



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

THIRD SECTION

Application no. 26608/11
T.M. and C. M.
against Moldova
lodged on 30 April 2011

STATEMENT OF FACTS

THE FACTS

The applicants, Ms T.M. and C.M., are Moldovan nationals who were born in 1982 and 2002 respectively and live in Chişinău. They are mother and daughter. They were represented before the Court by Mr A. Postica, N. Hriplivîi, P. Postica and L. Poţîng from “PromoLEX”, a non-governmental organisation based in Chişinău.

The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

1. Background to the case

The first applicant was married to M.M. since 2001. The second applicant was born from that marriage in 2002. M.M. got involved in gambling and became aggressive towards both applicants, following which the first applicant filed for and obtained a divorce on 25 February 2010. On 24 February 2011 the Chişinău Court of Appeal decided that the applicants had the right to $\frac{3}{4}$ of the family's apartment, leaving $\frac{1}{4}$ to M.M. The latter allegedly became even more aggressive after that decision was adopted.

On 22 June 2010 the first applicant complained about verbal violence by M.M., following which the latter was sanctioned administratively to paying a fine of 500 Moldovan lei (MDL, approximately 31 euros at the time).

On 5 September 2010 M.M. beat up the first applicant; he also allegedly caused some bruises to the child. A medical report dated 6 September 2010

established that the first applicant had two haematomas on her lower lip and a slight defect to her teeth on the left side. Another report made on the same day established that the second applicant had two bruises on her right hand.

On 21 March 2011 the first applicant again complained to the police about physical and psychological violence from her ex-husband. A medical report made on the same day established that she had two haematomas on her right leg. M.M. was then fined MDL 500.

2. The applicants' request for a protection order

On 1 April 2011 the first applicant made another complaint against M.M. and asked for a protection order.

On 5 April 2011 she asked the prosecution office to initiate a criminal investigation against M.M. On 6 May 2011 a prosecutor rejected that request, finding that the medical evidence had confirmed that the injuries caused to the applicants had been considered as not causing damage to their health, while the offence of family violence applied only when at least light damage to health had been caused. The applicants challenged that decision before the Prosecutor General's Office on 12 May 2011.

On 11 April 2011 the Buiucani District Court adopted a protection order, obliging M.M. to temporarily leave home and avoid coming closer than 100m to the applicants or their places of work and study. However, it was not sent to the relevant authorities and the first applicant obtained a copy only on 22 April 2011. On the same day the first applicant brought the copy of the protection order to the knowledge of the local police, the Ministry of Internal Affairs and the Social Assistance Department.

On 20 April 2011 a psychological report confirmed that the second applicant experienced anxiety and emotional trouble. It recommended separation from the abusive father.

Despite two visits by the police aimed at forcing M.M. to leave the apartment (on 22 and 28 April 2011), M.M. was not evicted and the applicants had to spend several nights with their relatives. A third attempt to evict M.M. on 29 April 2011 failed, when the latter showed a decision of the Buiucani District Court suspending the enforcement of its own decision of 11 April 2011 pending examination of the appeal lodged by M.M. After that the police refused to take any action in respect of M.M. until a decision was reached by the courts.

On 22 April 2011 the applicants asked to be admitted to a family violence victims' shelter, the staff of which established their psychological troubles as a result of violence suffered from M.M.

On an unknown date the applicants appealed against the decision of 29 April 2011. The Public Order and Police Department of the Ministry of Internal Affairs ("the Department") also appealed against that decision and submitted that the court had been obliged by law to take a decision in respect of the applicants' complaint within 24 hours, which it had manifestly failed to do. Moreover, the law provided that objections to a decision instituting a protection order could not suspend the enforcement of such an order. However, the court had suspended the enforcement of the protection order of 11 April 2011. Furthermore, the protection order had not been forwarded to the police and social protection authority immediately, as

required by law. The failure to take a decision and the failure to enforce the protection order put the applicants at risk of further ill-treatment.

On 24 May 2011 a criminal investigation was initiated against M.M. for the alleged stealing of jewellery from the first applicant.

Also on 24 May 2011 the Chişinău Court of Appeal rejected the appeal lodged by the applicants and the Department and accepted that lodged by M.M., quashing the decisions of 11 April 2011 and implicitly annulling the measures adopted in the protection order. The court found that the lower court had failed to examine the applicants' request in a special procedure and had not specified the reasons for adopting the protection order, had not verified whether the alleged aggressor had been properly summoned to the court hearing and had failed to obtain a report from the social assistance authority and the police before adopting the protection order. Moreover, the lower court had not had the power to suspend the enforcement of the protection order as it had done. Therefore, the decision of 29 April 2011 was also quashed. Since the lower court had failed to observe legal requirements and adopted an unlawful decision, the Court of Appeal ordered a re-examination of the case.

On 15 July 2011 the Buiucani District Court rejected the applicants' request for issuing a protection order. It found that the second applicant had explained that she loved both parents equally; that the father had spoken bad things and tried to oust them out of the apartment; that there had been cases when her father had hit her mother and cases where the latter had scratched her father or threatened him with a knife. The court noted that the first applicant had submitted that M.M. had insulted her, but that had not been proved. It concluded that domestic violence had not been proved.

The case is pending before the Chişinău Court of Appeal.

COMPLAINTS

1. The applicants complain under Article 3 of the Convention that the authorities have failed to fulfil their positive obligations in offering protection from further violence and in failing to prosecute the aggressor.

2. They also complain under Article 6 of the Convention that the Buiucani District Court suspended its own decision of 11 April 2011 even though the law reserved such a right only to the higher instance court.

3. They further complain under Article 8 of the Convention about the failure of the authorities to fulfil their positive obligations such as taking a quick decision in response to their request for a protection order and then communicating the decision immediately to the competent authorities. They claim that the leniency of the sanctions applied to the aggressor contributed to his continuing his violent acts.

4. The applicants complain under Article 13 of the Convention that they have no effective remedies in respect of their complaints under Article 8, in particular in respect of the police officers' inertia in enforcing the protection order.

5. They finally complain under Article 14 in conjunction with Articles 3 and 8 of the Convention, claiming that the authorities have a biased approach against women in matters concerning family violence.

QUESTIONS TO THE PARTIES

1. Has there been a violation of Article 3 and/or 8 of the Convention? In particular, did the authorities discharge their positive obligations under these provisions to protect the applicants from domestic violence and to prosecute those responsible for such violence?

2. Has there been a violation of Article 13 of the Convention? In particular, did the applicants have at their disposal effective remedies in respect of their complaints under Article 3 and/or 8 of the Convention, in view *inter alia* of the apparent impossibility to enforce the protection order while it was in force?

3. Has there been a violation of Article 14 of the Convention, taken in conjunction with Article 3 and/or 8 of the Convention on account of an alleged discrimination against women in matters concerning domestic violence?