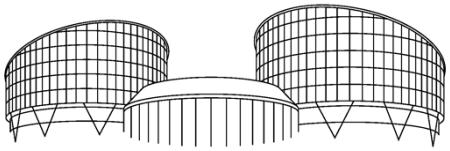

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF A AND B v. ROMANIA

(Applications nos. 48442/16 and 48831/16)

JUDGMENT

Art 2 (substantive aspect) • Positive obligations • Authorities' efforts sufficient, despite some delays and omissions, in view of obstructive behaviour of witnesses placed under protection • Witnesses placed under initial protection order as soon as risk identified • Witnesses not left without any protection during initial delays in finalising protection protocols • Absence of clear instruction to police protection officers and lack of adequate preparation • Authorities' prompt response to correct the failures identified • Witnesses' breach of duty to cooperate and unattainable demands on authorities • Witnesses compromising their safety through presence on social media and on television • Protection and financial support maintained despite unilateral decision by witnesses to change location abroad

STRASBOURG

2 June 2020

FINAL

12/10/2020

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

In the case of A and B 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,
Jolien Schukking,
Péter Paczolay, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 48442/16 and 48831/16) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Romanian nationals, Ms A and Mr B ("the applicants"), on 11 August 2016;

the decision to give notice of the applications to the Romanian Government ("the Government");

the decision not to have the applicants' names disclosed (Rule 47 § 4 of the Rules of Court);

the decision to give priority to the applications (Rule 41);

the parties' observations;

Having deliberated in private on 21 April and 12 May 2020,

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

INTRODUCTION

The case concerns the effectiveness in practice of the protection afforded by the authorities to the applicants through the witness protection programme, once a risk to their life and physical integrity was identified.

THE FACTS

1. The applicants were born in 1981 and 1978 respectively and live as a couple in R. They were represented by Ms Diana-Elena Dragomir, a lawyer practising in Bucharest.

2. The Government were represented by their Agent, most recently Ms O.F. Ezer, of the Ministry of Foreign Affairs.

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

I. BACKGROUND OF THE CASE

4. In 2012 the anti-corruption prosecutor's office attached to the High Court of Cassation and Justice ("the prosecutor's office" and "the HCCJ") started a criminal investigation into alleged acts of corruption committed by two senior officials, C and D. The investigation was widely publicised in the media.

5. Between February and August 2015 the applicants, who used to work for C, were interviewed by the prosecutor's office as witnesses in the case. They were believed to have witnessed transactions between C and D which were of interest to the investigation.

II. PROSECUTOR'S ORDER OF 28 AUGUST 2015

6. On 28 August 2015, after interviewing the applicants, the prosecutor's office issued an order declaring them "threatened witnesses" under the provisions of Articles 125 and 126 of the Code of Criminal Procedure ("the CCP", see paragraph 83 below). It was decided that certain protection measures would be taken, namely police surveillance and protection of the applicants' home, and a constant police escort. The prosecutor justified the need for protection as follows:

> "On 27 February 2015, 3 March 2015 and 26 August 2015 [A and B] were interviewed as witnesses in connection with the criminal activity which is the subject of criminal case no. ...
>
> Witnesses [A and B] are in danger as there is a reasonable suspicion that their life or [physical integrity] may be at risk, bearing in mind the statements they made before the prosecutor's office and which may contribute to establishing the truth and holding the perpetrators criminally responsible."

7. On the same day the prosecutor's order was sent to the chief of the Directorate General of Police in B. ("the DGP"), who was responsible for ensuring the applicants' personal protection, via the Special Actions Service ("the SAS"), and protection of their home, via their local police station. The SAS team started immediately and from February 2016 a second team was assigned to protect the applicants.

8. According to the applicants, on 28 August 2015 the prosecutor also drafted, in accordance with the applicable law, an action plan indicating the scope of protection, as well as the measures to be taken and the specific tasks of the police officers in charge of carrying them out. The plan was not provided to the applicants. According to official documents, the plan was an internal DGP document describing specific actions to be taken by the police officers with a view to enforcing the prosecutor's order of 28 August 2015 (see paragraph 6 above). Moreover, as the document contained personal data concerning the police officers involved in the protection scheme, the DGP could not disclose it to the applicants.

9. Following the prosecutor office's proposal to include the applicants in the witness protection programme, representatives of the National Office for Witness Protection ("the NOWP", see paragraph 85 below) met with the prosecutor and the applicants to explain to both parties the specific conditions and requirements of the programme and explore their options. The purpose of the meeting was to allow both parties to make an informed decision regarding inclusion in the witness protection programme.

10. According to the applicants, the prosecutor's order was meant to be a temporary measure aimed at offering them protection until their inclusion in the witness protection programme was processed. The prosecutor had given assurances that their private life would not be affected by the measure.

11. They were allegedly told that, if they agreed to be included in the programme, they would be moved to a different town and nobody, not even the case prosecutor, would know their new location. They would have to cut off all contact with their friends and limit contact with their families. They would have to sell all their possessions, as the NOWP could not pay the storage costs during their absence. They were also informed that there was little chance of finding employment in the new location. The applicants asked for time to consider the consequences.

12. On 9 December 2015 the applicants agreed to be included in the witness protection programme.

III. PROTECTION PROTOCOLS

13. On 11 February 2016 the DGP asked the prosecutor's office to transfer the applicants' protection to the NOWP. The DGP explained that the applicants had refused to cooperate with the teams assigned for their protection, leaving their home unaccompanied and without stating their intentions to the police officers concerned. Moreover, they pointed out that there were currently no DGP regulations in place concerning the methods of protecting threatened witnesses (see paragraph 17 below).

14. On 22 February 2016 the NOWP informed the prosecutor that the applicants could not be included in the programme. It explained that an agreement could not be reached with them concerning the scope of protection. For instance, the applicants had asked to be guaranteed a high level of comfort if relocated nationally or internationally, which was an exaggerated request and impossible for the NOWP to ensure.

15. On 1 March 2016 the applicants were invited to the DGP's premises to sign protection protocols, which were documents including a detailed description of the police officers' duties and the applicants' obligations (notably to refrain from any action that might compromise the protection measures, inform the police of any changes in their personal lives and activities, and not disclose their protected witness status or the identity of the police officers involved).

16. On 7 July 2016 the applicants refused to sign a new set of protection protocols drafted in similar terms by the DGP.

17. On 27 June 2016 the DGP adopted regulations concerning the methods of protecting threatened witnesses (applicable since 1 July 2016).

IV. REQUESTS TO LIFT THE PROTECTION MEASURES

18. Meanwhile, on 16 September 2015 the HCCJ started hearing the main criminal case and became responsible for the protection measures (see paragraph 84 below).

19. On 29 June 2016 the prosecutor's office asked the HCCJ to lift the measures taken in the applicants' favour and exclude them from the witness protection programme, on the grounds that they were no longer in any danger. The prosecutor argued that the applicants could not indicate any specific circumstances confirming the existence of a threat to life and limb. The prosecutor also stated that they had not cooperated with the police officers assigned to protect them and had refused to sign the protection protocols, blocking the procedure. Moreover, the prosecutor argued that any protection inevitably restricted the applicants' personal freedom, and as long as they were unwilling to accept that, the protection measures could not be enforced.

20. In court, the applicants disagreed with the prosecutor's request and maintained that the threat to life and limb still persisted. They also declared that they accepted the protocols, but did not trust the police officers who had been assigned to protect them. They considered that the latter had committed abuses by refusing to accompany them, while at the same time preventing them from leaving their home unaccompanied.

21. On 25 August 2016 the HCCJ dismissed the prosecutor's request of 29 June 2016 (see paragraph 19 above). It considered that the reasons for the initial measures remained valid since the High Court was still hearing evidence in the main proceedings. The HCCJ further considered that it was the authorities' fault that it had taken such a long time for the protection protocols to be provided to the applicants. The HCCJ considered that the witness protection should continue within the limits set by the prosecutor in the order of 28 August 2015 (see paragraph 6 above). It noted, however, that the protection protocols were not subject to negotiation and, by their nature, imposed certain limitations on the applicants' freedom; those limitations could not, however, amount to a complete denial of their rights.

22. The applicants alleged that they had never received a copy of that decision as it had been a confidential document, and that they had only been informed of its content verbally by the prosecutor's office. According to official documents, on 14 October 2016 the applicants were allowed to consult the decision in question.

23. On 5 September 2016 the applicants gave the prosecutor's office their consent to be included in the witness protection programme, and reiterated that the protection offered until then under the relevant provisions of the CCP had been deficient, abusive and restrictive of their rights.

V. INCLUSION IN THE WITNESS PROTECTION PROGRAMME

24. On 15 November 2016 the applicants again refused to sign the protection protocols drafted by the DGP, believing that they limited their fundamental rights. According to a police report drafted that day, the applicants, after reading the documents, declared that they would never comply with the requirements issued by the police officers, would never state their intention to leave their home or wait for the police escort before leaving, and would not agree to moving elsewhere on the territory of Romania.

25. On 14 October 2016 the applicants gave evidence before the HCCJ in the criminal proceedings against C and D.

26. On 26 October 2016 the prosecutor asked the NOWP to assess the feasibility of including the applicants in the witness protection programme, starting the procedure provided for by the Witness Protection Act ("the WPA", see paragraph 85 below). The NOWP assessed the situation in a confidential report.

27. Based on this information, on 5 December 2016 the prosecutor asked the HCCJ to order the applicants' inclusion in the witness protection programme.

28. On 5 January 2017 the HCCJ ordered that the applicants be included in the witness protection programme and that the following protection measures proposed by the prosecutor's office be taken:

(a) increased protection of the applicants' home;
(b) protection during journeys to and from court;
(c) help in securing employment; and
(d) financial assistance until employment was found.

29. On 10 January 2017 the HCCJ noted that the prosecutor's order of 28 August 2015 (see paragraph 6 above) had ceased to apply, and on 16 January 2017 the DGP ended the protection measures instituted under the provisions of the CCP.

30. On 17 January 2017 the applicants signed a framework of assistance detailing the protection measures and assistance offered, and the protection protocols. They were mainly required to refrain from any activity which would compromise the protection measures or disclose their status or the identity of the police officers involved. They were also required not to record any of their meetings with the liaison officer. The protocols also reiterated the situations in which the protection programme would end, as described in Article 17 of the WPA (see paragraph 85 below).

31. The applicants were thus formally included in the witness protection programme run by the NOWP and, in accordance with the WPA, their protection was ensured by the police.

VI. REQUESTS FOR ASSISTANCE

32. On 25 January 2017 the applicants asked the NOWP to change their identities and relocate them abroad. Their request was forwarded to the HCCJ the same day. The NOWP was of the view that the request could not be met for various reasons; one being that the applicants' presence was needed for the purposes of the criminal investigation in which they were witnesses.

33. On 30 January 2017 the applicants also requested financial assistance from the NOWP, presenting a detailed account of their expenses and tax obligations. They also sought the NOWP's help in finding employment.

34. According to a report by the NOPW of 1 February 2017, the applicants could not be offered employment because they had refused all the offers made by the authorities corresponding to their level of education and had asked to work in fields in which they had not yet obtained professional qualifications. On 1 February and 9 March 2017 the NOWP informed the HCCJ of the attempts to find employment for the applicants and their rejection of all the proposals.

35. In an interlocutory judgment of 30 March 2017 the HCCJ dismissed the requests formulated by the applicants. It noted that they had refused all the employment proposals made by the NOWP, and the offer to be relocated in Romania. It further noted that their presence was needed often for the purposes of the criminal investigation. The HCCJ also noted that relocation abroad and a change of identity would be impossible, since the applicants could not cross the State border with a temporary identity card, the only identity document that could be issued under the provisions of the WPA. The decision was confidential and it appears that its contents were only made available to the applicants when the Government's observations were forwarded to them by the Court.

36. The applicants alleged that as they were both unemployed, they had had to sell their possessions in order to be able to pay their taxes.

37. A, who managed to find work after the start of the protection measures, was allegedly asked by her new employer to resign soon after, because of the intrusive presence of the SAS officers. She complained to the National Council for Combatting Discrimination. No information as to the outcome of this complaint was available at the date of the applicants' last correspondence with the Court (13 March 2018).

38. B did not manage to find employment. He allegedly had no means of subsistence. He asked the authorities to cover his medical expenses and to exempt him from paying property tax.

39. According to official documents issued by the NOWP, the applicants received monthly financial support representing the equivalent of the gross minimum wage, that is to say 1,250 Romanian lei (RON) initially, which was raised to RON 2,080 (approximately 500 euro (EUR)). Payments apparently continued after the applicants had left the country (see paragraph 80 below).

VII. IMPLEMENTATION OF THE PROTECTION MEASURES

A. The applicants' version

40. To better understand the scope of their personal protection, the applicants asked the police officers from the SAS to explain to them what to expect in practice. According to the applicants, the officers admitted that they had not received any instructions concerning their mission, which they said was the first of its kind. Their usual assignment involved protection of public officials and magistrates.

41. The applicants further noted that instead of guarding their flat, the police officers sometimes slept in their car, drank on duty or even guarded the building next door. They did not carry any weapons to ensure effective protection. They had also left the liaison file unattended in public places (in particular they recounted an incident on 9 February 2016 when the liaison file had been lost). The file included photographs of the applicants, confidential data about the purpose of the protection mission and other sensitive information (see paragraph 67 below).

42. The applicants alleged that they were sometimes prevented from leaving their building because their SAS team was not available, or they were simply left without protection. They recounted an incident on 11 February 2016 when B, left without protection because the team was accompanying A, was told to go to the nearest police office to seek help, but once there, had been held against his will for two hours and prevented from leaving on his own.

43. The applicants further explained that they were only allowed to travel from 7 a.m. to 10 p.m., in SAS cars, and could not leave town. They were not allowed to leave home without observing these limitations, not even if they were willing to forego protection. They were asked to call ahead and wait for the SAS officers to arrive at their home. Because of how the protection measures were being carried out, they had been unable to attend important family events, such as weddings, christenings and funerals.

44. The applicants also explained that the SAS officers were conspicuous and carried unconcealed weapons, which often revealed the

applicants' status to the public. The applicants also noticed that the SAS officers were filming them while travelling. Eventually, the applicants started to feel threatened by the police officers in charge of their protection.

B. The Government's version

45. The documents provided by the DGP at the Government's request indicate that the applicants' protection was ensured as follows:

(a) the applicants' protection at home was ensured by the police in three eight-hour shifts, outside the door to their flat;

(b) the applicants' protection while travelling was ensured by SAS officers in two twelve-hour shifts.

46. On 7 July 2016, in line with the newly adopted regulations (see paragraph 17 above), the duties of the police officers involved in the applicants' protection were set out in a plan.

C. Incidents with the protection officers

47. B, who was unsatisfied with the manner in which the authorities had organised the protection of him and A, often got into arguments with the police officers. For instance, on 26 October 2016 he was fined 500 Romanian lei (RON, about EUR 110 at the time) for offending a police officer; on 20 November 2016 he was fined RON 500 (about EUR 110 at the time) for not allowing the police officers access to his flat (B explained that the police officers had refused to give their names when they had called on him; the fine was cancelled by the District Court on 19 May 2017); on 27 December 2016 he was fined RON 1,000 (about EUR 220 at the time) for posting an offensive comment about police officers on his social media; and on 11 January 2017 he was fined RON 1,000 (about EUR 220 at that time) for offending a police officer in charge of his protection.

48. On 24 March 2016, following a request made by A, the DGP informed the applicants of the scope of the protection ordered by the prosecutor on 28 August 2015 (see paragraph 6 above). It also informed the applicants that, although no obligation as such was placed on them by the order, their cooperation with the police officers was necessary to make the measures effective.

49. On 4 May 2016 the applicants complained to the DGP that they had not received protection during any of their journeys since 1 March 2016. On 31 May 2016 they were informed of the scope of their protection and were reminded that the success of the mission depended on their cooperation.

50. On 6 July 2016 the applicants informed the prosecutor, by text message, that because of the abuses committed by the police officers assigned to protect them, they had stopped cooperating starting from 1 July 2016.

51. At 7.55 p.m. on 28 July 2016 a police officer went to the applicants' home in an attempt to put an end to a fight taking place outside the flat between the applicants and the police team assigned to protect them. In his report to the DGP, the police officer stated that the applicants had complained that "the whole thing was a mockery" and that they were "dissatisfied with everything". The applicants also asked to be relocated to different accommodation with equivalent facilities.

52. On 29 July 2016 and 5 January 2017 the DGP assessed the measures taken for the applicants' protection. The reports described several incidents in which the applicants had refused protection, run away from their protection teams, driven away in their own cars (instead of those of the police) and committed several traffic violations in order to escape the police. It was also reported that the applicants had asked the police officers to stop following them, verbally abused them and threatened to alert passers-by in order to create panic. The police also maintained that since the protection measures had been instituted, there was nothing to indicate that the applicants would be in any danger. The DGP asked the HCCJ and the prosecutor's office to reassess the possibility of maintaining the protection measures.

53. Similar assessments were done periodically by the SAS in 2016 and 2017, reporting similar incidents in which the applicants had refused to cooperate, verbally abused police officers and filmed their encounters with the police teams.

54. On 28 October 2016 SAS reported that since the beginning of that month the applicants had systematically refused to cooperate with the SAS officers and had started calling them offensive names, such as twerps, scum, "handicapped", "liars and corrupt", (*jigodii, jeguri, handicapaţilor, mincinoşilor şi corupţilor*) and other more offensive words.

55. On 29 October 2016 the applicants left home without stating where they were going. They were followed by the police team on duty. B became offensive and threatened to throw himself in front of a car if the police officers did not stop following him. He then pushed the officers. They warned him that they would use force if he continued to breach the peace and eventually handcuffed him and took him to the police station. B was fined and a police report was drawn up regarding the incident.

The police inquiry into the incident revealed that the police officers had acted diligently within the limits of their powers. It was suggested that the prosecutor's office and the HCCJ reassess the possibility of maintaining the protection measures.

D. NOWP letter to the applicants

56. The applicants submitted a letter of 23 May 2017, signed by the director of the NOWP, informing them that they could not be offered

genuine protection or help finding employment. The private sector refused to hire them because of their role in the criminal investigation, and the public sector was inaccessible because of C's connections. They were told that anyone included in the witness protection programme was offered the minimum salary in force, irrespective of their personal situation. A total change of identity was impossible because of a lack of harmonisation between the applicable laws. The NOWP advised the applicants against complaining to the courts about the matter, as if they did, they would risk revealing to the public their protected witness status, which would automatically result in exclusion from the protection programme.

57. The NOWP admitted that the protection measure that the applicants were benefiting from, namely a surveillance camera installed at the entrance to their home, was ineffective and insufficient. Total relocation should have been considered. The applicants continued to be at risk, and, according to the authorities' estimations, would need protection even after the criminal proceedings in question ended.

58. The NOWP reiterated that the applicants' requests (to be relocated abroad and be given a new identity), as well as those by the NOWP (to relocate the applicants, to allow them the right to carry guns and to pay for their professional re-qualification) had been dismissed by the HCCJ by means of a confidential interlocutory judgment which could not be communicated to them. In the same letter, the NOWP admitted that certain police officers assigned to protect the applicants had posted information about their protected witness status on social media.

59. According to the Government, this letter was not acknowledged by the NOWP. In September 2018 the prosecutor's office started a criminal investigation into the matter. That investigation was still ongoing at the date of the last correspondence from the Government on this point (28 March 2019).

E. Threats to the applicants

60. On 11 November 2015 the applicants complained to the prosecutor's office attached to the HCCJ that the police officers in charge of their protection had not been given clear instructions about their mission and had failed, on several occasions, to identify potential threats to their security (such as somebody allegedly staking out their building or tampering with their car). They further complained of deficiencies (logistical, technical and in terms of personnel) in their protection. Their complaint was forwarded to the DGP which, on 22 December 2015 took measures to remedy the problems observed during the implementation of the protection measures.

61. In March 2017 the applicants complained to the NOWP that unidentified men had been following them in the vicinity of their home.

They also alleged that someone had slashed their car tyres. The NOWP could not find any evidence of tampering or a threat to life and limb.

62. In February 2018 the applicants informed the NOWP that in September 2017 they had found two bullets on their doorstep, allegedly delivered and left there by a courier. The applicants refused to hand the bullets to the NOWP for investigation. They also refused to lodge a criminal complaint with the prosecutor's office about the incident.

63. On 13 September 2018 the applicants lodged a complaint with the HCCJ concerning what they considered to be deficiencies in the protection measures taken by the NOWP. In particular, they complained that no measures had been taken concerning the bullets they had found on their doorstep or the slashing of their car tyres. They also complained that their liaison officer had allegedly told them that the new officers assigned to their case "did not know what they were doing" and that their mission was "to convince them to leave the protection programme". No information is available on the outcome of these proceedings.

64. On 4 April 2019 the prosecutor's office attached to the Court of Appeal dismissed as unfounded a new complaint lodged by the applicants of abuse of office on the part of NOWP employees and threats. The prosecutor found that neither the recordings submitted by the applicants nor the other evidence in the file revealed any abuse against them.

F. Complaints to the authorities about the witness protection measures

65. Numerous complaints and petitions were lodged concerning the activity of the police officers in charge of the applicants' protection, alleged abuse, misconduct or negligence in their duties, as well as more serious matters, such as infringement of the applicants' rights and freedoms (complaints to the police and prosecutor's office of May 2016, 27 July, 13 September, 29 October and 14 November 2016, and 17 March 2017). They were all examined by the police and/or prosecutor and most of them were dismissed on the grounds that the police officers had complied with the legal requirements and the relevant regulations and had not overstepped their authority (decisions of 15 May, 4 and 24 August 2017, and 13 February 2018).

66. The police officers who were found to have failed in their duties while in charge of the applicants' protection (being unarmed, not wearing their uniforms, leaving the post before the next team arrived, failing to report, or losing the liaison file – incidents of 9 February 2016) were placed under administrative investigation and for the more serious misconduct, criminal proceedings were started.

67. In addition, on 15 February 2016 the police started an investigation against the officer in charge of protecting the applicants' home for leaving

the post unattended before his replacement arrived and misplacing the liaison file (incident of 9 February 2016). On 12 October 2016 the prosecutor's office attached to the District Court decided not to prosecute. It found that the instructions given to the officers in charge of protecting the applicants' home had not been very clear (whether they should guard the flat itself or the building entrance). It also concluded that it had been the applicants who had taken the liaison file without permission.

68. On 21 September and 21 October 2016 the SAS informed the applicants that their protection had been ordered under the relevant provisions of the CCP, but that the specific protection measures could only be implemented with their consent. They reminded them that they had on numerous occasions refused to sign the relevant protection protocols and explained that, even without their consent, the authorities were still bound by the prosecutor's order to offer them protection. At the request of the applicants, the same information was given to them by the police section in charge of protecting their home (on 12 October and 12 December 2016), by the DGP (on 4 October and 21 November 2016), and by the anti-corruption prosecutor's office (on 31 October and 5 December 2016). The applicants were also informed that the DGP did not have the power to lift the protection measures instituted in their favour.

VIII. MEDIA PRESENCE

A. Social media

1. The applicants' posts

69. The Government also informed the Court that there was a Facebook page named "[applicants' full names] – Abused Witnesses in the case file [D]-[C]". The page had 2,323 likes and 2,487 followers, and contained posts written in the first person about the applicants' story and their interactions with the police. The page was still active on 7 October 2019.

70. On 21 November 2016 a letter from the DGP was posted on the page. The letter said, without giving any names, that two individuals had been declared by the prosecutor as "threatened witnesses" and had had measures taken for their protection, but that they had refused to sign the protection protocols and repeatedly refused or opposed the protection measures. The letter reiterated that cooperation of the witnesses was essential for the effectiveness of the protection measures.

71. On 27 December 2016 a similar letter from the prosecutor's office was posted on the page. The letter, written on 31 October 2016, was addressed to the applicants and contained their full names.

72. On 13 June 2018 a post was published on the page explaining, in the first person, how A and B had found two bullets on their doorstep which

must have come from C and D (see paragraph 63 above). Photographs of the bullets were also posted.

2. B's posts

73. On 20 November 2016 B posted a "Facebook live" video recording of him asking the police officers assigned to protect him to identify themselves, state why they were there and give details of their activities. Later that night, B called the national emergency number to complain that there were two police officers outside his flat who refused to tell him why they were there.

74. On 27 January 2019, on a Facebook page bearing B's name and a photograph resembling him, a post written in the first person was added telling B's story, starting from his role in the criminal trial against C and D, referring to alleged abuses and errors on the part of the authorities in the implementation of the protection measures and referring to previous similar revelations (including the video recording) made by him. On the same day the story was published by media outlets accompanied by a similar photo.

B. Newspapers and Television

75. In 2016 several media outlets published information on the applicants' situation, giving B's full name and connecting him with the criminal case against C and D (articles of 11 February and 11 July 2016). On 15 and 20 November 2016 national newspapers published articles allegedly based on an interview held with B about his situation. According to the applicants, the press had not based their articles on an interview with B, and had copied quotes from the Facebook posts made by him.

76. On 28 January 2018 both applicants appeared on a television show. The Government submitted two screenshots of the show, showing a person appearing to be B accompanied by the text "[applicant's full name], protected witness" and "The risks incurred by protected witnesses".

77. On 30 January 2018 the NOWP contacted the applicants concerning their appearance on the television show, saying that by exposing themselves publicly, they had compromised the protection measures and made them ineffective.

IX. THE APPLICANTS' CURRENT SITUATION

78. The applicants alleged that in May 2016 they had been told unofficially by State agents that the constant harassment against them was aimed at intimidating them to make them withdraw their statements in the corruption case and prevent them from testifying in other similar cases against their former employer.

79. In November 2017 the applicants were summoned again to testify in another corruption case opened against C.

80. In October 2017 the applicants left Romania. In November2017 they informed the Court of this and that they were currently looking for employment. In March 2018 the applicants informed the Court that the authorities had taken no additional measures to protect them.

81. On 20 June 2018 the HCCJ issued the final decision in the criminal case in which the applicants were called to testify as witnesses. It convicted C.

82. On 13 September 2018 the applicants lodged a new complaint with the HCCJ. They mainly complained that the NOWP had not investigated the threats to their lives, such as the bullets found on their doorstep and the slashing of their car tyres (see paragraph 63 above). The applicants further informed the HCCJ that they had informed the NOWP two weeks before leaving the country and had kept in touch with their liaison officer from abroad. There is no information in the case file as to the response provided by the HCCJ to these complaints.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Code of Criminal Procedure

83. The relevant provisions of the Code of Criminal Procedure ("the CCP") concerning witness protection read as follows:

Article 125 – Threatened witness

"If there is a reasonable suspicion that the life, physical integrity, personal liberty, possessions or professional activity of a witness or member of his family may be in danger because of information provided or statements made to the judicial authorities, the judicial authority in charge shall grant him threatened witness status and order one or more of the protection measures under Articles 126 and 127, as applicable."

Article 126 – Protection measures ordered during the criminal investigation

"(1) During the criminal investigation, once the prosecutor grants threatened witness status, he shall order one or more of the following measures:

(a) surveillance and protection of the witness's home, or the provision of temporary accommodation;

(b) accompanying the witness and protecting him or members of his family while travelling;

(c) protection of the witness's identity, by granting a pseudonym under which [he or she] shall sign statements;

(d) hearing the witness without him being present in court, via audio and video link, using voice and image distortion, when other measures are insufficient.

(2) The prosecutor shall orders the measures of his own initiative or at the request of the witness or another party.

...

(4) The prosecutor shall grant threatened witness status and order the protection measures by means of a reasoned order, which shall remain confidential.

(5) The prosecutor shall verify, at reasonable intervals, if the reasons for the measures are still valid, and if not, shall lift the measures by reasoned order.

(6) The measures under paragraph (1) shall remain in place throughout the criminal proceedings if the danger persists.

...

(8) The protection measures under paragraph (1) (a) and (b) shall be transferred to the authorities in charge of implementation."

84. Articles 127 and 128 of the CCP provide that protection measures are decided by the court once the prosecutor has completed the investigation.

B. Witness Protection Act

85. The Witness Protection Act (Law no. 682/2002 on witness protection, referred to as "the WPA") regulates the scope of the protection programme and the rights and obligations of the police and protected persons. Under this law, the National Office for Witness Protection (*Oficiul Naţional pentru Protecţia Martorilor*, "the NOWP") is a structure of the Ministry of Internal Affairs, which belongs to the General Inspectorate of Police. Its functioning, the rights and duties of protected witnesses, and the application and content of the protection measures are detailed in the Act. The relevant parts read as follows:

Article 2

"For the purposes of the present [Act], the terms and phrases used shall have the following meaning:

...

(b) 'situation of danger' means the situation of a witness ... whose life, physical integrity or personal liberty are threatened, as a consequence of information and data disclosed to the judicial authorities or in their statements;

...

(f) 'Witness protection programme', hereinafter 'the Programme', means the activities undertaken by the [NOWP] with the assistance of the central and local public authorities, in order to protect the life, physical integrity and health of persons who have been granted protected witness status in accordance with the provisions of the present [Act].

(g) 'interim measures' mean specific temporary activities carried out by the police investigating the case or by the administration of the detention facility, as soon as the witness is found to be in a situation of danger;

...

(i) 'protection protocol' means the confidential agreement between the [NOWP] and the protected witness concerning the protection and assistance to be provided to the witness, the duties of [the signatories] and the situations in which the protection and assistance may cease."

Article 5

"During the criminal investigation, the investigating authority may ask the prosecutor and the prosecutor may ask the pre-trial judge [*judecătorul de cameră preliminară*] or the court, during the pre-trial proceedings or court proceedings respectively, to include a witness ... in the Programme, giving reasons for the proposal."

Article 6

"(1) The proposal for inclusion in the Programme shall refer to:

(a) information regarding the criminal case;

(b) the identity of the witness;

(c) the information provided by the witness and [how decisive it is] for the criminal case;

(d) the circumstances in which the witness acquired the information he or she provided or intends to provide;

(e) any evidence that may show the witness to be in a situation of danger;

(f) an estimate of the possibility of remedying the damage caused by the offence;

(g) other persons aware of the information known by the witness or who are aware that the witness provided or intends to provide that information to the judicial authorities;

(h) a psychological assessment . ..;

(i) the risks the witness and the other persons to be included pose for the community where they are to be relocated;

(j) information regarding the financial situation of the witness;

(k) any other relevant information ...

(2) The proposal for inclusion in the Programme must be accompanied by the written agreement of the person to be included and an assessment by the NOWP concerning the possibility of inclusion."

Article 7

"The prosecutor, pre-trial judge or court, as applicable, shall decide ... on the proposal to include [a witness] in the Programme as soon as possible but no later than five days from the date [of receipt]."

Article 8

"(1) If the prosecutor, pre-trial judge or court agrees with the proposal, they shall notify the decision to the NOWP ... which shall take the measures necessary to draft and implement the protection scheme."

Article 9

"(1) The NOWP shall draft a protection protocol for each individual concerned by the measure, within seven days of the date on which the decision to include [a witness] in the Programme was adopted.

(2) The persons mentioned in paragraph 1 shall become protected witnesses upon signature of the protection protocol."

Article 14

"(1) Protection and assistance granted to a threatened witness and protected witness are ensured by the police and the NOWP respectively, in accordance with the present Act."

Article 15

"(1) Interim measures may be taken to protect the threatened witness, ...

(2) Interim measures shall remain in place as long as the danger persists or until inclusion in the Programme."

Article 17

"(1) "The Programme shall end ...:

(a) at the witness' request, in writing and sent to the NOWP;

(b) if the witness gives false testimony in the criminal trial;

(c) if the witness intentionally commits an offence;

(d) if there is evidence or a reasonable suspicion that the witness joined a criminal group after inclusion in the Programme;

(e) if the witness fails to comply with the obligations undertaken by signing the protocol or gives false information concerning any aspect of their situation;

(f) if the witness's life, physical integrity or liberty are no longer threatened;

(g) if the witness dies.

(2) The Programme shall be ended by order of the prosecutor or an interlocutory decision of the court."

86. The Witness Protection Act also provides that the witness protection programme is financed by the State budget (Article 21), and that the authorities involved have a duty to cooperate with each other and with similar authorities from other countries (Article 22).

II. COUNCIL OF EUROPE MATERIALS

A. Recommendation Rec(2005)9

87. Recommendation Rec(2005)9 of the Council of Europe's Committee of Ministers to member States on the protection of witnesses and collaborators of justice (adopted by the Committee of Ministers on 20 April 2005 at the 924th meeting of the Ministers' Deputies) reads as follows:

> "The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
>
> ...
>
> Recommends that governments of member states:
>
> i. be guided, when formulating their internal legislation and reviewing their criminal policy and practice, by the principles and measures appended to this Recommendation;
>
> ii. ensure that all the necessary publicity for these principles and measures is distributed to all interested bodies, such as judicial organs, investigating and prosecuting authorities, bar associations, and relevant social institutions.
>
> **Appendix to Recommendation Rec(2005)9**
>
> **I. Definitions**
>
> For the purposes of this Recommendation, the term:
>
> - 'witness' means any person who possesses information relevant to criminal proceedings about which he/she has given and/or is able to give testimony (irrespective of his/her status and of the direct or indirect, oral or written form of the testimony, in accordance with national law), who is not included in the definition of 'collaborator of justice';
>
> - 'collaborator of justice' means any person who faces criminal charges, or has been convicted of taking part in a criminal association or other criminal organisation of any kind, or in offences of organised crime, but who agrees to cooperate with criminal justice authorities, particularly by giving testimony about a criminal association or organisation, or about any offence connected with organised crime or other serious crimes;
>
> - 'intimidation' means any direct or indirect threat carried out or likely to be carried out to a witness or collaborator of justice, which may lead to interference with his/her willingness to give testimony free from undue interference, or which is a consequence of his/her testimony;
>
> - 'anonymity' means that the identifying particulars of the witness are not generally divulged to the opposing party or to the public in general;
>
> - 'people close to witnesses and collaborators of justice' includes the relatives and other persons in a close relationship to the witnesses and the collaborators of justice, such as the partner, (grand)children, parents and siblings;
>
> - 'protection measures' are all individual procedural or non-procedural measures aimed at protecting the witness or collaborator of justice from any intimidation and/or any dangerous consequences of the decision itself to cooperate with justice;

- ‘protection programme’ means a standard or tailor-made set of individual protection measures which are, for example, described in a memorandum of understanding, signed by the responsible authorities and the protected witness or collaborator of justice.”

B. Appendix to Recommendation No. R (97) 13

88. The Appendix to Recommendation No. R (97) 13 of the Council of Europe’s Committee of Ministers to member States concerning intimidation of witnesses and the rights of the defence (adopted by the Committee of Ministers on 10 September 1997 at the 600th meeting of the Ministers’ Deputies), includes the following passage:

“...11. Anonymity should only be granted when the competent judicial authority, after hearing the parties, finds that:

– the life or freedom of the person involved is seriously threatened or, in the case of an undercover agent, his/her potential to work in the future is seriously threatened; and

– the evidence is likely to be significant and the person appears to be credible.

12. Where appropriate, further measures should be available to protect witnesses giving evidence, including preventing the identification of the witness by the defence, for example by using screens, disguising the face or distorting the voice.

13. When anonymity has been granted, the conviction shall not be based solely or to a decisive extent on the evidence of such persons.

14. Where appropriate, special programmes, such as witness protection programmes, should be set up and made available to witnesses who need protection. The main objective of these programmes should be to safeguard the life and personal security of witnesses, their relatives and other persons close to them.

15. Witness protection programmes should offer various methods of protection; this may include giving witnesses and their relatives and other persons close to them a change of identity, relocation, assistance in obtaining new jobs, providing them with bodyguards and other physical protection.

16. Given the prominent role that collaborators of justice play in the fight against organised crime, they should be given adequate consideration, including the possibility of benefiting from measures provided by witness protection programmes. Where necessary, such programmes may also include specific arrangements such as special penitentiary regimes for collaborators of justice serving a prison sentence.”

THE LAW

I. JOINDER OF THE APPLICATIONS

89. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

90. The applicants complained about the organisation of the witness protection programme, arguing that it was inefficient. They relied on Articles 2, 8, 13 and 18 of the Convention and Article 2 of Protocol No. 4 to the Convention. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, ECHR 2018), considers that the nature of this complaint, as well as the manner in which it was formulated, calls for an examination under Article 2 of the Convention alone.

In so far as relevant, this provision reads as follows:

> "1. Everyone's right to life shall be protected by law. (...)."

A. Admissibility

1. Abuse of the right of application

(a) The parties' submissions

(i) The Government

91. The Government argued that the applicants had supported their application to the Court using vague and undefined terms, purposely chosen to conceal the factual and legal issues, or manifestly false statements used to fabricate their case. Their intention had been to mislead the Court into believing that they had been subjected to abuse and neglect at the hands of the authorities. For that reason, the Government asked the Court to declare that the applicants had abused their right of application.

(ii) The applicants

92. The applicants denied all the accusations brought by the Government concerning their alleged bad faith. They also refuted the allegations that they had fabricated their case. They considered the allegations defamatory, absurd and outrageous. In their view, the Government had misrepresented the situation to justify the failure of the witness protection system and the abuses committed by the authorities. For instance, the lack of evidence as to the risk faced by them was the consequence of a defective investigation by the authorities and not a misrepresentation of the situation by them.

(b) The Court's assessment

93. The Court reiterates that under Article 35 § 3 (a) an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts. The submission of incomplete and thus misleading information may also amount to an abuse of

the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if important new developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references).

94. In the present case, the Court notes that what the Government considered to be abusive behaviour of the applicants (see paragraph 91 above), was no more than a diverging view on the facts of the case and on the effectiveness of the protection granted to the applicants by the domestic authorities. The Court does not discern any inappropriate language in the applicants' submissions. Moreover, the Government did not convincingly point to any statements made by the applicants, which would be clearly false or misleading.

95. It follows that the Government's objection of abuse of the right of application should be dismissed.

2. Non-exhaustion of domestic remedies

(a) The parties' submissions

(i) The Government

96. The Government contended that the applicants had never complained to the HCCJ about the operational principles guiding implementation of the protection measures, such as the presence of uniformed police officers outside their door or the requirement to state their intention to go somewhere seventy-two hours in advance. They observed that a similar complaint lodged by the applicants concerning relocation abroad had been examined on the merits by the HCCJ in the light of the documents provided by the NOWP (see paragraph 35 above).

97. The applicants had not challenged before the courts the prosecutor's decisions not to prosecute in the various complaints brought by them concerning the activity of the police officers assigned to protect them. In the same vein, they argued that A had failed to lodge a complaint with the relevant courts concerning her alleged unlawful dismissal from work (see paragraph 37 above).

98. The Government pointed out that the operational guidelines for implementation of the protective measures had only been adopted in February 2014. There had not therefore been sufficient time for a domestic judicial practice to develop in this regard.

(ii) The applicants

99. The applicants pointed out that, with only one exception, all the criminal complaints they had lodged had been dismissed by the prosecutor's office. They further averred that the Government could not indicate which domestic actions would have constituted certain, effective and accessible remedies, in theory as well as in practice.

100. They asserted that they had had no possibility of bringing before the domestic courts their complaints concerning the manner in which the protection programme had been organised and the gross negligence of the persons entrusted with their protection.

(b) The Court's assessment

(i) General principles

101. The Court refers to the well-established principles of its case-law, as reiterated notably in *Gherghina v. Romania* ((dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015), and *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

102. In particular, the Court reiterates that the obligation to exhaust domestic remedies requires applicants to make normal use of remedies which are available and sufficient in respect of their Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Gherghina*, decision cited above, § 85, with further references).

103. Nevertheless, there is no obligation to have recourse to remedies which are inadequate or ineffective. However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to pursue it (ibid., § 86, with further references).

104. The Court has, however, also frequently stressed the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (ibid., § 87, with further references).

105. The Court also reiterates that as regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. The availability of a remedy said to exist, including its scope and application, must be clearly set out and confirmed or complemented by practice or case-law (ibid., § 88, and *Molla Sali v. Greece* [GC], no. 20452/14, § 89, 19 December 2018).

(ii) Application of those principles to the facts of the present case

106. At the outset, the Court notes that the applicants raised their grievances with the HCCJ, indicating exactly the problems encountered

with the protection measures and the police officers involved, and that at least some of those complaints were examined by that court (see, notably, paragraphs 20, 21 and 35 above).

107. They also complained to the police and the prosecutor's office (see notably paragraphs 65-66 above). Admittedly, the applicants did not challenge before the courts the prosecutor's decisions unfavourable to them. However, the Court cannot speculate about whether in lodging such actions with the courts, other than the HCCJ which, in their case, was responsible for the protection measures under the WPA (see paragraphs 19 and 28 above, as well as Article 5 of the WPA cited in paragraph 85 above) the applicants, whose identity was not protected, would have exposed themselves publicly and thus risked breaching their obligation not to disclose their protected witness status. A similar concern was expressed by the director of the NOWP in his letter of 23 May 2017 (see paragraphs 56-58 above), albeit the authenticity of this letter is contested by the Government (see paragraph 59 above). The Court cannot but note that the decisions taken by the HCCJ were confidential and not communicated to the applicants (see paragraphs 22 and 35 above).

108. In these circumstances, the Court considers that, by bringing their grievances before the HCCJ, the applicants exhausted the domestic remedies available to them. It follows that the Government's objection of non-exhaustion of domestic remedies should be dismissed.

3. Other grounds for inadmissibility

109. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

110. The applicants complained that the authorities had not provided them with the appropriate protection, and that the investigations into their various allegations of threats had been ineffective. They pointed out that the authorities had been under an obligation to take operational measures to investigate all risks to their lives and to prevent any risk from materialising. They had instead treated the threats to their lives, such as the slashing of their car tyres or the bullets found on their doorstep (see paragraph 63 above), in a perfunctory manner.

111. As to the quality of protection received, the applicants argued that the DGP had never understood the situation of a witness in need of protection or how to implement protection measures without violating the

rights of witnesses. The police officers had been inexperienced, and had made detailed reports on their private lives and shared them with other authorities. The applicants had written to the institutions they considered to be responsible for this invasion of their privacy, but to no avail.

(b) The Government

112. The Government pointed out that the allegations of a threat to life and limb, made by the applicants to the prosecutor, had never been substantiated by the evidence gathered. In their view, the applicants had knowingly and deliberately misled the Court in order to create the misrepresentation that despite being in possession of evidence of threats, the authorities had decided not to include them in the witness protection programme. In reality, they had failed to inform the prosecutor's office of the alleged threats they had received while the protection measures had been ongoing.

113. The Government further argued that, despite the applicants' claims to the contrary (see paragraphs 10 and 11 above), the prosecutor's order of 28 August 2015 was never meant to be a temporary measure. That order had been made under the provisions of the CCP and had made no reference to the relevant provision of the WPA (see paragraph 6 above).

114. They also refuted the applicants' claims that the police officers had lacked experience or had refused to protect them. The SAS took part in high-risk police operations and were entrusted, for instance, with the protection of threatened magistrates. The applicants, on the other hand, had made consistent efforts to elude the protection measures, making false requests for protection and breaching their obligations. For instance, they had provoked incidents with the police, given live interviews on national television (which had then led to the termination of A's work contract), declined adequate job offers and refused to cooperate with the authorities.

115. The Government reiterated that the requirements imposed on the applicants during their inclusion in the protection programme had not been disproportionate, and that they had implicitly agreed to comply with them when they had agreed to be included in the protection programme.

2. The Court's assessment

(a) General principles

116. The Court notes that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. The State's obligation in this regard extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and

sanctioning of breaches of such provisions. Article 2 of the Convention may also imply, in certain well-defined circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *R.R. and Others v. Hungary*, no. 19400/11, § 28, 4 December 2012, and *Maiorano and Others v. Italy*, no. 28634/06, §§ 103-104, 15 December 2009, with further references).

117. Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. In the opinion of the Court, where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals 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. For the Court, and having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case (see *Osman v. the United Kingdom*, 28 October 1998, §§ 115-16, *Reports of Judgments and Decisions* 1998-VIII).

118. So far the Court has dealt with various situations engaging the States' positive obligations to protect the right to life under Article 2 of the Convention from the criminal acts of a third party. It has thus, by applying the test set out in the *Osman* judgment (cited above), defined the scope of the obligation to protect witnesses, notably, in the case of *R.R. and Others v. Hungary* (cited above), which concerned the exclusion from the witness protection scheme.

119. The Court further notes that Article 2 of the Convention may come into play even though the person whose right to life was allegedly breached did not die. In the case of *R.R. and Others v. Hungary* (cited above, §§ 26-32), the Court considered that the removal of four of the five applicants from the witness protection scheme in Hungary had constituted a breach of the State's positive obligation to protect their right to life, even though they did not lose their lives, since there had been a real and immediate risk (known to the national authorities) to the lives of those individuals, necessitating protection within the witness protection scheme.

Noting the Government's failure to show in a persuasive manner that the risk in question had ceased to exist and the inadequacy of the measures taken to protect the applicants' lives subsequent to their removal from the witness protection scheme, the Court concluded that the Hungarian authorities' actions had fallen short of the requirements of Article 2 of the Convention (see also *Selahattin Demirtaş v. Turkey*, no. 15028/09, §§ 30-31, 23 June 2015, with further references).

(b) Application of those principles to the facts of the present case

120. At the outset, the Court notes that on 28 August 2015 the applicants were declared "threatened witnesses" following statements they made to the prosecutor's office in a corruption case involving senior officials; in particular, the prosecutor's office believed that the applicants were "in danger as there [was] a reasonable suspicion that their life or [physical integrity might] be at risk" (see paragraphs 5 and 6 above). On 9 December 2015 the applicants agreed to be included in the witness protection programme (see paragraph 12 above). Several incidents, described as threats to life and limb, were subsequently reported by the applicants, albeit in rather vague terms (see paragraphs 60-64 above). Moreover, despite attempts by the authorities to remove the applicants from the witness protection programme, the HCCJ maintained the measure (see paragraphs 19 and 21 above).

121. The Court considers that in applying the rules of witness protection to the applicants' case, the authorities explicitly or/and implicitly accepted that there was a risk to their life, physical integrity or personal liberty within the meaning of the relevant legal provisions (see paragraphs 83 and 85 above, as well as, *mutatis mutandis*, *R.R. and Others v. Hungary*, cited above, § 30). In this context, the Court accepts that there was indeed a serious threat of real and immediate risk to the applicants' life, physical integrity and liberty, both when the measure was originally put in place and in October 2017, when the applicants left Romania (see paragraph 80 above).

122. Having established that at the time the authorities knew or ought to have known that there was a real and immediate risk to the applicants' life, it remains to be established whether they did all that could be reasonably expected of them to avoid it (see the case-law cited in paragraph 117 above).

123. The Court notes that the authorities placed the applicants under protection as soon as a risk was identified (see paragraph 6 above). The parties disagree as to the nature of the initial protection order, the applicants arguing that it was meant to be a temporary measure and the Government pointing to the different nature of the two protection schemes (see, respectively, paragraphs 10 and 113 above). Be that as it may, it is to be noted that, in practice, that order gave rise to a series of measures being

taken to protect the applicants: an action plan was adopted the same day (see paragraph 8 above), the parties concerned entered into negotiations to set the details of that protection (see paragraphs 7-11 above), and two teams were assigned to protect the applicants (see paragraph 7 *in fine* above).

124. Admittedly, it took the authorities six months to draft the protection protocols: from 28 August 2015 when the prosecutor's order was adopted (see paragraph 6 above), to 1 March 2016 when the protocols were first provided to the applicants (see paragraph 15 above). However, that delay was not left unaddressed, as the HCCJ criticised the authorities for their inaction (see paragraph 21 above). The Court also notes that it took the authorities more than three months to secure, on 9 December 2015, the applicants' consent to be included in the protection programme (see paragraph 12 above).

125. Furthermore, the prosecutor waited until 26 October 2016 to start the proper procedure for including the applicants in the witness protection programme under the WPA (see paragraph 26 above). Two months passed between the date of the HCCJ's decision of 25 August 2016 (see paragraph 21 above) and the date on which the prosecutor made that request.

126. The Court is concerned that a matter of such importance and urgency was left unresolved by the authorities for such long periods of time, amounting to a total of more than one year and four months, from 28 August 2015 when the risk was first identified (see paragraph 6 above) to 17 January 2017 when the applicants were formally included in the programme (see paragraphs 30 and 31 above).

127. That said, the applicants were not left without protection during this time, even if that protection was at least in the beginning mostly improvised, in the absence of regulations, which only became applicable on 1 July 2016 (see paragraphs 13, 17 and 46 above). The inevitable deficiencies were, however, corrected by the authorities (see paragraphs 56-58 and 60 *in fine* above). Moreover, no direct attack against the applicants took place during this time.

128. The Court observes that the applicants complained of inexperience and a lack of preparation on the part of the police officers assigned to protect them (see paragraphs 40 and 111 above). However, it cannot but note that, according to the information provided by the Government (see notably paragraph 114 above), the officers had received comparable, high-risk assignments in the past; their experience in the field cannot therefore be disputed.

129. Admittedly, the police officers' past experience cannot make up for the absence of clear instructions from their superiors concerning the scope and aim of the mission in question. The Court cannot but note that several incidents point to a lack of adequate preparation on the part of the police officers on duty. They were sometimes found to be unarmed or without

uniforms, had left the post before the next team arrived, had failed to report, or had simply lost the liaison file which contained sensitive data concerning the applicants (see paragraph 66 above). These omissions risked compromising the applicants' protection. However, they were taken seriously by the authorities, who investigated and when necessary reprimanded those responsible (see paragraphs 65 to 67 above).

130. Notwithstanding the authorities' prompt response to correct the failures identified, the Court accepts that they must have contributed to the escalation of the conflicts and mistrust between the applicants and the police (see notably paragraph 20 and 111 above). They do not, however, justify the applicants' provocative behaviour and repeated disregard of their own responsibilities towards their protection.

131. In this connection, the Court must note that domestic law imposes on protected witnesses a duty to cooperate with the authorities and abstain from any action that might compromise the safety of the mission. Those duties were clearly set out in the protection protocols to which the applicants eventually gave their consent (see paragraphs 15 and 30 above). Failure to comply with the obligations undertaken by signing the protocols may result in exclusion from the programme (see, in particular, Article 17 of the WPA, cited in paragraph 85 above). It can therefore be accepted that the applicants were fully aware of their duty to cooperate with the authorities.

132. However, in practice, the applicants repeatedly failed to comply with their obligations and breached the protection protocols. They were uncooperative and very often exhibited inappropriate behaviour towards the police officers. They made considerable efforts to elude the protection measures and obstruct the work of the officers assigned to protect them (see notably the incidents described in paragraphs 52-55 above). They refused to cooperate with the protection teams (see, for instance, paragraphs 47 and 50 above) and used offensive language towards the police (see, for instance, paragraph 54 above). The applicants also allegedly made unattainable demands to the authorities concerning the obligation to find them new jobs and refused to compromise (see paragraphs 32-35 above). Moreover, the applicants, through their presence on social media and on television (see paragraphs 69-77 above), risked compromising their protected witness status.

133. Furthermore, the applicants refused the offer of relocation within Romania (see paragraph 24 above). As for their request to have their identities changed and be relocated abroad (see paragraph 32 above), the HCCJ dismissed them after careful examination and provided reasons as to why those measures would not be feasible in their situation (see paragraph 35 above). In complete disregard of the HCCJ's decision and of their obligation to comply with the protection protocols, the applicants decided unilaterally to change their residence abroad. This act, in practice, effectively ended their protection (see paragraphs 30 and 85 above) and

potentially exposed them to a serious risk to their lives and physical integrity. It appears, however, that despite the additional difficulties raised by this new situation created by the applicants' actions, the authorities did not withdraw protection but maintained contact with the applicants abroad (see paragraph 82 above) and continued to offer them financial support (see paragraph 39 above).

134. The Court commends the authorities for their efforts to continue the protection despite the applicants' lack of cooperation instead of withdrawing them from the witness protection programme, an option provided for by law (see Article 17 of the WPA, cited in paragraph 85 above, as well as paragraph 131 above). Their willingness to ensure the applicants' protection and find alternative solutions did not weaken despite the applicants' lack of cooperation, breach of the rules and provocative behaviour.

135. In the light of the above findings, the Court considers that the authorities did what could reasonably be expected of them to protect the applicants from the alleged risk to their lives. They thus complied with the requirements of Article 2 of the Convention.

There has accordingly been no violation of that provision.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been no violation of Article 2 of the Convention.

Done in English, and notified in writing on 2 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Jon Fridrik Kjølbro
Deputy Registrar	President