸ Equal Opportunities Agency, 2019 Monitoring report (fn. 10 above), Chapter "Monitoring the implementation of the National Strategy for the promotion of equal opportunities for women and men and the prevention and combating of domestic violence 2018-2021", section C, "SWOT analysis of activities for the implementation of the strategy in 2018".

¹⁹ European Court of Human Rights, *Bălșan v. Romania*, application no. 49645/09, judgment of 23 May 2017, paragraphs 83 and 85.

domestic violence was highlighted in a number of reports of the Equal Opportunities Agency.²⁰ In this context, she regrets the recent adoption by the Parliament of Romania of an amendment to the Law on national education, prohibiting the teaching of “gender identity theory” in schools at all levels, including universities.²¹ The Commissioner is concerned that the above-mentioned amendment, which bans education on “the theory or opinion that gender is a concept different from biological sex”, may further fuel sexist prejudices in society and hinder, at a systemic level, the fulfilment of Romania’s international obligations to fight gender-based discrimination and violence. She wishes to recall in this respect that the purpose of the term “gender”, as used in the Istanbul Convention, is not to replace the biological definition of “sex”, but to make the point that “gender stereotypes and roles” about women and men need to be tackled because they play a part in the perpetuation of violence against women.

Conclusions

21. The Commissioner considers that a stronger commitment of the authorities is needed to ensure the effective protection of women from gender-based violence in Romania, as an essential component of guaranteeing women’s rights and advancing gender equality. In the Commissioner’s opinion, decisive action by the authorities is necessary to: address obstacles to women’s access to justice, including by filling legislative gaps and fighting gender-based discrimination of women among law enforcement forces and in the judiciary; increase the availability and accessibility of support measures for victims of domestic violence; and prevent domestic violence and other forms of gender-based violence against women, including through measures aimed at fighting prejudices and promoting gender equality.
22. The Commissioner therefore considers that the Romanian authorities should in particular:
 - broaden the scope of the relevant legislation, in particular the Criminal Code, in order to ensure that all definitions of domestic violence include acts committed between former or current spouses or partners and persons who have established relations similar to those between parents and children, whether or not the perpetrator shares or has shared the same residence with the victim;
 - remove undue financial or administrative barriers for victims requesting protection orders, including by extending the financial support currently provided by law to victims requesting forensic certificates to include those victims who are not registered users of public support services;
 - ensure that provisional protection orders and protection orders are systematically enforced and that breaches of issued orders are subject to effective and dissuasive sanctions;
 - provide ongoing training to professionals involved in combating violence against women and domestic violence, in particular with a view to preventing gender-based discrimination and secondary victimisation of women in law enforcement, criminal investigations and judicial proceedings;
 - develop a sufficient number of shelters of adequate geographical distribution and ensure that access to shelters is not subject to conditions compromising their role of providing support to victims in emergency situations;
 - set up an integrated information management and reporting system for cases of domestic violence as soon as possible;

²⁰ Equal Opportunities Agency, monitoring reports on the implementation of the National Strategy and Action Plan for preventing and combating domestic violence 2013-2017, available at: <http://anes.gov.ro/rapoarte/>.

²¹ Legislative proposal [L87/2020](#) (Senate) for the amendment of Law no. 1/2011 on national education. On 10 July the President of Romania challenged the amendment before the Constitutional Court.

- allocate sufficient resources to the Equal Opportunities Agency and to county and local authorities for their work in combating gender-based violence and promoting gender equality;
- enhance inter-institutional coordination and co-operation; and encourage and support, including by providing adequate financial allocations, the work carried out by relevant NGOs;
- strengthen efforts to promote “zero tolerance” of domestic violence, by carrying out further education and awareness-raising programmes, including in schools and through media campaigns, with a view to increasing public awareness of violence against women and domestic violence, their consequences and the need to prevent such violence;
- fight prejudices and practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men; in this context, pay special attention to countering attempts to challenge gender equality, including any legislative initiatives which might have adverse consequences for the prevention and combating of domestic violence.