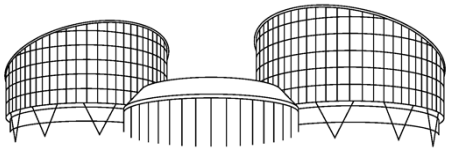

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BUTURUGĂ v. ROMANIA

(Application no. 56867/15)

JUDGMENT

Art 3 and Art 8 • Positive obligations • Respect for correspondence • Cyberviolence as a form of domestic violence • Failure by the authorities to approach the criminal investigation from the perspective of domestic violence • Failure to examine the merits of the complaint of cyberviolence, closely linked to the complaint alleging domestic violence • Need to address comprehensively the phenomenon of domestic violence, in all its forms

STRASBOURG

11 February 2020

FINAL

11/06/2020

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

In the case of Buturugă v. Romania,

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

Jon Fridrik Kjølbro, *President,*
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Carlo Ranzoni,
Georges Ravarani,
Jolien Schukking, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 19 November 2019 and 14 January 2020,

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

PROCEDURE

1. The case originated in an application (no. 56867/15) 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 national of that State, Ms Gina-Aurelia Buturugă ("the applicant") on 11 November 2015.

2. The applicant was represented by Ms L. Cojocaru, a lawyer in Tulcea. 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 a victim of domestic violence and criticised the lack of action by the State authorities.

4. On 29 March 2017 the Government were given notice of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and resides in Tulcea.

6. She complained that she had been the victim of domestic violence. She stated that, during her marriage to M.V., she was subjected to repeated physical violence and death threats, and that these intensified in November 2013. During this period that she and her former husband had been discussing the possibility of a divorce, which was ultimately pronounced on 30 January 2014.

A. The criminal complaint concerning the incidents of 17 and 22 December 2013

7. The applicant submitted that on 17 December 2013 M.V. had threatened to kill her, by throwing her from a balcony in order to create the impression that she had committed suicide. She further submitted that on 22 December 2013 M.V. struck her on the head and threatened to kill her with an axe; she had then taken refuge in a room in their flat and called for help.

8. On 23 December 2013 the applicant obtained a forensic certificate stating that she required three to four days of medical treatment on account of her injuries, which could have been sustained on 22 December 2013.

9. On 23 December 2013 she also filed a complaint against M.V. before the prosecutor's office at the Tulcea Court of First Instance ("the prosecutor's office"). On 6 January 2014 she filed a further complaint against M.V. and reiterated her allegations as to the violence and threats she had suffered. The applicant alleged that the authorities tried to persuade her to withdraw her complaint on the grounds that her injuries were not serious.

10. On an unspecified date the applicant applied to join the proceedings as a civil party and requested compensation for the pecuniary and non-pecuniary damage she had suffered.

11. On 18 March 2014 she requested, with a view to obtaining evidence in criminal proceedings, an electronic search of the family's computer, alleging that M.V. had wrongfully accessed her electronic accounts, including her Facebook account, and that he had made copies of her private conversations, documents and photographs. By an order of 2 June 2014, the Tulcea police rejected the applicant's request on the grounds that the evidence liable to be gathered in this way would be unrelated to the offences of making threats and violence of which M.V. was accused.

12. On 2 July 2014 the applicant added to the file at the public prosecutor's office a copy of the judgment of 13 March 2014 of the Tulcea Court of First Instance ("the first-instance court"), which had issued a protection order in her favour (see paragraph 23 below).

13. On 11 September 2014 the applicant filed a new criminal complaint against M.V. for breach of the confidentiality of correspondence.

14. The police questioned the applicant and also, as witnesses, her daughter, mother and sister-in-law. The latter persons indicated that their relative had spoken to them about the violence to which she had been subjected.

15. In the applicant's submission, her mother had told the police that she had given her daughter accommodation following the latter's departure, driven by fear, from the marital home, and that she had seen the marks of violence and excoriations caused by her former son-in-law. However, still in the applicant's submission, the police officers did not record her mother's

statement in its entirety because, in their view, it was not relevant. Furthermore, again according to the applicant, the witnesses had been heard unlawfully, without being sworn in, and their statements had not been recorded in full. The Government challenged the applicant's allegations, relying on the records of the interviews with the witnesses, which contained their signatures.

16. On 25 November 2014 the police questioned M.V. as a suspect.

17. By a decision of 17 February 2015, the public prosecutor discontinued the case. The order to discontinue the case was based on Article 193 §§ 1 and 2, Article 206 § 1 and Article 302 § 2 of the new Criminal Code, penalising assault and other violence, threats, and breach of the secrecy of correspondence respectively (see paragraph 32 below). In its order, the prosecutor's office stated that the applicant had indeed been threatened with death by her former husband on 17 December 2013, but it considered that his conduct had not been serious enough to be classified as an offence. It therefore decided to impose an administrative fine of 1,000 Romanian lei (RON, approximately 250 euros (EUR)) on M.V. In addition, the prosecutor's office considered that there was no evidence of the acts of violence allegedly committed on 22 December 2013. Thus, according to the public prosecutor's office, the forensic medical certificate issued on the following day (see paragraph 8 above) proved that the applicant had been subjected to violence but did not establish with certainty that M.V. was the perpetrator. As regards the complaint concerning the breach of the secrecy of correspondence, the prosecutor's office dismissed it as being out of time.

18. The applicant challenged the order of 17 February 2015 before the public prosecutor's office. By an order of 9 March 2015, the head prosecutor at the public prosecutor's office dismissed her challenge.

19. The applicant then challenged the prosecutor's orders before the district court, complaining, *inter alia*, that insufficient evidence had been gathered. She also argued that the offence of a breach of the secrecy of correspondence fell to be examined *ex officio*, even in the absence of a formal complaint by the injured party.

20. The applicant alleged that she had asked to consult the file at the prosecutor's office and had in the process discovered that some of the evidence was missing, in particular her requests to the prosecutor's office and several police reports. The Government disputed these allegations, referring to the file from the public prosecutor's office, a copy of which had been submitted to the Court. This file included copies of the criminal complaints lodged by the applicant on 23 December 2013 and on 6 January and 11 September 2014 (see paragraphs 9 and 13 above). The file also included copies of the statements made by the applicant, M.V. and the witnesses (the applicant's daughter, sister-in-law and mother). These statements had been signed by their respective authors. The file also

contained a number of requests made by the applicant to the investigating authorities, as well as police reports drawn up during the proceedings.

21. By a final decision of 25 May 2015, the first-instance court rejected the applicant's challenge. The court upheld the prosecutor's findings that the threats made to the applicant by M.V. did not present the degree of social danger necessary to be classified as offences and that there was no direct evidence that the injuries sustained by the applicant had been inflicted by M.V. With regard to the applicant's complaint about the alleged breach of the secrecy of correspondence, the court found that it was irrelevant to the subject matter of the case and that data published on social networks were public. The court also rejected the applicant's arguments concerning irregularities in the taking of witness statements (see paragraph 15 above).

B. The application for a protection order

22. On an unspecified date the applicant applied to the trial court for a protection order (*ordin de protecţie*) against M.V., on the basis of Law no. 217/2003 on preventing and combating domestic violence ("Law no. 217/2003"; see paragraph 33 below).

23. By an enforceable judgment of 13 March 2014, the first-instance court, relying on the statement by the applicant's mother, who had been questioned as a witness, and on the forensic certificate of 23 December 2013 (see paragraph 8 above), found that M.V. had assaulted and threatened his former wife. It accordingly granted the applicant's request, and issued a six-month protection order, worded as follows:

> "For the duration of the protection order, [the court] shall impose the following measures on the defendant:
>
> - eviction from the building in Tulcea...;
>
> - an obligation to keep at a minimum distance of 200 metres from the requesting party;
>
> - a prohibition on travelling to the address of the requesting party's parents in Tulcea ...;
>
> - a prohibition on making any contact by telephone or written correspondence, or in any other manner, with the requesting party."

24. On 17 March 2014 the police informed M.V. of the protection order against him. The Government submitted copies of two reports drawn up by the Tulcea police for this purpose, which also included the applicant's signature.

25. In the meantime, M.V. had lodged an appeal against the above judgment. By a judgment of 18 September 2014, the Tulcea County Court dismissed his appeal and confirmed the facts established by the first-instance court.

26. The applicant alleged that there had been a delay by the police in enforcing the protection order and that M.V. had failed to comply with it. In this regard, she states that he approached the block of flats in which her parents lived and that she received threats from him through one of his family members. She added that her former husband had contacted her through a mediator, seeking to persuade her to withdraw her criminal complaints in exchange for a more favourable division of the joint property, while simultaneously threatening to file a criminal complaint against her for defamation. She also submitted that M.V. had been in contact with her mother and daughter, and that she had informed the police about this on several occasions, to no avail.

27. The Government submitted that they had not found in the domestic authorities' case file any request made by the applicant for protection during the period in which the protection order was in force, that is, until 13 September 2014 (see paragraph 23 above), and that the applicant did not apply for renewal of the order after 13 September 2014.

C. The incident of 29 October 2015

28. The applicant also referred to an incident on 29 October 2015, when M.V. allegedly chased her down a street. She stated that on 3 November 2015 she applied to the Tulcea police for recordings from the surveillance cameras installed in the vicinity of the public area where she had allegedly been pursued by M.V.

29. The Government submitted that criminal proceedings for harassment were pending before the prosecutor's office when observations were exchanged in the present case (27 July 2017). In the course of those proceedings, the police interviewed the applicant and her former husband and obtained recordings from the surveillance cameras in the vicinity of the area indicated by the applicant. An individual who was accompanying the applicant at the time could not be questioned as a witness because he had left the country in the meantime.

30. The parties have not informed the Court of the outcome of those proceedings.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law

31. The relevant provisions of the former Romanian Criminal Code pertaining to the present case, particularly those concerning the offences of "assault and other violence" and threats, are set out in the judgment *E.M.*

v. Romania (no. 43994/05, § 41, 30 October 2012). The former Criminal Code also contained the following provision:

Article 195 – Breach of secrecy of correspondence

"1. Anyone who unlawfully opens somebody else's correspondence or intercepts somebody else's conversations or communications via telephone, telegraph or any other long-distance means of transmission shall be liable to imprisonment for between six months and three years.

...

3. A prosecution shall be initiated on the basis of a complaint by the injured party."

32. The relevant provisions of the new Criminal Code, in force since 1 February 2014, are worded as follows:

Article 193 – Assault or other violence

"(1) Assault or acts of violence causing physical suffering shall be punishable by a prison sentence of between three months and two years, or by a fine.

(2) The fact of causing injuries or damage to the health of a person [where the gravity of his or her condition necessitates] a maximum of 90 days of medical care, shall be punishable by a prison sentence of between six months and five years, or a fine.

(3) Criminal proceedings shall be initiated upon a prior complaint by the injured party."

Article 199 – Family-based violence

"1. (1) Where the facts referred to in Article 188 [homicide], Article 189 [aggravated homicide] and Articles 193-195 [assault and other violence, physical injury and bodily harm resulting in death] are committed against a family member, the maximum sentence provided for by law shall be increased by a quarter.

2. With regard to the offences set out in Article 193 and Article 196 [involuntary body injury], criminal proceedings may be instituted *ex officio*. The parties' reconciliation shall remove criminal liability."

Article 206 – Threat

"1. The fact of threatening a person with a crime or an act prejudicial to him or her, or to another person, if it is such as to induce fear [in the person threatened], shall be punishable by imprisonment of between three months and one year, or by a fine; the penalty imposed shall not exceed the penalty prescribed by law for the offence that is the subject of the threat."

Article 302 – Breach of the secrecy of correspondence

"1. The opening, removal, destruction or retention without permission of correspondence addressed to another person, as well as the disclosure without permission of the content of such correspondence, even where it was sent unsealed or was opened in error, shall be punishable by imprisonment of between three months and one year or a fine.

2. The interception without permission of a conversation or communication made by telephone or by any electronic means of communication shall be punishable by imprisonment of between six months and three years or by a fine.

...

7. With regard to the acts referred to in the first paragraph, criminal proceedings shall be initiated upon a prior complaint by the injured party."

Article 360 – Illegal access to a computer system

"1. Unauthorised access to a computer system shall be punishable by imprisonment from three months to three years, or by a fine.

2. The acts referred to in the first paragraph, where they were committed with a view to obtaining computer data, shall be punishable by imprisonment of between six months and five years."

33. The relevant provisions of Law no. 217/2003 (see paragraph 22 above) have been summarised in the *E.M. v. Romania* judgment (cited above, §§ 43-45). In particular, Law no. 217/2003 defines as follows the forms taken by domestic violence:

Article 4

"Family-based violence is expressed in the following ways:

(a) verbal violence – ... ;

(b) psychological violence – imposing one's wishes or controlling the individual ..., control of [the other person's] private life ..., monitoring the victim's home, workplace or other locations frequented by him or her ... ;

(c) physical violence – ... ;

(d) sexual violence – ... ;

(e) economic violence – ... ;

(f) social violence – ... ;

(g) spiritual violence – ..."

B. International law

34. The relevant international law in this area is set out in the case of *Opuz v. Turkey* (no. 33401/02, §§ 72-82, ECHR 2009).

1. The United Nations system

35. In its Concluding observations on the combined seventh and eighth periodic reports of Romania[1], examined on 6 July 2017, the United Nations Committee on the Elimination of Discrimination against Women noted its

[1] https://www.ohchr.org/EN/Countries/ENACARegion/Pages/ROIndex.aspx

concerns about under-reporting of cases of gender-based violence against women and girls, including psychological and economic violence, sexual harassment and marital rape. Thus, the UN Committee recommended, among other measures, that the Romanian authorities ensure that all reported cases of gender-based violence against women and girls are effectively investigated, perpetrators be prosecuted and sentences that are commensurate with the gravity of the crime be handed down.

36. According to a report[2] on cyberviolence against women and girls issued in 2015 by a specialised United Nations commission, the UN Broadband Commission for digital development working group on broadband and gender, cyberviolence against women and girls must be approached in the light of the definition given by the United Nations to violence against these groups. According to this report, cyberviolence thus has the following specific aspects:

> "The term 'cyber' is used to capture the different ways that the Internet exacerbates, magnifies or broadcasts the abuse. The full spectrum of behaviour ranges from online harassment to the desire to inflict physical harm including sexual assaults, murders and suicides. Cyber violence takes different forms, and the kinds of behaviours it has exhibited since its inception has changed as rapidly — and, unchecked, will continue to evolve — as the digital and virtual platforms and tools have spread."

This report includes a list of the forms that cyberviolence against women may take, and identifies six categories: hacking, impersonation, surveillance/tracking, harassment/spamming, recruitment and malicious distribution. It defines hacking as the use of technology to gain illegal or unauthorised access to systems or resources for the purpose of acquiring personal information, altering or modifying information, or slandering and denigrating the victim, and takes, for example, the form of violating passwords and controlling computer functions. Surveillance/tracking refers to the use of technology to monitor a victim's activities and behaviours either in real-time or historically (such as GPS tracking, or tracking keystrokes in order to recreate the victim's computer activity).

2. The Council of Europe system

37. The provisions of the Convention on preventing and combating violence against women and domestic violence ("the Istanbul Convention") are described in *M.G.* v. *Turkey* (no. 646/10, § 54, 22 March 2016). This convention entered into force in respect of Romania on 1 September 2016.

38. The Istanbul Convention contains, *inter alia*, the following provisions:

[2] https://en.unesco.org/sites/default/files/genderreport2015final.pdf

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;

b "domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;

..."

39. It also contains, in Chapter V, provisions of substantive law, and defines several types of domestic violence, including psychological violence, stalking, and physical or sexual violence (Articles 33-36). Articles 33 and 34, which are relevant to the present case, are worded as follows:

Article 33 – Psychological violence

"Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.

Article 34 – Stalking

"Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.

..."

40. The Council of Europe's Working Group on cyberbullying and other forms of online violence, especially against women and children, proposed the following definition in a report prepared in 2018[3] (*Mapping study on cyber violence*):

> "Cyberviolence is the use of computer systems to cause, facilitate, or threaten violence against individuals that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering and may include the exploitation of the individual's circumstances, characteristics or vulnerabilities."

This study specifies that certain forms of cybercrime, such as illegal access to intimate personal data or the destruction of data may also be considered acts of cyberviolence. It also includes a list of actions falling within the definition of cyberviolence against women: ICT-related violations of privacy, ICT-related hate crimes, cyberstalking, direct online

[3] https://rm.coe.int/t-cy-2017-10-cbg-study-provisional/16808c4914

threats of physical violence, cybercrime and sexual exploitation, and online sexual abuse of children. ICT-related violations of privacy include computer intrusions and the taking, sharing, manipulation of data or images, including intimate data. Cyberstalking is stalking in an electronic format. It encompasses a pattern of repeated, intrusive behaviours – such as following, harassing, and threatening, and causes fear in victims. The study also refers to research showing that cyberstalking by intimate partners often occurs in the context of domestic violence and is a form of coercive control.

C. The data available in the European Union

41. An EU-wide survey carried out between March and September 2012 by the European Union Agency for Fundamental Rights indicated that 30% of Romanian women stated that they had been victims of physical and/or sexual violence by a partner or another person, and 39% of Romanian women stated that they had experienced some form of psychological violence by a partner. According to the conclusions of this survey, published in March 2014, violence against women in the European Union is mainly perpetrated by a current or previous partner. 22% of women indicated that they had experienced physical or sexual violence within their intimate-partner relationship. 33% of women reported such violence from a life partner or other person[4]. According to the same report, 5% of women have already experienced cyberharassment at least once since the age of 15[5].

42. In 2017 the European Institute for Gender Equality issued a report on "Cyber violence against women and girls"[6]. According to this report, although statistical data is still lacking, the research that is available nonetheless suggests that women are disproportionately the targets of certain forms of cyberviolence compared to men. The report cites experts who argue that it is more appropriate to consider cyberviolence as a continuum of offline violence. The police tend to make a false dichotomy between online and offline violence against women and girls, constructing victims' experiences as "incidents" rather than patterns of behaviour over time. In addition, the report contains the following passages:

> "There are various forms of cyber VAWG, including, but not limited to, cyber stalking, non-consensual pornography (or 'revenge porn'), gender-based slurs and harassment, 'slut-shaming', unsolicited pornography, 'sextortion', rape and death threats, 'doxing', and electronically enabled trafficking.
>
> ...
>
> Cyber stalking is stalking by means of email, text (or online) messages or the internet. Stalking involves repeated incidents, which may or may not individually be

[4] https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf (see pages 28, 29 and 74).
[5] Ibid., p. 87
[6] https://eige.europa.eu/publications/cyber-violence-against-women-and-girls

innocuous acts, but combined undermine the victim's sense of safety and cause distress, fear or alarm.

As with intimate partner violence (IPV) experienced offline, cyber VAW can manifest as various forms of violence, including sexual, psychological and, as growing trends would indicate, economic, whereby the victim's current or future employment status is compromised by information released online. The potential for violence in the cyber-sphere to manifest psychically should also not be discounted..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

43. The applicant complains of the ineffectiveness of the criminal investigation into the acts of marital violence of which she claimed to be the victim. She complains that her personal safety was not adequately secured. She also criticises the authorities' refusal to examine her complaint alleging a breach of her correspondence by her former husband. She relies on Articles 5, 6 and 8 of the Convention.

44. The Court reiterates that, by virtue of the *jura novit curia* principle, it is the master of the legal characterisation of the facts in the case; it is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], no. 37685/10, §§ 114 and 126, 20 March 2018). In the present case, having regard to the circumstances complained of by the applicant and the manner in which her complaints were formulated, the Court will examine them under Articles 3 and 8 of the Convention (for a similar approach, see *E.S. and Others v. Slovakia*, no. 8227/04, §§ 25-44, 15 September 2009). These provisions are worded as follows:

Article 3

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

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

45. The Government raised several pleas of inadmissibility, the relevance of which was disputed by the applicant.

1. The implementation of the protection order

46. The Government submitted, firstly, that the applicant had not exhausted the domestic remedies in that that she had not contacted the authorities in order to complain about an incident which took place during the period of validity of the protection order issued by the domestic courts (see paragraphs 23 and 27 above) and, secondly, that her complaint was out of time, since it had been submitted to the Court more than six months after the date on which the above order had expired, that is, on 13 September 2014.

47. The applicant considered that the six-month time-limit in the present case had started running on 25 May 2015, the date of the final decision by the first-instance court (see paragraph 21 above).

48. The Court considers that the objections raised by the Government are essentially arguments on the merits, in that they concern the effectiveness of the mechanisms for the protection of victims of marital violence introduced by the domestic legislation. It notes that the applicant exhausted the remedies available to her, in that she lodged criminal complaints against her former husband (see paragraph 9 above) and also made use of the provisions of Law no. 217/2003 in order to obtain a protection order in respect of her former husband (see paragraph 22 above). The issue of whether or not the protection provided to the applicant by that order was effective is an argument relating to the merits of the case, which the Court will examine below (see paragraph 71 below). Equally, the Court considers that it is appropriate in the present case to examine globally all the remedies available to the applicant (see, *mutatis mutandis*, *Kalucza v. Hungary*, no. 57693/10, §§ 49-50, 24 April 2012) and that it would be formalistic to separate the complaint and to calculate in this case the six-month time-limit from 13 September 2014, the date on which the protection order expired, although the applicant's complaint also concerns the criminal investigation regarding threats and assault and violence, which ended with the first-instance court's decision of 25 May 2015 (see paragraph 21 above; for an overall examination of all the remedies available to an applicant who is a victim of domestic violence, see *Bălşan v. Romania*, no. 49645/09, §§ 64-69, 23 May 2017). The Court therefore rejects the Government's objections.

2. The complaint concerning a breach of the secrecy of correspondence

49. The Government objected that the applicant had not exhausted domestic remedies in respect of her complaint regarding the breach of the secrecy of her correspondence. In this connection, they alleged that the applicant had not brought an action for damages in tort against her former husband, which, in their view, would have been the most appropriate action, having regard to the fact that she was complaining about a breach of her correspondence by a private individual.

50. The applicant considered that she had exhausted the remedies available to her.

51. The Court considers that this objection is closely linked to the substance of the applicant's complaint and decides therefore to join it to the merits (see paragraph 73 below).

3. Other grounds of inadmissibility

52. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

53. The applicant asserted that the Romanian State had not complied with its obligations. She submitted that the authorities had not approached the case as one involving marital violence, but as a simple case of violence between individuals, and that they had not conducted the investigation with the diligence required by offences of this kind, which had been committed in private premises and were difficult to prove. She added that the authorities had been passive: they had not questioned the neighbours, had not monitored communications and had not made use of specific investigative measures.

54. The applicant submitted that the protection order had been implemented by the police after a delay and only partially. She alleged that the police had not immediately communicated the content of the order to her former husband and that, during its period of validity, the authorities had ignored his wrongful conduct; he had attempted to intimidate her during the proceedings to divide their property, by failing to appear at the court hearings and by using mediators who had harassed her (see paragraph 26 above).

55. She stated that the allegations against her former husband of breaching the secrecy of correspondence were criminal in nature and that

they were directly related to the incidents of assault, threats and intimidation also alleged by her. In her view, the authorities had been required to examine these incidents of their own motion, without a prior complaint from her, and that, in consequence, she had not been obliged to lodge a complaint within the statutory time-limit.

56. The applicant considered that the authorities' attitude had encouraged her former husband to continue to behave as he saw fit, since he had been aware of the leniency shown by the State institutions.

(b) The Government

57. The Government considered that the criminal investigation in this case had been effective. They stated that the regulatory framework had been adequate and had remained so since the entry into force of the new Criminal Code. They considered that the applicant had complained about one incident of physical violence on 22 December 2013 and two incidents of verbal abuse, which had occurred on 17 and 22 December 2013. The applicant had benefited from protective measures under Law no. 217/2013; however, the Government submitted that the level of evidence required to impose such measures was not the same as that required to form the basis of a criminal conviction. They indicated that during the criminal investigation, all witnesses who might have known the details of the case had been heard. In addition, the evidence had been duly examined, there had been no direct evidence of the assault against the applicant, and she had not lodged a complaint with the authorities immediately after the incidents complained of, but a few days later. In the Government's view, the present case was distinguishable from those of *E.M. v. Romania* (no. 43994/05, 30 October 2012) and *Bălşan* (cited above), given the absence of direct proof and the one-off nature of the physical violence.

58. With regard to the effectiveness of the protection measures, the Government pointed out that the protection order issued by the courts covered the period from 13 March to 13 September 2014 (see paragraph 23 above). They considered that the authorities had acted swiftly in granting the applicant a six-month protection measure, a period that was in their view sufficient to resolve the problems between the spouses. The police authorities had been delayed for three days in implementing the protection order on account of the former husband's absence from his home, but this delay had not resulted in any harm to the applicant. The Government added that the applicant had not informed the authorities of any incident that had occurred during the period covered by the protection order (see paragraph 27 above); the incident reported by her had occurred on 29 October 2015 (see paragraph 28 above), that is, outside this period, and it had been duly investigated.

59. Lastly, the Government submitted that the Romanian State had fulfilled its positive obligations by regulating the offence of breaching the secrecy of correspondence. The legislature's decision to make the instigation of criminal proceedings conditional on a prior complaint by the injured party had been motivated by its wish to protect the right of victims to decide whether or not to make public, in the context of legal proceedings, matters relating to their private lives. The three-month time-limit for lodging a prior complaint was adequate and sufficient and the formal requirements for such a complaint were not excessive. They stated that, in the present case, the applicant had lodged her complaint after the three-month time-limit and that, in addition, she had not availed herself of the possibility of bringing a civil action against her former husband (see paragraph 49 above).

2. The Court's assessment

(a) General principles

60. The Court reiterates that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, even administered by private individuals. Children and other vulnerable individuals – into which category fall victims of domestic violence – in particular are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see *Opuz v. Turkey*, no. 33401/02, § 159, ECHR 2009, and *Bălşan*, cited above, § 57). 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. (see *Bălşan*, cited above, § 57).

61. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the relevant 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 *Đorđević v. Croatia*, no. 41526/10, § 139, ECHR 2012). 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, and *Bălşan*, cited above, § 57 *in fine*).

62. It also reiterates that while the essential object of Article 8 of the Convention is to protect individuals against arbitrary interference by public authorities, it may also impose on the State certain positive obligations to ensure effective respect for the rights protected by Article 8 (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 108 *in fine*, 5 September 2017 (extracts)). The choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation. There are different ways of ensuring respect for private life, and the nature of the State's obligation will depend on the particular aspect of private life that is at issue (see *Söderman v. Sweden* [GC], no. 5786/08, § 79, ECHR 2013, with further references).

(b) Application of the general principles to the present case

63. Turning to the facts of the present case, the Court notes that the Government do not expressly dispute the applicability of Article 3 of the Convention (see paragraph 57 above). It notes that it is also undisputed by the Government that the applicant's right to respect for her private life and correspondence, as guaranteed by Article 8 of the Convention, is in issue. In this connection, the Government's arguments focus rather on the submission that the national authorities complied with their positive obligations under the Convention, by making available to the applicant remedies enabling her to have her complaints examined and to award her compensation where appropriate (see paragraphs 49 and 59 above).

64. The Court further notes that the applicant complains of several shortcomings in the protection system for the victims of domestic violence, which it will examine below.

(i) The investigation into the ill-treatment

65. As it has already held in the *Bălşan* judgment (cited above, § 63), the Court notes that in the present case the applicant had available to her a regulatory framework, based in particular on the provisions of the Criminal Code, which punished domestic violence very severely (see paragraph 32 above), and of Law no. 217/2003 (see paragraph 33 above), so as to complain about the violence of which she claimed to be a victim and to seek the authorities' protection. The Court will now examine whether the impugned regulations and practices, and in particular 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 (see *Valiulienė v. Lithuania*, no. 33234/07, § 79, 26 March 2013).

66. The Court notes that the applicant contacted the authorities on 23 December 2013 and 6 January 2014 to lodge complaints about her former husband's violent behaviour (see paragraph 9 above). Submitting a forensic medical report (see paragraph 8 above), she complained, in particular, about the threats and assaults allegedly inflicted by her former husband. However, the Court notes that the authorities did not address the facts of the present case from the perspective of marital violence. Thus, the Court notes that the decision by the prosecutor's office on 17 February 2015 to discontinue the proceedings was based on the articles of the new Criminal Code which punish violence between individuals, and not on the provisions of that Code which punish more severely marital violence (see paragraph 17 above; for the provisions of the new Criminal Code, see paragraph 32 above). The Court further notes that the first-instance court, in its decision of 25 May 2015, did not change the legal classification given to the offences with which the former husband was charged (see paragraph 21 above).

67. The Court emphasises that special diligence is required in dealing with domestic violence cases and considers that the specific nature of domestic violence as recognised in the Preamble to the Istanbul Convention (see paragraph 38 above) must be taken into account in the context of domestic proceedings (see *M.G. v. Turkey*, cited above, § 93). In the present case, it notes that the domestic investigation conducted by the national authorities failed to take these specific aspects into account.

68. Moreover, the Court considers that the conclusions reached by the first-instance court are open to question. Thus, that court found that the threats to the applicant were not sufficiently serious to qualify as offences, and that there was no direct evidence that the injuries had been caused by her former husband (see paragraph 21 above). The Court is not convinced that such conclusions had a dissuasive effect capable of curbing such a serious phenomenon as domestic violence. It also notes that although no domestic authority contested the reality and severity of the injuries sustained by the applicant, none of the investigative measures had enabled the individual responsible to be identified. Thus, it notes that the investigative authorities had merely questioned as witnesses the applicant's relatives (her mother, her daughter and her sister-in-law; see paragraph 14 above), but no other evidence had been gathered in order to identify the origin of the injuries sustained by the applicant and, as appropriate, the individuals responsible. In a case such as the present one, concerning alleged acts of family violence, the investigating authorities had a duty to take the necessary measures to clarify the circumstances of the case; such measures could have included, for example, the examining of additional witnesses, such as neighbours, or a confrontation between the witnesses and the parties (see, *mutatis mutandis*, *E.M. v. Romania*, cited above, §§ 66 and 68).

69. The Court further notes that the Government argued that the effectiveness of the investigation was compromised because the applicant did not contact the authorities until several days after the incidents complained of, and that the physical violence to which she was allegedly subjected was an isolated incident (see paragraph 57 above). However, the Court does not consider these arguments to be decisive. It notes that the applicant contacted the authorities within the legal time-limits and that the investigating authorities at no point indicated to her that her complaint alleging threats and assault was out of time. The incidents complained of by the applicant were alleged to have occurred on 17 and 22 December 2013 (see paragraph 7 above), and her first complaint was lodged on 23 December 2013 (see paragraph 9 above); it cannot be considered that an excessive period elapsed between the events in question and her complaint to the authorities. Accordingly, in the circumstances of the present case, the applicant's conduct does not disclose a lack of diligence on her part, especially as the psychological impact is an important aspect to be taken into consideration in cases of domestic violence (see *Valiulienė*, cited above, § 69). Moreover, the Government have not established before the Court that the delay in lodging the complaints had direct consequences on the investigation, for example by rendering impossible the examination of certain items of evidence or the questioning of certain witnesses.

70. Nor can the Court attach decisive importance to the fact that the applicant complained to the authorities about only one incident involving physical violence. It notes that the applicant obtained a forensic medical certificate attesting to the fact that she required three to four days of medical treatment on account of her injuries (see paragraph 8 above) and that the Government do not dispute the seriousness of those injuries (see paragraph 57 above). The Court further notes that no evidence has been adduced, before it or the national authorities, indicating that the present case should be examined from another angle than that of marital violence, and the isolated nature of the incident complained of cannot lead to a different conclusion.

71. It is true that the applicant successfully used the provision of Law no. 217/2003 and that, on 13 March 2014, the first-instance court issued a protection order in her favour, for a period of six months (see paragraph 23 above). The Court also notes the applicant's submission that her former husband failed to comply with the provisions of the protection order (see paragraph 26 above). However, it observes that the allegations that the applicant contacted the police in this connection are not supported by the evidence adduced by the parties (see paragraphs 26-27 above). Nonetheless, it notes that the protection order was issued for a period subsequent to the incidents of 17 and 22 December 2013 complained of by the applicant and that the effects of this order had no impact on the effectiveness of the criminal investigation carried out in her case.

72. Accordingly, the Court considers that, although the legal framework put in place by the respondent State provided the applicant with a form of protection (see paragraph 65 above), this took effect after the violent acts complained of, and was insufficient to remedy the shortcomings in the investigation.

(ii) The investigation into the breach of the secrecy of correspondence

73. The Court observes that the Romanian Criminal Code specifically criminalises the offence of breach of the secrecy of correspondence (for the two versions of the Code successively in force, see paragraphs 31-32 above). It also notes that the applicant contacted the national authorities, in the context of the criminal proceedings for assault and threat, to complain that her former husband had accessed, without authorisation, her electronic communications and made copies of them (see paragraphs 11 and 14 above). At no point did the authorities responsible for the criminal investigation indicate to the applicant that the allegations that she was making against her former husband were not criminal in nature; nor have the Government argued before the Court that the criminal-law remedy was inadequate in this case. Rather, the Government's argument consists in stating that the applicant did not choose the most appropriate remedy in the circumstances and that she ought to have brought a civil action in tort, since the events in question concerned a private individual (see paragraph 49 above). However, the Court considers that the applicant availed herself of a remedy made available to her under domestic law and that she thus exhausted the available remedies. The existence of an alternative remedy cannot lead to a different conclusion (see, *mutatis mutandis*, *Aquilina v. Malta* [GC], no. 25642/94, § 39 *in fine*, ECHR 1999-III, and *M.K. v. Greece*, no. 51312/16, § 55 *in fine*, 1 February 2018). It follows that the Government's preliminary objection (see paragraph 49 above), which had been joined to the merits (see paragraph 51 above), must be dismissed.

74. The Court further notes the applicant's submission that she applied to the authorities who were already investigating her criminal complaint for assault and threat since, in her view, there was a direct link between the breach of her correspondence by her former husband and the acts of violence, threats and intimidation to which she had allegedly been subjected (see paragraph 55 above). The Court notes that, under both domestic and international law, the phenomenon of domestic violence is not regarded as being limited to the sole fact of physical violence but is considered to include, among other aspects, psychological violence and stalking (see paragraphs 33 and 34-42 above; and, *mutatis mutandis*, *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 47, 28 January 2014). Furthermore, cyberbullying is currently recognised as one aspect of violence against women and girls, and can take a variety of forms, including breaches

of cyberprivacy, intrusion into the victim's computer and the capture, sharing and manipulation of data and images, including private data (see paragraphs 36, 40 and 42 above). In the context of domestic violence, cybersurveillance is often carried out by the person's intimate partner (see paragraph 40 above). In consequence, the Court accepts the applicant's argument that actions such as illicitly monitoring, accessing or saving one's partner's correspondence can be taken into account by the domestic authorities when investigating cases of domestic violence.

75. In the present case, however, the Court notes that the domestic authorities failed to consider the merits of the applicant's criminal complaint alleging a breach of the confidentiality of her correspondence. Thus, it notes that her request on 18 March 2014 for an electronic search of the family computer was dismissed by the Tulcea police on the grounds that any information liable to be obtained by this method would be unrelated to the offences of threats and violence of which M.V. was accused (see paragraph 11 above). The Court further notes that the criminal complaint lodged on 11 September 2014 for breach of correspondence was dismissed by an order of the prosecutor's office of 17 February 2015 as being out of time (see paragraphs 13 and 17 above). The Court takes the view that, by acting in this way, the investigating authorities displayed excessive formalism, particularly since, according to the applicant's arguments (see paragraph 55 above), which were not disputed by the Government, under the new Criminal Code (which entered into force on 1 February 2014, and thus before the applicant's first request for an electronic search of the family computer), the investigating authorities could intervene of their own motion in the event of the wrongful interception of a conversation conducted by any electronic means of communication; the condition of a prior complaint was applicable solely for the improper opening, removal, destruction or detention of correspondence addressed to another person (see Article 302 of the new Criminal Code, cited in paragraph 32 above).

76. As to the final decision by the first-instance court of 25May 2015, finding that the applicant's complaint concerning the alleged breach of her correspondence was unrelated to the subject matter of the case and that information posted on social media was public in nature (see paragraph 21 above), the Court considers that these findings are open to criticism. It reiterates that it has already held that acts such as illicitly monitoring, accessing or saving one's partner's correspondence can be taken into account by the domestic authorities when investigating cases of domestic violence (see paragraph 74 above). It considers that such allegations of breach of correspondence require the authorities to conduct an examination on the merits in order comprehensively to apprehend the phenomenon of domestic violence in all its forms.

77. The Court also notes that the applicant 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 (see paragraphs 11 and 13 above). It deduces that the applicant was referring to a whole set of electronic data and documents, which was not confined to the data which she had published on social media. Consequently, the finding by the first-instance court that the data in issue were public is problematic, in that the domestic authorities did not carry out an examination on the merits of the applicant's allegations before categorising the relevant data and communications in this way.

78. The Court therefore concludes that the applicant's allegations to the effect that her former husband improperly intercepted, consulted and saved her electronic communications were not examined on the merits by the national authorities. They did not take procedural measures in order to gather evidence that would have enabled the veracity of the facts or their legal classification to be determined. The Court considers that the authorities were therefore overly formalistic in dismissing any connection with the incidents of domestic violence already brought to their attention by the applicant, and thus failed to take into consideration the many forms that domestic violence may take.

(iii) Conclusion

79. The Court concludes that the national authorities failed to address the criminal investigation as one which raised the specific problem of marital violence (see paragraphs 66-67 and 78 above) and that, by taking this approach, they failed to respond in a manner that was commensurate to the seriousness of the matters complained of by the applicant. The investigation into the accusations of assault was deficient and no examination was conducted into the merits of the complaint alleging a breach of the secrecy of correspondence, which, in the Court's opinion, is closely linked to the complaint of violence. It follows that there has been a failure to comply with the positive obligations under Articles 3 and 8 of the Convention and a breach of these provisions.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed RON 30,358, approximately EUR 6,645, in respect of the pecuniary damage she had sustained on account of the loss of her salary after November 2014 and the costs of her visits to doctors in 2017. She also claimed EUR 12,000 in respect of the non-pecuniary damage caused by the physical and mental suffering resulting from the domestic violence.

82. The Government opposed the award of the sum claimed in respect of pecuniary damage, arguing that there was no causal link with the subject matter of the application. They submitted that the sum claimed in respect of non-pecuniary damage was excessive and unjustified.

83. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers it appropriate to award the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

84. The applicant also claimed RON 2,136.85 (approximately EUR 467) for the costs and expenses incurred before the domestic courts and the Court. She submitted certain supporting documents, concerning, in particular, the legal fees for her representation before the Court, postal and translation costs, and expenses in respect of the medical examinations of 23 and 24 December 2013.

85. The Government invited the Court to award the applicant an amount corresponding to the reasonable expenses necessarily and actually incurred in the proceedings.

86. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 457 covering costs under all heads.

C. Default interest

87. 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. *Joins to the merits* the Government's preliminary objection on non-exhaustion of domestic remedies as regards the complaint under Article 8 of the Convention, and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Articles 3 and 8 of the Convention on account of the failure to comply with the positive obligations arising from these provisions;

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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 457 (four hundred and fifty-seven euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 French, and notified in writing on 11 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Andrea Tamietti
Deputy Registrar

Jon Fridrik Kjølbro
President