

Eremia v. the Republic of Moldova - 3564/20

Judgment 28.5.2020 [Section III]

Summary of Allegations

Inhuman treatment	2
Positive obligations	2
➤ Failure of authorities to take adequate measures to protect applicant and her daughters from domestic violence: violation	2
➤ The obligation extends to protecting citizens from violence by others: violation.....	2
Respect for private life	2
➤ Failure of authorities to take adequate measures to protect daughters traumatised from witnessing their father's violent assaults on their mother: violation.....	2
Discrimination	2
➤ Failure of judicial system to provide adequate response to serious domestic violence against women: violation	2
Facts	2
Law	2
Article 3:	2
On 9 December 2010 the district court decided that the situation was sufficiently serious to warrant a protection order being made in respect of the first applicant, who had subsequently obtained medical evidence of ill-treatment. Moreover, the fear of further assaults was sufficiently serious to have caused her suffering and anxiety amounting to inhuman treatment within the meaning of Article 3, which was therefore applicable.	2
Article 8:	3
Article 14.....	4
Article 41:	4

Article 3

Inhuman treatment

Positive obligations

- Failure of authorities to take adequate measures to protect applicant and her daughters from domestic violence: violation
- The obligation extends to protecting citizens from violence by others: violation

Article 8

Positive obligations

Article 8-1

Respect for private life

- Failure of authorities to take adequate measures to protect daughters traumatised from witnessing their father's violent assaults on their mother: *violation*

Article 14

Discrimination

- Failure of judicial system to provide adequate response to serious domestic violence against women: violation

Facts – The first applicant was married to a police officer who would often come home drunk and beat her in the presence of their two teenage daughters, the second and third applicants. After having been fined and given a formal warning by the authorities, he became even more violent and allegedly almost suffocated his wife in November 2010. On 9 December 2010 a district court issued a protection order requiring him to vacate the family home and not to contact any of the applicants. On 13 December the first applicant asked for a criminal investigation to be initiated. Further incidents occurred on 16 and 19 December and were reported to the police and on 13 January the husband entered the family home in breach of the protection order and threatened to kill the first applicant unless she withdrew her criminal complaint. That incident was also reported. However, the criminal investigation was suspended for one year provided the husband did not reoffend after the prosecutor found that although there was substantive evidence of guilt the husband had committed a "less serious offence", had no history of drug or alcohol abuse and "did not represent a danger to society". That decision was upheld by a senior prosecutor on appeal.

Law Article 3: On 9 December 2010 the district court decided that the situation was sufficiently serious to warrant a protection order being made in respect of the first applicant, who had subsequently obtained medical evidence of ill-treatment.

Moreover, the fear of further assaults was sufficiently serious to have caused her suffering and anxiety amounting to inhuman treatment within the meaning of Article 3, which was therefore applicable.

By 13 January 2011, when the first applicant met the prosecutor to discuss her husband's alleged breaches of the protection order, the authorities had sufficient evidence of his violent behaviour and of the risk of further violence. The first applicant was particularly vulnerable to violence in the privacy of the family home from her husband, who, as a police officer, was trained to overcome any resistance. The risk to her physical and psychological well-being was imminent and serious enough to require swift action. Although the authorities had not remained totally passive – the husband had been fined and given a formal warning – none of these measures had proved effective.

However, instead of taking decisive action, the authorities had suspended the investigation into his violent behaviour and offered him the possibility of a complete release from criminal liability if he did not reoffend. Given his repeated assaults on the first applicant and blatant disregard of the protection order it was unclear how the prosecutor could have found that he was "not a danger to society" and decided to suspend the investigation against him. Yet the senior prosecutor had subsequently arrived at the same conclusion only four days after a court had extended the protection order on the grounds that the husband still posed a significant risk. In the Court's view, the suspension of the criminal investigation in such circumstances had had the effect of shielding the husband from criminal liability rather than deterring him from committing further violence, and had resulted in his virtual impunity. The State had thus failed to observe its positive obligations under Article 3.

Conclusion: violation in respect of the first applicant (unanimously).

Article 8:

On 9 December 2010 the district court found that the second and third applicants' psychological well-being was being adversely affected as a result of witnessing their father's violence against their mother and made an order extending protection to them also. By late December 2010 the authorities were clearly aware of the husband's breaches of the protection order as well as of his threatening and insulting behaviour towards the first applicant and the effect it was having on the second and third applicants. However, as the Court had already found with respect to the first applicant, little or no action had been taken to prevent the recurrence of such behaviour. On the contrary, despite a further serious assault on 13 January 2011, the husband had eventually been released from all criminal liability. The authorities had therefore not properly complied with their positive obligations under Article 8 in respect of the second and third applicants.

Conclusion: violation in respect of the second and third applicants (unanimously).

Article 14 in conjunction with **Article 3**: The Court reiterated that a State's failure to protect women against domestic violence breached their right to be equally protected under the law. In the instant case, the first applicant had been repeatedly subjected to violence from her husband and the authorities were well aware of the situation. However, the courts had refused to expedite her divorce, the police had allegedly put pressure on her to withdraw her criminal complaint and the social services had failed to enforce the protection order until 15 March 2011 and had even suggested reconciliation since she was "not the first nor the last woman to[have been] beaten up by her husband". Finally, although he had confessed to beating up his wife, the husband had essentially been exempted from all responsibility following the prosecutor's decision to conditionally suspend the proceedings against him.

The combination of these factors clearly demonstrated that the authorities' actions were not a simple failure or delay in dealing with violence against the first applicant but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman. The findings of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences only went to support the impression that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in the Republic of Moldova and its discriminatory effect on women.

Conclusion: violation in respect of the first applicant (unanimously).

Article 41:

EUR 15,000 jointly in respect of non-pecuniary damage.