The role of magistrates' associations in nurturing legal culture and protection of vulnerable groups

INTERNATIONAL CONFERENCE

Collection of materials

Sofia, Bulgaria, 27th September 2024

TABLE OF CONTENTS

THE GOAL OF THE CONFERENCE

Article I. The International Conference “The role of magistrates' associations in nurturing legal culture and protection of vulnerable groups” aims to gather and present examples and good practices on the role of magistrates' associations in shaping the legal culture, guarantees for the participation of people in vulnerable situations in judicial processes, possibilities of cooperation within the judicial process with professionals from other spheres in order to ensure effective protection of human rights.

This international forum will provide opportunities for professionals in the judiciary system to share experience and opinions on the strengthening of the protection of vulnerable groups and enhancing their legal culture. The conference will further develop the international networking and relations among magistrates and other professionals and thus will support joint efforts and initiatives.

AGENDA

FRIDAY, 27TH OF SEPTEMBER 2024

9.00 – 9.30	Registration
	OPENING AND WELCOMING SPEECHES
9.30 – 9.45	**Tatyana Zhilova – President of the Board of the Bulgarian Judges Association** **Galina Zaharova – President of the Supreme Court of Cassation of Bulgaria** **Mariarosaria Guglielmi – President of MEDEL**
	THE ROLE OF MAGISTRATES' ASSOCIATIONS IN NURTURING LEGAL CULTURE WITHIN SOCIETY
9.45 – 11.30	**Moderator Nelly Koutzkova – former President of the Bulgarian Judges Association, former member of the Supreme Judicial Council of Bulgaria** • **Tatyana Zhilova – The activities of the Bulgarian Judges Association in the framework of the project "On the rule of law through the lens of literature and philosophy".** • **Monika Frąckowiak – The activities of Iustitia – Poland for strengthening of the values of the Rule of law among Polish citizens.** • **Adrienn Laczo – The experience of Res Iudicata Association – Hungary to build a bridge between judiciary and society.** • **Alexander Arabadjiev - President of the First Chamber of the Court of Justice of EU /online/ – The role of professional associations of magistrates in the proceedings before the Court of Justice and the General Court of EU.** **DISCUSSION**
11.30 – 12.00	**COFFEE BREAK**
	PROTECTION OF VULNERABLE VICTIMS OF CRIMES AND OF VULNERABLE PEOPLE FROM OTHER FORMS OF BASIC RIGHTS VIOLENCE
12.00 – 13.30	**Moderator: Maria Doncheva – Vice – President of the Sofia Regional Court** • **Fabrizio Filice - Judge at the Milan Criminal Court /online/ – The protection of victims and vulnerable persons in the Italian criminal system.** • **Yonko Grozev – Former Judge at the European Court of Human Rights /2015 – 2024/ – The ECtHR jurisprudence on protection of**

	victims of domestic violence. • **Galia Valkova – Judge at the Sofia City Court – Legal issues in the Bulgarian judicial system on the protection of victims of domestic violence.** • **Julio Martínez Zahonero – Instruction judge at the court of Gijon – The Spanish system for protection of gender-based violence.** **DISCUSSION**
13.30 – 14.30	**LUNCH**
	EQUAL ACCESS AND PARTICIPATION OF DISABLED PERSONS IN COURT PROCEEDINGS
14.30 – 16.15	**Moderator Vladislava Tsarigradska – Judge at the Pleven District Court** • **Ao. Univ.-Prof. Dr. Andrea Berzlanovich - Leiterin Fachbereich Forensische Gerontologie, Medizinische Universität Wien - The forms of violence against people in need of care and people with disabilities that are not punishable by law, but which represent massive infringements of the personal rights of those affected.** • **Alexander Klerch – President of the Court in Pirna, Germany – Legal guarantees for protection of people with mental-health issues and their practical application by the German Judiciary.** • **Alexandra Neves - Assistant Attorney General at the Court of Appeal of Évora, Portugal - The legal framework for vulnerable people in Portugal.** • **Miroslava Todorova – Judge at the Sofia City Court – The efforts of the judicial professional community in Bulgaria for reform of the legal basis on the rights of people with mental-health issues.** • **Vladimir Sotirov – Medical doctor of psychiatry - The necessary reform in the field of mental health care in Bulgaria.** • **Professor Hans Petter Graver – University of Oslo /online/ - Positive and negative examples in history for the role of judges in protection of vulnerable groups.** **DISCUSSION**
16.15 – 16.30	**CLOSING REMARKS**
17.00 – 19.30	**COCKTAIL DINNER**

CONFERENCE PARTNERS AND ORGANISERS

BULGARIAN JUDGES ASSOCIATION

The Bulgaria Judges Association is an independent, voluntary, professional organization, unit- ing judges in Bulgaria and assisting in the protection of their professional, intellectual, social and material interests, in strengthening the prestige of the courts in Bulgaria. The Union was registered in 1997 as a non-profit legal entity to carry out activities for the public benefit.

BULGARIAN CENTER FOR NOT-FOR-PROFIT LAW

The Bulgarian Center for Not-For-Profit Law (BCNL) was established in July 2001 as a foundation in pursue of activities for the public bene- fit. The mission of the organization is to support the draft and the implementation of laws and policies aiming the development of the civic society, civic participation and good governance in Bulgaria. BCNL is the local affiliate of the International Center for Not-for-Profit Law (ICNL) and the European Center for Not-for- Profit Law (ECNL). The mission of BCNL is to provide legal support for the development of civil society in Bulgaria. BCNL spreads its activities over the territory of the whole country, providing expertise and legal assistance to NGOs, local government and institutions.

MEDEL
Magistrats Européens pour la Démocratie et les Libertés

MEDEL /Magistrats européens pour la démocratie et les libertés/ is an international association established in 1987, whose members are associations of judges and prosecutors from Germany, Belgium, Cyprus, Spain, France, Greece, Italy, Poland, Portugal, Czech Republic, Romania, Serbia, Turkey, Moldova, Hungary and Bulgaria.

SPEAKERS

TATYANA ZHILOVA

Judge Tatiana Zhilova is a lecturer in Intellectual Property Law at the Faculty of Law of Sofia University "St. Kliment Ohridski", where she graduated in Bulgarian Philology (1991) and in Law (1997).
She obtained a Master's degree in European Union Law (2009) and a Doctorate in Intellectual Property Law (2020).
Since 2007 she has been a judge at the Administrative Court of Sofia-City.

MONIKA FRĄCKOWIAK

Monika Frąckowiak is a judge at the Court of First Instance in Poznan, Poland. She is a member of Iustitia, the largest association of judges in Poland, and vice-president of Magistrats Européens pour la Démocratie et les Libertés – MEDEL.

Dr. ADRIENN LACZÓ

She has been a criminal judge since 2001 and a judge of the Criminal Department of the Budapest Metropolitan Court since 2008, appointed a Head of Chamber in 2021.

She obtained a qualification as an organised crime counsellor from the Faculty of Law Enforcement of the National University of Public Service and LL.M. degree from the Faculty of Law and Political Sciences of the PPKE in Cybercrime, Corruption and Money-laundering.

She is a regular lecturer at the University of Budapest. She participates as a lecturer in professional training courses within the judiciary and regularly conducts evaluation procedures of judges. She is the author of several studies on criminal law and rule of law related topics.
She is fluent in English and German and intermediate in Italian and French.

ALEXANDER ARABADJIEV

Alexander Arabadjiev studied law at Sofia University "St Kliment Ohridski", Bulgaria, from which he graduated in 1972. In 1975, he was appointed as a judge at the Blagoevgrad Regional Court, Bulgaria, and served in that capacity until 1983, the year in which he joined the Blagoevgrad District Court, Bulgaria, where he held office until 1986. He then served at the Supreme Court of Bulgaria between 1986 and 1991 and at the Constitutional court, Bulgaria, from 1991 to 2000. He was a member of the European Commission of Human Rights from 1997 to 1999.
Between 2001 and 2006, was a Member of the Bulgarian Parliament and an observer at the European Parliament from August 2005 to December 2006. From 2002 to 2003, he was involved in the drawing up of policy responses to the future challenges for the European Union in the context of the 2004 enlargement as a member of the Convention on the Future of Europe.
On 12 January 2007, Mr Arabadjiev was appointed as a Judge at the Court of Justice and has served in that capacity since then. Elected as President of Chamber by his peers, he has held that office at the Court since 9 October 2018. He is Chair of the Bulgarian Association for European Law.
He is honoured with Order of 'Stara Planina, First Class' (decree of 18 December 2009 of the President of the Republic of Bulgaria).

FABRIZIO FILICE

Fabrizio Filice, currently Judge of the Milan criminal court, pre-trial division, has got a specific professional experience in the gender-based violence and domestic and sexual violence matter, on which He is Author of scientific publications as well, e.g. "Gender Violence" (Milan, ed. Giuffrè, 2019) and various articles on different law journals, e.g. "Questione giustizia" and "Giudice donna".

ЙОНКО ГРОЗЕВ

Judge Grozev completed his 9-year term at the European Court of Human Rights in April 2024 (13.04.2015 - 12.04.2024).
He graduated in law from the Faculty of Law of Sofia University "St. Kliment Ohridski" in 1991 and joined the Sofia Bar Association as a lawyer in 1993. He participated in the process of developing and implementing a training programme for Bulgarian judges on the application of the European Convention on Human Rights, Council of Europe (1991-2001). He holds a master's in law degree from Harvard Law School, Cambridge, Massachusetts (1995).
He is Founding member of the Bulgarian Helsinki Committee (1992-2013), the Centre for Liberal Strategies (1993-2013) and the Access to Information Foundation (1996-2002). He has been a member of the Legal Advisory Committee of the European Roma Rights Centre (1998-2010), the Board of the Media Development Centre (2000-2003), the Board of the Open Society Institute (2001-2004), the Board of the Centre for the Protection of the Rights of Persons with Mental Disabilities, Budapest (2002-2006), and the Board of the European Roma Rights Centre (2002-2006). He was Chairman of the Board and is founding member of the Risk Monitor (2009-2015), member of the Board of the Bulgarian Lawyers for Human Rights (2009-2013) and of the Board of the Open Society Justice Initiative, New York (2011-2015).
He was the head of a working group tasked with drafting a strategy for institutional reform aimed at improving the implementation of European Court of Human Rights decisions, Ministry of Justice of Bulgaria (2007-2008), and a member of the working group for drafting the first legal aid law (2009).

GALIA VALKOVA

Galya Valkova is a judge at Sofia City Court. She has undergone training in mediation and negotiation and referred the first court disputes in the field of parental conflicts for their resolution through mediation to the Centre for Settlement and Mediation (CSM) at Sofia District and Sofia City Courts. She completed an internship at the Registry of the European Court of Human Rights, Strasbourg. Since 2014 Judge Valkova has been cooperating with the Justice and Reconciliation Society. She has conducted a number of trainings on referral to mediation.

Ao. Univ.-Prof. Dr. ANDREA BERZLANOVICH

She is working as a forensic pathologist at the Center for Forensic Medicine at the Medical University of Vienna for 34 years, where she is the head of the Unit of Forensic Gerontology since 2010 and deputy head of the Institute since 2022. Furthermore, she is the head of one of six the regional expert commissions of the Austrian Ombudsman Board (AOB). The AOB along with the commissions monitor institutions in which there is or can be a deprivation or restriction of personal liberty, such as in prisons or nursing homes. The inspection also extends to institutions and programmes for people with disabilities, and the administration is monitored as an executive authority if direct orders are issued and coercive measures are exercised, as in the case of deportations, demonstrations and police operations. The essential purpose of the above is to recognise and remedy risk factors for human rights infringements at an early stage. The focus of her practical and scientific work is on violence in nursing, poor nursing care, nursing errors, as well as preventable deaths of elderly people, suicides and homicides in old age. On the other hand, she concerned with improving the preservation of evidence by optimizing the collection of findings and securing evidence for victims of violence of all ages.

JULIO MARTÍNEZ ZAHONERO

Julio Martínez Zahonero is judge since 2005. Currently a senior judge he works as Instruction Judge in the Court of Gijón (Spain). He is a former judge in a Gender Violence's Court for 4 years. Specialized in Gender Violence by the Supreme Council of the Judiciary in 2023. Member of the Board of "Jueces para la Democracia" for 4 years. Several stages in France, Romania and Germany.

Professor HANS PETTER GRAVER

Hans Petter Graver received the degree of cand. jur in 1980, and was awarded a Doctor of Laws (dr. juris) in 1986 – both degrees from the University of Oslo. In 1993 he was appointed Professor in Sociology of law with an obligation to teach administrative law.

For the past 15 years his research has centred around the role of courts and judges in situations where the rule of law breaks down. He led the research project Judges under Stress – the Breaking Point of Judicial Institutions and has advised the court administrations of Norway, Ukraine and Bosnia and Herzegovina.

He has authored numerous books and articles over a wide field of subjects, including administrative law, competition law, fundamental rights, sociology of law, legal history, legal theory, argumentation and rhetoric. His most recent book is Democracy and Lawlessness the Penitentiary Laws and Civil Disobedience in Norway 1928-1931, Springer 2024. His book Valiant Judges, Iniquitous Law Thirteen Stories of Heroes of the Law has been translated into Slovak, Ukrainian, and Georgian.
Graver was president of the Norwegian Academy of Science and Letters 2019-2021. He was awarded an honorary doctorate at the University of Helsinki in 2010, at the University of Heidelberg in 2017 at the University of Uppsala in 2020 and at the University of Bergen 2022. He is an honorary member of the Law Society of Finland and member of the Academia Europaea (2022).

ALEXANDER KLERCH

Alexander Klerch is a family judge and president of the District Court (Amstgericht) in the city of Pirna, Germany. He started working as a judge in 1998. He has over 25 years of experience as a civil judge and 1 year as an administrative law judge. He is with more than 5 years of experience as a judge in protective proceedings with a focus on proceedings relating to the rights of people with disabilities and people with mental health problems. He has 5 years of experience as a family court judge with a focus on mediation in custody cases before the appellate court, including 3 years in the first instance court.
He is qualified to apply the special method of avoiding restrictions to the elderly, sick and disabled "Werdenfelser Weg" (note: persistent and insistent pursuit of a route that does not conform to the main route).
As of 2018, he is part of the European Judicial Training Network.
Within 2018-2023 he conducted several visits to Bulgaria, including 2018 in Sofia, in Balchik (2021) and in Lukovit (2023). Since 2019 he has been in collaboration with the Global Initiative in Psychiatry - Sofia.

ALEXANDRA CHÍCHARO NEVES

Alexandra Chícharo Neves graduated in law in 1987 from the Faculty of Law of Lisbon and joined the Public Prosecutor's Office in 1988. In 2009 she obtained a master's degree in law and in 2013 a Doctorate in Law (defending a thesis on disability rights), both in the Autonomous University of Lisbon (UAL). From 2017 to 2023 she is a member of the High Council of the Public Prosecutor's Office. Throughout her career, she has worked in criminal law, labour law, family and juvenile law, civil law and commercial law. She is currently a member of the Board of the Union of Public Prosecutors (SMMP) and Assistant Attorney General at the Court of Appeal of Évora.

MIROSLAVA TODOROVA

Miroslava Todorova has been a judge since 1997, and since 1999 she has been hearing criminal cases. Currently she is a judge at the Sofia City Court. She is permanent lecturer at the National Institute of Justice in criminal law and procedure. For more than 15 years he has been involved in initiatives related to the promotion of the separation of powers, the independence of the courts and the quality of justice. She has been President of the Bulgarian Judges Association within 2009-2012. Since 2014 she has been involved in the activities of the Justice and Reconciliation Society.

Dr. VLADIMIR SOTIROV, MD

Dr. Vladimir Sotirov is a psychiatrist, graduated from the Medical University - Sofia in 1995, acquired a specialty in Psychiatry in 2001. He worked as a psychiatrist at the psychiatric hospital “Ivan Rilski” - Novi Iskar (Kurilo). In 2007 he graduated from the Master's program “Health Policies and Health Care Management” at New Bulgarian University. He was a lecturer at the Master's program “Clinical Social Work” at the NBU between 2003 and 2010. He was Secretary (1998-2002) and successively Vice-Chairman, Chairman and Board Member (2004-2010) of the Sofia Psychiatric Society, as well as Vice-Chairman of the Consultative Council for Mental Health at Sofia Municipality (2009-2010). Since 2001 he has been the manager and psychiatrist at the Adaptation Mental Health Outpatient Clinic - a group practice for specialized psychiatric outpatient care. He is involved in several researches, applied and training projects.

MODERATORS

NELLY KOUTZKOVA

Nelly Koutzkova graduated from the Faculty of Law at Sofia University "St. Kliment Ohridski". She has worked as a junior judge at the Sofia City Court, as district judge at the Sofia District Court, and as judge and president of the Sofia District Court. In 2007 she became a judge at the Sofia Court of Appeal. She was a member of the Supreme Judicial Council - elected from the quota of the judges. She participated in the establishment of the National Institute of Justice. She is a former Chairman of the Board of the Bulgarian Judges Association. She has worked as an expert on the CARDS programme for the Western Balkans - Albania, Macedonia, Bosnia and Herzegovina. She obtained additional trainings in the USA (ongoing training of judges and court administration), in Germany and Austria (Statute of the Free Notary), in the - European Legal Academy in Trier (Rights of Persons with Disabilities).

MARIA DONCHEVA

Maria Doncheva is Deputy Chairman of the Sofia Regional Court, currently a permanent lecturer of the candidates for junior judges at the National Institute of Justice. She has a special interest in the criminal aspects of domestic and gender-based violence and she trains professionals on the subject.

VLADISLAVA TSARIGRADSKA

Vladislava Tsarigradska graduated in law at the Faculty of Law of "St. Kliment Ohridski" University in Sofia. Since 2010 she has been a judge at the District Court - Lukovit. She is interested in securing and guaranteeing the rights of people with disabilities and vulnerable groups in judicial processes, including the application of restorative practices and multidisciplinary approach - interaction with specialists from different fields.

The activities of Iustitia – Poland for strengthening of the values of the Rule of law among Polish citizens.

Presentation by Monika Frąckowiak – a judge at the Court of First Instance in Poznan, Poland, Vice-president of MEDEL

NOT ONLY THE RIGHT, BUT THE DUTY TO SPEAK OUT

CCEJ (op. nr 18(2015))

ENCJ (Sofia Declaration 2013)

ECHR verdicts:

Baka v. Hungary
Żurek v. Poland
Todorova v. Bulgaria
Tuleya v. Poland

POLISH JUDGES WITH CITIZENS

FIGHT FOR HUMAN RIGHTS FOR ALL

RULE OF LAW IS MORE IMPORTANT THEN YOUR PARTICULAR SITUATION

TV

INTERVIEWS

SOCIAL MEDIA

FB, INSTAGRAM, X

NEWSPAPERS

MOOT COURTS

BOOK FESTIVALS

EDUCATION

CHAINS OF LIGHT

LEGAL CAFES

ROCK FESTIVALS

SCIENCE FESTIVALS

SPORT EVENTS

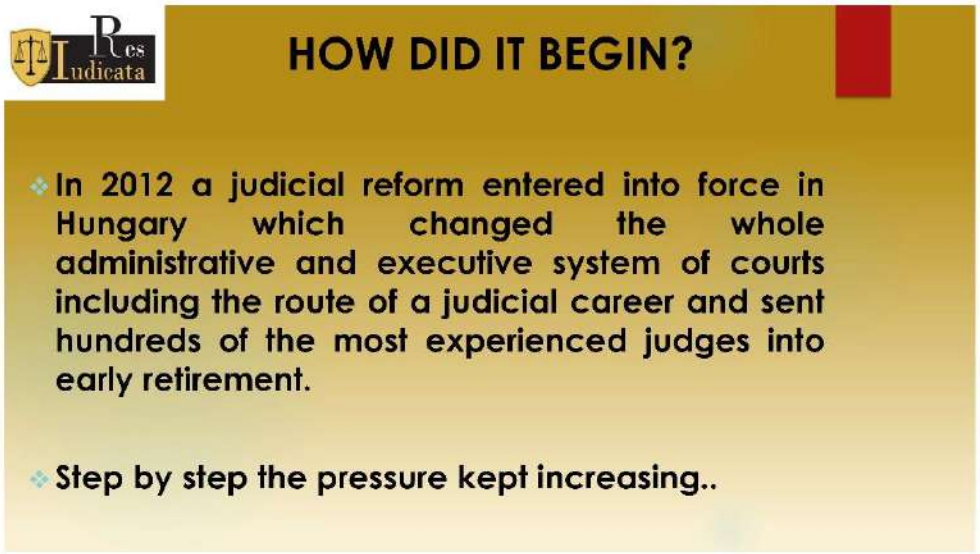

29
Poland Rock
IUSTITIA
W TYM ROKU GRAMY DLA WAS RAZEM!
HR
HELSIŃSKA FUNDACJA PRAW CZŁOWIEKA


SOLIDARITY
VISIBILITY
COOPERATION
COURAGE
AUTHENTICITY
ACCESSIBILITY
COMPREHENSIBLE LANGUAGE


IUSTITIA

The experience of Res Iudicata Association – Hungary to build a bridge between judiciary and society.

Presentation by Adrienn Laczo - a judge of the Criminal Department of the Budapest Metropolitan Court and a Head of Chamber since 2021.



- For years and years judges in Hungary have experienced the most devastating apathy on behalf of the judicial community as well as the society.
- After a harsh and longlasting debate between the National Office of Judiciary (run by an appointee of the governing politicians) and the National Judicial Council (composed of judges elected by judges) everyone felt just exhausted..

There came an eye-opening meeting with colleagues from Iustitia…

And a couple of Hungarian judges went into action.

RES IUDICATA - Judges for Social Awareness Association

was founded in 2020

„The purpose of our association is to raise the legal awareness and acceptance of the values of rule of law in society, to deepen the recognition of the judicial profession and to increase public confidence in the judiciary."

In other words: to build a bridge between judges and society.

Judges all over the world encounter these questions every day:

- **What exactly do the courts do in the first place?**
- **Why do we need courts to be independent?**
- **Why do cases keep dragging on?**
- **What does a judge do all day?**
- **How can a judge be impartial?**
- **What is the difference between a judge and a lawyer?**
- **Why? What? Where? How much? Who?.....**

We think that by answering these questions we bring judges closer to people.

We make them understand how courts work and what it means for them to have impartial judges sitting in independent courts.

Information leads to understanding and understanding leads to embracing.

We're all in this together.

What do we do?

We go to schools

Res Iudicata

We hold seminars at universities

Res Iudicata

we organise panel discussions....

Res Iudicata

we build international connections and make true friendships

Res Iudicata

Our association became a member organization of MEDEL in 2023. We have become part of a large family of European judges and prosecutors committed to an independent judiciary governed by the rule of law.

MEDEL
Magistrats Européens pour la Démocratie et les Libertés

Res Iudicata

.....and conferences

Res Iudicata

we go to homeless-shelters to educate social workers .....

.....as well as homeless citizens

On the international field....

- We regularly give contribution to the annual **Rule of Law Report** of the European Commission
- We submitted an **NGO communication** concerning freedom of expression of judges to the Committee of Ministers concerning the execution of the judgment of the European Court of Human Rights in the case of Baka v. Hungary the statements of which were implemented by the Committee
- We keep in touch with **international organizations** who care about the rule of law
- Recently we filed a **complaint to the European Commission** concerning insufficient judicial salaries and the lack of courtstaff which may have a bad influence on judicial independence, too

we communicate our professional or generally rule-of-law related opinion via all channels available

Le Monde

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

ALEC

hvg

KOSSUTH RÁDIÓ

European Commission

Res Iudicata

Find us at:

Res Iudicata – Bírák a Társadalmi Tudatosságért Egyesület

Contact us:

resiudicataegyesulet@gmail.com

+36702515303
+36703789089

The role of professional associations of magistrates in the proceedings before the Court of Justice and the General Court of EU.

Alexander Arabadjiev - President of the First Chamber of the Court of Justice of EU

(translated from Bulgarian by DeepL - https://www.deepl.com/)

Dear participants in the conference on the role of magistrates' associations in shaping the legal culture.
I would like to make a few opening remarks, first of all to congratulate the participants in this conference and to encourage the holding of similar events.

I hope that such forums, such appearances will be an incentive and will inspire the Bulgarian judges' associations and Bulgarian magistrates in general to be initiators and implementers of events that are able to provoke a real, meaningful dialogue - among the professional community , but also among the public in general - on issues that are of paramount importance for the structure and functioning of the judicial system - but which are also issues that affect not only this system as such, but have an impact on life.
Because - let's face it - the way the public debate is going in this country makes this debate not just incomplete, it is irrelevant. And the actions that are being taken - including at the level of changes to the Constitution - apart from being ill-prepared (in the phrase of a number of commentators, who, if my quality allowed me - "incompetent") - are blows in empty space. And - designed to be so .
In this sense, the role of the professional organisations of judges is essential, both in raising the legal culture of society and - more specifically - in shaping and upholding the principle of the rule of law and the criteria for the independence of judges as an essential element of this principle - both at institutional and personal level.

As will be discussed further on, a landmark decision of the CJEU -.judgment of 27 February 2018 in the case of ASJP ("Syndicate of Portuguese Judges", case C - 64/16 , decided on a reference for a preliminary ruling made in proceedings before the Supreme Administrative Court of Portugal, was initiated on an appeal by this very Association. That judgment placed Article 2 TEU, which enshrines the values on which the Union is founded, on the agenda of the CJEU.1 On that basis, the Court of Justice 'instrumentalised' that provision and mobilised those values, making them a measure, on a scale, against which national judicial systems are judged.
Of course, the CJEU does not stop there. That judgment marks the beginning of a jurisprudence, of a jurisprudential development, which, without being complete, elevates the values among which that of the rule of law stands out to the point of defining the very identity of the Union as a common legal order[2].
Professional organisations whose objects include the dissemination and defence of these values and standards have a public mission of paramount importance.

It is in this context that the question of the role of judges' professional organisations in proceedings before the CJEU arises. And, in particular, the question of whether they have standing to challenge the legality of an act of an EU institution.

I will focus my presentation on this issue on a recent ruling of the General Court of the EU, which is to a large extent the reason why I have been invited to take part in today's conference.
It is the order of 4 June 2024 in Joined Cases T-530/22 - :T-533/22.
This order of the General Court, which, incidentally, has not entered into force, as it is being appealed before the Court of Justice of the European Union, fits directly into today's topic, all the more so because it has given me some thoughts which I would like to share with you today. With the caveat, of course, that, as I am still a judge at the CJEU, it is not permissible for me to express opinions on pending proceedings. In any event, the context in which the issues raised in these proceedings are set is entirely created by the aforementioned developments in the case law of the CJEU, which are also the product of the activities of judicial organisations. In any event, by initiating proceedings before the relevant courts, these organisations are fulfilling their mission to uphold and promote the values of the rule of law.
First of all, let me reproduce in a few words the content of that order, which dismissed as inadmissible - for lack of direct concern - the appeals of the Magistrats européens pour la démocratie et les libertés (MEDEL), the International Association of Judges, the Association of European Administrative Judges and the Stichting Rechters voor Rechters, p. 1. all "Associations of Judges", against the Council's implementing decision of 17 June 2022 (amended by decision of 8 December 2023) approving the sustainability and development assessment of Poland . This is an implementing act of Regulation 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing a Recovery and Sustainability Mechanism, the contested measure concerns requirements/measures to strengthen the independence and impartiality of Polish judges. It concerns - in particular - a reform to ensure that judges affected by the Disciplinary Chamber of the Supreme Court[3] have access to review procedures for their cases. In fact, the immediate and main subject-matter of the dispute are three 'jalons', three objectives to be achieved which - together with the indicators for their fulfilment - are set out in an annex to the contested decision. They relate to measures to remedy infringements of effective judicial protection. Pursuant to Article 4 of the contested decision, the Republic of Poland is the addressee thereof. According to the applicants, the 'complaints' themselves are unlawful and insufficient to achieve the objectives pursued, and the conditions and time-limits laid down for the implementation of the relevant reforms, on compliance with which the relevant payments depend, are contrary to EU law.
The Council submitted that the appellants were not entitled to challenge the decision in question, either on their own behalf or on behalf of the judges whose interests they were defending, since those judges themselves did not have standing to challenge the validity (i.e. compliance with EU law) of that decision.
As I do not have the case materials, and as I am constrained by the requirement not to rule on pending proceedings, I will reproduce the content of the definition in general, very schematically, paying more attention to the arguments according to which this is an area that requires a conceptual change in the interpretation and application of the conditions for the acquisition of standing by natural and legal persons - in this case NGOs representing associations of judges.

Before doing so, it is pertinent to briefly outline the normative framework within which the issue at hand fits.

It is contained in Article 263 TFEU, the first paragraph of which refers to the acts of the Union which are subject to review before the Court of Justice of the European Union, namely, on the one hand, legislative acts and, on the other, other acts of a binding nature intended to produce legal effects for third parties, which may be individual acts or acts of general application. According to the second paragraph of Article 263 TFEU, those acts may be subject to review on grounds of incompetence, infringement of a fundamental procedural requirement, infringement of the Treaties or of any rule of law relating to their

application or misuse of powers.

Article 263 TFEU then draws a clear distinction between the right of appeal of the institutions and the Member States on the one hand and that of natural and legal persons on the other. Thus, the second paragraph of Article 263 TFEU confers on the institutions of the Union listed therein as well as on the Member States (i.e. on the so-called 'privileged complainants') the right to challenge, by means of an action for annulment, the lawfulness of any act referred to in the first paragraph, without the exercise of that right being conditional on proof of a legal interest.
As regards the right of appeal of natural and legal persons, the fourth paragraph of Article 263 TFEU provides that '[a]ny natural or legal person may bring an action, under the conditions laid down in the first and second paragraphs of that provision, against [acts] addressed to him or affecting him directly and individually, and against subordinate acts directly affecting him which do not involve implementing measures'[4].

The General Court, referring to the order of 8 May 2019 in Case T-330/18 *Armando Carvalho*, paragraph 51, has considered the question of admissibility in the context of three hypotheses.
The first relates to the admissibility of the claims(complaints), viewed as an action by the said associations on their own behalf. Those associations have maintained that their mission is to defend the value of the rule of law and the independence of the courts, in pursuance of which mission they regularly act as intermediaries, or rather as interlocutors (as partners), with the institutions of the Union in matters of the rule of law. As associations representing judges, i.e. one of the authorities in the State, they cannot, therefore, be treated in a manner analogous to the treatment of other associations as regards the admissibility of a claim of illegality.
The Court finds, first, that the applicants do not rely on a legal provision which expressly confers standing on them. Furthermore, there is no legal provision conferring them procedural rights to enable them to provide an effective remedy to the courts/judges, particularly in the light of the rule of law enshrined in Article 2 TEU, in the context of the Mechanism for Recovery and Sustainability. Consequently, the Court holds, as associations representing judges, the applicants cannot benefit from procedural 'treatment' different from that applied to any other association.
The second hypothesis relates to the admissibility of complaints, regarded as actions by the applicants on behalf of their members, whose interests they defend and who - as such - are entitled to challenge the legality of acts such as the contested one. In that regard, it is stated that the associations in question are associations representing judges at international level, whose members are, as a general rule, national professional associations, including the Polish Association of Judges.
In view of that, the General Court has held that it is necessary to examine the existence of *standing* for the judges who are members of the associations of which the applicants are members. For the purposes of that analysis, reference is made to the content of the fourth paragraph of Article 263 TFEU, according to which, as already stated, 'any natural or legal person may bring an action ... against decisions addressed to him or which affect him directly and individually, and against regulations which affect him directly and which do not involve implementing measures'.

Taking into account that the contested decision is addressed to the Republic of Poland, the analysis focuses on the requirement of direct and personal concern.
- On the question whether the Polish judges to whom the decisions of the Disciplinary Chamber relate are directly affected

On the basis of well-established case-law according to which " the requirement that a natural or legal person be directly affected by the measure which is the subject of the appeal (challenge) presupposes the fulfilment of two cumulative conditions, namely, on the one hand, that the challenged measure, directly produces effects in the legal situation of that person and, on the other hand, does not leave any discretion to its addressees, who are entrusted with its implementation, which is purely automatic and derives solely from Union law, without the application of other rules of an intermediate nature. In that regard, the General Court has referred to paragraph 43 of the judgment of 12 July 2022 in Case C-348/20 P *Nord Stream 2 AG*, which states precisely that, namely:

'According to settled case-law, the requirement that a natural or legal person be directly affected by the measure which is the subject-matter of the action presupposes the fulfilment of two cumulative conditions, namely that the contested measure, on the one hand, directly produces effects in the legal situation of that person and, on the other, that it leaves no discretion to its addressees, who are entrusted with its implementation, which is purely automatic in nature and derives solely from the legal framework of the Union, without any other rules of an ex post facto nature being applicable. the General Court has examined the substance of the contested measure and concluded that that decision establishes and conditions the Republic of Poland's access to funding under the mechanism and does not directly affect the legal position of the judges affected by the decisions of the Disciplinary Board, from which it follows that the first of those conditions for concluding that they are directly affected within the meaning of Article 263(4) TFEU is not satisfied. Reference is also made in that regard to the Nord Stream 2 judgment, in this case paragraph 63, where it is stated that '*in order to determine whether an act produces such (binding) legal effects and is therefore open to challenge under Article 263 TFEU, the substance of the act must be taken into account and those effects must be assessed in the light of objective criteria such as the content of the act itself, possibly also taking into account the context in which it was adopted and the powers of the institution which issued it*'.

In that context, the concept of direct link is of key importance in the context of the analysis of the possibility of the contested measure directly producing legal effects on the applicant's legal situation. In that regard, it is accepted - in paragraph 88 of the order - that the contested decision does not have the direct effect of subjecting the judges affected by the decisions of the Disciplinary Chamber to the conditions laid down in the contested decision. Consequently, this Court holds, there is no direct link between that decision - and in particular one of the 'complaints' referred to - and the legal position of those judges.

-On the question whether the Polish judges or judges from other Member States are directly concerned

The Court of First Instance has held that, since the judges whose interests the applicant associations defend are not themselves entitled to initiate proceedings for the legality of the contested measure, the applicants do not satisfy the requirements for admissibility under the second hypothesis at issue.

The third hypothesis, established in the case-law and within the framework of which the General Court has examined admissibility, concerns a situation in which an association's own interests as such are affected, in particular by reason of the fact that its negotiating position is affected by the measure whose lawfulness is contested.

In that regard, it is held that the applicants have not established that they are affected in that sense. That

also relates to the fact, maintained by the applicants, that some of them have observer status in Council of Europe formations, and to the fact that one of them has intervened before the ECtHR in cases brought by Polish judges on complaints concerning the rule of law crisis in Poland, a circumstance held to be irrelevant.
There is also a section in the reasoning of the order devoted to the applicants' argument that, in the present case, *the conditions for admissibility should be "softened"/softened*.

The appellants have argued, in essence, that the conditions of eligibility should be applied with a certain degree of flexibility, in particular having regard to the requirements relating to effective judicial protection and the principle of the rule of law, which is a fundamental value of the European Union which forms its very identity.

In that regard, the General Court has observed that, while it is true that 'the conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU must be interpreted in the light of the fundamental right to an effective judicial remedy, [that is so] without, however, going so far as to disapply those conditions, which are expressly provided for in that Treaty'[5].

In view of the protection afforded by Article 47 of the Charter, it is pointed out that that Article is not intended to alter the system of judicial review provided for in the Treaties, and in particular the rules relating to the admissibility of actions or complaints brought directly before the courts of the European Union, as is also apparent from the explanations concerning that Article 47, which, pursuant to the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, must be taken into account in its interpretation. [6] That protection - conferred by Article 47 of the Charter - does not entail a requirement that an individual legal subject should be unconditionally entitled to bring an action for annulment of an act of the Union directly before the courts of the Union.

Since the appellants cannot show that they are directly affected, the General Court continues, to relax the conditions of admissibility claimed by them would in effect be to ignore that condition (of direct concern) which is expressly laid down in the fourth paragraph of Article 263 TFEU, in direct contravention of the consistent case-law of the CJEU. The systemic deficiencies of the Polish judicial system cannot justify a derogation - by the General Court - from the requirement of direct concern which applies to actions brought by natural or legal persons pursuant to the fourth paragraph of Article 263 TFEU.
It may be added here that, in their appeal against the order of the General Court, the appellants submit that the present case is situated in a context which has not been considered at all in the previous case-law and that, consequently, that case-law must be adapted accordingly, to the extent that it derives (or is required) from Articles 2 and 19(1) TEU and Article 47 of the Charter. In this ground of appeal, which appears to be directed precisely against the part of the reasoning just reproduced in the order under review, it is submitted that the present case is characterised by the context created by the '*regression*'/'*backsliding*'in certain Member States with regard to compliance with the principle of the rule of law and the requirement of an effective remedy. It is in that context that the applicants, as representative organisations of judges from all the Member States, raise the relevance of the interpretation of Article 263(4) TFEU in the light of Article 19 TEU and Article 47 of the Charter. In their view, the case provides the Court of Justice with a first opportunity to 'clarify'/'clarify' the case-law on the concept of 'direct concern' within the meaning of the fourth paragraph of Article 263 TFEU in the context precisely of *backsliding* and potential - as a result - infringements of the values enshrined in Article 2 TEU.

It should be made clear here that the 'previous' case-law refers to the judgments of 25 July 2002 in *Union de Pequenos Agricultores v Council*(*UPA*), C-50/00 P, and of 1 April 2004 in *Commission v Jégo-Quére*, C-263/02 P. I myself find it necessary to refer to these judgments because their delivery is directly linked to the shaping of the existing legal framework and, above all, to the current wording of the fourth paragraph of Article 263 TFEU.

In the first of those two cases, C-50/00 R, the Court of Justice heard an appeal by the *UPA*, a professional association which organises and defends the interests of small agricultural undertakings in Spain, against an order of the General Court declaring inadmissible a challenge by that association to a Council regulation concerning the olive oil market.

In dismissing the appeal, the Court of Justice emphasised that the Treaty had established a complete system of legal remedies and procedures designed to ensure that the acts of the institutions were reviewed for legality, that review being entrusted to the Community judge. Under that system, natural and legal persons are not able - because of the conditions of admissibility laid down in the Treaty as it then stood - to challenge directly such legislative acts of general application, but may instead bring an incidental review under Article [277 TFEU] before the Community judge or before a national judge, by causing the latter to refer to the CJEU a question of preliminary ruling on the validity of the relevant provision of EU law on the basis of Article 267 TFEU. It follows that the Member States are under an obligation to provide in their national legal systems for legal remedies enabling them to ensure respect for the right to an effective remedy. And the national courts are required, in the spirit of the requirement of sincere cooperation, to interpret and apply the national procedural rules relating to the right of appeal in such a way as to enable natural and legal persons to challenge before a court the lawfulness of any decision or any other measure relating to the application to them of a Community act of general application, raising an argument that such an act is invalid.

The judgment in the Jégo Quére case was given on an appeal by the Commission against a decision of the General Court upholding a challenge by that undertaking to a provision of Commission Regulation (No 1162/2001) establishing measures for the recovery of hake stocks in the relevant sub-areas. Reiterating the considerations of the UPA judgment just reproduced, the Court concludes that to adopt the Tribunal's reasoning in order to allow the challenge would render meaningless the requirement of Article 230(4) EC, i.e. of the current Article 263(4).
In addition - and this is particularly important - the Court has emphasised that, while it is true that the requirement of personal prejudice must be interpreted in the light of the principle of effective judicial protection, bearing in mind the various circumstances which are capable of giving a specific character to the situation of an applicant (i.e. of 'individualizing' that situation), such an interpretation cannot lead to the 'abolition' (exclusion) of that condition, which is expressly provided for in the Treaty, without going beyond the powers conferred by it on the judiciary.

If a modification of the system of control of the legality of Community acts of general application is in principle permissible (possible), it is within the competence of the Member States - subject to the conditions for modification of the Treaties - to reform the contested system in force.

Such an attempt is being made at almost exactly the same time, because the adoption of these decisions coincides with the holding of the Convention on the Future of Europe, which produced the ill-fated - unfortunately - Constitutional Treaty. In the framework of the Convention's discussions, a possible

change in the conditions of access to the Union's jurisdictions is also being discussed. What the Convention arrived at was reproduced a few years later in the Treaty of Lisbon, under which, in Article 263(4), a hypothesis was added allowing actions against regulations which directly affect the natural or legal person concerned and which do not involve implementing measures. The requirement of personal concern is therefore removed in this case[7].

The second subparagraph of Article 19(1) TEU, according to which the Member States are to establish the legal remedies necessary to ensure effective legal protection in the areas covered by Union law, is also the fruit of that discussion.

It remains to be seen how the CJEU will react to that argument, having first, of course, analysed what the General Court has held concerning the requirements of direct and personal concern, that is to say, the application by that Court of those requirements as conditions for the admissibility of an action for annulment of an act of an institution of the Union.

It is also important to note that one of the (third) grounds of appeal against the order in question, namely that concerning the alleged infringement of Article 263(4) TFEU in the light of the fundamental right to an effective remedy laid down in Article 19(1) TEU and Article 47 of the Charter, is put '*in the light of*' the judgment of the ECtHR of 9 April 2024 in *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (Application No 53600/20). This judgment is remarkable for its decision on the merits - something which is not the subject of discussion today, but which deserves mention. The case before the ECtHR was brought by four (elderly) women and a Swiss association whose members are all elderly women affected by the effects of global warming on their living conditions and on their health. They have maintained that the Swiss authorities have not taken sufficient measures to reduce the effects of climate change.

The Strasbourg Court has held that Article 8 of the Convention - enshrining the right to respect for private (and family) life - extends to the right to effective protection by public authorities from the serious adverse effects of climate change on life, health, well-being and quality of life (this is the so-called "positive obligation" of States.).

And in the context that concerns us today, this Court has held that the four applicants do not meet the criteria for victim status ("victims") of a violation within the meaning of Article 34 of the Convention and has declared their complaints inadmissible. Conversely, the applicant association was granted the right to lodge a complaint (*locus standi*) concerning threats arising from climate change on behalf of those individuals who could be said to be subject to specific threats from climate change within the meaning of that interpretation of Article 8.

In this context, it also remains to be seen whether the jurisprudential surge on the importance of the rule of law and the independence of the courts as a core element of the content of this value that we have witnessed over the last few years may have similar implications to global warming in the area of access to justice as far as EU jurisdictions are concerned.

In other words, whether the standard introduced by the *Klima Senoorinnen* judgment to protect the procedural rights of Associations in Convention proceedings, especially in the case of Associations whose purpose is the protection of rights against threats arising from developments of major (overriding)

public importance, can be 'transposed' and applied in the area of interest to us. That is to say, whether the challenges faced by liberal democracies when faced with " non-liberal "regressions",i.e. backward movements with respect to fundamental pillars of the rule of law, can be considered equivalent to the risks associated with climate change. In any event, it should be pointed out in this respect that the appeal against the definition in question also contains an argument based on Article 52(3) of the Charter, according to which that provision requires the same approach to be applied in interpreting the rules on access to an effective remedy before the courts of the Union, including Article 263(4) TFEU. May I recall that, according to this provision of the Charter, 'in so far as this Charter contains rights corresponding to rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, their meaning and scope are the same as those given to them in that Convention. This provision does not preclude Union law from affording wider protection."

In any event, it remains for us to see to what extent the circumstances defining the present context must be judged to differ from those underlying the present case-law so as to lead to an adaptation of the interpretation of Article 263(4) TFEU as the injunctions of Article 2 and the second subparagraph of Article 19(1) TEU and Article 47 of the Charter so require-.

Or, like what was said in paragraph 45... of the *UPA* judgment , a new amendment of the Treaties will be awaited in order to "facilitate"(relax) the eligibility conditions.

In addition , the Strasbourg Court has held that Article 6(1) of the Convention. Right to a fair trial - applies to the Association's complaint about the effective application of mitigation measures under the applicable national law.

.....
It should be stressed, however, albeit parenthetically, that in the field of environmental law (i.e. law concerning the protection of the environment), the issue of the ability of environmental NGOs to challenge the

In a sense, the situation in this area is quite different, and at legislative level, and in this respect I can confine myself to referring to Regulation No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

Article 10 of that Regulation, entitled 'Request for internal review of administrative acts', states in its paragraph 1:

1. Any non-governmental organisation which meets the criteria described in Article 11 shall have the right to request an internal review of the Community institutions and bodies which have adopted an administrative act under environmental law or, in the case of alleged administrative failure to act, should have adopted such an act.

And according to Article 12 of the Regulation, entitled 'bringing proceedings before the courts'

2. A non-governmental organization that has made a request for an internal review under Article 10 may institute proceedings before the courts in accordance with the relevant provisions of the Treaty.

Where the Community institution or body fails to act in accordance with Article 10(2) or (3), the non-governmental organisation may bring proceedings before the courts in accordance with the relevant provisions of the Treaty[8].

However, it must be borne in mind that legislative acts of the Union are excluded from the operation of Article 9(3) of the Aarhus Convention, so that the requirement of the fourth paragraph of Article 263 TFEU on personal concern applies as a general rule.

Incidentally, a judgment to be set out in more detail at the end, as it concerns national legislation which prevents an association of magistrates from challenging certain appointments before the national courts(Case C-53/23), deals with the point made by the referring court, that the Court has recognised the standing of associations for the protection of the environment and that it has already found that, in certain cases, Member States are obliged to allow representative associations to take legal action to protect the environment or to combat discrimination.

In relation to this argument, specifically in relation to environmental protection, it is pointed out that this finding of the Court derives from procedural rules specifically granted to representative associations by the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, i.e. *the Aarhus Convention*. On the other hand, the Court points out, it follows from its case-law that, even in the area in question, the Member States remain free, where that Convention does not specifically require the recognition of the standing of representative associations, to grant or not to grant that standing. And where, in that context, they intend to recognise such legitimation for representative associations, they must define both the scope of the judicial action available to them and the conditions which make such action conditional upon the right to an effective remedy being respected.9

And, since reference has just been made, and has already been made before, to the judgments of the CJEU given on preliminary references made in the context of proceedings brought by professional organisations and/or associations of judges before national jurisdictions, here are some of them in brief. The enumeration must inevitably begin, not only chronologically but also in terms of its importance, with the case of the Portuguese judges - C - 64/16 (judgment of 27 February 2018).

The Portuguese legislature has temporarily reduced (by special law), as from October 2014, the remuneration for the performance of a number of public sector posts and functions. By virtue of the administrative acts adopted on the basis of this law for the "determination of salaries", the amount of the remuneration of the judges of the Court of Auditors (Tribunal de Contas) has been reduced. On behalf of certain members of the Tribunal de Contas (Court of Auditors), ASJP, the Portuguese Judges' Syndicate, lodged an appeal under the special administrative procedure before the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal), seeking those administrative acts relating to October 2014. annul those administrative measures, order the defendant to reimburse, with default interest, the sums withheld from their salaries and order the persons concerned to be entitled to the full amount of their remuneration.

In support of that action, the ASJP submits that the salary reduction measures infringe 'the principle of the independence of the judiciary', which is enshrined not only in the Portuguese Constitution but also in

European Union law, in particular the second subparagraph of Article 19(1) TEU and Article 47 of the Charter.

The question referred for a preliminary ruling is:

"*Should the principle of the independence of the judiciary, as derived from the second subparagraph of Article 19(1) TEU, Article 47 of the [Charter] and the case-law of the Court of Justice, be interpreted as precluding measures to reduce the remuneration of magistrates in Portugal in so far as they are imposed unilaterally by other sovereign authorities/bodies and for a prolonged period, as evidenced by Article 2 of Law [No 75/2014]?"*

In answering this question, the Court gave "jurisprudential significance" to the provisions of Article 2 and Article 19(1) TEU and "operationalised" Article 2 through Article 19. It is not superfluous to point out the observation - in paragraph 29 of that judgment - as regards the scope ratione materiae of the second subparagraph of Article 19(1) TEU, that that provision refers to 'areas covered by Union law', irrespective of the cases in which Member States apply that law within the meaning of Article 51(1) of the Charter.

Before answering the question referred, however, the Court made the observation that, since the applicant in the main proceedings was acting on behalf of members of the Court of Auditors, it was necessary, in order to answer that question, to have regard only to the position of the members of that body. That, of course, does not affect the scope and effect of the judgment, in which it is not the answer as such which is important, but the significance which that judgment derives from the 'operationalisation', as already pointed out, of Article 2 TEU. In the words of the Court itself - in paragraph 32 of that judgment - 'Article 19 TEU, which specifies the rule of law as a value enshrined in Article 2 TEU, entrusts the task of ensuring judicial review of compliance with the legal order of the Union not only to the Court of Justice but also to the national courts'.

In Case C - 896/19, *Repubblika* (judgment of 20 April 2021....) the reference was made in the context of a dispute between *Repubblika*, an association registered as a legal person in Malta and having as its object the promotion of the protection of justice and the rule of law in that Member State, and the Prime Minister of Malta concerning *actio popularis* , in particular the compatibility with European Union law of the provisions of the Constitution of Malta governing the procedure for the appointment of judges. The action seeks a declaration that, by reason of the existing system for the appointment of judges, as laid down in the relevant provisions of the Constitution, the Republic of Malta has failed to fulfil its obligations under, in particular, the second subparagraph of Article 19(1) TEU and Article 47 of the Charter. Furthermore, it is requested that all appointments made under the existing system be declared null and void and that no new judges be appointed unless the recommendations of a Venice Commission decision are complied with.
Incidentally, the preliminary questions referred by the referring court are worded as follows:

'1) Are the provisions of Article 19(1) [second paragraph] TEU and Article 47 [of the Charter], read together or separately, applicable to the validity of Articles 96, 96A and 100 of the Constitution of Malta?

(2) If the answer to the first question is in the affirmative, are the powers of the Prime Minister in the process of appointing members of the judiciary in Malta compatible with Article 19(1) TEU and Article

47 of the [Charter], read also in the light of Article 96A of the Constitution, which has been in force since 2016?

(3)If the powers of the Prime Minister are found to be incompatible, should that fact be taken into account in respect of future appointments and should it also affect previous appointments?"

Reiterating what was said above in the judgment for the Portuguese judges on the effect of the second subparagraph of Article 19(1) TEU, the Court held that that provision must be interpreted as applying in a case in which a national court is seised of an action under national law for a ruling on the compatibility with European Union law of national provisions governing the procedure for the appointment of judges in the Member State of that court, due regard being had, for the purposes of interpreting that provision, to Article 47 of the Charter of Fundamental Rights of the European Union.

The judgment of 18 May 2021 in 6 joined cases - C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, or, as it is known, the case of *Associatia " Formul Judecatorilor din Romania " (i.e. Forum of Judges from* Romania*)*has at its core several references for a preliminary ruling made by Romanian courts, some of which originate from proceedings initiated on complaints/requests of precisely thatprofessional association of magistrates 'Forum of Judges from Romania'.

Thus, in Case C-83/19, the reference for a preliminary ruling arose following an application, registered on 27 August 2018, by the "Forum of Romanian Judges" seeking access from the Judicial Inspectorate to statistical information concerning its activities in the period 2014-2018, in particular the number of disciplinary proceedings initiated, the reasons for initiating them and their outcome, as well as the cooperation agreement concluded between the Judicial Inspectorate and the Romanian Intelligence Service and the involvement of that service in the checks carried out. Since it considers that the Judicial Inspectorate has only partially responded to this request, which concerns information of public interest, and has thus failed to fulfil its legal obligations, the Romanian Judges' Forum has lodged a complaint with the referring court requesting that the Judicial Inspectorate be ordered to provide the information in question.

In Case C-127/19, the "Forum of Judges from Romania" and the "Movement for the Protection of the Status of Prosecutors" brought an action before the Court of Appeal - Pitești, requesting the annulment of the decision of the Plenum of the SJC approving, respectively, the rules for the appointment and removal of prosecutors in executive positions in the OPPU and the rules for the appointment, continuation in office and removal of prosecutors in executive positions in that department.
In Case C-355/19, the main proceedings were initiated by an appeal filed before the same Court of Appeal by the "Forum of Judges of Romania", the "Movement for the Defence of the Status of Prosecutors" and the OL, seeking the annulment of a decree of the Prosecutor General concerning the organisation and functioning of the OPPPS - Prosecutor's Unit for the Investigation of Crimes Committed within the Judiciary.

It is important to bear in mind that in all three of those cases the question was raised whether Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of Romania's progress in achieving specific objectives in the areas of judicial reform and the fight against corruption, and the reports prepared by the European Commission on the basis of that decision, constitute acts adopted by an institution of the European Union which are subject to interpretation by the Court on

the basis of Article 267 TFEU. As is well known, such a decision has also been adopted in relation to Bulgaria as a kind of "safeguard clause". The mechanism in question has now been abrogated, but the effect of that judgment, as set out in paragraphs 1 and 2 of the operative part of the judgment in those joined cases, is not irrelevant.

As is apparent from the content of the judgments in those cases, the Court was responding to preliminary references addressed to it in cases in which the referring court had been addressed by professional associations of magistrates. The admissibility of the appeals in the main proceedings has not been challenged, and the Court should not - and ought not - to have ruled on that question in the context of a preliminary reference. It should be noted, however, that in the *Repubblika* case, in ruling on the first question referred for a preliminary ruling but not on the admissibility, which was challenged by the Polish Government on other grounds, the Court of Justice pointed out that that association relied on the incompatibility with European Union law of the constitutional provisions on the basis of which the contested appointments of judges were decided, and not on infringements by those appointments of rights which it - the association - drew from provisions of European Union law. In view of that - and on the basis of Article 51(1) of the Charter - it is held that Article 47 of the Charter is not applicable to the dispute in the main proceedings, although that provision must properly be taken into account in interpreting Article 19(1) TEU[10].

However, in the recent judgment of the First (5-member) Chamber already mentioned - judgment of 8 May 2024 in Case C-53/23 - . The Court holds that Articles 2 and 19(1) TEU, read in conjunction with Articles 12 and 47 of the Charter, must be interpreted as precluding national legislation which, by making the admissibility of an action for annulment against the designation of public prosecutors competent to prosecute magistrates subject to the existence of a legitimate private interest, effectively excludes the possibility for professional associations of magistrates to bring such an action in order to safeguard the principle of the independence of the judiciary.

It is interesting to note that in this case the request was made in the context of a dispute between the same professional associations of magistrates (i.e. including the "Forum of Romanian Judges") against the Prosecutor General concerning the legality of a decision to appoint prosecutors to the Prosecutor's Office of the Supreme Court of Cassation.

The referring court - which is the same Court of Appeal - has based the reference for a preliminary ruling on the existence of a provision of the Law on Administrative Proceedings, which states that 'natural persons and private legal entities may bring actions in defence of a legitimate public interest only in the alternative, in so far as the violation of the legitimate public interest follows logically from the violation of subjective rights or legitimate private interests'.

According to the referring court, it follows from that legislation that private parties may rely on a public interest only in so far as the prejudice to that interest follows logically from the infringement of subjective rights or legitimate private interests. Reference is also made to the case-law of the Supreme Court of Cassation, according to which, as regards associations, the admissibility of an appeal such as that in the main proceedings is conditional on the existence of a direct link between the administrative act subject to review for legality and the direct aim and objectives of the applicant association. It is pointed out that in several of its judgments the Supreme Administrative Court has held that professional associations of magistrates have no legal interest in the annulment of decisions appointing magistrates.

The referring court, emphasising that the applicants in the main proceedings are seeking effective judicial protection in an area covered by European Union law, has considered it necessary to determine whether the interpretation adopted by the SCC (of the national procedural rules) is contrary to Articles 2 and 19(1) TEU in conjunction with Articles 12 and 47 of the Charter.

The reference for a preliminary ruling is made on that basis and involves two questions. We are concerned here with the first question referred for a preliminary ruling, which is worded as follows:
'*Do Article 2 and the second subparagraph of Article 19(1) TEU, in conjunction with Articles 12 and 47 [of the Charter], permit restrictions to be imposed on the lodging of certain judicial complaints by professional associations of judges - in order to promote and protect the independence of judges and the rule of law? and to preserve the status of the profession - by introducing the condition that there must be a legitimate private interest in an overly strict sense, based on a binding decision of the Înalta Curte de Casație și Justiție (Supreme Court of Cassation), followed by national case-law in cases analogous to the present question, requiring a direct link between the administrative act subject to review for legality by the judicial authorities and the direct aim and objectives of professional associations of magistrates, as laid down in their statutes, in cases where the associations aim to obtain effective judicial protection in matters governed by European Union law, in accordance with the aim and general statutory objectives? "[11]*

Before answering that preliminary question, the Court reformulated it by holding that, in essence, the referring court was seeking to ascertain whether Articles 2 and 19(1) TEU, read in conjunction with Articles 12 and 47 of the Charter, must be interpreted as precluding national legislation which, by making the admissibility of an action for annulment against the appointment of public prosecutors competent to prosecute magistrates subject to the existence of a legitimate private interest, effectively excludes professional associations of mag

After reformulating the question, the Court observed that, in principle, it is for the Member States to determine the standing and legal interest of the parties to proceedings, without, however, prejudice to the right to effective judicial protection, and that, in that regard, the procedural rules for judicial proceedings designed to ensure the protection of the rights which legal persons derive from European Union law must comply with the principles of equivalence and effectiveness. This means that those rules must not be less favourable than those governing analogous domestic proceedings (principle of equivalence) and must not make it impracticable or excessively difficult to exercise the rights conferred by the Union legal order (principle of effectiveness).

However, it is also emphasised that nothing in European Union law obliges Member States to guarantee professional associations of judges' procedural rights enabling them to challenge any alleged incompatibility with European Union law of a national provision or measure relating to the status of judges.

In analysing the case-law of the Court of Justice concerning the requirements of judicial independence which flow from the second subparagraph of Article 19(1) TEU, the formation of the Court of Justice which gave the judgment under review observed that rules which preclude professional associations of magistrates from challenging decisions concerning the designation of prosecutors competent to prosecute magistrates do not appear to be of a nature to affect those requirements directly, since those rules cannot in themselves affect the ability of judges.

As regards the designation of prosecutors competent to prosecute magistrates, it has been pointed out that, for the avoidance of any doubt, Member States are obliged in principle to ensure that the activities of such prosecutors are governed by effective rules, fully consistent with the requirement of judicial independence, which provide the necessary guarantees that such prosecutions cannot be used as a system of political control over the activities of such magistrates, and to ensure that.

Having regard, first, to the obligation on the Member States to adopt and apply such rules and, second, to the fact that professional associations of magistrates are not, in principle, directly concerned with the designation of prosecutors competent to prosecute magistrates and, second, to the fact that European Union law does not, as a general rule, require the recognition of specific procedural rules of such associations, the Court has concluded that the mere fact that a national rule does not authorise In that sense - or in other words - the requirement of judicial independence cannot generally be interpreted as obliging States to permit professional associations of judges to lodge such complaints.

Finally, the hypothesis concerning the possible application of Article 47 of the Charter is examined. In that regard, it is submitted that the right of professional associations of magistrates to bring proceedings against measures such as those at issue in the main proceedings cannot be inferred from that provision, since the recognition of an effective remedy in a particular case presupposes that the person claiming it relies on rights or freedoms guaranteed by European Union law - something which does not follow from the reference for a preliminary ruling. Referring to what it has held in paragraphs 43 and 44 of the *Repubblika* judgment, cited above, the Court has held that an association which alleges before a national court the incompatibility with Article 19(1) TEU of a national rule on the appointment of magistrates cannot, on that ground alone, be regarded as alleging an infringement of a right which it derives from European Union law.

Notwithstanding what is accepted in that judgment, the case-law of the Court of Justice of the European Union, albeit in outline, demonstrates the importance of the activities of professional associations of judges in a number of Member States in upholding the principle of the rule of law and the fundamental component of that principle and the guarantee of its observance, namely the independence of the courts. As is evident, in the context of proceedings brought before national courts on complaints/claims by such associations, preliminary references have been made, leading to fundamental rulings by the CJEU. That fact in itself confirms not only the important role played by the professional organisations of judges, but also the correctness and validity of an often-repeated formula of the Court of Justice, according to which the Union is a Union of law in which the acts of its institutions are subject to scrutiny for compliance, in particular, with the Treaties, with the general principles of law and with fundamental rights, and to that end, by means of the provisions of Articles 263 and 277, on the one hand, and Article 267, on the other, the Treaty on the Functioning of the European Union has established a complete system of means for the In this context, it is important to emphasise, as already noted above, that judicial review of compliance with the legal order of the Union is, however, provided, as follows from Article 19(1) TEU, not only by the Court of Justice but also by the courts of the Member States.

In any event, the case which is the focus of the present submission[12] is not intended to bring about changes in that system, but in the interpretation of the requirement of direct and personal concern.
Finally, I will take the liberty of mentioning - although this is outside the immediate subject of my submission - two interpretative decisions of the SAC.

According to the first one - Decision No. 2 of 12 February 2010 on Interpretative Case No. 4/2009 of the OCA of the First and Second Collegiums of the SAC - "professional (branch) organizations and other non-profit legal entities may challenge sub-legislative acts in the presence of a legal interest justified by the subject of their activity and the purposes for which they were established."
According to the second interpretative decision of 25 July 2023 on interpretative case No. 4/2022 of the OCA of the I and II Collegiums of the SAC - "non-profit legal entities registered in the Register of non-profit legal entities as organizations of and for people with disabilities within the meaning of § 1, item 1, para. 12 of the Supplementary Provisions of the Law on Persons with Disabilities, in the legal-organizational form of a foundation for carrying out activities for private benefit, have no legal interest in challenging by-laws affecting persons with disabilities who are not members of the same organizations and with whom the organizations have not concluded a contract for the social service "advocacy".
I stop here without commenting on these two interpretative decisions. With this, it seems to me, a transition can be made to one of the following topics.

[1] According to paragraph 32 of that judgment, Article 19 ECJ '...concretises the rule of law as a value affirmed by Article 2 TEU...'.
[2] Paragraph 127 of the judgment of 16 February 2022 in Case C-156/21 Hungary v Parliament and Council states: 'The values referred to in Article 2 TFEU are established and shared by the Member States. They define the very identity of the Union as a common legal order. The Union must therefore, within the framework of its powers under the Treaties, be able to defend those values."
[3] See in this regard the judgment of 19 November 2019 in Joined Cases C-585/18, C-624/18 and C-625/18, A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court).
[4] In the words of the CJEU in paragraph 31 of its judgment of 15 July 2021 in Case C - 453/19 P, Deutsche Lufthansa v Commission, "... a condition for the admissibility of an action brought on the basis of the fourth paragraph of Article 263 TFEU by a natural or legal person against an act to which that person is not the addressee is that that person be recognised as having standing, which is the case in two hypotheses. On the one hand, such an action may be brought provided that the act directly and individually affects the person concerned. On the other hand, such a person may lodge an appeal against a regulation which does not include implementing measures if it directly affects him.
[5] Paragraph 113 of the order with reference to paragraph 98 of the judgment of 3 October 2013 in Case C-583/11 R, *Inuit Tapiriit and Others v Parliament and Council and* paragraph 44 of the judgment of 28 April 2015 in Case C-456/13 R, *T & L Sugars and Sidul Açucares v Commission*.
[6] Paragraph 97 of the *Inuit* judgment .
[7] It should be noted that the fourth paragraph of Article 263 TFEU reproduces verbatim the content of Article III-365(4) of the draft Treaty establishing a Constitution for Europe.
[8] See judgment of 6 July 2023 in Joined Cases C-212/21 R and C-223/21 R , EIB v ClientEarth.
[9] Paragraph 40 with reference to paragraph 58 of the judgment of 20 December 2017. in Case C-664/15, where it was held *that Article 9(3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that an environmental organisation duly constituted and operating in accordance with the requirements of national law should be able to challenge before the courts an act granting permission for the implementation of a project which is likely to be contrary to the obligation laid down in Article 4 of Directive 2000/60 to prevent deterioration of* water bodies. and paragraph 60 of the judgment of 23 April 2020 in Case C-507/18, where it was held that '[u*]nder Article 9(2) of Directive 2000/78, Member States shall ensure that associations, organisations and other legal*

entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with the provisions of this Directive may participate on behalf of, or in support of, the complainant'.

[10]. See paragraphs 41 to 45 of the judgment.

[11] It should be noted that in the proceedings in this case the jurisdiction of the Court and the admissibility of the reference for a preliminary ruling were challenged by the Attorney General and the Romanian Government. Admissibility was challenged on grounds unrelated to the presence or absence of standing discussed here.

[12] The case pending before the Court is C- 555/24R.

The protection of victims and vulnerable persons in the Italian criminal system

Speech given by Fabrizio Filice - Judge at the Milan District Court

The Italian criminal system, on the topic of victim's rights, pursues a double goal.

On one hand, our objective is always to ensure that the victim is protected from retorsion by the perpetrator of the violence; on the other hand, we aim to protect the victim during the trial from the so-called "secondary victimisation".

Both systems of protection stem from European Sources: The first is the Istanbul Convention, which is the convention issued specifically for the protection of women, firstly from victimisation *ex se* (i.e., carried out by the same perpetrator of the crime) and secondly, from secondary victimisation, which consists of the negative effects brought to the victim by the criminal proceeding itself. The second is addressed in the European Directive No. 29 of 2012, recently modified by the new Directive No. 1385 of 2024, which focuses particularly on victims' rights during the trial.

It is important to highlight that these two laws were issued in different contexts: The first originates from the European Council (C.O.E. for short), while the second originates from the European Union (EU for short).

Of course, every EU country has the duty to respect these laws, but the question is *how are these laws interpreted in Italy.*

The Istanbul Convention was ratified with Law No. 77 of 2013. Instead, the EU Directive was ratified with Italian Law No. 212 of 2015.

The most important of these two Italian laws is the latter, because with this law the Italian legal system has included within its criminal system specific protection for the victim during the trial. It is the most important instrument we have since it provides for the victim to give testimony before the trial.

The provision in question (article 392, code of criminal procedure) has been repeatedly modified over the years, until it was completely replaced by Law No. 172 of 2012, implementing the so-called Lanzarote Convention; this modification introduced the possibility of using this particular procedure for an exhaustive list of offenses (e.g., mistreatment, domestic abuse, rape and sexual violence, but also, and that's interesting, stalking and the hate crimes such as the hate speech against the immigrants, motivated by racial bias), not only for the hearing of the minors, but also of the adult victims.

Following the fundamental EU Directive, mentioned above, the National Legislature harmonized domestic law with the supernational indications, extending the special hearing modalities to any victim in conditions of vulnerability.

The reason behind the new shape was found both in the need to protect the genuineness of evidence and in the necessity to safeguard the vulnerable person, avoiding the risk of secondary victimization.

Firstly, protected hearing methods can be applied; furthermore, the confidential context in which this procedure takes place allows to avoid the publicity typical of the trial. In particular, the aim is to facilitate the swift exit of the victim from the judicial process by reducing the number of hearings they are required to undergo. In fact, individuals subjected to this special procedure can benefit from the provision − contained in the code of criminal procedure as well (article 190-bis) − which limits further questioning of the same person during the trial, to facts or circumstances different from those addressed in the previous statements, or if the judge or one of the parties deem specific needs to exist.

Regarding the specific listening methods, the help of a psychological expert who can assist in evidence acquisition is permitted. The judge could also ask, in case of minors, the assistance of a family member. The judge may order the use of a one-way mirror with an intercom system to avoid any contact between the victim and the defendant. The provision continues to provide for the complete documentation of testimonial statements, alternatively in phonographic or audio-visual form.

In effect, this is a private hearing basically, in which the victim's evidence is given not in the presence of the defendant, who may or may not be in another room in the court, connected by the intercom system mentioned above. In such cases, the defence lawyer cannot cross-examine the victim and the victim can only be questioned by the judge.

Indeed, in the trials for domestic abuses and gender-based crimes, there actually is a risk that the prosecutor or the defence lawyer could use aggressive questioning tactics to intimidate the victim. For example, they may ask if the victim had other sexual relations outside the relationship in question. To avoid such intimidatory tactics, the law provides that only the judge can interview the victim.

It must acknowledge that when the defence lawyer cannot cross-examine, it leads to a contradiction between the rights of both parties, the defendant, and the victim; so, the judge must try to strike a fair balance between these different rights, by getting the victim to explain the full details of the violence. Once the victim's testimony has been heard, then the judge can share the relevant information with the defence lawyers. The judge therefore acts as an intermediary between the parties, and in this role he/she must decide which questions are appropriate for the case, as well as which questions to prohibit, based on whether they are or are not deemed relevant to the case.

The judge has the duty to filter questions that might undermine the tranquillity of the victim; but also, he/she must determine which questions are appropriate and how to phrase the questions so that they are non-judgemental of the victim. For example, questions of a sexual nature may be appropriate in certain cases, but the judge must explain to the victim why such questions are being asked and must also phrase the questions appropriately, in a way that is neither offensive not judgemental.

Another important type of protection regards the possibility of retorsion, that is the possibility of the crime being committed again by the same perpetrator. To deal with this risk, judges can adopt preventative measures, either restrictive orders or custodial orders, depending on the case. The Judge

must decide when to apply these measures and which is appropriate. Once the measure has been chosen, it is necessary for the authorities to monitor the perpetrator and where restrictive orders are violated, the judge must be notified immediately to substitute the restrictive order with a custodial one, as an arrest warrant.

That's interesting because historically this has been the most important and relevant problem when it comes to protecting victims, as it is in this "post-violence period" that victims are most vulnerable, and their lives are most at risk. In fact, many judgements have been issued by the European Court of Human Rights that have condemned Italy for its failure to protect victims in this critical period.

Over the years, more and more Italian laws have been made to address this issue. The last of which was issued as recently as November 2023, the so-called *Roccella Law* (named after the Equal Opportunities Minister at the time). This specific law aims to increase the vigilance of offenders subjected to a restrictive order.

This new law allowed for a specific type of vigilance, the so-called "dynamic vigilance", that was before then unforeseen. For instance, the Prefetto, Italy's Chief of Police, has the duty to ensure such vigilance when deemed necessary by the judge.

In cases where the perpetrator violates the restrictive order, he must be arrested immediately, even when such violation has not been witnessed first-hand by the police. Under this law, it is sufficient for the victim to provide digital evidence of a violation of the restraining order, for the police to act. This evidence could be, for example, a video or text messages sent to the victim. So, this means that if a judge has issued a restrictive order prohibiting contact of any type with the victim and the perpetrator has sent text messages to the victim, this evidence would be sufficient for him to be arrested and detained.

As a final point, I would like to highlight the importance that is given to how judges write down their judgements.

It has been flagged by the European Courts that often these judgements have reflected some bias on the part of the judge. For example, in one case that comes to mind (J.L. *v.* Italy), a judge expressed his opinion about the victim's credibility based on photos on the victim's social media profile, which led the judge to decide that the victim was promiscuous and hence her testimony was not credible. The European Court determined that in this case the Italian tribunal's decision was motivated by gender bias.

The Roccella Law also includes special courses of professional development to teach judges to evaluate cases of gender violence without being influenced by forms of gender bias, especially against women.

To conclude, the topic of victim's rights in Italy is basically a work in progress.

We have been starting to harmonize our domestic legislation with European principles and Sources, but there still are many prejudices and bias against vulnerable person, especially against the victims

of gender-based violence, the l.g.b.t.q.a.i. plus people, the immigrants, and the people with disabilities.

This has to do with politics obviously, but also with the judiciary and jurisprudence.

For instance, just these days the Italian parliament is about to approve a new criminal law, named "Security law", really cracking down on student protest, the immigrants, and the detained people as well.

As "Magistratura democratica", the national association which take parts in Medel, we think that the freedom to express dissent could be significatively jeopardised by this criminal law, but when we take the floor on topic like this, we usually are accused to being politicized, not just by the current majority but also by the society in general.

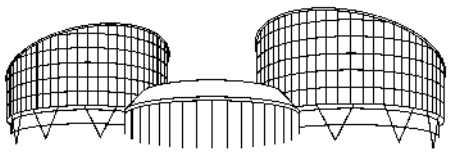
Maybe the formal language of jurists is a problem, but we think there is another one, as in critical period like this, citizens tend to mistrust the judiciary e we must regain our credibility and authority.

We still have a long way to go and, properly from this point of view, national and international associations of jurists, as Medel, really got a fundamental role.

This regards, I completely agree with the polish colleague who spoken before, the "Iustitia" rep, Monika Frackowiak: judges must be active in the society, they have to speak to the citizens and always try and get their point across to them, to make people understand that our civil commitment for rights, in particular for those of vulnerable people and minorities, is not for us, for the judiciary as a caste, but is for the community and for the democracy itself.

As jurists we can clearly understand when democracy and rule of law are put at risk, and then we have the duty to intervene and to protect it.

Yonko Grozev – Former Judge at the European Court of Human Rights /2015 – 2024/



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

FIRST SECTION

CASE OF TALPIS v. ITALY

(Application no. 41237/14)

JUDGMENT
(Extracts)

This version was rectified on 21 March 2017
under Rule 81 of the Rules of Court.

STRASBOURG

2 March 2017

FINAL

18/09/2017

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

In the case of Talpis v. Italy,
The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Mirjana Lazarova Trajkovska, *President*,

Guido Raimondi,
Kristina Pardalos,
Linos-Alexandre Sicilianos,
Robert Spano,
Armen Harutyunyan,
Tim Eicke, *judges*,
and Abel Campos, *Section Registrar*,

Having deliberated in private on 24 and 31 January 2017,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 41237/14) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian and Moldovan national, Ms Elisaveta Talpis ("the applicant"), on 23 May 2014.

2. The applicant was represented by Ms S. Menichetti and Ms C. Carrano, lawyers practising in Rome[1]. The Italian Government ("the Government") were represented by their Agent, Mrs E. Spatafora.

3. The applicant complained, *inter alia*, of a failure by the Italian authorities to comply with their duty to protect her against the acts of domestic violence inflicted on her and that had led to an attempt to murder her and the death of her son.

4. On 26 August 2015 the application was communicated to the Government. The Romanian and Moldovan Governments did not exercise their right to intervene in the procedure (Article 36 § 1 of the Convention).

5. The Government objected on the grounds that the observations submitted by the applicant had reached the Court on 15 March 2016, which was after the time-limit of 9 March 2016 had expired. The Court observes, however, that the observations were sent on 9 March 2016, in accordance with Rule 38 § 2 of the Rules of Court.

THE FACTS

Article II. I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965 and lives in Remanzaccio.

7. The applicant married A.T., a Moldovan national, and two children were born of the marriage: a daughter in 1992 and a son in 1998.

8. The applicant alleged that after their marriage her husband had started beating her. However, in 2011 the applicant followed her husband to Italy in order to provide her children with the opportunity of a more serene future.

[1] Rectified on 21 March 2017: the text read as follows: "The applicant was represented by Ms S. Menichetti, a lawyer practising in Rome."

Section 2.01 1. The first assault committed by A.T. against the applicant and her daughter

9. The applicant submitted that her husband, who was an alcoholic, had already been physically abusing her for a long time when, on 2 June 2012, she requested the intervention of the police after she and her daughter had been assaulted by A.T.

10. When the police arrived, A.T. had left the family home. He was found in the street in a state of intoxication, with scratches on the left side of his face. The police drew up a report of the incident. The report stated that the applicant had been beaten and bitten in the face and the left leg and that she had a number of bruises. The report also stated that the applicant's daughter had herself been hit after intervening to protect her mother and presented a neck injury caused by a fingernail and injuries to both arms. The applicant and her daughter were informed of their rights and expressed their intention to go to the hospital accident and emergency unit.

11. The applicant alleged that she had not, however, been informed of the possibility of lodging a complaint or contacting a shelter for battered women. She also submitted that she went to the accident and emergency unit in order to have her injuries recorded, but that after waiting for three hours she had decided to return home.

12. The Government, referring to the police report, submitted that there was no evidence that the applicant had gone to the accident and emergency unit.

Section 2.02 2. The second assault committed by A.T. against the applicant

(a) a) The applicant's version

13. The applicant submitted that after the assault on 2 June 2012 she had taken refuge in the cellar of her flat and started sleeping there.

14. She recounted the following events as follows. On 19 August 2012, after receiving a threatening telephone call from her husband, and fearing an attack by him, she decided to leave the house. When she returned home, she found that the cellar door had been broken. She tried telephoning a friend to ask if she could stay the night with her, but no one answered her call. She then decided to go back to the cellar. A.T. attacked her there with a knife and forced her to follow him in order to have sexual relations with his friends. Hoping that she would be able to seek help once outside, she resigned herself to following him. She asked a police patrol in the street for help.

15. The police merely checked her and A.T.'s identity papers, and despite the applicant's assertions that she had been threatened and beaten by her husband, they invited her to go home without offering her help and told A.T. to keep away from her. A.T. was fined for unauthorised possession of a lethal weapon.

16. Shortly after she had returned home, the applicant called the emergency services and was taken to hospital. The doctors noted, among other things, that she suffered from cranial trauma, a head injury, multiple abrasions to her body and a bruise on her chest. It was deemed that her injuries would heal up within a week.

(b) b) The Government's version

17. The Government indicated that, according to the incident report drawn up by the police, they had arrived at Leopardi Street shortly after midnight. The applicant informed them that she had been hit in the face. A.T. had given the police officers a knife. The applicant told the police that she wanted to go to hospital to have her injuries recorded. She had gone there and A.T. had returned home. The knife had been seized and the applicant fined for unauthorised possession of a lethal weapon.

Section 2.03 3. The applicant's complaint

18. At the hospital the applicant spoke to a social worker and said that she refused to return home to her husband. She was then given shelter by an association for the protection of female victims of violence, IOTUNOIVOI ("the association").

19. The president of the women's shelter, accompanied by police officers, went to the cellar where the applicant had been living in order to fetch her clothes and personal effects.

20. From 20 August onwards A.T. began harassing the applicant by telephoning her and sending her insulting messages.

21. On 5 September 2012 the applicant lodged a complaint against her husband for bodily harm, ill-treatment and threats of violence, urging the authorities to take prompt action to protect her and her children and to prevent A.T. from approaching them. She stated that she had taken refuge in a women's shelter and that A.T. was harassing her by telephone.

22. A.T. was placed under judicial investigation on charges of ill-treating family members, inflicting grievous bodily harm and making threats. The police sent the criminal complaint to the prosecution on 9 October 2012.

23. On 15 October 2012 the prosecution, having regard to the applicant's requests for protection measures, ordered urgent investigative measures, in particular requesting the police to find potential witnesses, including the applicant's daughter.

24. The applicant was given shelter by the association for three months.

25. In a letter of 27 August 2012 the head of Udine social services informed the association that there were no resources available to take charge of the applicant or to find alternative accommodation for her.

26. The Government gave a different interpretation of that letter, saying that, as the applicant had not first been referred to the Udine social services, which cared for victims of violence in the context of another project, called "Zero tolerance", the latter could not pay the association's expenses. In their submission, female victims of violence could contact social services requesting assistance, which the applicant had not done.

27. On 4 December 2012 the applicant left the shelter to look for work.

28. She said that she had first slept in the street before being accommodated by a friend, and had subsequently found a job as an assistant nurse for elderly people and was then able to rent a flat. According to the applicant, A.T. had continued exerting psychological pressure on her to withdraw her complaint.

29. On 18 March 2013 the prosecution, finding that no investigative measure had been carried out, again asked the police to investigate the applicant's allegations rapidly.

30. On 4 April 2013, seven months after she had lodged her complaint, the applicant was questioned for the first time by the police. She altered her statements, mitigating the seriousness of her original allegations. Regarding the episode of June 2012 she stated that A.T. had unsuccessfully attempted to hit her and her daughter. With regard to the incident that had occurred in August 2012, she said that A.T. had hit her but had not threatened her with a knife. A.T. had, however, pretended to turn the knife on himself.

The applicant also stated that at the time she had not spoken very good Italian and had not been able to express herself properly. She also stated that A.T. had not forced her to have sex with other people and that she had returned to live at the family home. She said that when she had been living at the shelter provided by the association, she had not spoken to her husband on the telephone because she had been told not to. She stated that, barring her husband's alcoholism, the situation at home was calm. She concluded by saying that her husband was a good father and a good husband and that there had been no further episodes of violence.

31. The applicant submitted that she had altered her original statements because of the psychological pressure exerted on her by her husband.

32. On 30 May 2013 the Udine public prosecutor's office, after noting, firstly, that the applicant, who had been interviewed in April, had mitigated her allegations against her husband saying that he had not

threatened her with a knife and that she had been misunderstood by an employee from the shelter where she had taken refuge and, secondly, that no other violent episode had occurred, asked the investigating judge to close the complaint lodged against A.T. for ill-treatment of family members. Regarding the offence of grievous bodily harm, the prosecuting authorities indicated that they intended to continue the investigations.

33. In a decision of 1 August 2013 the investigating judge discontinued the part of the complaint concerning the allegations of ill-treatment of family members and threats. He considered that the course of the events was unclear and that, with regard to the alleged ill-treatment, the offence had not been made out because, since the applicant had complained only about the incident of August 2012, the criterion of repeated episodes of violence was not satisfied.

34. With regard to the complaint of threats aggravated by the use of a weapon, the investigating judge noted that the applicant's statements were contradictory and that in the report drawn up by the hospital there was no reference to knife injuries.

35. With regard to the offence of causing bodily harm, the proceedings were continued before the magistrate. A.T. was committed for trial on 28 October 2013. The first hearing was held on 13 February 2014 and A.T. was ordered to pay a fine of 2,000 euros (EUR) on 1 October 2015.

Section 2.04 4. The third assault by A.T., against the applicant and her son and the murder by A.T. of his son

36. It can be seen from the case file that on 18 November 2013 A.T. received notice of his committal for trial before the magistrate's court on 19 May 2014 for inflicting bodily harm on the applicant in August 2012.

37. In the night of 25 November 2013 the applicant sought the intervention of the police in connection with a dispute with her husband.

38. The police made the following findings in their report: on their arrival they saw that the bedroom door had been broken down and that the floor was strewn with bottles of alcohol. The applicant had stated that her husband was under the influence of alcohol and that she had decided to call for help because she thought he needed a doctor. She told them that she had lodged a complaint against her husband in the past, but that she had subsequently changed her allegations. The applicant's son had stated that his father had not been violent towards him. Neither the applicant nor her son had shown any traces of violence.

39. A.T. was taken to hospital in a state of intoxication. In the night he left the hospital and went to an amusement arcade.

40. While he was walking along the street he was arrested by the police for an identity check at 2.25 a.m.

41. The police report shows that A.T. was in a state of intoxication and had difficulty keeping his balance and that the police had let him go after stopping and fining him.

42. At 5 a.m. A.T. entered the family flat armed with a 12 cm kitchen knife with the intention of assaulting the applicant. The applicant's son attempted to stop him and was stabbed three times. He died of his wounds. The applicant tried to escape but A.T. succeeded in catching up with her in the street, where he stabbed her several times in the chest.

Section 2.05 5. Criminal proceedings instituted against A.T. for grievous bodily harm

43. On 1 October 2015 A.T. was convicted by the magistrate's court of inflicting grievous bodily harm on the applicant, on account of the injuries he had inflicted on her during the incident in August 2012, and sentenced to a fine of EUR 2,000.

Section 2.06 6. Criminal proceedings instituted against A.T. for the murder of his son, the attempted murder of the applicant and ill-treatment of the applicant

44. On an unspecified date in November 2013 the investigation into acts of ill-treatment was reopened.

45. A.T. asked to be tried in accordance with the summary procedure (*giudizio abbreviato*).

46. On 8 January 2015 A.T. was sentenced to life imprisonment by the Udine preliminary hearings judge for the murder of his son and the attempted murder of his wife and for the offences of ill-treatment of his wife and daughter and unauthorised possession of a prohibited weapon. He was also ordered to pay the applicant, who had applied to join the proceedings as a civil party, EUR 400,000 in damages.

47. With regard to the ill-treatment, the preliminary hearings judge, after hearing witnesses and the applicant's daughter, considered that the applicant and her children had been living in a climate of violence. He found that A.T. had been habitually violent and held that, apart from the daily harassment suffered by the applicant, there had been four violent episodes. He added that A.T., at his trial, had confessed to experiencing feelings of hatred towards his wife. According to the preliminary hearings judge, the events of 25 November 2013 were the consequence of an attempt by the applicant to get away from A.T.

48. On 22 May 2015 A.T. appealed against the judgment.

It can be seen from the file that in a judgment of 26 February 2016 the judgment was upheld by the Court of Appeal. However, neither of the parties annexed the judgment to their observations.

Article III. II. RELEVANT DOMESTIC LAW AND PRACTICE

...

55. In its report entitled "Violence towards women" (2014) the National Statistics Institute (ISTAT) provided statistical data concerning violence towards women.

> "Istat carried out the survey in 2014, on a sample of 24,000 women aged 16-70.The results are to be widely disseminated also among migrant women. Istat carried out the survey in 2014, on a sample of 24,000 women aged 16-70. Estimates indicate the most affected foreign women for citizenship: Romania, Ukraine, Albania, Morocco, Moldavia, China.
>
> More specifically, according to the second Istat survey, 6,788,000 women have been victims of some forms of violence, either physical or sexual, during their life, that is 31.5% of women aged 16-70. 20.2% has been victim of physical violence; 21% of sexual violence and 5.4% of the most serious forms of sexual violence such as rape and attempted rape: 652,000 women have been victims of rape; and 746,000 have been victims of attempted rape.
>
> Further, foreign women are victims of sexual or physical violence on a scale similar to Italian women's: 31.3% and 31.5%, respectively. However, physical violence is more frequent among the foreign women (25.7% vs. 19.6%), while sexual violence is more common among Italian women (21.5% vs. 16.2%). Specifically, foreign women are more exposed to rape and attempted rape (7.7% vs. 5.1%) with Moldavians (37,3%), Romanians (33,9%) and Ukrainians (33,2%) who are the most affected ones. As for the author, current and former partners are those who commit the most serious crimes. 62.7% of rapes is committed by the current or the former partner while the authors of sexual assault in the majority of cases are unknown (76.8%).
>
> As for the age of the victim, 10.6% of women have been victims of sexual violence prior to the age of 16. Considering VAW-cases against women with children who have been witnessed violence, the rate of children witnessing VAW cases rises to 65.2% compared to the 2006 figure (= 60.3%).
>
> As for women's status, women separated or divorced are those far more exposes to physical or sexual violence (51.4% vs. 31.5% relating to all other cases).
>
> It remains of great concern the situation of women with disabilities or diseases. 36% of the women with bad health conditions and 36.6% of those with serious limitations have been victims of physical or sexual violence. The risk to be exposed to rape or attempted rape doubles compared to women without any health problems (10% vs. 4.7%).

On a positive note, compared to the previous edition-2006, sexual and physical violence cases result to be reduced from 13.3% to 11.3%. This is the result of an increased awareness of existing protection tools by women in the first place and the public opinion at large, in addition to an overall social climate of condemnation and no mercy for such crimes.

More specifically, physical or sexual violence cases committed by a partner or a former partner is reduced (as for the former, from 5.1% to 4%; as for the latter, from 2.8% to 2%) as well as for cases of VAW perpetrated by non-partners (from 9% to 7.7%).

The decline is meaningful when considering cases among female students: it reduced from 17.1% to 11.9% in the event of former partners; from 5.3% to 2.4% in the event of current partner; and from 26.5% to 22%, in the event of a non-partner.

Significantly reduced are those cases of psychological violence committed by the current partner (from 42.3% to 26.4%), especially when they are not coupled with physical and sexual violence.

Women are far more aware that they have survived a crime (from 14.3% to 29.6% in case of violence by the partner) and it is reported far more often to the police (from 6.7% to 11.8%). More often, they talk about that with someone (from 67.8% to 75.9%) and look for professional help (from 2.4% to 4.9%). The same applies in the event of violence by a non-partner.

Compared to the 2006 edition, survivors are far more satisfied with the relevant work carried out by the police. In the event of violence from the current or the former partner, data show an increase from 9.9% to 28.5%.

Conversely, negative results emerge when considering cases of rape or attempted rape (1.2% in both editions).

The forms of violence are far more serious with an increase of those also victims of injuries (from 26.3% to 40.2% when the partner is the author); and an increased number of women that were fearing that their life was in danger (from 18.8% in 2006 to 34.5% in 2014). Also the forms of violence by a non-partner are more serious.

3, 466,000 women (=16.1%) have been victims of stalking during lifetime, of whom 1, 524,000 have been victims of their former partner; and 2,229,000 from other person that the former partner."

III. RELEVANT INTERNATIONAL LAW

56. The relevant international law is partly described in the case of *Opuz v. Turkey* (no. 33401/02, §§ 72-82, ECHR 2009) and partly in the case of *Rumor v. Italy* (no. 72964/10, §§ 31-35, 27 May 2014).

57. At its 49th session, which was held from 11 to 29 July 2011, the Committee on the Elimination of Discrimination against Women ("the CEDAW Committee") adopted its concluding comments on Italy, of which the passages relevant to the present case read as follows:-

"26. The Committee welcomes the adoption of the Act No. 11/2009 which introduced a crime of stalking and mandatory detention for perpetrator of acts of sexual violence, the National Action Plan to Combat Violence against Women and Stalking as well as the first comprehensive research on physical, sexual and psychological violence against women developed by the National Statistics Institute. However, it remains concerned about the high prevalence of violence against women and girls and the persistence of socio-cultural attitudes condoning domestic violence, as well as lack of data on violence against immigrant, Roma and Sinti women and girls. The Committee is further concerned about the high number of women murdered by their partner or ex-partner (femicide), which may indicate a failure of the State party's authorities to adequately protect the women victims from their partners or ex-partners. In accordance with its general recommendation No. 19 on violence against women and the views adopted by the Committee under the Optional Protocol procedures, the Committee urges the State party to:

(a) put emphasis on comprehensive measures to address violence against women in the family and in society, including through addressing the specific needs of women made vulnerable by particular circumstances, such as Roma and Sinti, migrant and older women and women with disabilities;

(b) ensure that female victims of violence have immediate protection, including expulsion of perpetrator from the home, guarantee that they can stay in secure and well funded shelters, in all parts of the country, and that they have access to free legal aid, psycho-social counselling and adequate redress, including compensation;

(d) enhance the system of appropriate data collection on all forms of violence against women, including domestic violence, protection measures, prosecutions and sentences imposed on perpetrators and conduct appropriate surveys to assess the prevalence of violence experienced by women belonging to disadvantaged groups, such as Roma and Sinti, migrant and older women and women with disabilities;

(e) further pursue, in collaboration with a broad range of stakeholders, including women's and other civil society organizations, awareness-raising campaigns through the media and public education programmes to make violence against women socially unacceptable and disseminate information on available measures to prevent acts of violence against women among the general public;

(f) ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in a timely manner."

58. On 27 September 2012 the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) was signed. It was ratified by Italy on 10 September 2013 and came into force in that country on 1 August 2014. The passages of that Convention relevant to the present case are partly set out in the case of *Y. v. Slovenia* (no. 41107/10, § § 72, ECHR 2015 (extracts)). Furthermore, Article 3 of that Convention provides:

Article 3 – Definitions

"For the purpose of this Convention:

a "violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

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

..."

59. The conclusions of the United Nations Special Rapporteur on violence against women, its causes and consequences, drawn up following his official visit to Italy (from 15 to 26 January 2012), read as follows:-

"VII. Conclusions and recommendations

91. Efforts have been made by the Government to address the issue of violence against women, including through the adoption of laws and policies and the establishment and merger of governmental bodies responsible for the promotion and protection of women's rights. Yet these achievements have not led to a decrease in the femicide rate or translated into real improvements in the lives of many women and girls, particularly Roma and Sinti women, migrant women and women with disabilities.

92. Despite the challenges of the current political and economic situation, targeted and coordinated efforts in addressing violence against women, through practical and innovative use of limited resources, need to remain a priority. The high levels of domestic violence, which are contributing to rising levels of femicide, demand serious attention.

93. The Special Rapporteur would like to offer the Government the following recommendations.

A. Law and policy reforms

94. The Government should:

(a) Put in place a single dedicated governmental structure to deal exclusively with the issue of substantive gender equality broadly and violence against women in particular, to overcome duplication and lack of coordination;

(b) Expedite the creation of an independent national human rights institution with a section dedicated to women's rights;

(c) Adopt a specific law on violence against women to address the current fragmentation which is occurring in practice due to the interpretation and implementation of the civil, criminal and procedures codes;

(d) Address the legal gap in the areas of child custody and include relevant provisions relating to protection of women who are the victims of domestic violence;

(e) Provide education and training to strengthen the skills of judges to effectively address cases of violence against women;

(f) Ensure the provision of quality, State-sponsored legal aid to women victims of violence as envisaged in the constitution and Law No. 154/200 on measures against violence in family relations;

(g) Promote existing alternative forms of detention, including house arrest and low-security establishments for women with children, having due regard to the largely non-violent nature of the crimes for which they are incarcerated and the best interest of children;

(h) Adopt a long-term, gender-sensitive and sustainable policy for social inclusion and empowerment of marginalized communities, with a particular focus on women's health, education, labour and security;

(i) Ensure the involvement of representatives of these communities, particularly women, in the design, development and implementation of policies which impact them;

(j) Ensure continued provision of quality education for all, including through a flexible application of the 30 per cent ceiling of non-Italian pupils per classroom, to allow for inclusive schools particularly in places where the population of non-Italians is high.

(k) Amend the "Security Package" laws generally, and the crime of irregular migration in particular, to ensure access of migrant women in irregular situations to the judiciary and law enforcement agencies, without fear of detention and deportation;

(l) Address the existing gender disparities in the public and private sectors by effectively implementing the measures provided by the Constitution and other legislation and policies to increase the number of women, including from marginalized groups, in the political, economic, social, cultural and judicial spheres;

(m) Continue to remove legal hurdles affecting the employment of women, which is exacerbated through the practice of signing blank resignations, and the lower positions and salary scale for women. Strengthen the social welfare system by removing impediments to the integration of women into the labour market;

(n) Ratify and implement the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, International Labour Organization Convention No. 189 (2011) concerning decent work for domestic workers; the European Convention on the Compensation of Victims of Violent Crimes and the Council of Europe Convention on preventing and combating violence against women and domestic violence.

B. Societal changes and awareness-raising initiatives

95. The Government should also:

(a) Continue to conduct awareness-raising campaigns aimed at eliminating;

(b) Strengthen the capacity of the National Racial Discrimination Office to put in place programmes to bring about change in society's perception of women who belong to marginalized communities and groups;

(c) Continue to conduct targeted sensitization campaigns, including with CSOs, to increase awareness on violence against women generally, and women from marginalized groups in particular;

(d) Train and sensitize the media on women's rights including on violence against women, in order to achieve a non-stereotyped representation of women and men in the national media.

C. Support services

96. The Government should further:

(a) Continue to take the necessary measures, including financial, to maintain existing and/or set-up new anti-violence shelters for the assistance and protection of women victims of violence;

(b) Ensure that shelters operate according to international and national human rights standards and that accountability mechanisms are put in place to monitor the support provided to women victims of violence;

(c) Enhance coordination and exchange of information among the judiciary, police and psychosocial and health operators who deal with violence against women;

(d) Recognize, encourage and support public-private partnerships with CSOs and higher learning institutions, to provide research and responses to addressing violence against women."

60. A report by the non-governmental organisation WAVE (Women Against Violence Europe) on Italy was published in 2015. The part relevant to the present case reads as follows:

"In 2014, 681 women and 721 children were accommodated at 45 women's shelters that are part of the national network *Associazione Nazionale Donne in Rete contro la violenza - D.i.R.e.*

In addition, there are three shelters for Black and Minority Ethnic (BME) women, migrant and asylum seeking women in the cities of Reggio Emilia, Imola and Modena, one shelter for girls and young women victims of forced marriage, and 12 shelters for victims of trafficking.

Women's Centres

There are 140 women's centres providing non-residential support to women survivors of any kind of violence in Italy; 113 of these centres are run by NGOs, 19 are run by the state, and 8 are run by faith-based organisations. While the exact number of such services is not known, there are several women's centres for Black and Minority Ethnic (BME) women, as well as centres for women victims of trafficking. All the women's centres provide information and advice, counselling, advocacy and practical support with access to social rights (i.e. housing, income, health care) and legal advice. Some only provide specialist support for children and family support, and cooperate with programmes for perpetrators of violence against women.

Women's Networks

There is one national women's network in Italy, called *Associazione Nazionale Donne in Rete contro la violenza - D.i.R.e.* The network includes 73 members, all women's organisations running women's shelters and anti-violence centres in Italy. Formed in 2008 and based in Rome, the network conduct activities in the areas of public awareness, lobbying and advocacy, training, research and networking. In 2014, the network received EUR 66,747 in funding from various private donors and foundations for specific projects, and EUR 20,000 in membership fees.

Policy & Funding

The Extraordinary Action Plan against gender and sexual violence in accordance with art.5 par. 1 Law Decree 14 August 2013 n.93 converted with amendments into Law 15 October 2013 n.119 (*Piano di Azione Straordinario contro la violenza sessuale e di genere ai sensi dell'art 5 comma 1 D.L. 14 Agosto 2013 n. 93 convertito con modifiche nella legge del 15 Ottobre 2013 n 119*) was launched in 2015 and covers a three-year period [voir paragraphe 53 ci-dessus]. The Plan addresses rape and sexual assault only marginally, and it does not provide for adequate financing of existing services or to create new services in the many regions where these are inexistent. While forced and early marriage is mentioned in the Plan, no particular measures are included. Conceived as an extraordinary measure provided for in a law decree addressing other subjects, the Plan generally fails to address the structural characteristics of violence against women and gender-based violence. Measures and interventions included in the Plan do not consider women's shelters and anti-violence centres as key actors in providing specialist support to survivors of violence, with a gender perspective.

The Department for Equal Opportunities – Presidency of the Council of Ministers – acts as coordinating body for the implementation of policies on VAW. This body has in practice little effectiveness, largely due to the failure of the President of the Council of Ministers to appoint a Minister with decision-making.

There is currently no national monitoring body entrusted with the evaluation of national strategies on VAW in Italy, and women's organisations are rarely invited to conduct such evaluation. Nonetheless, in 2014, a coalition of Italian women's NGOs (among which D.i.R.e.) submitted a Shadow Report on the implementation of the Beijing Declaration and Platform for Action covering 2009-2014, and including review of national strategies on VAW.

In 2014, funding for governmental activities to combat VAW equalled EUR 7 million, while very little funding was provided for NGOs activities through local regional governments; detailed information on funding for NGOs activities is not available, due to the budget being decentralized. State funding for women's organisations providing support is exclusively project-based.

Prevention, Awareness-raising, Campaigning

The national women's network, along with most of the women's shelters and centres, and the national women's helpline conduct activities in the field of prevention, awareness-raising and campaigning; besides the national women's helpline (1522), none of them received funding to carry out these activities in 2014.

Training

Most of the women's shelters and centres conduct trainings with a number of target groups: police, judiciary, civil servants, health professionals, psychologists, social workers, education professionals, media, and others."

THE LAW

...

Article IV. II. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

76. Relying on Articles 2, 3 and 8 of the Convention, the applicant complained that, owing to their complacency and indifference, the Italian authorities, despite having been alerted several times to her husband's violence, had not taken the necessary measures to protect her and her son's life from the – in her view real and known – risk represented by her husband, and had not prevented the commission of other domestic violence. She alleged that the authorities had thus failed to comply with their positive obligation under the Convention.

77. The Court reiterates that since it is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant or a government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties. In other words, a complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 43, ECHR 2012). Having regard to the circumstances complained of by the applicant and the manner in which her complaints were formulated, the Court will examine them under Articles 2 and 3 of the Convention (for a similar approach, see *E.M. v. Romania*, no. 43994/05, § 51, 30 October 2012; *Valiulienė v. Lithuania*, no. 33234/07, § 87, 26 March 2013; and *M.G. v. Turkey*, no. 646/10, § 62, 22 March 2016).

Those Articles provide:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 3

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

78. The Government disputed that argument.

Section 4.01 A. The applicant's submissions

79. The applicant alleged that the failure by the authorities to comply with their obligation to protect her life and that of her son, who was killed by her husband, had resulted in a violation of Article 2 of the Convention. She submitted in that regard that the Italian authorities had failed to protect her son's right to life and that they had been negligent before the repeated violence, threats and injuries which she herself had endured.

80. She argued that the Italian authorities had tolerated *de facto* her husband's violence. In her submission, the police had known since June 2012 that she had been a victim of violence and should have known that there was a real and serious risk that A.T. would be violent towards her. According to the applicant, there had been clear signs of a continuing threat of danger to her, but the authorities had not taken the necessary measures immediately after she had lodged her complaint and had thus left her alone and defenceless.

81. The applicant alleged, further, that, despite the hospital certificate of 19 August 2012 establishing that she had been beaten and threatened with a knife, that fact had not been taken seriously.

82. In the applicant's view, the only remedy available had been a criminal complaint and this had not been effective. She stated that she had lodged a complaint on 5 September 2012 and made a statement to the police in April 2013. She added that, during the seven months between lodging the complaint and giving her statement, no investigative steps had been taken and no witnesses heard. In March 2013 the public prosecutor had again had to ask the police to investigate (see paragraph 29 above).

83. The applicant complained of the authorities' complacency and stated that she had changed her version of the facts once she had been questioned by the police seven months after lodging her complaint. In her view, it was clear that the State had not protected her and that she had been abandoned by the authorities, who had not taken any measures to protect her despite her request. The applicant also stated that the Udine District Council, while aware of the difficult situation in which she found herself, had refused to help her and had stopped funding her accommodation at the shelter run by the association for the protection of battered women. In her submission, the authorities should have intervened of their own motion given the circumstances of the case and her vulnerability.

84. The applicant argued that, according to the Court's case-law, the positive obligations under Article 2 of the Convention imposed a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person and backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. She submitted that this could also imply in certain circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life was at risk from the criminal acts of another individual (she referred to *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII, cited in *Kontrová v. Slovakia*, no. 7510/04, § 49, 31 May 2007). She concluded that in the present case the Italian State had not taken the necessary measures to protect her life and that of her son.

85. Referring to the Court's case-law (*Opuz*, cited above, § 159), the applicant complained that she had also been subjected to inhuman and degrading treatment. She reiterated that she had lodged a complaint, supported by her medical case notes, in September 2012 and that, for seven months, the authorities had done nothing to protect her. She added that her husband had meanwhile succeeded in convincing her to come back and live with him.

86. In conclusion, the applicant submitted that the State had failed to comply with its positive obligations under Articles 2 and 3 of the Convention.

Section 4.02 B. The Government's submissions

87. After stating the principles established in the Court's case-law, the Government submitted that not every claimed risk to life could entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising (they referred to *Opuz*, cited above, § 129). In their submission, it also had to be established that the authorities had known or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they had failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

88. Furthermore, the Government considered that the present case had to be distinguished from the case of *Opuz* (cited above). In their submission, in the present case the authorities had not known and could not have known that the applicant and her son's lives were at risk, as there had been no tangible evidence that their lives were in imminent danger. They pointed out that, after the two episodes of violence in June and August 2012 the applicant had found refuge in a victim support shelter and that she had subsequently found employment providing her with financial independence. In the Government's submission, the two episodes reported in June and August 2012 had appeared to be mere family rows. The Government submitted that the authorities had done everything in their power by fining A.T. for unauthorised possession of a lethal weapon, and that an investigation in respect of ill-treatment and bodily injury required that a complaint be lodged.

89. The Government also stated that the applicant had left the shelter where she had taken refuge and that when she had been questioned by the police in April 2013 she had changed her earlier statements. They observed that the authorities, before discontinuing the complaint of ill-treatment, had checked whether her version of the facts was accurate, whether there had been other events of that type and whether the applicant had been in a vulnerable situation capable of inducing her to change her statements. According to the Government, the applicant had then stated that there had been no further incident and that A.T. had calmed down.

90. In those circumstances the Government considered that an intervention by the authorities could have breached Article 8 of the Convention.

91. In their view, the time that elapsed between lodging the complaint and hearing the applicant had not had the effect of leaving the applicant exposed to violence from A.T. The Government pointed out, further, that as no other request for intervention had been made, there had been no specific sign of real and immediate violence. They added that on the basis of the aforementioned factors the authorities had decided not to prosecute A.T. for ill-treatment of family members.

92. The Government submitted that the applicant had never shown that she had suffered continual abuse or violence or that she had lived in fear of being attacked. They observed, however, that during her interview with the police in April 2013 she had asserted that she was no longer being abused.

93. Consequently, the Government considered that the acts of violence allegedly suffered by the applicant could not be classified as inhuman or degrading treatment.

94. From a procedural point of view, the Government submitted that they had complied with their positive obligations under the Convention. They stated that, following the investigation, as the applicant had changed her statements, the prosecution had to request that the case be discontinued. They added that the proceedings relating to the offence of causing bodily injury had continued and that A.T. had been sentenced on 1 October 2015 to pay a fine of EUR 2,000.

Section 4.03 C. The Court's assessment

(a) 1. Applicable principles

95. The Court will examine the complaints under Articles 2 and 3 of the Convention in the light of the converging principles deriving from both those provisions, principles which are well-established and have been summarised, *inter alia*, in the judgments *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, §§ 110 and 112-113, ECHR 2005-VII), and *Ramsahai and Others v. the Netherlands* ([GC], no. 52391/99, §§ 324-25, ECHR 2007-II).

96. The Court has already stated that, in interpreting Articles 2 and 3, it must be guided by the knowledge that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective.

97. It reiterates that Article 3, like Article 2, must be regarded as one of the most fundamental provisions of the Convention and as enshrining one of the core values of the democratic societies making up the Council of Europe (see *Soering v. the United Kingdom*, 7 July 1989, § 88, Series A no. 161). In contrast to the other provisions in the Convention, it is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, § 49, ECHR 2002-III).

98. The Court also reiterates the general principles established in its case-law concerning domestic violence as laid down in *Opuz* (cited above, § 159, with the case-law references mentioned therein).

99. In that connection it reiterates that children and other vulnerable individuals – into which category fall victims of domestic violence – in particular are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see *Opuz*, cited above, § 159). It also observes that the positive obligations laid down in the first sentence of Article 2 of the Convention also require by implication that the State should set in place an efficient and independent judicial system by which the cause of a death can be established and the guilty parties punished. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. A requirement of promptness and reasonable expedition is implicit in that context (ibid., §§ 150-51).

100. The Court has also previously held that the authorities' positive obligations – in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention – may include a duty to put in place and apply an adequate legal framework affording protection against acts of violence by private individuals (see, among other authorities, *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008; *Sandra Janković v. Croatia*, no. 38478/05, § 45, 5 March 2009; *A. v. Croatia*, no. 55164/08, § 60, 14 October 2010; *Đorđević v. Croatia*, no. 41526/10, §§ 141-143, ECHR 2012; and *M. and M. v. Croatia*, no. 10161/13, § 136, ECHR 2015 (extracts)).

101. 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 *Osman*, cited above, § 115; *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 50, 15 January 2009; *Opuz*, cited above, § 128; *Mahmut Kaya v. Turkey*, no. 22535/93, § 85, ECHR 2000-III; and *Kılıç v. Turkey*, no. 22492/93, § 62, ECHR 2000-III).

Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive 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. For a positive obligation to arise, it must be established 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 from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Keenan v. the United Kingdom*, no. 27229/95, §§ 89-90, ECHR 2001-III; *Gongadze v. Ukraine*, no. 34056/02, § 165, ECHR 2005-XI; and *Opuz*, cited above, §§ 129-30). Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention (see *Osman*, cited above, § 116, and *Opuz*, cited above, § 129).

102. The Court reiterates that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, even administered by private individuals.

103. Nevertheless, it is not the Court's role to replace the national authorities and to choose in their stead from among the wide range of possible measures that could be taken to secure compliance with their positive obligations under Article 3 of the Convention (see *Opuz*, cited above, § 165). Moreover, under Article 19 of the Convention and under the principle that the Convention is intended to guarantee not theoretical or illusory, but practical and effective rights, the Court has to ensure that a State's obligation to protect the rights of those under its jurisdiction is adequately discharged (see *Sandra Janković*, cited above, § 46, and *Hajduová v. Slovakia*, no. 2660/03, § 47, 30 November 2010). The question of the appropriateness of the authorites' response may raise a problem under the Convention (see *Bevacqua and S.*, cited above, § 79).

104. The positive obligation to protect a person's physical integrity extends to matters concerning the effectiveness of a criminal investigation, which cannot be considered to be limited solely to cases of ill-treatment by State agents (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII).

105. This aspect of the positive obligation does not necessarily require a conviction, but effective implementation of the law, particularly criminal, in order to secure the protection of the rights guaranteed by Article 3 of the Convention (see *M.G. v. Turkey*, cited above, § 80).

106. A requirement of promptness and reasonable expedition is implicit in the obligation to carry out an investigation. The protection machinery provided for in domestic law must operate in practice within a reasonable time such as to conclude the examination on the merits of specific cases submitted to them (see *Opuz*, cited above, §§ 150-51). The State's obligation under Article 3 of the Convention will not be deemed to be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice, and that requires a prompt examination of the case without unnecessary delays.

(b) 2. Application of the above-mentioned principles to the present case

(i) a) Article 2

107. The Court observes first of all that there is no doubt that Article 2 of the Convention applies to the situation arising as a result of the death of the applicant's son.

108. It notes subsequently that in the instant case the force used against the applicant was not in the event lethal. This does not, however, exclude in principle an examination of the complaints under Article 2, the text of which, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to use force which may result, as an unintended outcome, in the

deprivation of life (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 49-55, ECHR 2004-XI). 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 (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports* 1998-III).

109. It is also necessary to bear in mind that, where the State's positive obligations to protect the right to life are concerned, it may be a question of recourse to lethal force by the police or of failure by the authorities to take protective measures to avoid a risk from the acts of third party (see, for example, *Osman*, cited above, §§ 115-22).

110. The Court considers that the applicant was the victim of inherently life-endangering conduct even though she ultimately survived her injuries (see *Camekan v. Turkey*, no. 54241/08, § 38, 28 January 2014). Article 2 of the Convention therefore applies in the present case in respect of the applicant herself as well.

111. Turning to the circumstances of the instant case, the Court notes that, following the violent acts perpetrated against her in June and August 2012**,** the applicant lodged a criminal complaint in respect of the abuse inflicted by A.T. (see paragraph 21 above). It observes that the applicant appended to her complaint a medical report drawn up after the assault and describing the physical injuries visible on her body (see paragraph 16 above). At that time she expressed her fears for her life and that of her daughter and requested the benefit of protective measures. Accordingly, the conduct of the domestic authorities must be assessed from that date onwards.

112. The Court notes that a judicial investigation was instituted against A.T. for ill-treatment of family members, inflicting grievous bodily harm and making threats. The police sent the applicant's complaint to the prosecution on 9 October 2012. On 15 October 2012 the prosecuting authorities, having regard to the applicant's request for protective measures, ordered urgent investigative measures to be carried out. In particular, they requested the police to check whether there had been witnesses, including the applicant's daughter. It notes that in the meantime the applicant had found refuge, through an association, in a shelter for victims of violence, where she stayed for three months.

113. The Court notes that no protection order was issued, that the prosecution reiterated its request to the police in March 2013, emphasising the urgency of the situation, and that the applicant was not heard until April 2013.

114. Whilst, in the context of domestic violence, protection measures are in principle intended to avoid a dangerous situation as quickly as possible, the Court notes that seven months elapsed before the applicant was heard. Such a delay could only serve to deprive the applicant of the immediate protection required by the situation. Admittedly, as submitted by the Government, during the period in question the applicant was not subjected to further physical acts of violence by A.T. However, the Court cannot disregard the fact that the applicant, who was being harassed by telephone, was living in fear while staying at the shelter.

115. In the view, the national authorities had a duty to take account of the unusual psychological, physical and material situation in which the applicant found herself and to assess the situation accordingly, providing her with appropriate support. That was not done in this case.

116. While it is true that, seven months later, in April 2013, the applicant changed some of her statements, which led the authorities to discontinue the case in part, the Court notes that proceedings for grievous bodily harm were still pending on that date. Yet, the authorities failed to conduct any assessment of the risks facing the applicant, including the risk of renewed assaults.

117. In the light of the foregoing, the Court considers that, by failing to act rapidly after the applicant had lodged her complaint, the national authorities deprived the complaint of any effectiveness, creating

a situation of impunity conducive to the recurrence of A.T.'s acts of violence against his wife and family (see *Halime Kılıç v. Turkey*, no. 63034/11, § 99, 28 June 2016).

118. Although the Government submitted that there had been no tangible evidence of an imminent danger to the applicant's life or that of her son, the Court considers that the authorities do not appear to have assessed the risks involved for the applicant as a result of A.T.'s behaviour.

119. It notes that the context of impunity referred to above (see paragraph 117) reached its peak during the tragic night of 25 November 2013. The Court observes in that connection that the police intervened twice that night. Having been called out by the applicant, the police first found the bedroom door broken and the floor strewn with bottles of alcohol. The applicant had informed them that her husband had been drinking and that she had decided to call them because she thought he needed a doctor. She had told them that she had lodged a complaint against her husband in the past, but that she had subsequently changed her statements. The couple's son had stated that his father was not violent towards him. Lastly, neither the applicant not her son presented any traces of violence. A.T. had been taken to hospital in a state of intoxication but had subsequently checked himself out to go to an amusement arcade.

The police intervened a second time the same night when they stopped and fined A.T. during an identity check in the street. According to the police report, A.T. had been in a state of intoxication, had difficulty maintaining his balance and the police had let him go after fining him.

120. The Court notes that on neither occasion did the authorities take any specific measures to provide the applicant with adequate protection consonant with the seriousness of the situation, even though the violence inflicted on her by A.T. was known to the police as proceedings for inflicting grievous bodily harm on the applicant were still pending at the time (see paragraph 35 above).

121. The Court cannot speculate as to how events would have turned out if the authorities had adopted a different approach. It reiterates, however, that a failure to take reasonable measures which might realistically have altered the outcome or mitigated the harm is sufficient to engage the State's responsibility (see *E. and Others v. the United Kingdom*, no. 33218/96, § 99, 26 November 2002; *Opuz*, cited above § 136; and *Bljakaj and Others v. Croatia*, no. 74448/12, § 124, 18 September 2014**).**

122. In the Court's view, the risk of a real and immediate threat (see paragraph 99 above) must be assessed taking due account of the particular context of domestic violence. In such a situation it is not only a question of an obligation to afford general protection to society (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 69, ECHR 2002-VIII; *Maiorano and Others v. Italy*, no. 28634/06, § 111, 15 December 2009; *Choreftakis and Choreftaki v. Greece*, no. 46846/08, § 50, 17 January 2012; and *Bljakaj*, cited above, § 121), but above all to take account of the recurrence of successive episodes of violence within the family unit. In that context the Court reiterates that the police had to intervene twice during the night of 25 November 2013: firstly when they inspected the damaged flat, and secondly when they stopped and fined A.T., who was in a state of intoxication. Having regard also to the fact that the police had been in a position to check, in real time, A.T.'s police record, the Court considers that they should have known that the applicant's husband constituted a real risk to her, the imminent materialisation of which could not be excluded. It therefore concludes that the authorities failed to use their powers to take measures which could reasonably have prevented, or at least mitigated, the materialisation of a real risk to the lives of the applicant and her son.

123. The Court reiterates that in domestic violence cases perpetrators' rights cannot supersede victims' human rights to life and to physical and psychological integrity (see *Opuz*, cited above, § 147). Furthermore, the State has a positive obligation to take preventive operational measures to protect an individual whose life is at risk.

124. In those circumstances the Court concludes that the authorities cannot be considered to have displayed due diligence. They therefore failed in their positive obligation to protect the right to life of the applicant and her son within the meaning of Article 2 of the Convention.

125. Having regard to the foregoing, the Court considers that the shortcomings observed above rendered the applicant's criminal complaint ineffective in the circumstances of the instant case. Accordingly, it rejects the preliminary objection raised by the Government on grounds of non-exhaustion of domestic remedies (see paragraph 68 above) and concludes that there has been a violation of Article 2 of the Convention.

(ii) b) Article 3

126. The Court considers that the applicant can be regarded as belonging to the category of "vulnerable persons" entitled to State protection (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI). In that connection it takes note of the acts of violence suffered by the applicant in the past. It also notes that the violent acts perpetrated against the applicant, manifesting themselves in physical injuries and psychological pressure, are sufficiently serious to be classified as ill-treatment within the meaning of Article 3 of the Convention. It must therefore be determined whether the domestic authorities acted in a manner such as to satisfy the requirements of that Article.

127. The Court has found, under Article 2 of the Convention (see paragraph 117 above) that, by failing to act rapidly after the applicant had lodged her complaint, the national authorities deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of A.T.'s acts of violence against his wife and family. It also notes that A.T. was convicted on 1 October 2015 of causing grievous bodily harm following the incident in August 2012, while in the meantime he had killed his son and attempted to murder the applicant and had also been sentenced on 8 January 2015, by the Udine preliminary hearings judge to life imprisonment for the murder of his son and the attempted murder of his wife, and for the offences of ill-treatment of the applicant and her daughter. It was established that the applicant and her children had been living in a climate of violence (see paragraph 47 above).

128. The Court reiterates on this point that the mere passing of time can work to the detriment of the investigation, and even fatally jeopardise its chances of success (see *M.B. v. Romania*, no. 43982/06, § 64, 3 November 2011). It also observes that the passing of time will inevitably erode the amount and quality of the evidence available and that the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the complainants (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

129. The Court again emphasises that special diligence is required in dealing with domestic violence cases and considers that the specific nature of domestic violence as recognised in the Preamble to the Istanbul Convention (see paragraph 58 above) must be taken into account in the context of domestic proceedings.

It stresses in this regard that the Istanbul Convention imposes a duty on the States Parties to take "the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings".

130. In that connection the Court also considers that, in judicial cases involving disputes relating to violence against women, the national authorities have a duty to examine the victim's situation of extreme psychological, physical and material insecurity and vulnerability and, with the utmost expedition, to assess the situation accordingly. In the instant case there is no explanation for the authorities' complacency for such a long period – seven months – before the instigation of criminal proceedings. Likewise, there is no explanation for why the criminal proceedings for grievous bodily harm, instituted after the applicant had lodged her complaint, lasted three years, ending on 1 October 2015.

131. Having regard to the findings in the present case, the Court considers that the manner in which the domestic authorities prosecuted the case is also a manifestation of that judicial complacency and cannot be deemed to satisfy the requirements of Article 3 of the Convention.

...

Article V. III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 2 AND 3

133. Relying on Article 14 of the Convention taken in conjunction with Articles 2 and 3, the applicant submitted that the omissions by the Italian authorities proved that she had been discriminated against as a woman and that the Italian legislation on domestic violence was inadequate.

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Section 5.01 A. The parties' submissions

134. Referring to all the domestic and international legislation she considered relevant in the instant case, the applicant relied on the conclusions of the United Nations Special Rapporteur, who urged Italy to eliminate stereotypical attitudes about the roles and responsibilities of women and men in the family, society and workplace.

135. The applicant alleged that she had not had the benefit of adequate legislative protection and that the authorities had failed to respond appropriately to her allegations of domestic violence. In her submission, that amounted to discriminatory treatment on grounds of sex.

136. Referring to the Court's conclusion regarding Article 14 of the Convention taken in conjunction with Article 3 in the case of *T.M. and C.M. v. the Republic of Moldova* (no. 26608/11, §§ 49 and 62, 28 January 2014), the applicant requested the Court to conclude that there had been a violation of Article 14.

137. The Government submitted that there had not been discrimination on grounds of sex in the present case. Moreover, in their submission, the claim that discrimination was institutionalised by the criminal law or administrative or judicial practice did not stand up to close analysis.

138. They pointed out that the National Council of the Judiciary had adopted two resolutions – on 11 February 2009 and 18 March 2014 – requesting the heads of the judicial offices to organise their departments and specialise in this area in such a way as to be able to deal effectively with cases of domestic violence.

139. They added that the domestic law provided for a firm response to such acts of violence: the law on stalking ... contained provisions for combating violence against women.

Section 5.02 B. The Court's assessment

(a) 1. Admissibility

140. The Court, while observing that this complaint was never examined as such by the domestic courts, considers, in the light of the circumstances of the case, that it is so closely linked to the complaints examined above that the outcome must be the same and the complaint accordingly declared admissible.

(b) 2. Merits

141. The Court reiterates that, according to its case-law, a State's failure to protect women against domestic violence breaches their right to equal protection before the law and that this failure does not need to be intentional (see *Opuz*, cited above, § 191). The Court has previously held that "the general and discriminatory judicial passivity [of the police] creating a climate that was conducive to domestic violence" amounted to a violation of Article 14 of the Convention (ibid., §§ 191 et seq.). It also found

that such discriminatory treatment occurred where it could be established that the authorities' actions were not a simple failure or delay in dealing with the violence in question, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the complainant as a woman (see *Eremia v. the Republic of Moldova*, no. 3564/11, § 89, 28 May 2013).

142. In the instant case the Court notes that the applicant was assaulted by A.T. on several occasions (see paragraphs 10, 16, 21 and 47 above) and that the authorities had been aware of this.

143. It observes that the authorities did not carry out any investigation in the seven months following the applicant's lodging of her complaint and that no measure of protection was implemented. Whilst, admittedly, the proceedings in respect of the applicant's complaint were discontinued approximately one year later, on account of her having changed her statements, the Court also notes that A.T. was convicted of grievous bodily harm three years later, on 1 October 2015, after killing his son and attempting to murder the applicant.

144. The authorities' complacency in the present case is particularly striking in that the prosecution had asked the police, who had remained inactive for six months, to take immediate action having regard to the applicant's request for protective measures. The Court reiterates in this connection the findings it has reached regarding the domestic authorities' failure to provide the applicant with effective protection and the impunity enjoyed by A.T. (see paragraph 117 above).

145. According to the Court, the combined effect of the above-mentioned factors shows that, by underestimating, through their complacency, the seriousness of the violent acts in question, the Italian authorities in effect condoned them. The applicant was therefore a victim of discrimination, as a woman, in breach of Article 14 of the Convention (see *T.M. and C.M. v. the Republic of Moldova*, cited above, § 62; *Eremia*, cited above, § 98; and *Mudric v. the Republic of Moldova*, no. 74839/10, § 63, 16 July 2013). Furthermore, the conclusions of the Special Rapporteur on violence against women, its causes and consequences, following his official visit to Italy (see 59 paragraph above), those of the CEDAW (see paragraph 57 above) and those of the National Statistics Institute (see paragraph 55 above) demonstrate the extent of the problem of domestic violence in Italy and the discrimination suffered by women in this regard. The Court considers that the applicant provided prima facie evidence, backed up by undisputed statistical data, that domestic violence primarily affects women and that, despite the reforms implemented, a large number of women are murdered by their partners or former partners (femicide) and, secondly, that the socio-cultural attitudes of tolerance of domestic violence persist (see paragraph 57 and 59 above).

146. That prima facie evidence, which is undisputed by the Government, distinguishes the present case from that of *Rumor* (cited above, § 76), the circumstances of which were very different, and in which the Court had held that the legislative framework in Italy governing domestic violence had been effective in that case in punishing the perpetrator of the crime of which the applicant had been a victim and preventing the recurrence of violent attacks on her physical integrity and had accordingly held that there had been no violation of Article 3, taken alone or in conjunction with Article 14.

147. The Court reiterates that, having found that the criminal-law system in the present case had not had an adequate deterrent effect capable of effectively preventing the unlawful acts by A.T against the personal integrity of the applicant and of her son, it held that there had been a violation of the applicant's rights under Articles 2 and 3 of the Convention.

148. Having regard to its conclusions reached above (see paragraph 145), the Court considers that the violence perpetrated against the applicant must be regarded as based on her sex and accordingly as a form of discrimination against women.

149. Consequently, in the circumstances of the instant case, the Court concludes that there has been a violation of Article 14 of the Convention taken in conjunction with Articles 2 and 3 of the Convention.

...

FOR THESE REASONS, THE COURT

...

3. *Holds*, by six votes to one, that there has been a violation of Article 2 of the Convention on account of the murder of the applicant's son and the attempted murder of the applicant;

4. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention on account of the authorities' failure to comply with their obligation to protect the applicant from the acts of domestic violence committed by A.T.;

...

6. *Holds*, by five votes to two, that there has been a violation of Article 14 of the Convention taken in conjunction with Articles 2 and 3;

...

Done in French, and notified in writing on 2 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

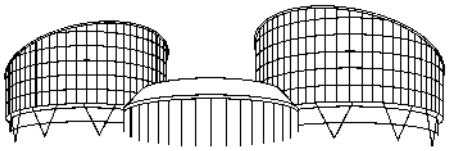
Mirjana Lazarova Trajkovska
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) partly concurring, partly dissenting opinion of Judge Eicke;

(b) partly dissenting opinion of Judge Spano.

M.L.T.
A.C.



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

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE EICKE

I. Article 2 and/or 3 of the Convention

1. Having had the opportunity to read, in draft, the Partly Dissenting Opinion of Judge Spano in this Case, I agree with his expression of the applicable principles (as derived from *Opuz v. Turkey*, no. 33401/02, ECHR 2009, and *Osman v. the United Kingdom*, 28 October 1998, Reports 1998-VIII), as well as the identification of the two questions to be answered concerning the "immediacy of the risk" and "reality of the risk": see Sections I and II of that Partly Dissenting Opinion. However, unlike him and not without considerable hesitation, I have reached a different conclusion on the application of those principles to the facts in the present case and have voted for a finding of a violation of Articles 2 and 3.

2. In relation to the question of *immediacy of the risk* Judge Spano focusses on the "lapses of time" between the initial incidents culminating in the lodging of her complaint on 5 September 2012 and the time of the tragic events of 25 November 2013. He concludes that these lapses "challenge the possibilities of imminence of risk in this case" (§ 5). However, from the point of view of the relevant "agents of the State" to whom an imminent real risk must have been reasonably foreseeable, the evidence suggests that there were a number of relevant events during that period of time running right up to the end of 2013. These include:

a. 19 August 2012 to 4 December 2012, following the second alleged attack on the Applicant by her husband (potentially involving the use of a switch blade) and with the support and knowledge of the police and local social services, the Applicant resided at a shelter run by an association for the protection of women who have been victims of domestic violence (§§ 18-19 and 27);

b. The Applicant's criminal complaint of 5 September 2012 was transmitted to the competent judicial authorities together with a request for the adoption of preventive measures aimed at protecting the Applicant;

c. 18 March 2013, the prosecutor, noting that, despite his orders of 15 October 2012 that investigative measures be taken urgently, none of the investigations had been concluded, again ordered the police to investigate the Applicant's complaints as soon as possible (§ 29);

d. 4 April 2013, the Applicant was interviewed for the first time by the police (§ 30). While the Applicant, at this interview, modified her initial allegations, it is said as a result of psychological pressure by her husband (not an uncommon phenomenon in the context of

domestic violence), she nevertheless confirmed that her husband's alcoholism was at the heart of any problems there might have been at home;

e. 30 May 2013, the public prosecutor invited the preliminary investigations judge to close the investigation into the offence of domestic abuse but to maintain the investigation against the Applicant's husband for grievous bodily harm against the Applicant (§ 32);

f. 1 August 2013, the preliminary investigations judge closed the investigations into the offence of domestic abuse but referred the charge of causing bodily harm to the Justice of the Peace (§§ 33-34);

g. 28 October 2013, the Applicant's husband was committed for trial by the Justice of the Peace for causing bodily harm (with the first hearing fixed for 13 February 2014) (§ 35);

h. 18 November 2013, the Applicant's husband was notified of his trial date (19 May 2014) in relation to the attack on the Applicant of August 2012 (§ 36); and, finally

i. At an unspecified date in November 2013, the public prosecutor reopened the investigation against the Applicant's husband for the physical abuse of his wife (§ 44).

3. Taken together with the facts of the initial attacks on the Applicant by her husband (in June and August 2012), as recorded by the police, and the fact that both were apparently connected to (if not caused by) the husband's alcohol abuse, it appears to me not unreasonable to work on the basis that the police was or should have been aware that (a) the Applicant's husband had been and was again under investigation for repeated incidents of domestic abuse against the Applicant, (b) had been charged with causing physical harm to the Applicant in two separate instances, with trial dates notified on 28 October 2013 and 18 November 2013 (a week before the tragic events of 25 November 2013), and (c) the attacks in relation which the husband was subject to investigation and/or charge had occurred when the husband was severely drunk (if not as a result of his alcohol abuse).

4. It is with this in mind that one then has to look at the events of 24 and 25 November 2013.

5. The judgment, at § 38, explains that, on the evidence, the police recorded that when they arrived at the Applicant's home (one assumes on 24 November), having been called by her as a result of an argument between her and her husband:

a. They find the doors of the bedroom broken and the floor covered with empty alcohol bottles;

b. The Applicant confirmed to them that her husband was drunk and indicated that she had called help because she considered that he might need the help of a doctor; and

c. Reminded them of her criminal complaint (and the fact that she had since changed her complaint).

6. Thereafter, the Applicant's husband was taken to hospital in a state of intoxication (§ 39) but checked himself out again that same night.

7. It seems to me that the crucial question, therefore, is whether it can be said that the police officers who, at 2:25 am on 25 November 2013, stopped the Applicant's husband for an identity check and noted that he was (again) in a state of intoxication and had difficulties maintaining his balance, were or should have been aware (having checked his identity) of the above facts and

circumstances. Should they at that stage, rather than merely give him a verbal warning, have come to the conclusion that, in his current state, he posed an imminent and real risk to the Applicant's physical integrity and/or life if he were allowed to return home (to the Applicant) in that state.

8. As indicated above and not without considerable hesitation, I have come to the conclusion that they should have known, when they stopped him and checked his identity at 2:25 am on 25 November 2013, of the existence of a real and immediate risk to the physical integrity and/or life of the Applicant (and her children) from the criminal acts of her husband and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

9. In saying that, I am, of course, conscious of (and agree with) the limitations identified in § 116 of *Osman* that:

> "... bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, 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. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention."

10. However, for me, there is a crucial distinction between the present case and that of *Osman*. After all, unlike in *Osman*, the police in this case had the Applicant within their control little more than 2.5 hours before the deadly attack on his wife and son and at a time when the common (and possibly causative) factor in all his previous attacks (namely his alcohol abuse) was present and apparent to everyone, when they checked his identity (and, therefore, had or should have had access to the information relevant to the risk posed by him, especially when drunk) and proceeded to give him a verbal warning. After all, the evidence is that, when he was stopped by the police, he was so intoxicated that he was having difficulties to maintain his balance. This case is not, therefore, about additional (pro-active) steps the police might or should have taken (which might impose an impossible or disproportionate burden on the police) but about the decision(s) taken when he was already within their control.

11. In this different context, there also seems to be no obvious reason why any short-term preventative intervention by the police authorities, whether in the form of an enforced return to hospital or otherwise, until (and only until) he was sober would have been inconsistent with his rights either under Article 5 or Article 8. In light of the particular circumstances of this case and my conclusions in relation to Article 2 (above) any such short-term (and effectively preventative) intervention may well have been capable of justification under Article 5 § 1; whether on the basis of securing fulfilment of "his obligation to keep the peace by not committing a specific and concrete offence" (see *Ostendorf v. Germany*, no. 15598/08, § 94, 7 March 2013) under Article 5 § 1(b), on the basis that it was "reasonably considered necessary to prevent his committing an offence" under Article 5 § 1(c) and/or on the basis of Article 5 § 1(e) (lawful arrest or detention

of alcoholics "whose conduct and behaviour under the influence of alcohol pose a threat to public order or themselves, ... for the protection of the public or their own interests, such as their health or personal safety"; *Kharin v. Russia*, no. 37345/03, § 34, 3 February 2011, see also *Witold Litwa v. Poland*, no. 26629/95, § 62, ECHR 2000-III). This is, of course, particularly so where the obvious less restrictive alternative to such intervention was to allow him to return home (to the place where his previous attacks took place and where the victim of those attacks, the Applicant, was also resident and was known to be resident as a result of the earlier police intervention).

II. Article 14 read with Articles 2 and/or 3 of the Convention

12. Beyond the complaint under Articles 2 and/or 3 of the Convention, the Applicant further complained that "the unreasonable passivity of [the] authorities demonstrates that the regulatory and protection system provided is not sufficiently suitable in order to ensure the protection of a woman victim of domestic violence" (§124 of the Applicant's Observations of 9 March 2016) and that, consequently, the ineffectiveness or lack of suitability of the domestic regulatory and protection system amounted to a violation of Article 14 read together with Articles 2 and/or 3. This complaint, therefore, was one of a systemic failure to protect women based on unlawful discrimination.

13. There is no doubt that gender based violence, including in particular domestic violence, continues to "reflect[..] and reinforce[...] inequalities between women and men and remains a major problem in the European Union. It is prevalent in all societies and is based on unequal power relations between women and men, which reinforce men's dominance over women" (*European Institute for Gender Equality – EIGE in brief* (2016) at p. 8). The fact that gender based violence remains a major problem not only in the EU but also beyond not only lies at the heart of the on-going work of the EU Fundamental Rights Agency and the EIGE on combatting the underlying causes, both societal as well as legal, but, of course also led the Council of Europe, in 2011, to adopt the Council of Europe Convention on preventing and combating violence (the "Istanbul Convention"). As § 5 of the Explanatory Report to the Istanbul Convention explains further:

> "Violence against women is a worldwide phenomenon. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (hereafter CEDAW) in its general recommendation on violence against women No. 19 (1992) helped to ensure the recognition of gender-based violence against women as a form of discrimination against women. The United Nations General Assembly, in 1993, adopted a Declaration on the Elimination of Violence against Women that laid the foundation for international action on violence against women. In 1995, the Beijing Declaration and Platform for Action identified the eradication of violence against women as a strategic objective among other gender equality requirements. In 2006, the UN Secretary-General published his In-depth study on all forms of violence against women, in which he identified the manifestations and international legal frameworks relating to violence against women, and also compiled details of "promising practices" which have shown some success in addressing this issue."

14. That said, I agree with the sentiment expressed in the opening sentence of Judge Spano's Partly Dissenting Opinion: "the law has its limits, even human rights law". This Court is, of course, a court of law and is therefore constrained to act within the limits of the law, the observance of which it is charged to ensure (Article 19), and on the basis of the evidence available to it. As a consequence, the role the Convention and this Court can play in addressing the issue of gender based violence is clearly delimited by the terms of the Convention and by this Court's case law; a fact which is, of course, also reflected in the fact that *inter alia* the Council of Europe, the United Nations and the EU have concluded Conventions and policies, adopted legislation and created specialist agencies for the specific purpose of addressing this issue.

15. Turning to the applicable law, it was in its landmark judgment in *Opuz v. Turkey* (no. 33401/02, § 191, ECHR 2009), that this Court, drawing inspiration from the terms of CEDAW and the work of the CEDAW Committee, first recognised that a State's failure to protect women against domestic violence is capable of breaching their right to equal protection of the law irrespective of whether this failure is intentional or not. On the facts of that case, the Court concluded that Turkey had breached the applicant's rights under Article 14 read together with Articles 2 and 3 of the Convention as there was:

a. A "suggestion" that "domestic violence is tolerated by the authorities and that the remedies indicated by the Government do not function effectively" (§ 197);

b. A "prima facie indication" that "the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence" (§ 198); and

c. "general and discriminatory judicial passivity in Turkey [which], albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women" (§ 200).

16. Applying the approach identified in *Opuz*, the Court has since had occasion to consider whether other High Contracting Parties had acted in breach of Article 14 read with Articles 2 and/or 3 in the context of domestic violence.

17. In relation to the Republic of Moldova, the Court found a breach of Article 14 read together with Articles 2 and/or 3 on the express basis 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 (see paragraph 37 above) only support the impression that the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women. (see *Eremia v. the Republic of Moldova* (no. 3564/11, § 89, 28 May 2013), *Mudric v. the Republic of Moldova*, no. 74839/10, § 63, 16 July 2013 and *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 62, 7 January 2014; my emphasis)"

18. By contrast, when confronted with a similar complaint against Croatia, the Court, in its judgment in *A v. Croatia*, no. 55164/08, §§94-104, 14 October 2010, concluded that the complaint under Article 14 of the Convention was manifestly ill-founded; "the applicant has not produced sufficient prima facie evidence that the measures or practices adopted in Croatia in the

context of domestic violence, or the effects of such measures or practices, are discriminatory" (§ 104). In reaching this conclusion, the Court identified the necessary evidential threshold for a finding of a violation of Article 14 in this context (by reference to and distinguishing the Court's conclusion in *Opuz*):

> "96. In support of these findings the Court relied on the Turkish Government's recognition of the general attitude of the local authorities, such as the manner in which the women were treated at police stations when they reported domestic violence, and judicial passivity in providing effective protection to victims (see *Opuz*, cited above, § 192). Furthermore, the reports submitted indicated that when victims reported domestic violence to police stations, police officers did not investigate their complaints but sought to assume the role of mediator by trying to convince the victims to return home and drop their complaint. In this connection, police officers considered the problem as a family matter with which they could not interfere (see *Opuz*, cited above, §§ 92, 96, 102 and 195). The reports also showed that there were unreasonable delays in issuing injunctions and in serving injunctions on the aggressors, given the negative attitude of the police officers. Moreover, the perpetrators of domestic violence did not seem to receive dissuasive punishments, because the courts mitigated sentences on the grounds of custom, tradition or honour (see *Opuz*, cited above, §§ 91-93, 95, 101, 103, 106 and 196).
>
> 97. The Court notes at the outset that in the present case the applicant has not submitted any reports in respect of Croatia of the kind concerning Turkey in the *Opuz* case. There is not sufficient statistical or other information disclosing an appearance of discriminatory treatment of women who are victims of domestic violence on the part of the Croatian authorities such as the police, law-enforcement or health-care personnel, social services, prosecutors or judges of the courts of law. The applicant did not allege that any of the officials involved in the cases concerning the acts of violence against her had tried to dissuade her from pursuing the prosecution of B or giving evidence in the proceedings instituted against him, or that they had tried in any other manner to hamper her efforts to seek protection against B's violence.
>
> ...
>
> 101. The Court has already established that not all the sanctions and measures ordered or recommended in the context of these proceedings were complied with. While this failure appears problematic from the standpoint of Article 8 of the Convention, it does not in itself disclose an appearance of discrimination or discriminatory intent on the basis of gender in respect of the applicant."

19. This jurisprudence makes clear that:

a. The assessment under Article 14 read with Articles 2 and/or 3 was distinct from any analysis in relation to any alleged breach of the positive obligations under those Articles 2 and/or 3 in relation to the circumstances of the particular applicant;

b. Absent any evidence that the officers involved in the individual case were acting in a discriminatory manner or with discriminatory intent towards the particular applicant, of which there was no evidence in those cases and is no evidence in the present case, a breach of Article 14 would arise only where there were systemic failings which arose out of a clear and systemic (even if not intentional) failure of the national authorities to appreciate and address the seriousness and extent of the problem of domestic violence within their jurisdiction and its discriminatory effect on women; and

c. The failure to apply the "sanctions and measures" existing in national law in the circumstances of the particular case before the Court, while potentially problematic under

Articles 2, 3 or 8 of the Convention, is not, in itself, sufficient to engage Article 14 of the Convention so as to shift the burden of proof to the respondent government to show that any difference in treatment is not discriminatory.

20. This is the context and background for the decision of this Court, as recently as 27 May 2014, in *Rumor v. Italy*, no. 72964/10. In that case, this Court was invited to consider the situation in Italy on the basis of a complaint by the applicant in that case that the "omissions and the inadequacy of the domestic legislative framework in combating domestic violence proved that she had been discriminated against on the basis of her gender" (§ 36). Having considered the applicant's complaint, the Court, however, concluded in unqualified terms that:

> "... the authorities had put in place a legislative framework allowing them to take measures against persons accused of domestic violence and that that framework was effective in punishing the perpetrator of the crime of which the applicant was victim and preventing the recurrence of violent attacks against her physical integrity. (§ 76)"

21. As a consequence, the question for the Court in the present case was not only (to us the language in *A v Croatia*) whether the Applicant had produced "sufficient statistical or other information disclosing an appearance of discriminatory treatment of women who are victims of domestic violence on the part of the authorities such as the police, law-enforcement or health-care personnel, social services, prosecutors or judges of the courts of law" but whether she had produced sufficient such evidence to justify a conclusion by this Court either that, in light of such further evidence, its decision in *Rumor* had been wrong (or, at the very least, premature) or that changes in the legislative and policy environment in Italy had changed sufficiently since 2014 to enable the Court to conclude that, whereas the Italian system was compliant with Article 14 then, it no longer was so compliant in 2017.

22. If one considers the material relied upon in the judgment (§§ 55-60) it becomes clear that, in fact, with one exception, none of the material relied upon post-dates the judgment in *Rumor* and is of such a nature as not to have been available either to the parties or to the Court in that case. The one document referred to that (just) post-dates the *Rumor* judgment is the Report "Violence against Women" (2014) of the National Statistics Bureau of Italy (ISTAT), quoted in § 55 of the judgment. While providing a (still) depressing picture as to the number of women who are victims of sexual or physical violence in Italy, most frequently at the hands of current or former partners, that Report provides little to no evidence to support the conclusion that there is "an appearance of discriminatory treatment of women who are victims of domestic violence on the part of the authorities such as the police, law-enforcement or health-care personnel, social services, prosecutors or judges of the courts of law". For what it is worth, the Report, in fact, appears to record a reduction in the number of cases of physical or sexual violence committed by a partner or former partner and notes that, compared to the 2006 ISTAT report, there is an increased awareness that domestic violence is a crime and it is reported far more often to the police. The Report also notes that "survivors are far more satisfied with the relevant work carried out by the police. In the event of violence from the current or the former partner, data shows an increase from 9.9% to 28.5%".

23. In any event, it seems to me that where the Court considers (as the majority in this case must be assumed to have considered) that there is sufficient evidence for it to reach the conclusion either that a prior decision was wrong or premature or that the legislative situation in a respondent State had changed sufficiently to now warrant a finding of a violation, it would be prudent for the Court to identify (both for the benefit of the Respondent Government as well as for the Committee of Ministers who is charged with supervising the enforcement of this judgment).

a. Which of these conclusions it had reached; and

b. If the latter, which were the developments since the last judgment which meant that a system which had been compliant had now become deficient.

A mere assertion, as in § 147 of the judgment, that the factual circumstances in *Rumor* were "clearly" different to those of the present case seems to me neither capable of justifying the finding of a violation under Article 14 nor capable of explaining either why the conclusion in § 76 of *Rumor* had been mistaken or premature or what had changed since 2014 to justify the conclusion now that the Italian "legislative framework" had become deficient.

PARTLY DISSENTING OPINION OF JUDGE SPANO

I. Preliminary remarks

1. The law has its limits, even human rights law. When a claim is made that the State did not take reasonable steps to prevent the taking of life by another individual, tensions arise between the demands of justice for the relatives of victims and the imposition of unrealistic burdens on law enforcement agents governed by the rule of law. The judicial resolution of such disputes, arising as they do from tragic events, thus requires that a delicate balance be struck between these two conflicting interests based on the objective and dispassionate application of clear and foreseeable legal standards. As the Court's application of the settled principles under Article 2 of the Convention to the facts of the present case unduly strikes the balance in favour of the former, without adequately taking account of the latter, I respectfully dissent from the majority's finding of a violation of Article 2, as I will explain in more detail in Part II of this opinion. Also, and for the reasons elaborated in Part III below, I disagree with the Court's finding of a violation of Article 14 taken in conjunction with Articles 2 and 3 of the Convention.

II. The State's preventive obligation to protect life under Article 2 of the Convention – the Osman test and domestic violence

2. In the Court's case-law on domestic violence, notably the landmark *Opuz v. Turkey* judgment, the Court established that the positive obligation to protect the right to life under Article 2 of the Convention requires domestic authorities to display due diligence, for instance by taking preventive operational measures, in protecting an individual whose life is at risk. In *Osman v. the United Kingdom* and subsequently in *Opuz v. Turkey* the Court held that "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" (see *Osman*, § 116, and *Opuz*, § 130; my emphasis).

3. It follows that in order for a finding of a violation of Article 2 to be properly substantiated in the present case, the *Osman* test must therefore be met. This begs the following question: did the national authorities know, or ought they to have known, that the lives of the applicant and her son were at *real and immediate risk* on 25 November 2013? The answer to this question requires a fact-sensitive analysis of the two prongs of the *Osman test*, i.e. the *imminence* and *reality* of the risk as reasonably foreseen by agents of the State, as I will now explain.

4. On 2 June 2012, the police intervened on the applicant's request after she complained that her husband, A.T. had hit her and her daughter. On 19 August 2012, the applicant again sought

police assistance after being physically assaulted by her husband. The applicant lodged a complaint against A.T. on 5 September 2012 for bodily harm, domestic abuse and threats. The final event, the fatal attack, then took place on 25 November 2013. On the evening in question, the police were called to the house by the applicant. Upon arrival, they noted a broken door and bottles on the floor. There were no signs of violence on either the applicant or her son, nor were such allegations made. Although the applicant mentioned that she had previously filed a complaint against her husband, she explained that she had subsequently modified her accusations and that she had sought help that evening believing that her husband's drunken state necessitated medical attention. The police duly took A.T. to a hospital, which he left the same evening. When he was stopped in the street by the police later that night, he made no threats of violence. Returning to the family home in the early hours of the morning, he carried out his fatal attack.

5. In determining the *immediacy of the risk*, it is crucial to note the lapses of time between the initial police intervention in June 2012, the August 2012 incident and the lodging of the complaint in September 2012, and between that time and the tragic events of 25 November 2013, a time lapse of over fourteen months. When contrasted with the close nexus in time and regularity of the violent acts in *Opuz v. Turkey*, which gave rise to the Court's finding of *constructive knowledge*, namely that the authorities *ought to have known* of a real and immediate risk under the *Osman* test, it is plain that the requisite timeframe allowing for a conclusion of immediacy is lacking in the present case. *Bljakaj and Others v. Croatia* presents a similar stark contrast and demonstrates the required extent of immediacy, with the perpetrator in that case making threats on the day before, morning of, and hour prior to, the fatal incident. It is worth noting that the Court's case-law in this regard falls in line with the requirements of the Istanbul Convention,[1] the Explanatory Report to which establishes that the term "immediate danger" refers to any situations of domestic violence in which harm is imminent or has already materialised and is likely to happen again.[2] The highlighted time lapses clearly challenge the possibilities of imminence of risk in this case.

6. Turning to the *reality of the risk*, besides their close nexus in time, the scale and regularity of the violent acts and the authorities' direct knowledge of them also formed the basis for the *Opuz* Court's finding of the existence of *constructive knowledge* under *Osman*. It goes without saying that the attacks of June and August 2012 and their impact on the applicant should in no way be underestimated, the Italian courts eventually convicting A.T. of the violence carried out on those occasions. Nonetheless, when contrasted with the gravity of the eight prior attacks identified in *Opuz*, involving repeated death threats and resulting in life-threatening injuries on several occasions, the constructive knowledge inevitably arising from such a course of events cannot be imputed to the authorities in the present case, who did not possess information on attacks and death threats on this scale. Similarly, in finding an Article 2 violation in *Kontrová v.*

[1] Council of Europe Convention on preventing and combating violence against women and domestic violence.

[2] Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para. 265.

Slovakia, the Court highlighted the lack of action taken in respect of allegations that the applicant's husband had a shotgun and had made violent threats with it.

7. The majority argues that the authorities failed to carry out an adequate risk assessment both on the night in question and during the preceding months, whereby the context of impunity eventually culminated in the fatal attack (see paragraphs 118-119). Having dealt with the former issue, the question in respect of the latter then arises: can investigative passivity give rise to constructive knowledge?

8. In *Opuz v. Turkey*, the Government had argued that there was no tangible evidence that the applicant's mother's life was in imminent danger. However, the Court found that it was not apparent that the authorities had assessed the threat posed by the perpetrator and only then concluded that his detention was a disproportionate step in the circumstances; rather, the authorities failed to address the issues at all (see *Opuz*, § 147). Despite the victim's complaint that the perpetrator had been harassing her, wandering around her property and carrying knives and guns, the police and prosecuting authorities failed either to place him in detention or to take other appropriate action in respect of the allegation that he had a shotgun and had made violent threats with it. Thus inactivity of the sort demonstrated in the present case, and the results thereof, do not of themselves create constructive knowledge such as to trigger an obligation under Article 2 (although it will usually, and in the present case does, give rise to an Article 3 violation in the domestic violence context). What is ultimately required is a set of facts rendering untenable the claim that the authorities did not know, or could not have known, of a real and immediate risk to life.

9. Consequently, although the majority finds that the nature of the act in August 2012 and the pending status of its inquiry in November 2013, along with the facts during the tragic evening, are sufficient to establish constructive knowledge of a real and immediate risk to the lives of the applicant and her son, the *Osman* test, as applied on the facts, the crux of the Article 2 substantive claim, is not made out. Regardless of how the judgment frames it, the *Osman* test continues to apply in the same way here as in other contexts triggering the State's Article 2 preventive obligation; the Court's domestic violence case-law has continued to apply a strict *Osman* test without any alterations. Diluting the *Osman* standard, to take account of the nature of different types of fatal criminal offences between individuals, will simply impose an unrealistic burden on law enforcement authorities. Again, the law, even human rights law, has its limits.

10. Furthermore, and importantly, the applicable principles, as summarised at §§ 129-130 of *Opuz v. Turkey*, are not fully reflected in the majority's judgment which, in particular, fails to take account of the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the Court being required to interpret the scope of the Article 2 positive obligation in a way which does not impose an impossible or disproportionate burden on the authorities. Indeed, "the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees

contained in Articles 5 and 8 of the Convention", is a particularly relevant consideration in cases such as these (see *Opuz*, § 129).

11. It is unclear what Convention-compliant measures the police could have taken on the night in question to avoid the ultimate tragic outcome. Despite finding, in paragraph 122 of the judgment, that possible measures were in existence at the relevant time, the majority fails both to specify the minutiae as well as to explain the feasibility of maintaining adherence to due process and Convention guarantees in the deployment of such measures. In the absence of any evidence or allegations of violence, the police lacked sufficient grounds to detain A.T. His lethal attack that evening, predicated as it was on volatile and unpredictable human behaviour rather than ongoing and repeated direct or indirect threats to life, could not in my view have been reasonably foreseen by the police.

12. Judge Eicke argues in his partly concurring, partly dissenting opinion, that there seems to be no obvious reason why any short-term preventative intervention by the police authorities, whether in the form of an enforced return to hospital or otherwise, until (and only until) the applicant's husband was sober would have been inconsistent with his rights either under Article 5 or Article 8 of the Convention. However, in my view the Court should be very careful in making findings on the possible legality of hypothetical police measures under Article 5 when such arguments have neither been raised before it nor the domestic courts.

13. Importantly, it has in no way been demonstrated before this Court that the arrest or detention of A.T. on 25 November 2013 could have been lawful under Article 5 § 1 (c), since, in the terms of that provision, there was no reasonable suspicion of him having committed an offence. Nor could his arrest or detention have been reasonably considered necessary to prevent his committing an offence, since, as was apparent both from the situation as seen by the police and from the exchanges with the applicant and her son, no threats had been made and no actual violence had occurred. On what basis, then, could he have been detained, arrested or held at a hospital against his will, bearing in mind that having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that he may have committed an offence and that there can clearly not be a "reasonable suspicion" if the acts or facts held against him, such as being drunk at home, did not constitute a crime at the time when they occurred?

14. The fact remains that, tragically, on 25 November 2013 the police did all they could by physically removing him from the premises in taking him to hospital, but they could not have kept him there by force. Furthermore, unlike Judge Eicke, I am unable to accept that the facts surrounding the police intervention on the street at 2.25 am on the night in question provided the police with any actionable information, even when reasonably viewed in context with other available information, about a real and immediate risk to the lives of the applicant and her children. In fact, with the exception of the drunken state of the applicant's husband, which alone does not suffice for these purposes, there were no comments, threats or other behavioural signs that could have justified the deployment by the police of operational measures of arrest or detention at that point.

15. In short, the doctrine of positive obligations cannot remedy all human rights violations occurring in the private sphere if due process considerations, also worthy of Convention protection, are not to be rendered obsolete. In other words, it is true that the States are under a Convention-based positive obligation effectively to combat domestic violence. But that fight, like any other campaign by Government to safeguard the lives and protect the physical integrity of its citizens, must be fought within the boundaries of the law, not outside them.

16. Finally, it is all too easy to review tragic circumstances with the benefit of hindsight and impute responsibility where, on an objective and dispassionate analysis, there can be none. There is a limit on how far positive obligations under Article 2 can extend to shield victims from unforeseen attacks without imposing unrealistic obligations on the police accurately to forecast human behaviour and to act on those prognostications by unduly restricting other Convention rights. Although it may be tempting to dilute legal concepts such as the *Osman* test when faced with heart-rending facts and give solace to individuals in situations such as that of the applicant, there are reasons why the threshold under the Convention is set high, and, in my view, why it must continue to remain so. Even in the field of domestic violence the ends cannot justify the means in a democratic society governed by the rule of law.

III. Systemic gender discrimination under Article 14 of the Convention

17. Judge Eicke and I are in agreement that a case for a violation of Article 14 of the Convention, taken in conjunction with Article 2 and 3, has not been made out on the facts and the materials before the Court and I largely agree with his reasoning in his separate opinion. I would only like to highlight the following elements.

18. The Court has previously concluded, in the landmark *Opuz* judgment, that general discriminatory judicial passivity creating a climate conducive to domestic violence entails a violation of Article 14 of the Convention, read in conjunction with Articles 2 and 3 (see *Opuz*, §§ 198 and 202). It has further stated that this conclusion will be reached where the actions of the authorities are not a simple failure or delay in dealing with violence, but amount to repeatedly condoning such violence and reflect a discriminatory attitude towards an applicant as a woman (see *Eremia v. the Republic of Moldova*, § 89). Having regard to this high threshold and the previous findings made under this provision with respect to Italy in the case of *Rumor v. Italy*, I cannot subscribe to the majority's findings that the inaction of the authorities, as manifested in the present case, reflects systemic gender-based discrimination, since there is insufficient evidence to show general and discriminatory passivity of the kind previously established in the Court's case-law.

19. The Court in *Opuz* made clear the elements tending to show an Article 14 violation in this sphere. It made reference to the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors. In particular, it noted the manner in which female victims were treated at police stations, with reports indicating that when they reported domestic violence, police officers tried to persuade them to return home and drop their complaint, seeing the problem as a family

matter with which they could not interfere. The perpetrators of domestic violence did not seem to receive dissuasive punishments, with the courts mitigating sentences on the grounds of custom, tradition or "honour". These findings were confirmed in *Halime Kılıç v. Turkey*, the Court highlighting the wilful refusal of the authorities to accept the seriousness of the incidents of domestic violence. In regularly turning a blind eye to the repeated acts of violence and death threats, the authorities had created a climate that was conducive to domestic violence. In both cases, the Court found that the inactivity, delays and, in particular, attempts to dissuade women from lodging complaints that characterised the treatment of domestic violence claims in Turkey stemmed directly from the discriminatory attitudes of the authorities.

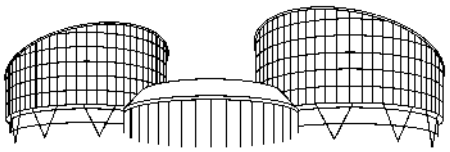
20. In contrast, and more in line with the facts of the present case, in *A. v. Croatia*, no. 55164/08, § 97, 14 October 2010, the Court concluded that there was insufficient statistical or other information disclosing an appearance of discriminatory treatment of female victims of domestic violence on the part of authorities such as the police, law enforcement or healthcare personnel, social services, prosecutors or judges. The applicant did not allege that any officials had tried to dissuade her from pursuing the prosecution of the aggressor or giving evidence against him, or that they had tried in any other manner to hamper her efforts to seek protection against his violence. The Court thus declared the applicant's complaint under Article 14 inadmissible, since she had failed to provide sufficient evidence that the practices adopted in Croatia as regards domestic violence were discriminatory.

21. Importantly, the Court has previously found that where the legislative framework cannot be said to be discriminatory, even if not all the sanctions and measures ordered or recommended are in fact complied with, this failure "does not in itself disclose an appearance of discrimination or discriminatory intent on the basis of gender" (see *A. v. Croatia*, § 101). Thus societal discrimination and high levels of domestic violence, as referenced by the judgment at paragraph 146, are not, in and of themselves, enough to ground a finding of an Article 14 violation; it is the legislative framework and its application by the national authorities that falls to be considered. In this regard, both in its substantive consideration of Articles 2 and 3 as well as in the Article 14 context, the judgment fails to take proper account of the Court's finding in *Rumor v. Italy*, in the context of Article 3, that "the authorities had put in place a legislative framework allowing them to take measures against persons accused of domestic violence and that that framework was effective in punishing the perpetrator of the crime of which the applicant was victim and preventing the recurrence of violent attacks against her physical integrity" (see *Rumor v. Italy*, § 76). Although, as the judgment notes, that case may have concerned a different set of facts, the system at issue is the same. Since the impugned failings were not rooted in the discriminatory intent of the authorities but rather in pure passivity, they do not provide grounds for departure from the Article 14 conclusions previously drawn in respect of Italy.

22. The international materials on which the majority relies in its finding of an Article 14 violation also fail to point to a discriminatory failing in the system. Although the *2010 CEDAW Concluding Observations* (see paragraph 57 of the judgment) noted that the increasing rate of femicides may lead one to think that the Italian authorities are not sufficiently protecting women,

the UN Special Rapporteur concluded in 2012 that the legal framework in Italy "largely provides for sufficient protection for violence against women" (see paragraph 68 of the report cited by the majority at paragraph 59 of the judgment). Where the Court has previously relied on international reports in this sphere, the criticisms therein have undoubtedly been more unequivocal. For instance, in *Mudric v. the Republic of Moldova*, the Court was of the view that the findings of the Special Rapporteur supported "the impression that the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence and its discriminatory effect on women" (see *Mudric*, § 63).

23. Ultimately, the finding in *Rumor* combined with the *Opuz* threshold makes it clear that there is insufficient evidence of institutional discrimination in Italy to ground a finding of an Article 14 violation. The relevant framework is still one that is effective, regardless of whether all the measures it provides for were, in the instant case, deployed (see *A. v. Croatia*, § 101).



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

THIRD SECTION

CASE OF VOLODINA v. RUSSIA

(Application no. 41261/17)

JUDGMENT

STRASBOURG

9 July 2019

FINAL

04/11/2019

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

In the case of Volodina v. Russia,

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

Vincent A. De Gaetano, *President,*
Georgios A. Serghides,
Paulo Pinto de Albuquerque,
Dmitry Dedov,
Alena Poláčková,
María Elósegui,
Erik Wennerström, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 11 June 2019,

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

PROCEDURE

150. The case originated in an application (no. 41261/17) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Valeriya Igorevna Volodina ("the applicant"), on 1 June 2017. In 2018, the applicant changed her name (see paragraph 188 below).

151. The applicant was represented by Ms Vanessa Kogan, Director of the Stichting Justice Initiative, a human-rights organisation based in Utrecht, the Netherlands. The Russian Government ("the Government") were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

152. The applicant alleged that the Russian authorities had failed in their duty to prevent, investigate and prosecute acts of domestic violence which she had suffered at the hands of her former partner and that they had also failed to put in place a legal framework to combat gender-based discrimination against women.

153. On 8 January 2018 the application was communicated to the Government. It was also decided to give priority to the application, in accordance with Rule 41 of the Rules of Court.

154. The applicant and the Government each lodged written observations. In addition, third-party comments were received from the Equal Rights Trust, a non-governmental organisation based in London, United Kingdom, which had been given leave by the President of the Section to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3). The Government replied to those comments (Rule 44 § 5).

THE FACTS

Article VI. I. THE CIRCUMSTANCES OF THE CASE

155. The applicant was born in 1985 and lives in Ulyanovsk.

Section 6.01 A. The applicant's relationship with Mr S.

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

(a) 1. First meeting and life together

157. The applicant began a relationship with Mr S. in November 2014, when they started living together in Ulyanovsk.

158. In May 2015 they separated for the first time. The applicant moved out. Mr S. became abusive and threatened to kill the applicant and her son if she refused to come back to live with him.

(b) 2. January 2016: Abduction and assault

159. On 1 January 2016 the applicant lodged a report with the Ulyanovsk district no. 2 police, complaining that S. had damaged the windscreen of her car and taken her identity papers. On the following day the applicant withdrew her report, claiming that she had found her papers.

160. On 5 January 2016 the police declined to institute criminal proceedings, stating that as the documents had been found and as S. had replaced the broken windscreen, no crime had been committed. On 6 June 2016 a supervising deputy prosecutor ordered an additional inquiry, which ended in the issuance of another decision refusing to prosecute S. on the grounds that his actions had not constituted any offence.

161. The applicant decided to move away from S., and relocated to Moscow. She did not leave her new address, but she did publish her CV on job-hunting websites. A certain D. called her and, claiming to be a human-resources manager, invited her to an interview at a location outside Moscow.

162. On 21 January 2016 D. picked her up in his car and they drove off. On the way, S. emerged from the back of the car, and D. handed the car keys over to him. S. took away the applicant's mobile phone and personal effects and told her they were going back to Ulyanovsk.

163. After their return to Ulyanovsk, on 25 January 2016 S. punched the applicant in the face and stomach. She was taken to Ulyanovsk Central Hospital, where doctors recorded bruises on the soft tissue of her head. They also established that she was nine weeks pregnant but faced the risk of a miscarriage. She agreed to undergo a medically-induced abortion. The applicant called the police to report the beatings.

164. On 29 January 2016 the police declined to institute proceedings, as they had not received any written complaint against S. from the applicant. On 2 February 2016 the supervising deputy prosecutor ordered an additional inquiry.

165. On 31 March 2016 the police obtained a written statement from the applicant in which she withdrew her complaints and refused to undergo a medical assessment. On 1 April 2016 the police declined to institute proceedings in the absence of any complaint from the injured party.

The supervising prosecutor set that decision aside, but on 29 June 2016 the police issued a final decision not to investigate, holding that no crime had been committed.

(c) 3. May 2016: Assault

166. On 18 May 2016 S. punched the applicant in the face, threw her to the ground and began to strangle her. She complained to the Ulyanovsk police and had her injuries recorded, which included bruises on the left side of her face and abrasions on her shoulders, elbows, shins and thighs.

167. The Ulyanovsk police determined that the events had occurred in the Samara Region and forwarded the complaint to colleagues in that region. On 9 August 2016 the Samara police received the file and asked the applicant to undergo a medical assessment, which she refused to do.

168. On 12 August 2016 the Samara police declined to institute criminal proceedings. Having heard from the applicant and S., it held that no prosecutable offence had been committed: his verbal threats had not been sufficiently specific as to constitute an offence under Article 119 of the Criminal Code (Threat of death or bodily harm), and a single punch was not prosecutable under Article 116 (Battery), which required that two or more blows be inflicted. The supervising prosecutor set that decision aside, but on 28 September 2016 the police again issued a decision declining to prosecute that was worded in identical terms.

(d) 4. July 2016: Assault and an attempt on the applicant's life

169. In May 2016 the applicant returned to Moscow, where she hoped to hide from S.

170. On 30 July 2016, as she was about to drive off from her home in her car, S. opened the car door and attacked her. Neighbours who witnessed the fight called the police. On the same day the applicant lodged a criminal complaint against S., stating that he was violent and had threatened her with death.

171. On 1 August 2016 the applicant received a text message from S., who told her that he had damaged the hydraulic braking system of her car. She called the police. An officer arrived and took stock of the extent of the damage, noting a cut to a plastic conduit containing a bundle of wires and a pool of transparent liquid next to the rear right-hand wheel.

172. On 8 August 2016 the Mozhayskiy district police in Moscow declined to institute criminal proceedings. They found that the applicant and S. "knew each other, had lived together before and had maintained a common household", that the applicant had not submitted an independent assessment of the damage caused to her car, that a single blow did not constitute an offence under Article 116 of the Criminal Code, and that the verbal threats had been "neither real nor specific" to be prosecutable under Article 119.

173. On 16 September 2016 the applicant lodged an application with the Kuntsevskiy District Court in Moscow seeking a review of the 8 August 2016 decision. She submitted in particular that the police had not considered the text messaging history, which showed that S. had the intention of causing her death by damaging the brakes of her car.

174. On 20 September 2016 the supervising prosecutor set aside the 8 August 2016 decision, which he described as being premature and incomplete. He directed the police to consider the text messages from S.

175. By a judgment of 14 October 2016, which was upheld on appeal on 1 December 2016, the Kuntsevskiy District Court dismissed the applicant's complaint, finding that the matter had become moot on account of the prosecutor's decision to order an additional inquiry.

176. On 28 October and 24 December 2016 the police issued further decisions declining to prosecute S. on the grounds that his actions had not constituted a criminal offence.

(e) 5. September 2016: Tracking device

177. In September 2016 the applicant found an electronic device in the lining of her bag which she believed was a GPS tracker that S. had put there.

178. On 5 October 2016 she reported her suspicions to the Kuntsevskiy Investigative Committee in Moscow. On 9 March 2017 the report was forwarded to the Special Technical Measures Bureau of the federal police (*Бюро специальных технических мероприятий ГУ МВД РФ*). According to the Government, the Bureau joined the report to the file, without initiating any inquiry. An internal investigation was launched.

(f) 6. March 2018: Publication of photographs

179. In early 2018, S. shared the applicant's private photographs on a social network without her consent. On 6 March 2018 the police initiated a criminal investigation under Article 137 of the Criminal Code (invasion of personal privacy). As at the date of the applicant's latest submissions in July 2018, the investigation had not yielded any results.

(g) 7. March 2018: Threats and an assault

180. On 12 March 2018 the applicant complained to the police about the threatening calls she had received from S. the previous night and about his uninvited presence in front of her house earlier that day. On 21 March 2018 the police declined to open a criminal investigation, finding that there was no danger that S. would carry out his threat to kill her because "[the applicant] remained in her flat, while [S.] stayed in his car and did not go up to the flat".

181. At 1.30 a.m. on 21 March 2018 the applicant called a taxi in order to visit a female friend. Shortly after she got in the taxi, she saw S.'s car following the taxi. He managed to cut off the taxi, pulled the applicant out of the car and began dragging her towards his car. The taxi driver did not intervene. Fearing for her life, the applicant sprayed tear gas in S.'s face. S. pushed her several times, grabbed her purse and drove away with it. The applicant went to the police station and lodged a complaint about the attack and the theft of her personal belongings, which included two mobile phones and identity documents. The taxi driver gave a statement to the police.

182. Shortly thereafter, S. came to the police station with his lawyer and returned the bag to the applicant, but not the phones or documents. He stated that he had paid for the phones and had let the applicant use them at his discretion. He had asked the applicant to return them but she had refused, and that was why he had been following her.

183. The next day the applicant found her documents in the mailbox. S. later brought the phones to the police, and they returned them to the applicant against receipt.

184. On 20 April 2018 the police declined to open an investigation into the alleged theft of the phones on the grounds that they had been returned to the applicant. The matter of the threats and assault was referred to the local police for additional investigation.

185. On 26 April 2018 the local police decided not to institute proceedings in respect of the threats, finding no indications of a criminal offence. In their view, neither the threatening statements nor actions on the part of S. were sufficiently credible to conclude that the death threats had been "real".

(h) 8. Application for State protection

186. On 22 March 2018 the applicant asked the police to grant her State protection, relying on her status as the injured party in the criminal investigation into the publication of her photographs (see paragraph 179 above). The application was forwarded to the regional police headquarters, which issued an opinion addressed to the investigator in charge of the case to the effect that her request was unfounded:

> "[N]o real threats to her person or property from [S.] or his family members in connection with [the applicant's] participation in the criminal proceedings have been established. The threats that [the applicant] previously complained about are the product of personal hostility [*личных неприязненных отношений*] between them and of [S.]'s jealousy. [S.] is currently in Moscow, outside the Ulyanovsk Region, and, according to him, has no plans to come back ..."

187. However, as no formal decision on her application had been taken, the applicant lodged a complaint with a court. On 16 April 2018 the Zavolzhskiy District Court in Ulyanovsk held that the failure to issue a formal decision had been unlawful. It declined to rule on the issue of whether or not the applicant should be granted State protection, leaving this matter for the police to decide.

(i) 9. Change of name

188. On 30 August 2018 the applicant secured a legal change of her name. She had asked for it, fearing for her safety, so that S. would not be able to find her and track her movements.

Section 6.02 B. Information on gender-based violence in Russia

189. The applicant submitted the following statistical information and research on gender-based violence in Russia.

190. Certified extracts from the statistics of the Ministry of the Interior on "crimes committed within the family or household" (*преступления в сфере семейно-бытовых отношений*) show that, in 2015, the police registered a total of 54,285 such crimes, in which 32,602 women and 9,118 minors had been harmed. More specifically, in 2015, 16,039 cases of battery (Article 116 of the Criminal Code) were recorded, which had involved 9,947 female and 6,680 underage victims. A further 22,717 instances of death threats or threats to inflict serious injury (Article 119 of the Criminal Code) were recorded, in respect of which 15,916 victims were female and 967 underage.

In 2016, the total number of such crimes increased to 65,535, with 42,164 female victims and 8,989 underage victims. Battery was recorded in 25,948 cases, of which 19,068 involved women and 6,876 minors. The number of threats of death or injury amounted to 21,730, including 15,820 against women and 890 against minors.

In 2017, the total number of family-related offences went down to 38,311. Of those, 24,058 crimes were committed against women and 2,432 against minors. Aggravated battery (Article 116) was committed in 1,780 cases, including 1,450 attacks on women and 250 on minors. "Repeat battery" (Article 116.1) was established in 486 cases, in which 344 victims were female and 119 underage. A total of 20,848 threats of death or injury were recorded, involving 15,353 women and 900 minors.

191. *Reproductive Health of the Russian Population in 2011*, a joint study by the Russian Federal Statistics Service and the Ministry of Health, found that 38% of Russian women had been subject to verbal abuse and a further 20% had experienced physical violence. In the latter group, 26% had not told anyone about what had happened. Of those who had, a majority of 73% had confided in friends or family, 10% had reported the incident to the police, 6% had visited a doctor and 2% had seen a lawyer.

192. *Violence in Russian Families in the North-Western Federal Circuit*, a joint study by the Institute for Social and Economic Studies of Population of the Russian Academy of Sciences and the Karelian Science Centre's Economics Institute, polled 1,439 participants aged 18 to 64 in the Republic of Karelia in 2014-15. A majority of participants (51.4%) had either experienced domestic violence or knew someone who had. In more than half of those cases women were victims of such violence, followed by children (31.5%), seniors (15%) and men (2%).

193. A "shadow report" to the CEDAW Committee by ANNA Centre for the Prevention of Violence, a Russian non-governmental organisation, provided a general assessment of the domestic-violence situation on the basis of a monitoring exercise conducted in Russia in 2010-15. It stated that monitors had recorded violence in one form or another in every fourth family, that two-thirds of homicides were attributable to family/household-related motives, that about 14,000 women died each year at the hands of their husbands or relatives, and that up to 40% of all serious violent crimes were committed within families.

194. A 2017 report by Russia's High Commissioner for Human Rights noted a lack of progress in addressing the problem of domestic violence (pp. 167-69, translated from Russian):

> "Complaints to the High Commissioner indicate that the problem [of domestic violence] is a topical issue ... Thousands of women and children suffer from family conflicts. Unfortunately, no official statistical data is available.
>
> Despite the topicality of the problem, no specific legislation ensuring the prevention and prosecution of crimes within the family and households has been adopted. Since the early 1990s, more than forty draft laws have been developed but none has been enacted ...
>
> Actual instances of violence against women are highly latent. Many women prefer to put up with it or to look for ways to solve the issue without involving official authorities, because they do not expect to find support from them. Unfortunately, the practice has demonstrated that women's complaints of threats of violence have received little attention.

Thus, in December 2017, the public was shocked by an incident in the Moscow Region, when Mr G., seeking to assert his dominant position and acting out of jealousy, chopped off his wife's hands. Prior to that, he had threatened her with death and had told her that he would maim her. Eighteen days before the incident, the woman had reported the threats to a district police inspector, who had intervened only to the extent of issuing an admonition ...

The High Commissioner supports a public discussion of whether Russia should join the Council of Europe's Istanbul Convention ..."

Article VII. II. RELEVANT DOMESTIC LAW

195. Chapter 16 of the Russian Criminal Code covers offences against the person, including murder and manslaughter (Articles 105 to 109) and three levels of assault occasioning actual bodily harm (Articles 111 to 115). "Grievous bodily harm" (Article 111) may involve the loss of a body part or the termination of pregnancy; "medium bodily harm" (Article 112) leads to a long-term health disorder or loss of ability to work, and "minor bodily harm" (Article 115) covers injuries that take up to twenty-one days to heal. Causing grievous or medium bodily harm is subject to public prosecution; the offence of "minor bodily harm" is liable to private prosecution, meaning that the institution and pursuance of criminal proceedings is left to the victim, who has to collect evidence, identify the perpetrator, secure witness testimony and bring charges before a court. Private prosecution proceedings can be terminated at any stage up until the delivery of judgment in the event that the victim has agreed to withdraw the charges.

196. Other forms of assault which may cause physical pain without resulting in actual bodily harm are treated as "battery" (*побои*) under Article 116. This provision has recently been amended a number of times.

197. Up until 3 July 2016 any form of "battery" constituted a criminal offence punishable by a fine, community work, or up to three months' detention. Aggravated battery could be punished with a longer period of deprivation of liberty. Prosecution of the offence was left to the private initiative of the victim. The law did not differentiate between various contexts in which the offence could be committed, whether within the family or between strangers.

198. On 3 July 2016 the provision was substantially amended.

First, common (non-aggravated) form of battery was decriminalised and reclassified as an administrative offence.

Second, a new form of aggravated battery was created which included battery committed in respect of "close persons", that is to say spouses, parents, siblings and domestic partners, and was punishable by a deprivation of liberty. That form of battery became subject to a mixed "public-private" prosecution regime which applies to some other offences, such as rape. Proceedings had to be instituted at the victim's initiative, but the subsequent investigation and prosecution were to be led by the authorities and could not be discontinued, even with the victim's consent.

Third, a new Article 116.1 was inserted into the Criminal Code. It created a new offence of "repeat battery" defined as battery committed by a person who had been convicted of the same actions in administrative proceedings within the previous twelve months and whose actions did

not constitute aggravated battery under Article 116. The offence can only be prosecuted privately and is punishable by a fine or up to three months' detention.

199. On 7 February 2017 the reference to "close persons" was removed from the definition of aggravated battery in the text of Article 116 for the purpose of decriminalising acts of battery inflicted by spouses, parents or partners. The only remaining forms of aggravated battery now include battery committed for racial, ethnic, social or disorderly (*хулиганские*) motives.

Article VIII. III. RELEVANT INTERNATIONAL MATERIAL

Section 8.01 A. Universally applicable standards on violence against women

(a) 1. CEDAW Convention and its interpretation

200. The Convention on the Elimination of All Forms of Discrimination against Women ("the CEDAW Convention"), which Russia ratified on 23 January 1981, provides a comprehensive international framework in which gender-based violence against women is seen as a manifestation of the historically unequal power relationship between women and men. The relevant provisions read:

Article I

"For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Article 2

"States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

...

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women."

Article 3

"States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."

Article 5

"States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women ..."

201. The United Nations Committee on the Elimination of Discrimination against Women ("the CEDAW Committee") – the UN expert body that monitors compliance with the CEDAW Convention – established in its General recommendation No. 19 (1992) that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" (§ 1) and that "the full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women" (§ 4). It further explained that such violence "impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions" (§ 7) and made specific recommendations to the State parties, including recommending the encouragement of "the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence" (§ 24).

202. In its General Recommendation No. 28 (2010) on the core obligations of States Parties under Article 2 of the CEDAW Convention, the CEDAW Committee noted that "States parties have a due diligence obligation to prevent, investigate, prosecute and punish ... acts of gender based violence" (§ 9).

203. The CEDAW Committee's General recommendation No. 33 (2015) on women's access to justice called on States to "take steps to guarantee that women are not subjected to undue delays in applications for protection orders and that all cases of gender-based discrimination under criminal law, including violence, are heard in a timely and impartial manner" (§ 51(j)).

204. In 2017, the CEDAW Committee adopted General recommendation No. 35 on gender-based violence against women, updating General recommendation No. 19. It noted that the interpretation of discrimination given in the former recommendation had been affirmed by all States and that the *opinio juris* and State practice suggested that the prohibition of gender-based violence against women had evolved into a principle of customary international law (§§ 1-2). It pointed out that "gender-based violence against women [was] rooted in gender-related factors such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour. These factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered as a private matter, and to the widespread impunity for it" (§ 19). The Committee

reaffirmed that "gender-based violence against women constitute[d] discrimination against women under article 1 and therefore engage[d] all of the obligations in the [CEDAW]" (§ 21). It listed the due diligence obligations that State parties have in respect of acts and omissions on the part of non-State actors (§ 24(b)):

> "Article 2 (e) of the [CEDAW] explicitly provides that States parties are required to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. This obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole and accordingly States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women ... Under the obligation of due diligence, States parties have to adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors. They are required to have laws, institutions and a system in place to address such violence. Also, States parties are obliged to ensure that these function effectively in practice, and are supported and diligently enforced by all State agents and bodies. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women when its authorities know or should know of the danger of violence, or a failure to investigate, prosecute and punish, and to provide reparation to victims/survivors of such acts, provides tacit permission or encouragement to acts of gender-based violence against women. These failures or omissions constitute human rights violations." (footnotes omitted)

205. In *V.K. v. Bulgaria* (Communication No. 20/2008, 15 October 2008), the CEDAW Committee took the view that "gender-based violence constituting discrimination within the meaning of article 2, read in conjunction with article 1, of the [CEDAW] Convention and general recommendation No. 19, does not require a direct and immediate threat to the life or health of the victim" (§ 9.8). When assessing whether a protection order should be granted, courts should take account of all forms of violence against women, without neglecting their emotional and psychological suffering or the past history of domestic violence. Furthermore, the standard of proof that the victim must meet in order to be awarded a protection order should not amount to the standard of proof required in criminal cases – that is to say that of "beyond reasonable doubt" – because such a standard of proof is excessively high and not in line with the CEDAW Convention (§ 9.9).

(b) 2. UN Special rapporteurs

206. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment assessed the applicability of the prohibition of torture under international law to the unique experiences of women in the report adopted at the thirty-first session of the Human Rights Council, held between 29 February and 24 March 2016 (A/HRC/31/57). He reiterated that "full integration of a gender perspective into any analysis of torture and ill-treatment is critical to ensuring that violations rooted in discriminatory social norms around gender and sexuality are fully recognized, addressed and remedied" (§ 6) and that "when a State knows or should have known that a woman is in danger, it must take positive steps to ensure her safety, even when she hesitates in pursuing legal action" (§ 12). He stated:

> "55. ... Domestic violence amounts to ill-treatment or torture whenever States acquiesce in the prohibited conduct by failing to protect victims and prohibited acts, of which they knew or should have known, in the private sphere ... States are internationally responsible for torture when they fail — by indifference, inaction or

prosecutorial or judicial passivity — to exercise due diligence to protect against such violence or when they legitimize domestic violence by, for instance, allowing husbands to 'chastize' their wives or failing to criminalize marital rape, acts that could constitute torture.

56. Societal indifference to or even support for the subordinate status of women, together with the existence of discriminatory laws and patterns of State failure to punish perpetrators and protect victims, create conditions under which women may be subjected to systematic physical and mental suffering, despite their apparent freedom to resist. In this context, State acquiescence in domestic violence can take many forms, some of which may be subtly disguised (A/HRC/7/3). States' condoning of and tolerant attitude towards domestic violence, as evidenced by discriminatory judicial ineffectiveness, notably a failure to investigate, prosecute and punish perpetrators, can create a climate that is conducive to domestic violence and constitutes an ongoing denial of justice to victims amounting to a continuous human rights violation by the State."

207. In her report on violence against women, its causes and consequences adopted at the thirty-fifth session of the Human Rights Council on 6-23 June 2017, the UN Special Rapporteur on violence against women identified key elements of a human-rights based approach to protection measures:

"112. States shall make the necessary amendments to domestic legislation to ensure that protection orders are duly enforced by public officials and easily obtainable.

a) States shall ensure that competent authorities are granted the power to issue protection orders for all forms of violence against women. They must be easily available and enforced in order to protect the well-being and safety of those under its protection, including children.

b) Protection orders for immediate protection in case of immediate danger of violence (emergency orders) should be available also *ex parte* and remain in effect until the longer-term protection orders comes into effect after a court-hearing. They should be available on the statement or live evidence of the victim, as seeking further evidence may lead to delays which put the victim at more risk. They typically should order a perpetrator to vacate the residence of the victim for a sufficient period of time and prohibit the perpetrator from entering the residence or contacting the victim.

c) The availability of protection orders must be: i) irrespective of, or in addition to, other legal proceedings such as criminal or divorce proceeding against the perpetrator; ii) not be dependent on the initiation of a criminal case iii) allowed to be introduced in subsequent legal proceedings. Many forms of violence, particularly domestic violence, being courses of conduct which take place over time, strict time-limit restrictions on access to protection orders should not be imposed. The standard of proof that an applicant must discharge in order to be awarded with an order should not be the standard of criminal proof.

d) In terms of content, protection orders may order the perpetrator to vacate the family home, stay a specified distance away from the victim and her children (and other people if appropriate) and some specific places and prohibit the perpetrator from contacting the victim. Since protection orders should be issued without undue financial or administrative burdens placed on the victim, protection orders can also order the perpetrator to provide financial assistance to the victim."

(c) 3. Council of Europe

208. The Committee of Ministers' Recommendation Rec (2002)5 of 30 April 2002 on the protection of women against violence defined the term "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of

liberty" (Appendix, § 1). In the sphere of criminal law, it established that member States should "provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence" (§ 35). As regards judicial proceedings, member States should in particular "make provisions to ensure that criminal proceedings can be initiated by the public prosecutor" (§ 39) and "ensure that measures are taken to protect victims effectively against threats and possible acts of revenge" (§ 44). Among additional measures with regard to violence within the family, member States should "classify all forms of violence within the family as criminal offences" (§ 55) and "enable the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas" (§ 58 (b)).

209. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention") was released for signing on 11 May 2011 and entered into force on 1 August 2014. Russia is one of the two member States that have not signed the Istanbul Convention. The definition of "violence against women" in Article 3 is identical to that in paragraph 1 of Recommendation Rec (2002)5. "Domestic violence" is defined to include "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim".

Section 8.02 B. Material relating to violence against women in Russia

210. *Integration of the human rights of women and a gender perspective: violence against women*, a report of the Special Rapporteur on violence against women, its causes and consequences, following her visit to the Russian Federation from 17 to 24 December 2004 (E/CN.4/2006/61/Add.2), took stock of the magnitude of the problem of domestic violence:

> "26. Although statistics on domestic violence in particular and violence against women in general are inconsistent, existing data reveals a worrisome increase in domestic violence since the collapse of the Soviet Union. Reportedly, 80 per cent of violent crimes against women are cases of domestic violence. Between 1994 and 2000, the number of reported cases increased by 217 per cent to 169,000. Over a 10-month period in 2004, the Ministry of Interior reported 101,000 crimes related to the family - a 16 per cent increase over the previous year. The State party's report to the Committee on the Elimination of Discrimination against Women (CEDAW) in 1999 acknowledged that 14,000 women were killed annually by their husbands or other family members. The report went on to state that the 'situation is exacerbated by the lack of statistics and indeed by the attitude of the agencies of law and order to this problem, for they view such violence not as a crime but as 'a private matter' between the spouses' (CEDAW/C/USR/5, para. 6 [on page 38]).
>
> 27. ... the main cause is rooted in patriarchal norms and values. In many meetings held by the Special Rapporteur, authorities referred to an ancient Russian proverb, 'a beating man is a loving man!' Due to strong patriarchal values, husbands in Russia are generally considered superior to their wives with the right to assert control over them, legitimizing the general opinion that domestic violence is a private issue. Women are often blamed for having provoked the violence ...
>
> 28. ... women's groups claim that domestic violence remains seriously under-reported, under-recorded and largely ignored by the authorities. Furthermore, social stigma is connected to sexual and domestic violence,

pressuring victims to keep silent and 'solve it' within the family. This stigma results in weak public pressure for State action, which may explain why the problem is low on the State agenda.

...

36. The lack of a specific law on domestic violence in Russia is a major obstacle to combating this violence. While the State Duma has considered as many as 50 draft versions of a law on domestic violence, none has been adopted. The Ministry for Foreign Affairs attributes this to the financial implications of the draft bills, members of the Committee on Women, Children and Family of the State Duma, however, indicated that violence against women is not a priority for the State and that most opponents of the bill claim it would duplicate existing legal provisions. They argue that perpetrators of domestic violence can be prosecuted under articles 111 to 115 of the Russian Criminal Code, which criminalize inflicting intentional harm on another person ... However, according to women's groups, these provisions are often interpreted too narrowly to apply to domestic violence cases, making it difficult to punish perpetrators.

38. The lack of specific legislation contributes to impunity for crimes committed in the private sphere. It deters women from seeking recourse and reinforces police unwillingness, or even refusal, to deal seriously with the problem, as they do not consider it a crime. Reportedly, police officers, when called on may refuse to come to the scene, even in critical situations. When they do come, they may not register the complaint or arrest the perpetrator, but instead pressure the couple to reconcile their differences. In the process, the case goes unrecorded and the victim may not receive necessary medical treatment for her injuries.

39. Where women are assertive in trying to file a complaint, the officers allegedly delay the filing process or make it difficult. Police also reportedly blame victims and treat them in a discriminatory and degrading manner. Some women also report further abuse at police stations when filing a complaint. Under such circumstances, investigation into complaints seems unlikely ...

40. ... If the police do arrest the perpetrator, they normally keep him in detention for less than a day or slightly longer in 'serious cases', then release him without charge. When he returns home, he may commit even worse acts of violence in revenge. With no system of restraining or civil protection orders, local officials lack a legal mechanism to protect the victim from further violence once the perpetrator has been released.

41. Owing to police inaction, many victims of domestic violence do not file complaints – 40 per cent of women victims of domestic violence never seek help from law enforcement agencies. In cases that are filed, victims reportedly often withdraw their complaint due to lack of confidence in the justice system, economic dependency on or threats from the perpetrator, fear of losing custody of their children or the social stigma connected with domestic violence. Thus, very few complaints ever reach the courts or result in prosecution ..."

211. The concluding observations on the fifth periodic report of the Russian Federation on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/RUS/CO/5), adopted by the UN Committee on Economic, Social and Cultural Rights on 20 May 2011, noted with concern "the continued prevalence of domestic violence" and recommended "adopting a specific legislative act criminalizing domestic violence" (§ 22).

212. The concluding observations on the fifth periodic report of the Russian Federation (CAT/C/RUS/CO/5), adopted by the UN Committee against Torture on 22 November 2012, included violence against women among the principal subjects of concern:

"14. Despite consistent reports of numerous allegations of many forms of violence against women throughout the State party, the Committee is concerned that there are only a small number of complaints, investigations and prosecutions of acts of domestic violence and violence against women, including marital rape. It is also concerned about reports that law enforcement officers are unwilling to register claims of domestic violence,

and that women who seek criminal investigations of allegations of domestic violence are compelled to participate in reconciliation processes. The Committee is also concerned about the absence in the State party's law of a definition of domestic violence (arts. 1, 2, 11, 13 and 16)."

213. The concluding observations on the eighth periodic report of the Russian Federation (CEDAW/C/RUS/CO/8), which the CEDAW Committee adopted on 27 October 2015, noted that violence against women remained one of the principal areas of concern:

"21. The Committee remains concerned at the high prevalence of violence against women, in particular domestic and sexual violence, in the State party and the lack of statistics disaggregated by age, nationality and relationship between the victim and the perpetrator and of studies on its causes and consequences. While noting the information provided by the delegation during the dialogue that the bill on domestic violence is currently undergoing a second reading in the parliament, the Committee is concerned that cases of violence against women are underreported, given that they are considered a private matter, and that victim protection services, such as crisis centres and shelters, are insufficient.

22. Recalling its general recommendation No. 19 (1992) on violence against women, the Committee urges the State party:

(a) To adopt comprehensive legislation to prevent and address violence against women, including domestic violence, introduce ex officio prosecution of domestic and sexual violence and ensure that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and adequately punished ...

(d) To collect statistical data on domestic and sexual violence disaggregated by sex, age, nationality and relationship between the victim and the perpetrator."

214. In *O.G. v. the Russian Federation* (Communication No. 91/2015, 6 November 2017), the CEDAW Committee took the view that by failing to investigate a complaint lodged by Ms O.G. of death threats and threats of violence emanating from her former partner "promptly, adequately and effectively and by failing to address her case in a gender-sensitive manner, the [Russian] authorities [had] allowed their reasoning to be influenced by stereotypes" (§ 7.6).

The Committee considered that "the fact that a victim of domestic violence has to resort to private prosecution, where the burden of proof is placed entirely on her, denies the victim access to justice, as observed in general recommendation No. 33 paragraph 15 (g)". It also noted that recent amendments to Article 116 of the Criminal code decriminalising battery "owing to the absence of a definition of 'domestic violence' in Russian law, go in the wrong direction and lead to impunity for perpetrators of these acts of domestic violence" (§ 7.7).

The Committee considered that "the failure by the State party to amend its legislation relating to domestic violence directly affected the possibility of [Ms O.G.] being able to claim justice and to have access to efficient remedies and protection" (§ 7.8) and that Ms O.G. "was subjected to fear and anguish when she was left without State protection while she was periodically persecuted by her aggressor and was exposed to renewed trauma when the State organs that ought to have been her protector, in particular the police, instead refused to offer her protection and denied her status as a victim" (§ 7.9).

The Committee concluded that Russia had violated Ms O.G.'s rights under Articles 1, 2 (b)-(g), 3 and 5 (a) of the CEDAW (§ 8); it made a number of recommendations to the Russian

authorities, including the reinstatement of the provision that domestic violence be subject to criminal prosecution (§ 9 (b)(ii)).

215. *"I Could Kill You and No One Would Stop Me". Weak State Response to Domestic Violence in Russia,* a report released by Human Rights Watch in October 2018, stated:

> "According to a 2008 assessment by the Interior Ministry, the most recent such assessment available, up to 40 percent of all grave violent crimes in Russia are committed within the family, and every fourth family in Russia experiences violence. Among women respondents to a 2016 opinion poll, 12 percent said they experienced battery by their present or former husband or partner (2 percent, often; 4 percent, several times; 6 percent, once or twice) ...
>
> Though some Russian state bodies do keep some data on violence within the family, the government does not systematically collect information on domestic abuse, and official statistics are scarce, fragmented, and unclear. The lack of a law on domestic violence or legal definition of domestic violence prevents categorization of the abuses as such, thus contributing to the absence of specific statistics.
>
> ...
>
> The true numbers of victims are likely much higher than the above data indicates, due to several factors. First, the above-cited numbers cover only those instances in which criminal proceedings were initiated: they do not reflect the actual numbers of complaints to the police or instances where police refused to initiate criminal investigation or instructed women to file a complaint with a magistrate judge for a private prosecution.
>
> Second, domestic violence is underreported worldwide, including in Russia. Official studies suggest that only around 10 percent of survivors of domestic violence in Russia report incidents of violence to the police. According to experts' estimates, between 60 and 70 percent of women who suffer family violence do not report it or seek help. Moreover, experts, rights groups, and service providers interviewed for this report told Human Rights Watch that Russian police rarely open criminal cases on domestic violence complaints and, even when they do, most criminal cases are dropped before they can lead to a conviction.
>
> ...
>
> According to statistics provided by the Justice Department of the Supreme Court, punishment for battery offenses became more frequent following decriminalization. In 2015 and 2016, 16,198 and 17,807 persons respectively were convicted for criminal (non-aggravated) battery. Throughout 2017, 113,437 people were sentenced for battery as an administrative offense. This data does not differentiate between battery within the family and in other circumstances.
>
> Also according to official data, in 2017, the majority of perpetrators of battery, 90,020 out of 113,437, were fined. However, several women noted to Human Rights Watch that when a court issued their abusers a fine the abuser paid the fine from the family's shared bank account."

THE LAW

Article IX. I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

216. The applicant complained that the domestic authorities had failed to protect her from treatment – consisting of repeated acts of domestic violence – proscribed by Article 3 of the

Convention and to hold the perpetrator accountable. She also alleged a breach of Article 13 of the Convention, taken together with Article 3, on account of deficiencies in the domestic legal framework and of the absence of legal provisions addressing domestic violence, such as restraining orders. The relevant parts of the Convention provisions read as follows:

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ..."

Section 9.01 A. Submissions by the parties

217. The Government emphasised that an assault on an individual of either sex was a criminal offence in Russia, irrespective of whether it was carried out by family members, partners or third parties. In their submission, domestic violence did not constitute a distinct offence but involved violent acts leading to bodily harm or physical or mental suffering. The Government listed the provisions of the Criminal Code that provided for sanctions for bodily harm, battery and threats of death, and submitted that the number of such provisions was sufficient to allow injured parties to seek the protection of law. They pointed out that the offences of minor bodily harm and battery (Articles 115(1) and 116 of the Criminal Code) were private prosecution offences, which meant that the police could not institute proceedings *ex officio* in the absence of a complaint from the victim, even if confronted with clear indications of an offence. Proceedings were also subject to mandatory termination in the event that the victim agreed to settle the matter. The requirement that a formal complaint be lodged by the victim complicated the prosecution of offences relating to assaults upon, and the battery of, women. Such offences were frequently committed within the family, in the absence of witnesses, and women suffering from violent partners infrequently applied to courts. The Government asserted that the Russian authorities had taken all legal measures to establish the truth of the applicant's allegations, including by carrying out "pre-investigation inquiries". The authorities had declined to institute criminal proceedings because the alleged violent conduct on the part of S. and his causing bodily harm to the applicant had not been proved. The applicant had not substantiated her claim that the investigation had been ineffective. She had failed to lodge complaints in order to set in motion private prosecution proceedings, had withdrawn her other complaints and had not brought any matters before a court. She had also refused to submit to a medical assessment and had asked that proceedings against S be discontinued. The applicant could have brought a civil claim against S., seeking compensation for mental suffering, but she had not availed herself of that remedy. In sum, the Government considered that there had been no violation of Article 3 or 13 of the Convention.

218. The applicant submitted that she was a victim of serious and recurrent domestic violence amounting to inhuman and degrading treatment. An independent psychiatric assessment found that she was suffering from serious psychological trauma arising from both the violence inflicted

upon her and her feelings of helplessness in the face of it. The Russian authorities had failed to establish a legislative framework to address domestic violence and to investigate and prosecute the ill-treatment of the applicant under the existing criminal-law provisions. For more than two years they had never once opened a criminal investigation, despite the seriousness of her allegations, the repeated nature of the violence, and the genuine threat to her life. The applicant provided specific examples of the shortcomings contained in the authorities' response to her complaints, including their failure to notify her of procedural decisions taken in response to her complaint, scheduling medical assessments many months after the events, and limiting their enquiries to obtaining explanations from S. Even when the crime of assault against "close persons" had briefly fallen under the public prosecution regime (between July 2016 and January 2017), the three complaints that the applicant had lodged in that period had not prompted the authorities to open a criminal investigation. The current legal regime, under which assault had been a non-criminal offence since January 2017 and was now privately prosecutable only in the event that the offender had been found guilty of the same offence in administrative proceedings in the previous twelve months, was inadequate for dealing with domestic violence. Private prosecution cases were prohibitively onerous for a victim, who had to act as her own investigator, prosecutor and advocate. Reconciliation was considered a primary goal in such cases, leaving the victim exposed to pressure from her abuser. About 90% of private prosecution cases were discontinued, either owing to reconciliation or failure to fulfil the legal requirements. In 2015, there had been 2.37 million reports of assault, but only 26,212 cases had resulted in a criminal conviction. In 2017, out of a total of 164,000 instances of assault, only 7,000 had been subject to a criminal investigation. The applicant pointed out that once the offence of assault had been decriminalised, the authorities had failed to hold S. accountable – even under administrative law. She also emphasised that nothing remotely resembling a protection order existed in Russian law and that the Russian authorities had been unable to offer her any meaningful protection over more than two years of violence.

Section 9.02 B. Admissibility

219. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

Section 9.03 C. Merits

(a) 1. General considerations

220. The Court reiterates that the issue of domestic violence, which can take various forms – ranging from physical assault to sexual, economic, emotional or verbal abuse – transcends the circumstances of an individual case. It is a general problem which affects, to a varying degree, all member States and which does not always surface since it often takes place within personal relationships or closed circuits and affects different family members, although women make up an overwhelming majority of victims (see *Opuz v. Turkey*, no. 33401/02, § 132, ECHR 2009).

221. The particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection have been emphasised in a number of international

instruments and the Court's case-law (see *Opuz*, cited above, §§ 72-86; *Bevacqua and S. v. Bulgaria*, no. 71127/01, §§ 64-65, 12 June 2008; and *Hajduová v. Slovakia*, no. 2660/03, § 46, 30 November 2010).

(b) 2. Analysis of the present case

(i) (a) Whether the applicant was subjected to treatment contravening Article 3

222. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. An assessment of whether this minimum has been attained depends on many factors, including the nature and context of the treatment, its duration, and its physical and mental effects, but also the sex of the victim and the relationship between the victim and the author of the treatment. Even in the absence of actual bodily harm or intense physical or mental suffering, treatment which humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or which arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, may be characterised as degrading and also fall within the prohibition set forth in Article 3. It should also be pointed out that it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 86-87, ECHR 2015).

223. Turning to the circumstances of the instant case, the Court notes that the physical violence suffered by the applicant at the hands of S. was recorded in medical documents, as well as in police reports. On at least three occasions S. assaulted her, kicking and punching her in the face and stomach – including when she was pregnant (see paragraphs 163, 166 and 170 above). A particularly heavy kick to her stomach led to the premature termination of her pregnancy. Those incidents, taken on their own, reached the required level of severity under Article 3 of the Convention. However, the Court has also acknowledged that, in addition to physical injuries, psychological impact forms an important aspect of domestic violence (see *Valiulienė v. Lithuania*, no. 33234/07, § 69, 26 March 2013).

224. The applicant reported to the police multiple instances of threatening conduct on the part of S. which caused her to live in fear for her safety. Evidence of such fear can be found in the applicant's repeated attempts to move away from him and to seek refuge in Moscow, far from her home town of Ulyanovsk (see paragraphs 161 and 169 above). S. followed and harassed her, taking her back to Ulyanovsk against her will, placing a GPS tracker in her purse and stalking her in front of her house (see paragraphs 162, 177 and 180 above). He sought to punish her for what he considered to be her unacceptable behaviour by making death threats and damaging or taking away her property and identity papers (see paragraphs 159, 171 and 181 above). His publication of her private photographs further undermined her dignity, conveying a message of humiliation and disrespect (see paragraph 179 above). The feelings of fear, anxiety and powerlessness that the applicant must have experienced in connection with his controlling and coercive behaviour were sufficiently serious as to amount to inhuman treatment within the meaning of Article 3 of the Convention (see *Eremia v. the Republic of Moldova*, no. 3564/11, § 54, 28 May 2013).

(ii) (b) Whether the authorities discharged their obligations under Article 3

225. Once it has been shown that treatment reached the threshold of severity triggering the protection of Article 3 of the Convention, the Court has to examine whether the State authorities have discharged their positive obligations under Article 1 of the Convention, read in conjunction with Article 3, to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment, including where such treatment is administered by private individuals.

226. These positive obligations, which are interlinked, include:

(a) the obligation to establish and apply in practice an adequate legal framework affording protection against ill-treatment by private individuals;

(b) the obligation to take the reasonable measures that might have been expected in order to avert a real and immediate risk of ill-treatment of which the authorities knew or ought to have known, and

(c) the obligation to conduct an effective investigation when an arguable claim of ill-treatment has been raised (see *Bevacqua and S.*, cited above, § 65; *Opuz*, cited above, §§ 144-45 and 162-65; *Eremia*, cited above, §§ 49-52 and 56; *Valiulienė*, cited above, §§ 74-75; *Rumor v. Italy*, no. 72964/10, § 63, 27 May 2014; *Talpis v. Italy*, no. 41237/14, §§ 100-06, 2 March 2017; and *Bălşan v. Romania*, no. 49645/09, § 57, 23 May 2017).

1) (i) The obligation to establish a legal framework

227. The Court will first examine whether the Russian legal order contains adequate legal mechanisms for the protection from domestic violence and how they are applied in practice. There is a common understanding in the relevant international material that comprehensive legal and other measures are necessary to provide victims of domestic violence with effective protection and safeguards (see the authorities referred to in *Opuz*, cited above, §§ 72-86 and 145, as well as paragraphs 206 and 207 above). The obligation on the State in cases involving acts of domestic violence would usually require the domestic authorities to adopt positive measures in the sphere of criminal-law protection. Such measures would include, in particular, the criminalisation of acts of violence within the family by providing effective, proportionate and dissuasive sanctions. Bringing the perpetrators of violent acts to justice serves to ensure that such acts do not remain ignored by the competent authorities and to provide effective protection against them (see *A. v. Croatia*, no. 55164/08, § 67, 14 October 2010; *Valiulienė*, cited above, § 71; *Eremia*, cited above, § 57; and *Ž.B. v. Croatia*, no. 47666/13, § 50, 11 July 2017).

228. The Court has accepted that different legislative solutions in the sphere of criminal law could fulfil the requirement of an adequate legal mechanism for the protection against domestic violence, provided that such protection remains effective. Thus, it has been satisfied that the Moldovan law provides specific criminal sanctions for the commission of acts of violence against members of one's own family and provides for protective measures for the victims of violence, as well as sanctions against those persons who refuse to abide by court decisions (see *Eremia*, cited above, § 57, and *Mudric v. the Republic of Moldova*, no. 74839/10, § 48, 16 July 2013). With respect to Croatia, Lithuania and Romania, it has found that by criminalising domestic violence as an aggravating form of other offences and adopting specific regulations for the

protection of victims of domestic violence, the authorities have complied with their obligation to put in place a legal framework allowing victims of domestic violence to complain of such violence and to seek protection (see *E.M. v. Romania*, no. 43994/05, § 62, 30 October 2012; *Ž.B. v. Croatia*, cited above, §§ 54-55, and *Valiulienė*, cited above, § 78).

229. Russia has not enacted specific legislation to address violence occurring within the family context. Neither a law on domestic violence – to which the CEDAW Committee referred in its 2015 report (see paragraph 213 above) – nor any other similar laws have ever been adopted. The concept of "domestic violence" or any equivalent thereof is not defined or mentioned in any form in the Russian legislation. Domestic violence is not a separate offence under either the Criminal Code or the Code of Administrative Offences. Nor has it been criminalised as an aggravating form of any other offence, except for a brief period between July 2016 and January 2017, when inflicting beatings on "close persons" was treated as an aggravating element of battery under Article 116 of the Criminal Code (see paragraph 198 above). Otherwise, the Russian Criminal Code makes no distinction between domestic violence and other forms of violence against the person, dealing with it through provisions on causing harm to a person's health or other related provisions, such as murder, death threats or rape.

230. The Court cannot agree with the Government's claim that the existing criminal-law provisions are capable of adequately capturing the offence of domestic violence. Following a series of legislative amendments, assault on family members is now considered a criminal offence only if committed for a second time within twelve months or if it has resulted in at least "minor bodily harm" (see paragraphs 195 and 199 above). The Court has previously found that requiring injuries to be of a certain degree of severity as a condition precedent for initiating a criminal investigation undermines the efficiency of the protective measures in question, because domestic violence may take many forms, some of which do not result in physical injury – such as psychological or economic abuse or controlling or coercive behaviour (see *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 47, 28 January 2014). Moreover, the provisions on "repeat battery" would not have afforded the applicant any protection in the situation where the attacks in 2016 were followed by a new wave of threats and assaults more than twelve months later, in 2018. The Court also reiterates that domestic violence can occur even as a result of one single incident.

231. Furthermore, the Russian law leaves the prosecution of charges of "minor harm to health" and "repeat battery" to the private initiative of the victim. The Court has acknowledged that the effective protection of the Convention right to physical integrity does not require public prosecution in all cases of attacks by private individuals (see *Sandra Janković v. Croatia*, no. 38478/05, § 50, 5 March 2009). Within the context of domestic violence, however, it has considered that the possibility to bring private prosecution proceedings is not sufficient, as such proceedings obviously require time and cannot serve to prevent the recurrence of similar incidents (see *Bevacqua and S.*, cited above, § 83; see also the Council of Europe's Recommendation Rec (2002) 5, cited in paragraph 208 above). A private prosecution puts an excessive burden on the victim of domestic violence, shifting onto her the responsibility for

collecting evidence capable of establishing the abuser's guilt to the criminal standard of proof. As the Government acknowledged, the collection of evidence presents inherent challenges in cases where abuse occurs in a private setting without any witnesses present, and sometimes leaves no tangible marks. The Court agrees that this is not an easy task even for trained law-enforcement officials, but the challenge becomes unsurmountable for a victim who is expected to collect evidence on her own while continuing to live under the same roof as the perpetrator, being financially dependent on him, and fearing reprisals on his part. Moreover, even if a trial results in a guilty verdict, a victim cannot be provided with the necessary protection, such as protective or restraining orders, owing to the absence of such measures under Russian legislation.

232. In *Opuz* (cited above, §§ 138-39), the Court listed certain factors that could be taken into account in deciding whether domestic violence should be publicly prosecutable and posited the principle that "... the more serious the offence or the greater the risk of further offences, the more likely that the prosecution should continue in the public interest, even if victims withdraw their complaints". In other cases, the Court was satisfied that, to the extent that a public prosecutor had the right to open a criminal investigation into acts causing minor bodily harm if the crime was of public importance or the victim was not able to protect his or her interests, the domestic law provided an adequate framework for prosecuting domestic-violence charges (see *Valiulienė*, § 78, and *Bălşan*, § 63 – both cited above).

233. By contrast, the Russian law makes no exception to the rule that the initiation and pursuance of proceedings in respect of such offences are entirely dependent on the victim's initiative and determination. The Court reiterates that the prosecuting authorities should have been able to pursue the proceedings as a matter of public interest, regardless of the victim's withdrawal of complaints (see *Opuz*, cited above, § 145). The Russian authorities have not given heed to the Council of Europe's Recommendation Rec(2002)5, which required member States to make provision to ensure that criminal proceedings could be instituted by a public prosecutor and that the victims should be given effective protection during such proceedings against threats and possible acts of revenge (§§ 39 and 44, cited in paragraph 208 above). The authorities' failure to provide for the public prosecution of domestic-violence charges has been consistently criticised by the CEDAW Committee. In 2015, in its concluding observations on the eighth periodic report by the Russian Federation, the Committee expressed concern regarding the high prevalence of violence against women – which was considered "a private matter" – and recommended that the Russian State amend the relevant law to provide for the *ex officio* prosecution of domestic violence (see paragraph 213 above). In the views that it recently expressed regarding a domestic-violence complaint against Russia that was similar to the one addressed in the present case, the Committee established that placing the burden of proof on the victim of domestic violence in private prosecution cases had the effect of denying access to justice, in breach of Russia's obligations under the CEDAW Convention (see paragraph 214 above).

234. In sum, the Court finds that the Russian legal framework – which does not define domestic violence whether as a separate offence or an aggravating element of other offences and

establishes a minimum threshold of gravity of injuries required for launching public prosecution – falls short of the requirements inherent in the State's positive obligation to establish and apply effectively a system punishing all forms of domestic violence and providing sufficient safeguards for victims (see *Opuz*, cited above, § 145).

2) (ii) The obligation to prevent the known risk of ill-treatment

235. The Court reiterates that the State authorities have a responsibility to take protective measures in the form of effective deterrence against serious breaches of an individual's personal integrity by a member of her family or by a partner (see *M. and Others v. Italy and Bulgaria*, no. 40020/03, § 105, 31 July 2012, and *Opuz*, cited above, § 176). Interference by the authorities with private and family life may become necessary in order to protect the health and rights of a victim or to prevent criminal acts in certain circumstances (see *Opuz*, § 144, and *Eremia*, § 52, both cited above). The risk of a real and immediate threat must be assessed, taking due account of the particular context of domestic violence. In such a situation, it is not only a question of an obligation to afford general protection to society, but above all to take account of the recurrence of successive episodes of violence within a family (see *Talpis*, cited above, § 122, with further references). The Court has found in many cases that, even when the authorities did not remain totally passive, they still failed to discharge their obligations under Article 3 of the Convention because the measures they had taken had not stopped the abuser from perpetrating further violence against the victim (see *Bevacqua and S.*, cited above, § 83; *Opuz*, cited above, §§ 166-67; *Eremia*; cited above, §§ 62-66; and *B. v. the Republic of Moldova*, no. 61382/09, § 53, 16 July 2013).

236. The applicant first informed the authorities of her partner's violence on 1 January 2016. She reported further episodes of violence or threats of violence by way of making emergency calls to the police or lodging formal criminal complaints on 25 January, 18 May, 30 July and 1 August 2016 and 12 and 21 March 2018. In her complaints, she informed the authorities of the threats of violence made, and actual violence perpetrated, by S. and supplied medical evidence corroborating her allegations. Therefore, the officials were aware, or ought to have been aware, of the violence to which the applicant had been subjected and of the real and immediate risk that violence might recur. Given those circumstances, the authorities had an obligation to take all reasonable measures for her protection (see *Eremia*, § 58, and *Bălşan*, § 62, both cited above).

237. In a large majority of Council of Europe member States, victims of domestic violence may apply for immediate measures of protection. Such measures are variously known as "restraining orders", "protection orders" or "safety orders", and they aim to forestall the recurrence of domestic violence and to safeguard the victim of such violence by typically requiring the offender to leave the shared residence and to abstain from approaching or contacting the victim (see, for examples of such measures, Turkey's Family Protection Act, quoted in *Opuz*, cited above, § 70; Moldova's Domestic Violence Act, quoted in *Eremia*, cited above, § 30; section 7 of Croatia's Protection against Domestic Violence Act, quoted in *A. v. Croatia*, cited above, § 42; and Article 282 of Italy's Code of Criminal Procedure, quoted in *Talpis*, cited above, § 51). The CEDAW Committee and the UN Special Rapporteur on violence against women have

identified the key features that such orders must possess in order to ensure the effective protection of the victim (see paragraphs 205 and 207 above).

238. Russia remains among only a few member States whose national legislation does not provide victims of domestic violence with any comparable measures of protection. The respondent Government in their observations did not identify any measures that the authorities could use to ensure the protection of the applicant. As regards an application for State protection – to which the applicant ultimately resorted (see paragraph 186 above) – the Court observes that the State protection scheme is geared towards protecting witnesses before and during criminal trials against any attempts to suppress or modify their testimony. In domestic-violence cases, the identity of the perpetrator is known and a restraining order keeps him away from the victim so that she can carry on as normal a life as possible under the circumstances. By contrast, witness-protection measures seek to foil attacks from as yet unidentified criminal associates. They frequently involve highly disruptive and costly arrangements, such as a full-time security detail, relocation, a change of identity, or even plastic surgery. Such heavy-handed measures are usually unnecessary within the domestic-violence context, where the availability of a protection order and the rigorous monitoring of the abusive partner's compliance with its terms will ensure the victim's safety and discharge the State's obligation to protect against the risk of ill-treatment (see *A. v. Croatia*, §§ 62-80, and *Eremia*, §§ 59-65, both cited above).

239. In the instant case, it cannot be said that the Russian authorities made any genuine attempts to prevent the recurrence of violent attacks against the applicant. Her repeated reports of physical attacks, kidnapping and assault in the first half of 2016 did not lead to any measures being taken against S. Despite the gravity of the acts, the authorities merely obtained explanations from him and concluded that it was a private matter between him and the applicant. A criminal case was opened for the first time only in 2018 – that is to say more than two years after the first reported assault. It did not relate to any violent act on the part of S., but to the much lesser offence of interference with her private life. Even though the institution of criminal proceedings allowed the applicant to lodge an application for State protection measures, she did not receive any formal decision on her application, to which she was entitled under the law. An opinion issued by the regional police pronounced the application unfounded, describing the series of domestic-violence incidents as mere ill feeling between her and S. which was not worthy of State intervention (see paragraph 186 above). Lastly, a later series of stalking incidents and threats of death against the applicant in March 2018 did not lead to the taking of any protective measures.

240. The Court considers that the response of the Russian authorities – who were made aware of the risk of recurrent violence on the part of the applicant's former partner – was manifestly inadequate, given the gravity of the offences in question. They did not take any measure to protect the applicant or to censure S.'s conduct. They remained passive in the face of serious risk of ill-treatment to the applicant and, through their inaction and failure to take measures of deterrence, allowed S. to continue threatening, harassing and assaulting the applicant without hindrance and with impunity (see *Opuz*, §§ 169-70, and *Eremia*, §§ 65-66, both cited above).

3) (iii) The obligation to carry out an effective investigation into allegations of ill-treatment

241. The obligation to conduct an effective investigation into all acts of domestic violence is an essential element of the State's obligations under Article 3 of the Convention. To be effective, such an investigation must be prompt and thorough. The authorities must take all reasonable steps to secure evidence concerning the incident, including forensic evidence. Special diligence is required in dealing with domestic-violence cases, and the specific nature of the domestic violence must be taken into account in the course of the domestic proceedings. The State's obligation to investigate will not be satisfied if the protection afforded by domestic law exists only in theory; above all, it must also operate effectively in practice, and that requires a prompt examination of the case without unnecessary delays (see *Opuz*, cited above, §§ 145-51 and 168; *T.M. and C.M. v. the Republic of Moldova*, § 46; and *Talpis*, §§ 106 and 129, all cited above).

242. Since 1 January 2016 the applicant has reported to the police at least seven episodes of recurrent serious violence or threats of violence by S. and submitted evidence – including medical reports and statements by witnesses – corroborating her allegations (see paragraph 236 above). Her reports amounted to an arguable claim of ill-treatment, triggering the obligation to carry out an investigation satisfying the requirements of Article 3.

243. Responding to the applicant's complaints, the police carried out a series of short "pre-investigation inquiries", which invariably concluded with a refusal to institute criminal proceedings on the grounds that no prosecutable offence had been committed. Supervising prosecutors set aside some of the decisions concluding the pre-investigation inquiries. They apparently found that the applicant's allegations were sufficiently serious as to warrant additional examination of her grievances. However, the police officers did not take any additional investigative steps and issued further decisions declining to initiate criminal proceedings; the wording of those decisions reproduced in essence the text of previous decisions (see paragraphs 160, 165, 168, 172, 176, 184 and 185 above). Over more than two years of recurring harassment by S., the authorities never once opened a criminal investigation into the use or threat of violence against the applicant. The only criminal case that has been instituted since 1 January 2016 did not relate to any violent acts but to the relatively minor offence of publishing photographs of the applicant (see paragraph 179 above).

244. The Court has found in many previous Russian cases that the authorities, when confronted with credible allegations of ill-treatment, have a duty to open a criminal case; a "pre-investigation inquiry" alone not being capable of meeting the requirements for an effective investigation under Article 3. That preliminary stage has too restricted a scope and cannot lead to the trial and punishment of the perpetrator, since the opening of a criminal case and a criminal investigation are prerequisites for bringing charges that may then be examined by a court. The Court has held that a refusal to open a criminal investigation into credible allegations of serious ill-treatment is indicative of the State's failure to comply with its procedural obligation under Article 3 (see *Lyapin v. Russia*, no. 46956/09, §§ 134-40, 24 July 2014; *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 81-82, 2 May 2017; and *Samesov v. Russia*, no. 57269/14, §§ 51-54, 20 November 2018).

245. As in those and many other cases, the police officers' reluctance to initiate and carry through a criminal investigation in a prompt and diligent fashion led to a loss of time and undermined their ability to secure evidence concerning the domestic violence. Even when the applicant presented visible injuries, such as after the assaults on 25 January and 18 May 2016, a medical assessment was not scheduled immediately after the incident. In respect of the first incident, the supervising prosecutor had to intervene before the police would schedule a medical examination, which only took place in March 2016 – almost two months after the events. In respect of the second incident, the Ulyanovsk police referred the matter to colleagues in another region, causing an almost three-month delay. Given the amount of time that had passed since the incident described in the applicant's complaint, a medical examination had become pointless; it therefore cannot be held against her that she refused to submit to such an examination.

246. The Court is not convinced that the Russian authorities made any serious attempt to establish the circumstances of the assaults or took an overall view of the series of violent acts, which is necessary in domestic-violence cases. The scope of their inquiries was confined in most instances to hearing the perpetrator's version of the assaults. The police officers employed a variety of tactics that enabled them to dispose of each inquiry in the shortest possible time. The first such tactic consisted of talking the perpetrator into making amends and repairing the damage caused. Once he had replaced the broken window of her car and returned the identity papers and personal effects to the applicant, the police declared that no offence had been committed, as if nothing had ever happened (see paragraphs 160 and 184 above). Alternatively, the police officers sought to trivialise the events that the applicant reported to them. Thus, an attempt on the applicant's life by means of cutting the brake hose in her car was treated as a minor property-damage case and the police closed the matter, citing the applicant's failure to submit a valuation of the damage (see paragraphs 172 to 176 above).

247. Confronted with indications of prosecutable offences, such as recorded injuries or text messages containing death threats, the police raised the bar for evidence required to launch criminal proceedings. They claimed that proof of more than one blow was needed to establish the offence of battery and that threats of death had to be "real and specific" in order to be prosecutable (see paragraphs 168 and 172 above). They did not cite any domestic authority or judicial practice supporting such an interpretation of the criminal-law provisions. The Court reiterates that the prohibition of ill-treatment under Article 3 covers all forms of domestic violence without exception, and every such act triggers the obligation to investigate. Even a single blow may arouse feelings of fear and anguish in the victim and seek to break her moral and physical resistance (see the case-law cited in paragraph 222 above). Threats are a form of psychological violence and a vulnerable victim may experience fear regardless of the objective nature of such intimidating conduct. The CEDAW Committee has indicated that, to be treated as such, gender-based violence does not need to involve a "direct and immediate threat to the life or health of the victim" (see paragraph 205 above). This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation.

248. The Government blamed the applicant for a lack of initiative in pursuing criminal-law remedies. In their view, her failure to lodge, or the subsequent withdrawal of, criminal complaints had prevented the authorities from continuing criminal proceedings against S. The Court cannot accept this view. It reiterates that the provisions of Russian law that make a criminal investigation strictly dependent on the pursuance of complaints by the victim are incompatible with the State's obligation to punish all forms of domestic violence. Having regard to the particularly vulnerable situation of victims of domestic violence, the legislative framework must enable the authorities to investigate domestic-violence cases of their own motion as a matter of public interest and to punish those responsible for such acts (see see *Opuz*, §§ 145 and 168; *T.M. and C.M. v. the Republic of Moldova*, § 46, and *B. v. the Republic of Moldova*, § 54, all cited above). In the present case, despite the seriousness of the assault on the pregnant applicant, which had led to the termination of her pregnancy, the authorities did not consider what the motives behind the withdrawal of the complaint had been and whether the seriousness of the attacks had required them to pursue the criminal investigation. They did not institute of their own motion any investigation into that matter, even though the kidnapping and serious bodily harm – such as the termination of pregnancy – could have been investigated as public-prosecution offences (see paragraph 195 above).

249. Lastly, the Government contended that other legal remedies had been open to the applicant which, had she used them, could have fulfilled their procedural obligations under the Convention, such as bringing a civil action for damages against S. The Court reiterates that such an action could have led to the payment of compensation but not to the prosecution of those responsible. Accordingly, it would not be conducive to the State discharging its procedural obligation under Article 3 in respect of the investigation of violent acts (see *Beganović v. Croatia*, no. 46423/06, § 56, 25 June 2009, and *Abdu v. Bulgaria*, no. 26827/08, § 51, 11 March 2014).

250. In view of the manner in which the authorities handled the case – notably the authorities' reluctance to open a criminal investigation into the applicant's credible claims of ill-treatment by S. and their failure to take effective measures against him, ensuring his punishment under the applicable legal provisions – the Court finds that the State has failed to discharge its duty to investigate the ill-treatment that the applicant had endured.

4) (iv) Conclusion

251. There has therefore been a violation of Article 3 of the Convention. In the light of this finding, the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 13 (compare *Opuz*, cited above, §§ 203-05).

Article X. II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3

252. The applicant complained that the Russian authorities' failure to put in place specific measures to combat gender-based discrimination against women amounted to a breach of Article 14 of the Convention, taken in conjunction with Article 3. The relevant part of Article 14 reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex ..."

Section 10.01A. Submissions by the parties

253. The Government submitted that the main provisions of the CEDAW Convention, including the equality clause, were written into the Russian Constitution. The Russian authorities had dutifully acted upon the applicant's complaints and had made enquiries in respect of her allegations. She had not alleged that any State officials had attempted to discourage her from prosecuting S. or from giving evidence against him or that they had otherwise impeded her attempts to seek protection against her violent partner. The applicant had not submitted any statistical data showing that women in Russia who complained of domestic violence were subject to discriminatory treatment.

254. The applicant – referring to official statistics, as well as independent studies and research undertaken by gender-violence advocates – submitted that domestic violence was widespread in Russia and disproportionately impacted women. Her own case illustrated the lack of remedies for domestic-violence victims in Russia, where law enforcement agencies displayed a patriarchal and discriminatory attitude towards the problem of domestic violence, viewing it as a "lesser form" of violence and a "private matter". Despite the applicant lodging more than seven reports to the authorities, they had not opened an investigation or prevented further attacks, showing a striking level of complacency towards, and complicity in, the ill-treatment that she had experienced. For over a decade, various UN bodies had expressed alarm over the high level of violence against women in Russia and had called upon Russia to bring its legislation into line with international standards. Instead, the Russian lawmakers had rolled back the existing protections for domestic-violence victims and decriminalised the offence of assault within the family in 2017. Support for decriminalisation at the highest political levels demonstrated that discrimination against women was part of official State policy, which championed "traditional values" and rigid gender roles and failed to condemn the use of physical violence against family members.

255. The third party, Equal Rights Trust, submitted that it was essential for cases of domestic violence to be examined under Article 14 in conjunction with Article 3, given that discrimination is a fundamental aspect of such violence which gives rise to the State's positive obligations of prevention, protection, investigation, prosecution and reparation. Gender-based violence is a form of discrimination against women and domestic violence impacts disproportionately and differently upon women, requiring a gender-sensitive approach to understanding the level of pain and suffering experienced by women. Referring to an extensive selection of international human-rights-law instruments, the third party outlined the scope and nature of the State's positive obligations in the sphere of domestic violence.

256. Commenting on the third-party submissions, the Government submitted that they contained unreliable information. Russian law already adequately protected victims of domestic violence, and the adoption of any specific legislation was unnecessary.

Section 10.02B. Admissibility

257. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

Section 10.03C. Merits

(a) 1. The principles applicable to the assessment of discrimination claims in domestic-violence cases

258. According to the Court's settled case-law, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations. Such a difference in treatment is discriminatory if it has no objective and reasonable justification. The Court has also accepted that a general policy that has disproportionately prejudicial effects on a particular group may be considered to constitute discrimination, even where it is not specifically aimed at that group and there is no discriminatory intent. Discrimination that is contrary to the Convention may also result from a de facto situation (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV, and *S.A.S. v. France* [GC], no. 43835/11, § 161, ECHR 2014 (extracts)).

259. Having regard to the terms of specialised legal instruments – primarily the CEDAW Convention, and the work of the CEDAW Committee – the Court has recognised that violence against women, including domestic violence, is a form of discrimination against women. The State's failure to protect women against domestic violence breaches their right to equal protection of the law, irrespective of whether such failure is intentional or not (see *Opuz*, cited above, §§ 185-91). In its general recommendation No. 19 (1992) on violence against women, the CEDAW Committee clarified that the definition of discrimination against women in Article 1 of the CEDAW Convention includes gender-based violence, which is understood as violence that "is directed against a woman because she is a woman or that affects women disproportionately" (see paragraph 201 above). Twenty-five years later, the Committee's general recommendation No. 35 (2017) affirmed that the prohibition of gender-based violence against women as a form of discrimination against women has evolved into a principle of customary international law (see paragraph 204 above).

260. As regards the distribution of the burden of proof in discrimination cases, the Court has held that once an applicant has shown that there has been a difference in treatment it is then for the respondent Government to show that that difference in treatment could be justified (see *D.H. and Others*, cited above, § 188). Within the context of violence against women, if it has been established that it affects women disproportionately, the burden shifts onto the Government to demonstrate what kind of remedial measures the domestic authorities have deployed to redress the disadvantage associated with gender and to ensure that women can exercise and fully enjoy all human rights and freedoms on an equal footing with men. The Court has repeatedly held that the advancement of gender equality is today a major goal in the member States of the Council of Europe and that a difference in treatment that is aimed at ensuring substantive gender equality may be justified, and even required, under Article 14 of the Convention (see *Konstantin Markin*

v. Russia [GC], no. 30078/06, § 47, ECHR 2012 (extracts), and *Ēcis v. Latvia*, no. 12879/09, §§ 84-86, 10 January 2019). Substantive gender equality can only be achieved with a gender-sensitive interpretation and application of the Convention provisions that takes into account the factual inequalities between women and men and the way they impact women's lives. Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed, in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of this Article (see *D.H. and Others*, cited above, § 175).

261. As regards the question of what constitutes prima facie evidence capable of shifting the burden of proof on to the respondent State, the Court reiterates that in proceedings before it there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. In cases in which the applicants allege a difference in the effect of a general measure or a de facto situation, the Court has relied extensively on statistics produced by the parties to establish a difference in treatment between two groups – men and women – in similar situations (see *Zarb Adami v. Malta*, no. 17209/02, §§ 77-78, ECHR 2006-VIII, and *Di Trizio v. Switzerland*, no. 7186/09, § 66, 2 February 2016).

262. In domestic-violence cases, the Court has referred to reports by international and local human-rights organisations, periodic reports by the CEDAW Committee, and statistical data from the authorities and academic institutions to establish the existence of a prima facie indication that domestic violence affects mainly women and that the general attitude of the local authorities – such as the manner in which the women are treated at police stations when they report domestic violence and judicial passivity in providing effective protection to victims – creates a climate that is conducive to domestic violence (see *Opuz*, cited above, §§ 192-98, and *Halime Kılıç v. Turkey*, no. 63034/11, §§ 117-18, 28 June 2016). The Court has reached a similar conclusion in other cases in which the domestic authorities failed to appreciate the seriousness and extent of the problem of domestic violence. It found that their actions had gone beyond a simple failure or delay in dealing with violence against women and amounted to a repetition of acts condoning such violence and reflecting a discriminatory attitude towards victims on account of their sex (see *Eremia*, § 89; *Mudric*, § 63; *T.M. and C.M. v. the Republic of Moldova*, § 62; *Talpis*, § 145; and *Bălşan*, § 85, all cited above).

263. Once a large-scale structural bias has been shown to exist, such as that in the above-mentioned cases, the applicant does not need to prove that she was also a victim of individual prejudice. If, however, there is insufficient evidence corroborating the discriminatory nature of legislation and practices or of their effects, proven bias on the part of any officials dealing with the victim's case will be required to establish a discrimination claim. In the absence of such proof, the fact that not all of the sanctions and measures ordered or recommended have been complied with does not in itself disclose an appearance of discriminatory intent on the basis of sex (see *A. v. Croatia*, §§ 97-104, and *Rumor*, §§ 76-77, both cited above).

(b) 2. Analysis of the present case

(i) (a) Applicability of Article 14 in conjunction with Article 3

264. The Court reiterates that, for Article 14 to become applicable, a violation of one of the substantive rights guaranteed by the Convention is not required. It suffices that the facts of the case fall "within the ambit" of another substantive provision of the Convention or its Protocols (see *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 53, 24 January 2017). It has found above that the applicant was subjected to inhuman treatment which the State failed to prevent (see paragraphs 224 and 251 above); accordingly, the facts of the case fall "within the ambit" of that provision.

265. As to the requirement that an alleged difference in treatment relate to any of the grounds in Article 14, the Court notes that "sex" is explicitly mentioned in Article 14 as a prohibited ground of discrimination. Article 14 of the Convention taken in conjunction with Article 3 is therefore applicable in the present case.

(ii) (b) Whether women are disproportionately affected by domestic violence in Russia

266. The Court notes at the outset that the need to collect statistical information on the extent, causes and effects of gender-based violence has been part of the CEDAW Committee's specific recommendations for more than twenty-five years (see General recommendation No. 19 (1992) in paragraph 201 above). In 2004, the Special Rapporteur on violence against women, its causes and consequences observed that statistics on domestic violence were inconsistent or lacking in Russia (§ 26 of the report, cited in paragraph 210 above). In its 2015 periodic review of Russia's compliance with its obligations under the CEDAW Convention, the CEDAW Committee expressed concerns at "the high prevalence of violence against women, in particular domestic and sexual violence ... and the lack of statistics disaggregated by age, nationality, and relationship between the victim and the perpetrator, and of studies on its causes and consequences" (see paragraph 213 above).

267. The absence of comprehensive nationwide statistics in Russia has been linked to the lack of any definition of domestic-violence offences in Russian legislation, which prevents domestic authorities from classifying offences as such and from gathering any consistent data about the extent of the phenomenon (see the Human Rights Watch report cited in paragraph 215 above). The failure to collect adequate information being attributable to domestic authorities, the Court rejects the Government's argument that the applicant had somehow been at fault for not submitting official data showing that female victims of domestic violence in Russia were discriminated against.

268. Unlike the Government, who did not produce any statistical information, the applicant submitted the official data compiled by the Russian police regarding "crimes committed within the family and household", which can be seen as constituting the closest approximation to statistics regarding domestic violence because of the nature of offences involved (see paragraph 190 above). The total number of registered offences, their respective legal categorisation and the number of female and underage victims have been tabulated. Even making allowance for the fact that a single criminal incident could have harmed multiple parties, it is apparent that, as recently

as in the period 2015-17, women made up between 67% to 74% of all adult victims of registered crimes "committed within the family or household". The offence of battery, which is the most common form for prosecution of minor violence, appears to have targeted exclusively women and children, as the total number of those two categories of victims was equal to, or larger than, the total number of registered incidents. As regards the offence of threatening death or serious injury, which is also a frequent manifestation of violence within the family, the number of female victims increased year over year, from 73.2% in 2015 to 75.9% in 2016 to 77% in 2017.

269. The year 2017 saw a sharp drop in the overall number of crimes "committed within the family or household", which the applicant attributed to the decriminalisation of battery against "close persons" (see paragraph 199 above). The total number of registered offences fell by more than 40%, from 65,535 to 38,311. With the number of reported threats of death or injury remaining virtually unchanged, prosecutions on a charge of aggravated battery and "repeat battery" plummeted by a factor of eleven, from 25,948 in 2016 to just 2,266 in 2017. Women accounted for up to 95% of adult victims in those cases. The extraordinary decline in the number of registered offences could not have been caused by the implementation of any effective measures addressing domestic violence because no measures seeking to address that problem had been implemented. The Court agrees with the applicant's explanation that the decriminalisation of battery led to an even greater incidence of under-reporting of domestic violence, many more incidents of which have not found their way into the police statistics.

270. Even discounting the effect of decriminalisation, the number of offences registered nationwide has remained exceptionally low in relation to the Russian adult female population of 65 million and does not tally with the actual frequency of domestic violence, as established in many studies. A comprehensive study undertaken by the World Health Organisation found that domestic violence is under-reported world-wide, and that every fourth woman in the European region had experienced physical or sexual violence (See the WHO's 2013 report entitled *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*).

271. The situation in Russia appears to be even more severe. The 2004 report by the Special Rapporteur on violence against women noted the claim made by Russian women's groups that "domestic violence remained seriously under-reported, under-recorded and largely ignored by the authorities" (see § 28 of the report, cited in paragraph 210 above). The low number of complaints, investigations and prosecutions of acts of domestic violence and violence against women was a matter for concern for the UN Committee against Torture in its 2012 periodic report on Russia (see paragraph 212 above). A nationwide study by the Statistics Service and the Ministry of Health and a regional study by the Academy of Sciences established that more than half of Russian women had experienced verbal abuse or physical violence but that only 10% of them reported it to the police (see paragraphs 191 and 192 above). A Russian NGO estimated that some form of domestic violence affected every fourth family (see paragraph 193 above). The Russian Ombudsman, without giving specific figures, accepted that many female victims did not turn for assistance to the police or authorities as they had no hope of finding help there (see

paragraph 194 above). To the same effect, a recent comprehensive report on domestic violence in Russia by Human Rights Watch noted that an overwhelming majority of female survivors of domestic violence did not report it to the police or sought help from authorities (see paragraph 215 above).

272. Finally, on the question whether women who are victims of domestic violence have an equal access to justice, the Court has noted above that victims have had no access to public prosecution of such offences save for a short period between July 2016 and January 2017 (see paragraph 198 above). The majority of domestic-violence cases have been classified as private prosecution offences in the Russian legal system which placed the onus of prosecution on the victim (see paragraph 231 above). The official statistics of the Judicial Department of the Supreme Court of the Russian Federation indicate that that classification has the effect of disproportionately and adversely affecting the prospects of success for victims seeking access to justice. The global number of acquittals in the Russian criminal justice system in 2013-14 amounted to less than 1% of all criminal cases considered by courts of general jurisdiction. Approximately 70% of those acquittals were pronounced in private prosecution cases (3,894 out of 5,624 cases in 2013, and 3,778 out of 5,167 cases in 2014), even though such cases made up less than 5% of all criminal cases (49,315 out of 946,747 cases in 2013, 45,427 out of 936,771 cases in 2014). Moreover, private prosecution cases were four times more likely to be discontinued on various procedural grounds in comparison to public prosecution eases (78% compared to 19% in 2013 and 76% compared to 19% in 2014). It follows that victims of domestic violence have been placed in a de facto situation of disadvantage.

273. On the strength of evidence submitted by the applicant and information from domestic and international sources, the Court finds that there exist prima facie indications that domestic violence disproportionately affects women in Russia (see *Opuz*, cited above, § 198). Women make up a large majority of victims of "crimes committed within the family and household" in the official police statistics, violence against women is largely under-reported and under-recorded, and women have a much lesser chance to secure prosecution and conviction of their abusers owing to domestic classification of such offences.

(iii) (c) Whether the Russian authorities have put in place policy measures geared towards achieving substantive gender equality

274. Consistently with the State's obligation under the CEDAW Convention to condemn discrimination against women in all its forms, Article 19 of the Russian Constitution establishes the principle of equality of rights and freedoms for men and women and also proclaims that they should have equal possibilities to exercise them. In the present case, the alleged discrimination does not stem from any legislation which is discriminatory on the face of it, but rather results from a de facto situation in which violence disproportionately affects women (compare *Opuz*, cited above, § 192). The Court will accordingly examine whether the Russian authorities have put in place policy measures to counter discriminatory treatment of women and to protect them from domestic abuse and violence.

275. The Russian authorities have acknowledged the magnitude of the problem of violence against women in their reports to the CEDAW Committee. As early as 2004, they stated that "14,000 women were killed annually by their husbands or other family members" and that the "situation [was] exacerbated by the lack of statistics and indeed by the attitude of the agencies of law and order to this problem, for they view such violence not as a crime but as 'a private matter' between the spouses" (see § 26 of the Special Rapporteur's report cited in paragraph 210 above). The Special Rapporteur on violence against women pinpointed the lack of legislation on domestic violence in Russia as a major obstacle to combating such violence (ibid., § 36). In her view, the lack of specific legislation contributed to impunity for crimes committed in the private sphere, but also deterred women from seeking recourse and reinforced police reluctance to deal seriously with the problem which they did not consider a crime (ibid., § 38).

276. The United Nations treaty bodies considered the Russian authorities' persistent failure to define domestic violence in its legislation to be incompatible with their international commitments. The concluding observations of the CEDAW Committee on the sixth, seventh and eighth periodic reports of the Russian Federation in 2010-15 urged Russia to adopt comprehensive legislation to prevent and address domestic violence and to prosecute such offences (see paragraph 213 above). The Committee on Economic, Social and Cultural Rights and the Committee against Torture noted the absence of a definition of domestic violence in Russian law as problematic from the standpoint of observance of their respective treaties (see paragraphs 211 and 212 above). Considering an individual communication from a Russian woman who had been a victim of domestic violence, the CEDAW Committee established that the Russian authorities' failure to amend its legislation relating to domestic violence had denied her the possibility of being able to claim justice and breached anti-discrimination provisions of the CEDAW Convention (see paragraph 214 above).

277. Despite the high prevalence of domestic violence to which the above-mentioned statistical information attests, the Russian authorities have not to date adopted any legislation capable of addressing the problem and offering the protection to women who have been disproportionately affected by it. As Russia's Ombudsman observed, more than forty draft laws had been developed in the last twenty years but none enacted (see paragraph 194 above). The Court has found above that the existing criminal-law provisions are insufficient to offer protection against many forms of violence and discrimination against women, such as harassment, stalking, coercive behaviour, psychological or economic abuse, or a recurrence of similar incidents protracted over a period of time (see paragraph 230 above). The absence of any form of legislation defining the phenomenon of domestic violence and dealing with it on a systemic level distinguishes the present case from the cases against other Member States in which such legislation had already been adopted but had malfunctioned for various reasons (see *Opuz*, § 200; *Eremia*, §§ 89-90; and *Talpis*, § 147, all cited above).

278. In 2016, the Criminal Code was amended to decriminalise lesser offences, including non-aggravated battery. For the first time in Russia's modern history, the legislation introduced a distinction between beatings inflicted by strangers and assaults on "close persons" committed

in the domestic context. The former was reclassified as an administrative offence, the latter became an element of aggravated criminal battery (see paragraph 198 above). The Court considers that the positive development of Russian law offered a prospect of greater protection to victims of domestic violence. By introducing a new aggravating element, assault on "close persons" was reclassified as a more serious crime, which was subject to mixed public-private prosecution. Not only did the amendments send the message that such conduct would not be tolerated but they also had the practical effect of alleviating the burden of victims, who were no longer left entirely to their own devices. As the applicant's case demonstrated, the change did not have an immediate effect. She informed the police about serious incidents in July, August and September 2016, including an assault, an attempt on her life and the planting of a tracking device. The police, however, remained as passive as they had been before, seeking to trivialise the nature of the incidents and to close the matter as soon as possible.

279. The Court cannot speculate what the impact of the 2016 amendments could have been, had they been followed up with training of judges and law enforcement officers. As it happened, that legal regime which offered some form of protection against domestic violence was short-lived. Less than six months later, in early 2017, the Russian Parliament again amended the assault provisions of the Criminal Code, removing a reference to "close persons" as an aggravating element (see paragraph 199 above). As a consequence, domestic violence was, once again, not officially mentioned or defined in any legislation, whether administrative or criminal. A first-time assault, whether by strangers or abusive partners, has disappeared from the sphere of criminal law. Repeat instances of assault are criminally prosecutable only when an administrative sanction against the offender has been imposed within a period of twelve months prior to the repeat attack. The 2017 amendments also made it harder to punish incidents of domestic violence because the victims need to launch two sets of proceedings within a short timeframe, first by securing the offender's conviction in the administrative-offences court and then mounting a private prosecution case on a charge of "repeat battery".

280. The CEDAW Committee has recently had an opportunity to consider the Russian legislative framework as it obtained after the 2017 amendments. Noting the absence of a definition of "domestic violence" in Russian law, it expressed the view that the amendments decriminalising assault on close persons "go in the wrong direction" and "lead to impunity for perpetrators" of domestic violence (see paragraph 214 above). The Court concurs in this assessment. It has found above that the current Russian legislation is inadequate to deal with the phenomenon of domestic violence and to provide sufficient protection for its victims (see paragraph 234 above). It also fails to protect women from widespread violence and discrimination.

281. In the Court's opinion, the continued failure to adopt legislation to combat domestic violence and the absence of any form of restraining or protection orders clearly demonstrate that the authorities' actions in the present case were not a simple failure or delay in dealing with violence against the applicant, but flowed from their reluctance to acknowledge the seriousness and extent of the problem of domestic violence in Russia and its discriminatory effect on women.

By tolerating for many years a climate which was conducive to domestic violence, the Russian authorities failed to create conditions for substantive gender equality that would enable women to live free from fear of ill-treatment or attacks on their physical integrity and to benefit from the equal protection of the law.

282. There has been a violation of Article 14 of the Convention, taken in conjunction with Article 3.

Article XI. III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

283. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

284. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,875.69 for legal costs and expenses. The latter amount included the work of lawyers from the Stichting Justice Initiative who interviewed the applicant and experts, collected documents and evidence, and drafted submissions to the Court. Local research was billed at EUR 50 per hour, and legal work at EUR 150 per hour.

285. The Government submitted that Article 41 should be applied in accordance with the established case-law.

286. The Court awards the applicant EUR 20,000 in respect of non-pecuniary damage and the amount claimed for legal costs and expenses, plus any tax that may be chargeable to the applicant. The latter amount shall be paid into the bank account of the applicant's representatives, Stichting Justice Initiative, in the Netherlands.

287. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention;

3. *Holds*, unanimously, that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds*, unanimously, there has been a violation of Article 14 of the Convention, taken in conjunction with Article 3;

5. *Holds*, by five votes to two,

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 5,875.69 (five thousand eight hundred and seventy-five euros 69 cents) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, payable into the bank account of the applicant's representatives;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, by five votes to two, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Vincent A. De Gaetano
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) separate opinion of Judge Pinto de Albuquerque, joined by Judge Dedov;

(b) concurring opinion of Judge Dedov;

(c) separate opinion of Judge Serghides.

V.D.G.
F.A.

SEPARATE OPINION OF JUDGE PINTO DE ALBUQUERQUE, JOINED BY JUDGE DEDOV

1. In *Volodina*, the opportunity arose to address the disturbing issue of domestic violence in an unprecedented way. Not only did the applicant face moments of severe physical abuse, she also reportedly endured – and continues to endure – excruciating mental suffering. Statistics indicate that this case represents but one single, stark example of a much more systemic problem.[4] The majority offered four particular contributions in recognising the need to address the violations suffered by the applicant, and they are to be commended for this. In my opinion, however, the majority missed an opportunity to advance even further the Court's stance on addressing domestic violence as a human-rights violation. For this reason I concur with the judgment, but I feel compelled to disagree partly with regard to the reasoning.

A. The positive aspects of the majority judgment

1. A gender-sensitive interpretation of the Convention

2. My first point of congratulation is with regards to the incorporation of a "gender-sensitive interpretation and application of the Convention provisions"[5] which significantly shifts the burden of proof from the victim to the respondent State.[6] A gender-sensitive approach recognises the "factual inequalities between women and men"[7] and strives towards effective and substantive gender equality by responding to the particular vulnerabilities of domestic-violence victims.[8] Having acknowledged this, a State's positive obligation to protect women against domestic violence must firstly be recognised in the specific context within which domestic violence occurs. Several reports have indicated the prevalence of domestic abuse in Russia.[9] Instead of counteracting these contextual realities – which

[4] See paragraphs 40-45 of the present judgment.

[5] See paragraph 111 of the present judgment. This echoes my concurring opinion in *Valiulienė v. Lithuania,* no. 33234/07, 26 June 2013, in which I argued that a gender-sensitive interpretation and application, acknowledging gender ascriptions which define perceptions, relationships and interactions between men and women within societies, are necessary in order to pinpoint the actual disadvantages suffered by women. A gender-sensitive interpretation and application may consequently recognise and highlight the context within which women live in a certain society, acknowledge the disproportionate effect of violence on women and identify potentially debilitating circumstances that foster domestic violence incidents.

[6] The burden is shifted since the general understanding of domestic violence and relevant statistics have indicated that the persistent vulnerable position of women when experiencing gender-based violence in a domestic setting is exacerbated by inactivity on the part of a State. A State's silent acquiescence and inability or unwillingness to act perpetuates the suffering of women and upholds their unequal societal standing. Consequently, a State faces an obligation not only to respect, but also to protect, through effective legislative and operative measures which include swift action by State agents in intervening in domestic-violence incidents.

[7] See paragraph 111 of the present judgment.

[8] The majority have also noted that the Council of Europe has been focused on working towards the achievement of gender equality, which will benefit from a gender-sensitive perspective that takes into account the context within which members of society find themselves. This effort was further reflected in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention") which has pointed out the increased risk of women and girls to gender-based violence and under Article 6 proposed the implementation of gender-sensitive policies when implementing the Istanbul Convention. It is only natural that such gender-sensitive interpretation is equally utilised in the context of the European Convention on Human Rights ("the Convention") which, as in the present case, views domestic violence as a potential violation of Article 3. The notion of particularly vulnerable categories of persons in respect of domestic violence was previously brought up in *Hajduova v. Slovakia,* no. 2660/03, 30 November 2010, where the European Court of Human Rights ("the Court") found that the respondent State had insufficiently complied with its positive obligation to protect the applicant.

[9] See paragraphs 62, 64, 84, 117 and 128 of the present judgment.

place women and other vulnerable categories of persons at greater risk of facing domestic violence –, the Russian State's [in]action fosters and perpetuates the plight of women and girls.

2. Obligation to fight gender-based violence under customary international law

3. The second point worth highlighting is the majority's underscoring of the CEDAW Committee's recognition of the evolutive morphing of gender-based violence as a form of discrimination against women into a principle of customary international law.[10] The particularly humiliating nature of domestic violence, which is aimed at debasing women's dignity through "physical, sexual, psychological or economic violence"[11], is capable of triggering the prohibition against torture, inhuman or degrading treatment under Article 3.[12]. The acknowledgement that domestic violence and State inaction to cure and combat the occurrence of such events are subsumed to a prohibitive category of customary international law implies that domestic legislation and administrative practice should accordingly be shaped by such customary international law.

3. Appropriate weight accorded to soft-law instruments

4. Thirdly, I wish to stress that proper weight was accorded by the majority to soft-law standards. Although the Court is not willing to rely solely on them in finding a violation of the Convention, it is prepared to take into account soft-law instruments which appear sufficiently indicative of a crystallising consensus among member States. A cardinal principle of interpretation prescribes that the Convention is interpreted in the light of present-day conditions, according to which a newly found consensus will influence the Court's findings. Growing consensus is often reflected through the development of soft law.[13] It is commendable that, in addition to the Istanbul Convention, which is not binding on Russia as such[14], the majority in *Volodina* referred back to the influential work of the CEDAW Committee, the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment and the UN Special Rapporteur on violence against women, with a view to interpreting the Convention in the light of relevant international human-rights soft-law standards and, further, to grasping fully the extent to which women are threatened by acts of domestic violence in Russia.[15]

---

[10] See paragraph 110 of the present judgment. This was equally highlighted in my dissenting opinion in *Valiulienė v. Lithuania*, cited above, in which I mention the broad and long-lasting consensus on the State's positive obligation, triggered by the occurrence of violence against women (See *Valiulienė v. Lithuania*, cited above, at page 28).

[11] See the Istanbul Convention, Article 3(b).

[12] See paragraph 74 of the present judgment.

[13] In the leading case *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 146-154, 12 August 2008, the Court referred to several soft-law instruments which had highlighted the importance of the right to bargain collectively. Previously, in the seminal case *Marckx v. Belgium* (Plenary), no. 6833/74, §§ 41 and 58, 13 June 1979, the Court had already relied on the growing consensus ("clear measure of common ground in this area amongst modern societies") regarding the need to treat children born out of wedlock on an equal basis to those born within wedlock and the general need for social protection of unmarried mothers and their children, a finding which was based on international instruments that were not binding on the respondent State.

[14] Although not binding for Russia, the Court does not refrain from citing the Istanbul Convention (see paragraph 60 of the present judgment). A growing consensus can be noted from the number of Council of Europe Member States which have ratified this Convention - to date, 34 member States. The European Union has further expressed its commitment to combatting gender-based violence by highlighting it as one of their priorities for the EU's Strategic Engagement for Gender Equality for 2016-2019.

[15] See paragraph 88 of the present judgment.

4. Statistics speak louder

5. Finally, the majority have paid close attention to the importance of context.[16] The use of statistics has benefitted these considerations by helping to identify the underlying structural problem of domestic violence in Russia. Consequently a more stringent level of due diligence is expected from the State, for examination of the context inevitably predicts the likelihood of the occurrence of domestic violence in Russian society.[17] Despite the absence of nationwide statistics on domestic violence in Russia, the majority considered data collected on "crimes committed within the family and household"[18], drawn up from official police records and the Special Rapporteur's findings on violence against women, which highlighted the serious under-reporting and under-recording of incidents of domestic violence and ignorance in respect of this phenomenon.[19] The absence of national statistics on the specific issue of domestic violence is in itself telling with regard to the lack of general awareness of this pressing issue. Furthermore, it underpins the UN Rapporteurs' concerns regarding under-reporting and under-recording, for women are faced with a general atmosphere of blatant refusal to acknowledge their suffering. Consequently, statistics are useful in a two-fold way: firstly, the existing statistics provide useful context which aids in applying a gender-sensitive approach to the issue at stake; and secondly, the absence of specific statistics additionally highlights the lack of concern which the respondent State has paid to the issue of domestic violence.

B. Shortcomings in the majority judgment

1. Domestic violence is torture

6. Despite the positive aspects mentioned above, it is crucial to pinpoint three areas in which my opinion diverges from that of the majority. It is unquestionable that the psychological and physical pain endured by the applicant falls within the category of Article 3 treatment. Article 3, however, is distinguished by thresholds of severity and the intention and purpose behind the perpetrator's and complicit State's actions – or inaction, with regard to the latter. In *Ireland v. United Kingdom*, the Court distinguished torture from inhuman or degrading treatment by establishing that torture consists of "deliberate inhuman treatment causing very serious and cruel suffering."[20]

7. In my view, the applicant's ordeal as described in this judgment meets all the criteria for being identified as torture. The majority refer to feelings of fear, anxiety and powerlessness, as well as being subjected to controlling and coercive behaviour, which trigger the application of Article 3.[21] This summary is a tame expression of what the applicant endured. She was subjected to multiple and persistent instances of extreme domestic violence, including a punch to her stomach, which in fact led to medical advice that she should induce the abortion of her unborn baby. She was further psychologically taunted through the publication of private photographs, the finding of what was believed to be a GPS tracker inside her purse, threats to kill her – which S. attempted to substantiate by damaging her car – and abduction from her city of residence.

8. According to General Comment 2 of the UN Committee against Torture, the State's systematic omission, consent or acquiescence of privately inflicted harm raises concerns under the Convention

[16] See paragraphs 112, 113 and 117-124 of the present judgment.
[17] For a more elaborate discussion on the strictness of the due-diligence test, see my separate opinion in *Valiulienė v. Lithuania*, in which I draw reference from the *Hajduova* case, which requires a heightened degree of vigilance for particularly vulnerable victims of domestic violence. See *Valiulienė v. Lithuania*, cited above, page 30.
[18] See paragraph 119 of the present judgment.
[19] See paragraph 122 of the present judgment.
[20] *Ireland v. the United Kingdom* (Plenary), no. 5310/71, § 167, 13 December 1977.
[21] See paragraph 75 of the present judgment.

against Torture, a Convention that enjoys *jus cogens* status and is deemed as upholding principles of customary international law.[22] Not only did the majority cite the CEDAW Committee's concerns regarding violence against women, particularly within the domestic sphere, it also included the concluding observations of the UN CAT Committee for the Russian Federation in 2012, which explicitly expressed concern regarding violence against women, on account of the lack of reported complaints by the Russian authorities "despite numerous allegations of many forms of violence against women", as well as "reports that law-enforcement officers are unwilling to register claims of domestic violence ..." and the "absence in the State party's law of a definition of domestic violence...".[23] According to the CAT Committee, these concerns fell under Articles 1, 2, 11, 13 and 16 of the Convention Against Torture, the first two articles of which explicitly set out the definition of torture and the obligation of State Parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture. The message is clear. When severe forms of pain and suffering are deliberately inflicted on a person, this must be identified as torture. It is furthermore a matter of consistency that a 'gender-sensitive interpretation and application' of the Convention acknowledges the gravity and effect of persisting patterns of domestic violence on women and other categories of vulnerable persons. The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has similarly warned about the tendency to downplay gender-based crimes of violence against women.[24] The Special Rapporteur further emphasised that the use of a "gender-sensitive lens"[25] should counteract any attempt to downplay the suffering of women by ascribing the title of 'ill-treatment' instead of 'torture'. It is imperative that the Court does not fall in the trap of undermining its own gender-sensitive approach through the non-recognition of torture when it is faced with a situation that clearly amounts to it.

9. In the present case, the applicant faces revengeful action from S., who deliberately seeks to punish her for leaving him. In fear of his reprisal actions, she left her home town to resettle in the capital city. She currently lives under a new identity, which demonstrates the gravity of the threats she was facing. She cannot simply resume her old life. In the light of the accumulation of cruel and inhuman circumstances, there appears to be a disconnect between the reports on gender-based violence in Russia, the actual circumstances of this case – which give tangible form to the statistical evidence – and the fact that the Court is reluctant to take a strong stand in identifying the appropriate title for what the victim endured. The distinction between torture and inhuman treatment is crucial in the context of domestic violence. If the State faces condemnation for allowing its women to be submitted to torture, the positive obligation to protect is even more stringent. Furthermore, the State will be held to a higher standard when it comes to awarding damages and appropriate reparations to the victim. This is precisely the reason why I was also unable to subscribe to the amount of compensation awarded to the applicant in the present case.

10. Taking into account all of the circumstances of the case, which display an accumulation of aggravating factors of harmful masculinity leading to the grave infringement of the applicant's dignity and physical and psychological integrity, as well as the purposive conduct of the perpetrator, I wonder what more is needed to reach a finding of torture under Article 3.[26] Once torture is identified, it need not be compared to even worse instances of torture, which undeniably exist. In the case at hand, the

[22] UN Committee against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2, at 1.

[23] See paragraph 63 of the present judgment, referencing CAT/C/RUS/CO/5, adopted by the UN Committee against Torture on 22 November 2012.

[24] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Human Rights Council Thirty-first session A/HRC/31/57 (2016), at 9.

[25] Ibid, at 8.

[26] For a thought-provoking discussion on domestic violence and its connection to torture, read Isabel Marcus, "Reframing Domestic Violence as Torture or Terrorism", Collection of Papers No. 67, Faculty of Law, Niš, 2014.

elements of torture were clearly fulfilled. Any understatement of suffering is contrary to the intention of the Court to condemn all forms of domestic violence and to demand a proactive State which complies with its positive obligation to act in a manner which counteracts persisting gender inequalities.

2. The *Osman* test does not work in domestic violence cases

11. The State has a positive duty to prevent and protect, the scope of which is difficult to pinpoint prior to the circumstances of an actual case. *Osman v. the United Kingdom*[27] has served as the yardstick by which the State's positive obligation to protect has been measured. The test examines whether the authorities knew, or ought to have known at the time, of the existence of real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and whether they failed to take measures within the scope of their powers which, judged reasonably, might have been expected of them. *Osman* concerned the failure to protect the rights to life of Ali and Ahmet Osman, but the test has since shifted and is applied to other areas of a State's positive obligation, including domestic violence cases.[28]

12. Nevertheless, the *Osman* test fails to achieve its purpose if taken word for word. A 'real and immediate risk' in the context of domestic violence infers that the risk, namely the batterer, is already in the direct vicinity of the victim and about to strike the first blow. Were the test to be applied in such a manner, two concerns arise. Firstly, any protective action offered by the State would be too late and secondly, the State would have a legitimate excuse for not acting in a timely manner, since it is implausible to assume that the victim will be constantly accompanied by a State agent who may jump in to help. Hence, the 'immediacy' of the *Osman* test does not serve well in the context of domestic violence. I would rather propose, as I have done previously in *Valiulienė v. Lithuania*, that the standard by which the State is held accountable is whether a State knows or ought to know that a segment of its population, such as women, is subject to repeated violence and fails to prevent harm from befalling members of that group of people when they face a present (but not yet imminent) risk.[29] As a consequence, the due-diligence standard against which the State's action or inaction is assessed spans across a wider window of time, starting from the moment when a risk of domestic violence is present, but not yet imminent. It is baffling to witness that the majority have accepted CEDAW's approach that gender-based violence need not pose an 'immediate' threat in paragraph 77 of the present judgment, yet goes on to apply the original *Osman* test in paragraphs 56 and 98. This failure to adopt a coherent approach creates the risk that victims of domestic violence will fail to be protected since the positive obligation on the authorities to act would be triggered too late.

3. Need for clear Article 46 injunctions

13. My final point of critique with regard to the majority's approach concerns the missed opportunity to impose Article 46 injunctions in the judgment, as the Court has done on so many occasions[30]. Several points must be expanded upon in this regard. Firstly, domestic violence should be explicitly noted as an autonomous criminal offence in domestic law.[31] In 2017 Russia's High Commissioner for Human Rights reported the persistent absence of specific legislation on crimes

[27] See *Osman v. the United Kingdom*, no. 23452/94, § 116, 28 October 1998.
[28] See for example, *Opuz v. Turkey*, no. 33401/02, § 130, 9 June 2009, and *Hajduova v. Slovakia*, no. 2660/03, § 50, 30 November 2010.
[29] See *Valiulienė v. Lithuania*, cited above, at page 30.
[30] See my separate opinion in *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, 11 July 2017.
[31] See paragraphs 80, 81 and 131 of the present judgment.

within the family and households.[32] Similar concern for the absence of explicit legislation prohibiting domestic violence was reiterated by the Special Rapporteur on violence against women, its causes and consequences as far back as in 2004[33]. In *O.G. v. the Russian Federation*[34], the CEDAW Committee concluded that Russia should reinstate the provision that domestic violence be subject to criminal prosecution and found that the failure to do so created a situation in which the victim could not claim justice, nor have access to efficient remedies and protection.[35] The absence of domestic violence as a criminal-law offence was noted as a distinctive feature which distinguished Russia from other Council of Europe member States, such as Turkey, Italy and Moldova, where legislation on domestic violence existed but was not always effective in protecting women.[36] If Russia introduces domestic violence as an autonomous offence, this will be of significant value in addressing the specific plight of women, which is currently disregarded in criminal-law provisions.[37] In other words, the definition of domestic violence as an autonomous criminal offence consisting in the commission of physical, sexual or psychological harm or harassment, or the threat or attempt thereof, in private or public life, by an intimate partner, an ex-partner, a member of the household, or an ex-member of the household does not duplicate other existing legal provisions and has a legal value of its own.

14. Secondly, the law must equate the punishment of domestic violence to that of the most serious forms of aggravated assault. There exists a plethora of information on the forms and effects of domestic violence, which results in a number of negative consequences for the victims.[38] It is of utmost importance to recognise the gravity of the commission of a domestic violence offence, by enacting strict laws which punish the perpetrators of the offence appropriately. The classification of domestic violence as a minor or administrative offence does not do justice to the serious harm suffered by women who experience domestic violence.

15. Thirdly, the law must reflect the "public interest" in prosecuting domestic violence, even in instances where women choose not to lodge a complaint or subsequently withdraw a complaint.[39] The dichotomy of the public/private divide of domestic violence must be addressed and resolved through specific criminal-law legislative drafting, to reflect the fact that domestic violence is not just 'private business' amongst members of a household. The persistent under-reporting of incidents of domestic violence in Russia is a symptom of the false perception that domestic violence is a private matter.[40] CEDAW has long stressed that States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and that they are also liable for providing compensation.[41] The criminal law must assert the public authorities' role in preventing, investigating and punishing the commission of any incident of domestic violence.[42]

---

[32] See paragraph 45 of the present judgment.
[33] See paragraph 61 of the present judgment.
[34] CEDAW, Communication No. 91/2015, 6 November 2017.
[35] Ibidem, § 7.8, § 9 (b). See also CEDAW Committee, *Concluding observations on the eighth periodic report of the Russian Federation*, UN Doc. CEDAW/C/RUS/CO/8, § 22, and Committee against Torture, *Concluding observations on the fifth periodic report of the Russian Federation*, UN Doc. CAT/C/RUS/CO/5, § 14.
[36] See paragraph 128 of the present judgment, citing *Opuz v. Turkey*, § 200, cited above; *Eremia v. Republic of Moldova*, no. 3564/11, §§ 89-90, 28 May 2013; and *Talpis v. Italy*, no. 41237/14, § 147, 2 March 2017.
[37] See also the Istanbul Convention, Articles 4 and 62, which reiterate the importance of effective legislation for the prevention, combatting and prosecution of all forms of violence against women.
[38] UN World Health Organization (WHO), *Global Status Report on Violence Prevention 2014*, at page 8.
[39] See paragraph 99 of the present judgment.
[40] See paragraphs 120-121 of the present judgment.
[41] CEDAW General Recommendation No. 19: Violence against women, 1992, paragraph 9.
[42] See also the Istanbul Convention, Article 55, and CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, paragraph 34.

16. Fourthly, the law must provide for an urgent response mechanism in relation to the investigation and prosecution of domestic-violence incidents.[43] In light of the acute danger many women may find themselves in, it does not suffice to have slow investigative and prosecution mechanisms. This was already stressed by the UN Economic and Social Council in its Resolution 1984/14 on violence in the family[44] and the UN General Assembly's Resolution 40/36, which urged Member States to prevent domestic violence through urgent action, which includes the appropriate assistance to victims.[45] In *Opuz v. Turkey*, the requirement of promptness and reasonable expedition had already been identified as part of an effective investigation.[46] In *P.M. v. Bulgaria*, the Court criticized the fact that urgent investigative measures, such as the commissioning of an expert team in the case of rape and interviewing the victim, had taken far too long to be deemed effective investigative measures.[47] CEDAW has similarly condemned inexpedient response measures which place women at greater risk of experiencing domestic violence.[48] One way in which urgent measures should be realised is through the possibility of issuing emergency barring orders. The Council of Europe has identified emergency barring orders as a suitable means to protect women "in situations of immediate danger", even if no offence has yet been committed.[49] This brings us to the fifth requirement that should be incorporated into Russia's criminal legislation, namely the possibility of preventive detention.

17. Fifthly, the law must provide for a penalty which will allow for preventive detention of the perpetrator, if necessary.[50] This is particularly crucial given the findings of the majority that the current legislative framework does not sufficiently protect against multiple forms of violence and discrimination against women, such as harassment, stalking, coercive behaviour and psychological or economic abuse.[51] Consequently, the legislation should set out instances in which the domestic courts may consider preventive detention, which should include, but not be limited to, instances in which there is a risk of escalation of physical violence or other forms of abuse, homicidal ideation, threats or attempts, stalking, obsessiveness, the victim's attempt to terminate the relationship, etc.

18. Lastly, the law must set out an adequate framework for training judges, prosecutors and law-enforcement officers, so that they will implement the legislative measures on domestic violence adequately. A change in mentality is necessary to eradicate the problematic inaction on the part of judicial and prosecutorial authorities and police officers with regard to domestic violence incidents. This can be achieved through sensitisation training, which presents domestic violence as a human-rights violation triggering a responsibility to protect, investigate and prosecute perpetrators. This training of public authorities must go hand-in-hand with raising public awareness on the domestic legislative changes and the implications for potential perpetrators and victims. The training of social workers, teachers and health-care professionals in recognising and addressing domestic violence has also been reiterated as an important element of prevention.[52]

---

[43] See paragraphs 91 and 96 of the present judgment.
[44] UNESC Resolution 1984/14, on violence in the family.
[45] See UN General Assembly Resolution on Domestic violence, 29 November 1985.
[46] *Opuz v. Turkey*, cited above, §150.
[47] *P.M. v. Bulgaria*, no. 49669/07, §§ 65-6, 24 January 2012.
[48] CEDAW, *A.T. v. Hungary*, Communication No. 2/2003, recommendations II(c) and II (f) (2005).
[49] See Article 52 of the Istanbul Convention, as well as the Council of Europe's *Emergency Barring Orders in Situations of Domestic Violence: Article 52 of the Istanbul Convention – A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence,* at 28 (2017).
[50] See paragraphs 82 and 132 of the present judgment. Where there exists clear and convincing evidence that the defendant poses a danger to the victim, pre-trial preventive detention should be available under the legislation on criminal procedure.
[51] See paragraph 128 of the present judgment.
[52] See the Council of Europe's Gender Equality Commission, *Analytical study on the results of the 4th round of monitoring the implementation of Recommendation Rec(2002) 5 on the protection of women against violence in Council of Europe member states*, at 49 (2014).

19. Highlighting the binding force under which Russia is obligated to act to rectify its violation is a crucial final step to create momentum, which can be used by parliamentarians in the respondent State, as well as the Committee of Ministers in requiring compliance with the final judgment. A case is not "finished" once it has been decided by the Strasbourg Court. Rather, the Court's judgment should act as a catalyst, setting in motion a number of changes that will compensate the applicant's experience of human-rights violations, and if they are of a systemic nature, as in the present case, a change in policies that will enable a shift in human-rights observance by the respondent Government. To effectuate this change, considerable effort is necessary. The contexts in which systemic gender inequalities operate are excruciatingly difficult to unravel and alter. Therefore, it is of particular importance to highlight all relevant aspects of the Convention which may be useful in initiating change, including Article 46 injunctions.

20. To sum up, the following concrete substantive-law and procedural-law reforms should flow from the execution of this judgment:

(1) The law must define domestic violence as an autonomous criminal offence.

(2) The law must equate the punishment of the criminal offence of domestic violence to that of the most serious forms of aggravated assault.

(3) The law must provide for a public-prosecution offence of domestic violence and reflect the "public interest" in prosecuting domestic violence, even in instances where the victim fails to lodge a complaint or subsequently withdraws a complaint.

(4) The law must establish the urgent nature of the criminal procedure for investigating domestic violence and provide for an urgent response mechanism in relation to the investigation and prosecution of domestic violence incidents.

(5) The law must provide for preventive detention of the perpetrator where this is deemed necessary.

(6) The law must indicate the need for adequate training of judicial and prosecutorial authorities and the police, so as to ensure effective implementation of the innovative legislative measures described above and the recognition of gender equality.

Conclusion

21. With the above-mentioned caveats, I concur with the majority opinion. I applaud the crucial steps that have been taken in acknowledging domestic violence as an autonomous human-rights violation, capable of triggering Article 3 of the Convention. I am particularly satisfied that the importance of a gender-sensitive interpretation and application has been accentuated. It is now time to implement in a consistent manner this gender-sensitive approach, which seeks to eradicate gender inequality and with it the wholly demeaning occurrence of domestic violence.

CONCURRING OPINION OF JUDGE DEDOV

I concur with the separate opinion of Judge Pinto de Albuquerque as regards his analysis of the State obligations flowing from Article 3 of the Convention. However, I voted with the majority on the issue of just satisfaction.

SEPARATE OPINION OF JUDGE SERGHIDES

1. I fully subscribe to the separate opinion of Judge Pinto de Albuquerque. However, I would like to emphasise the importance of the effectiveness principle, in the context of Article 3 of the Convention.

A. The distinction between "torture", "inhuman treatment" and "degrading treatment" in Article 3 of the Convention

2. The right under Article 3 of the Convention not to be tortured or to be subjected to inhuman treatment or degrading treatment distinguishes between violations suffered by a victim according to their intensity. This is the only provision of the Convention which sets out a classification according to the intensity of a violation. It is clear from the text and the object and purpose of Article 3 that its drafting as it stands could only be deliberate.

B. The distinction of Article 3 in the light of the effectiveness principle

3. In my humble view, it would undermine the level of protection of the right under Article 3 and the victim, as well as his or her human dignity, if the Court were to wrongly classify a violation as "inhuman treatment" instead of "torture". Such a wrong classification, not being in line with the real intensity of the violation, would be against the text, and the object and purpose of Article 3. The distinction in Article 3 between the three kinds of violations according to their intensity is based on the effectiveness principle, which requires, in this connection, that, to give full effective protection to the right under Article 3, the Court must rightly assess the intensity of the violation and the corresponding positive obligation of the respondent State regarding such violation, taking into account the meaning, the threshold, and the differences between the three separate kinds of violation.

4. Support for the proposed view, namely that it is a requirement of the effectiveness principle that violations coming under Article 3 must be assessed correctly, according to their intensity, can be deduced by what the Court said in *Selmouni v. France* [GC], 25803/94, § 101, ECHR 1999-V:

> "The Court has previously examined cases in which it concluded that there had been treatment which could only be described as torture ... However, having regard to the fact that the Convention is a 'living instrument which must be interpreted in the light of present-day conditions' ... the Court considers that *certain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in future*. It takes the view that the increasingly high standard being required *in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies*." (emphasis added).

The above statement is relevant and important to the issue in question in two respects: not only does it connect the assessment of what is "torture" with the protection of human rights, thus, the effectiveness principle (albeit in an indirect formulation), but it also makes the latter, through the living instrument doctrine, capable of requiring, at the present time, a greater firmness in assessing "torture". This is so required, as the statement mentions, because of the "increasingly high standard being required in the protection of human rights and fundamental liberties." This wording, as well as the Court's admission in that case "that certain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in future", and its conclusion in that case in finding a violation amounting to torture (see paragraph 105 of that judgment), show that the Court effected an advanced and progressive interpretation of Article 3, as required by the Preamble of the Convention, namely "the maintenance and further realisation of human rights and fundamental freedoms".

C. The conclusion of the Court in the light of the effectiveness principle

5. Regrettably, the Court's conclusion to the effect that the respondent State failed to discharge its duty to investigate the "ill-treatment" which the applicant had endured (see paragraph 101 of the judgment), instead of concluding that the State in fact failed to investigate a "torture", is based on an erroneous assessment of the facts and a misclassification of the kind of violation suffered by the applicant (see Judge Pinto de Albuquerque's separate opinion). Hence, the Court did not provide the applicant with the effective protection required by Article 3.

6. That erroneous assessment had the result of reducing the amount of compensation payable in respect of non-pecuniary damage. Like Judge Pinto de Albuquerque, I would propose making a higher award in the present case. According to the effectiveness principle and the established case-law of the Court, the interpretation and application of the Convention provisions must be practical and effective and not theoretical and illusory.

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

***Kurt v. Austria [GC]* - 62903/15**
Judgment 15.6.2021 [GC]

Article 2

Positive obligations

Article 2-1

Life

Adequate protective measures in the absence of a discernible real and immediate risk of child's murder by father accused of domestic violence and barred from home: *no violation*

Facts – In June 2010, following a complaint by the applicant to the police of beatings by her husband, E., a barring and protection order was issued against him obliging him to stay away from their apartment, as well as from the applicant's parents' apartment and the surrounding areas for fourteen days. It appears he complied with the order. In January 2011 E. was convicted of causing bodily harm to her and making dangerous threats towards his relatives. After this, the applicant did not report any incidents to the police until 22 May 2012, when she filed for divorce and reported E. to the police for rape, choking her and for making dangerous threats on a daily basis in the preceding two months. She also stated that sometimes he had slapped their two children; when interviewed, their minor son and daughter confirmed this as well as that their mother had been beaten. On the same day a new barring and protection order was issued against E., prohibiting him from returning to their apartment, the applicant's parents' apartment and the surrounding areas. He was taken for questioning and his keys were seized. The public prosecutor's office also instituted criminal proceedings against him. Three days later, he shot their son at school and committed suicide by shooting himself. The boy subsequently died of his injuries. The applicant unsuccessfully brought official liability proceedings claiming that E. should have been held in pre-trial detention.

In a judgment of 4 July 2019 (see Legal Summary), a Chamber of the European Court found unanimously no violation of Article 2 in its substantive limb. The case was referred to the Grand Chamber at the applicants' request.

Law – Article 2 (substantive aspect):

1. *General principles* – The duty to take preventive operational measures to protect an individual whose life was at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*) was an obligation of means, not of result. Thus, in circumstances where the competent authorities had responded to the identified risk by taking appropriate measures within their powers, the fact that such measures might nonetheless fail to achieve the desired result was not in itself capable of justifying the finding of a violation of the State's preventive operational obligation under Article 2. A given case in which a real and immediate risk materialised must be assessed from the point of view of what was known to the competent authorities at the relevant time.

On the other hand, in this context, the assessment of the nature and level of risk constituted an integral part of the duty to take preventive operational measures. Thus, an examination of the State's compliance with this duty under Article 2 had to comprise an analysis of both the adequacy of the assessment of risk conducted by the domestic authorities and the adequacy of the preventive measures taken.

In the context of domestic violence, the obligations incumbent on the State authorities could be summarised as follows:

(i) An immediate response to allegations of domestic violence was required.

(ii) The authorities had to establish whether there existed a real and immediate risk to the life of one or more identified victims of domestic violence by taking due account of the particular context of domestic violence cases. Violence against children belonging to the common household, including deadly violence, could be used by perpetrators as the ultimate form of punishment against their partner.

The authorities were under a duty to carry out an autonomous, proactive and comprehensive risk assessment. The terms "autonomous" and "proactive" referred to the requirement for the authorities to not rely solely on the victim's perception of the risk, but to complement it by their own assessment, collecting and assessing information on all relevant risk factors and elements of the case. Furthermore, the use of standardised, internationally recognised checklists, which indicated specific risk factors and had been developed on the basis of sound criminological research and best practices in domestic violence cases, could contribute to the "comprehensiveness" of the risk assessment. It was important for the relevant authorities to receive regular training and awareness-raising, particularly in respect of risk assessment tools, in order to understand the dynamics of domestic violence. Any risk assessment had to be apt to systematically identify and address all the potential – direct or indirect – victims, keeping in mind the possibility that the outcome could be a different level of risk for each of them.

The law-enforcement authorities should share information on risks and coordinate support with any other relevant stakeholders who came into regular contact with persons at risk, including, in the case of children, with teachers. The authorities should inform the victim(s) of the outcome of their risk assessment, and, where necessary, provide advice and guidance on available legal and operational protective measures. Some basic documenting of the conduct of the risk assessment was thus of importance.

Regarding the concept of "immediate risk", the Court had already applied it in a more flexible manner than in traditional *Osman*-type incident-based situations, taking into account the common trajectory of escalation in domestic violence cases, even if the exact time and place of an attack could not be predicted in a given case. The perpetrator's behaviour could become more predictable in situations of a clear escalation of such violence, with an increase in frequency, intensity and danger over time. The Court had observed in numerous other cases that a perpetrator with a record of domestic violence posed a significant risk of further and possibly deadly violence. This general knowledge and the comprehensive research available in that area had to be duly taken into account by the authorities when they assessed the risk of a further escalation of violence, even after the issuance of a barring and protection order. However, an impossible or disproportionate burden must not be imposed on the authorities.

(iii) If the outcome of this assessment was the existence of such a risk, the authorities' obligation to take preventive operational measures was triggered. Such measures had to be adequate and proportionate to the level of the risk assessed.

Whether sufficient operational measures were available in law and in practice at the critical moment was closely related to the question of the adequacy of the legal framework (the "measures within the scope of their powers" aspect of the *Osman* test). A proper preventive response often required coordination among multiple authorities, including the rapid sharing of information. If children were involved or found to be at risk, the child protection authorities should be informed as soon as possible, as well as schools and/or other childcare facilities. Risk management plans and coordinated support services for victims proved valuable in practice. Treatment programmes for perpetrators were desirable.

The choice of an operational measure inevitably required, at both general policy and individual level, a careful weighing of the competing rights at stake and other relevant constraints. On the one hand, any such measures had to offer an adequate and effective response to the risk to life as identified. On the other hand, and to the extent that they had an impact on the alleged perpetrator, any measures taken had to remain in compliance with the States' other obligations under the Convention, including the need to ensure that the police exercised their powers in a manner which fully respected due process and other safeguards, including the guarantees contained in Articles 5 and 8. The nature and severity of the assessed risk would always be an important factor with regard to the proportionality of any protective and preventive measures to be taken.

Regarding a deprivation of liberty in this context, the positive obligation to protect life arising under Article 2 might entail certain requirements for the domestic legal framework in terms of enabling necessary measures to be taken where specific circumstances so required. At the same time, however, any measure entailing a deprivation of liberty will have to fulfil the

requirements of the relevant domestic law as well as the specific conditions set out in Article 5 and the Court's case-law pertaining to it.

2. *Application to the instant case* –

(a) *Whether the authorities reacted immediately to the domestic violence allegations* – The applicant's complaint was only about the choice of the measures taken by the domestic authorities. Indeed, in the instant case, unlike in many other cases of domestic or gender-based violence before the Court, the authorities, both in 2010 and 2012, had responded immediately to the applicant's domestic violence allegations, had taken evidence and issued barring and protection orders; there had been no delays or inactivity. The police had also had a checklist of specific risk factors to consider in the event of an intervention under the relevant domestic law. The Grand Chamber thus endorsed the Chamber's findings in this regard. Moreover, the police had accompanied the applicant to the family home after she had made her report, ensuring thus that she would not have to encounter E. alone and had informed her, via a leaflet, about the possibility of applying for a temporary restraining order in order to be protected from him. The officers had taken E. to the police station for questioning and confiscated his keys to the family home. One of the officers who had responded to the applicant's allegations of violence had been specially trained and experienced in handling domestic violence cases. The above measures, thus, demonstrated that the authorities had displayed the required special diligence in their immediate response to the applicant's allegations.

(b) *The quality of the risk assessment* – At the outset the Court reiterated that it had to look at the facts strictly as they had been known to the authorities at the material time, and not with the benefit of hindsight. It then found that the authorities' risk assessment, while not following any standardised risk assessment procedure, fulfilled the requirements of being autonomous, proactive and comprehensive. In particular:

First, the police's assessment had not just been on the basis of the factual account given by the applicant, who had been accompanied by her long-standing expert counsellor from the Centre for Protection from Violence, but also on several other factors and items of evidence. On the very day of the applicant's report, the police had questioned all the persons directly involved, drawn up detailed records of their statements and taken pictures of her visible injuries. The applicant had also undergone a medical examination. Further, they had carried out an online search of the records regarding the previous barring and protection orders and temporary restraining orders and injunctions issued against E. They had been aware of his previous conviction for domestic violence and dangerous threatening behaviour, and that he had been issued with a barring and protection order some two years earlier. Moreover, and importantly in the context, they had checked whether any weapons had been registered in E's name; this had produced a negative result.

Secondly, as could be seen from the police report, the risk assessment had identified and duly considered major known risk factors in the domestic violence context of the case. In particular, the police took into account the circumstances that a rape had been reported, the visible signs of violence in the form of haematomas on the applicant, her tearful and very scared state, that she had been subjected to threats and the children to violence, the known reported and unreported previous acts of violence, escalation, current stress factors such as unemployment, divorce and/or separation, E's strong tendency to trivialise violence, his behaviour when he had accompanied the officers to the station, and the fact that he had no firearms registered his name.

Thirdly, the death threats uttered by E. had all been targeted at the applicant, be it directly, or indirectly by threatening to hurt or kill her, those closest to her or himself. In that context such threats had to be taken seriously and assessed as to their credibility. It transpired from the police report sent to the public prosecutor's office that these threats and the fact that E. had choked the applicant had not been overlooked. The public prosecutor on duty had also had at his disposal the most relevant facts when deciding on the next steps to take: he had been informed by phone on the very same day of the allegations against E., the circumstances of the issuance of the barring and protection order immediately after it had been issued and had received the reports requested on the same evening. In his note for the file, he had summarised the main elements of the case, ordered further investigative steps (questioning of the children, submission of the reports on the investigations) and instituted criminal proceedings against E. for the crimes of which he had been suspected.

(c) *Whether the authorities knew or ought to have known that there was a real and immediate risk to the life of the applicant's son* – The authorities, on the basis of the evidence that had been available to them at the material time, had concluded that the applicant had been at risk of further violence and had issued a barring and protection order against E. Police officers with significant relevant experience and training had been involved in making this assessment, which the Court had to be careful not to question in a facile manner with the benefit of hindsight. Although no separate risk assessment had been explicitly carried out as to the children, this would not have changed the situation for the following reasons:

– While the fact that the children had been subjected to slaps by their father and to the mental strain of having to witness violence against their mother could in no way be underestimated, given the information the authorities had had, the children had not been the main target of E.'s violence or threats. The primary target had been the applicant, be it directly or indirectly.

– The predominant reason for the applicant's report to the police had been the alleged rape and choking the weekend before and the ongoing domestic violence and threats against her.

– Although the police report on the issuance of the barring and protection order had not explicitly listed the children as endangered persons, they had been explicitly mentioned as "victims" of the indicated crimes in the criminal investigation report forwarded to the prosecutor on the same day with their witness statements attached thereto.

– The authorities had legitimately assumed that the children had been protected in the domestic sphere from potential non-lethal forms of violence and harassment by their father to the same extent as the applicant, through the barring and protection order. There had been no indication of a risk to the children at their school, and more specifically, a real and immediate risk of further violence against the applicant's son outside the areas for which a barring order had been issued, let alone a lethality risk.

– It also appeared – albeit not in itself decisive – that the applicant and her counsellor from the Centre for Protection from Violence had not themselves considered that the level of threat justified requesting a complete ban on contact between the father and the children.

– E.'s threats had not been deemed sufficiently serious or credible by the authorities to point to a lethality risk that would have justified pre-trial detention or other more stringent preventive measures than the barring and protection order. There was no reason to call into question the authorities' assessment that, on the basis of the information available to them at the time, it had not appeared likely that E. would obtain a firearm, go to his children's school and take his own son's life in such a rapid escalation of events.

– Although the authorities appeared to have placed some emphasis on E.'s calm demeanour towards the police - something potentially misleading in a domestic violence context and that should not be decisive in a risk assessment - this element was not sufficient to cast doubt on the conclusion that no lethality risk to the children had been discernible at the time. Similarly, while in retrospect providing speedy information to the children's school or the child protection authorities would have been desirable, it had not been foreseeable that such a measure had been required to prevent a lethal attack on the applicant's son. Thus the omission to share this information, which had not been provided for under domestic law at the time of the events, could not be regarded as a breach of their duty of special diligence in the context of the authorities' positive obligations under the *Osman* test.

Lastly, taking into account the requirements of the domestic criminal law and those flowing from Article 5 of the Convention safeguarding the rights of the accused, there was no reason to question the finding of the domestic courts that the authorities had acted lawfully in not taking E. into pre-trial detention. Under Article 5 no detention was permissible unless it was in compliance with domestic law and the applicant had raised no complaint regarding the domestic legal framework concerning grounds for detention in relation to the positive obligations under Article 2.

In view of the above, the measures ordered appeared, in the light of the risk assessment's result, to have been adequate to contain any risk of further violence against the children. The authorities had displayed the required special diligence in responding swiftly to the applicant's allegations of domestic violence and had duly taken into account the specific domestic violence context of the case. They had been thorough and conscientious in taking all necessary protective measures. They had conducted an autonomous, proactive and comprehensive risk assessment, the result of which had led them to issue a barring and protection order; from this assessment, no real and immediate risk of an attack on the children's lives had been discernible under the *Osman* test as applied in the context of domestic violence. Consequently, there had been no obligation incumbent on the authorities to take further preventive operational measures specifically with regard to the applicant's children, whether in private or public spaces, such as issuing a barring order for the children's school.

Conclusion: no violation (ten votes to seven).

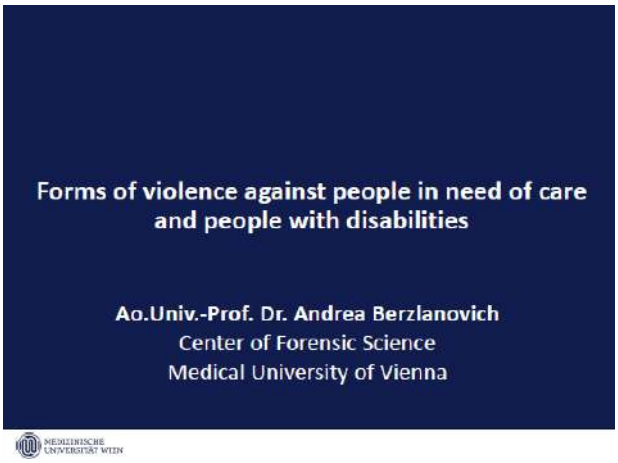
(See also *Osman v. the United Kingdom*, 28 October 1998, Legal Summary; see also *Bubbins v. the United Kingdom*, 50196/99, 17 March 2005, Legal Summary; *Kontrová v. Slovakia*, 7510/04, 31 May 2007, Legal Summary; *Branko Tomašić and Others v. Croatia*, 46598/06, 15 January 2009, Legal Summary; *Opuz v. Turkey*, 33401/02, 9 June 2009, Legal Summary; *Talpis v. Italy*, 41237/14, 2 March 2017, Legal Summary)

Forms of violence against people in need of care and people with disabilities which are not punishable by law but which constitute significant violations of the personal rights of those affected

Presentation by Prof. Andrea Berzlanovich - Medical University of Vienna, Austria

(translation from Bulgarian by DeepL https://www.deepl.com/)

Hello and welcome, ladies and gentlemen! I would like to apologize for giving my lecture in my mother tongue, Austrian German, but I am convinced that thanks to the good translation into Bulgarian, you will be able to understand me well.

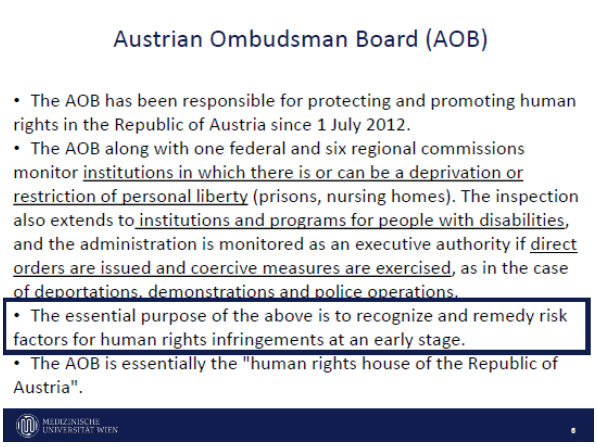


I am delighted to have the opportunity to give a lecture at your international conference on violence against people with disabilities and those in need of care. Especially as a non-lawyer and a rare bird in these circles. But first I would like to ask you a question: what do you think is the safest thing in life? It's not the birth of a child, as many would think, or taxes, even something more pleasant, the upcoming and hopefully peaceful weekend. - The surest thing for all of us is death, but what is not certain is when and how it will occur for each of us. In my work, I am confronted daily with the death of people.

I have been a forensic pathologist for 34 years and currently serve as the Deputy Director of the Center for Forensic Medicine, where I also direct the Forensic Gerontology Unit.

My practice and research focus on violence in care, nursing home abuse and errors, preventable elder mortality, suicide and homicide in the elderly. On the other hand, I am concerned with improving the acquisition of evidence by improving forensic examinations and how physical evidence is collected in victims of abuse of all ages.

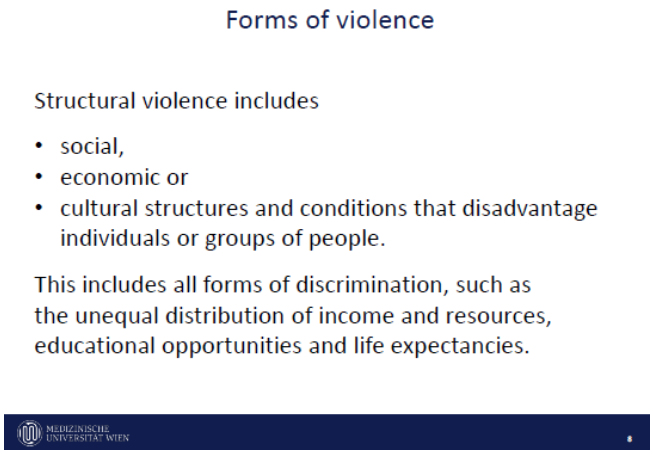
Since 2012, I have also been a member of the Human Rights Commission of the Austrian Ombudsman Council, and seven years ago I was appointed head of one of the six regional commissions. The members of the commission carry out the task of protecting and promoting human rights as a national preventive mechanism, carry out monitoring visits and have unrestricted access to all places of detention, e.g. police detention centres for administrative offences or deportation, police inspectorates, nursing homes and homes for the elderly, facilities for children and young people, as well as facilities for people with disabilities, hospitals and also those of the Austrian Armed Forces.



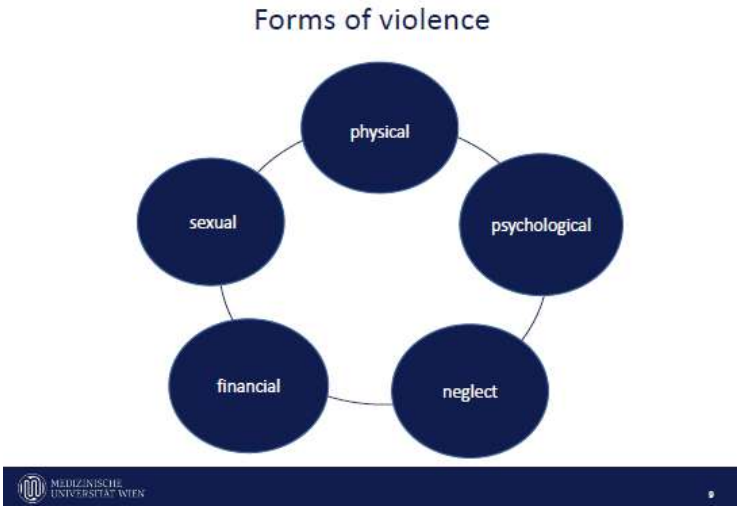
It is often argued that forensic pathologists know everything and can do everything, but that their expertise is too late in relation to the victims. As far as I am concerned, unfortunately, only the last part of that quote is true: I do not know everything, I cannot do everything, but as far as the victims are concerned, I am always late. I can no longer change the criminal violence that has been committed and I cannot bring the victims back to life, I can only act as an investigator during autopsies. However, as part of my work in the committee, I have the opportunity, together with my colleagues, to recognise and eliminate risk factors for human rights violations at an early stage and thus prevent violence in the various establishments.

Violence has many faces and is often unrecognisable at first sight because it does not just start when blood flows or bones are broken. What is perceived as violence depends on societal norms, cultural and social influences as well as our personal values.

Unfortunately, the experience of violence is more or less a part of the daily life of people who are voluntarily or involuntarily placed in institutions such as homes for the elderly and homes for the disabled. This clientele is exposed to structural and personal violence. Structural violence arises indirectly as

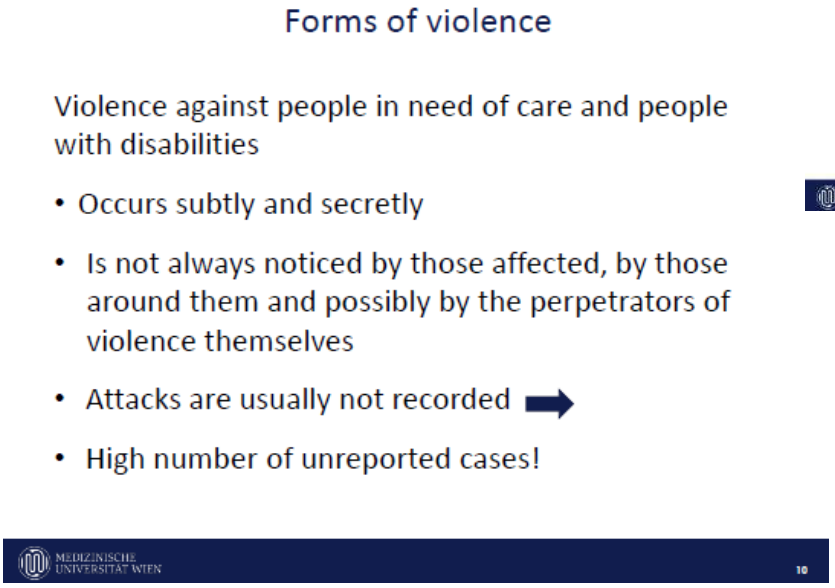


a result of conditions imposed by laws, home regulations or management staff, for example, the daily routines of the persons concerned are governed by strict rules or they are not adequately cared for due to inadequate staffing and as a result suffer psychological and/or physical harm.



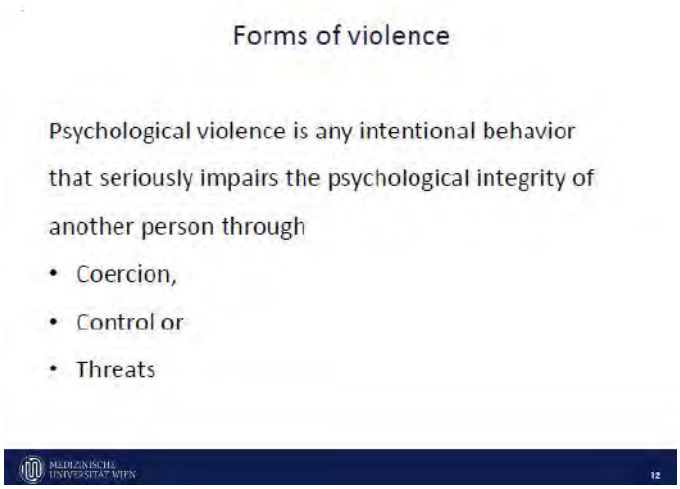
On the other hand, direct, personal violence comes from other patients or residents, relatives and, of course, hospital staff. It can be physical, psychological or sexual, but it can also take the form of financial exploitation or neglect.

Most often, violence is perpetrated by caregivers, and it manifests itself in pedantry, not always deliberately and maliciously, most often due to inattention or overwork, or in lack of time: often without witnesses. Minor injuries, psychological violence, but also neglect or neglect are not always recognised as violence by the persons concerned, by their social environment or even by the perpetrators themselves. As a consequence of illness or cognitive deficits, many victims are unable to talk about violent incidents or repress the experience out of shame or fear of further escalation or reprisals, which means that these incidents often go unreported, under the radar, and a large number of unreported cases could therefore be assumed.



I would therefore like to refrain from describing the already known forms of violence - such as grievous bodily harm and sexual violence - and instead draw your attention to the uncriminalised but often gross violations or infringements of personal rights that often result from the conditions in these establishments. We are talking, above all, about psychological abuse and neglect.

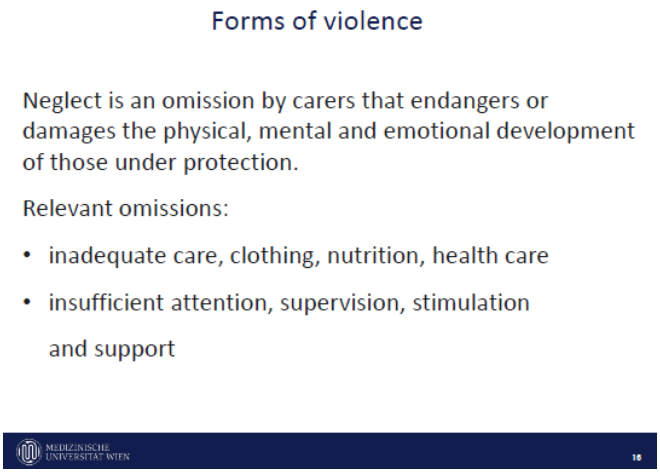
Psychological abuse refers to any intentional behaviour that seriously violates the psychological integrity of another person through coercion, control or threats.



Psychological abuse includes inappropriate statements, actions or attitudes by carers or relatives towards the cared-for person, such as insults, accusations, humiliation, abuse, instilling fear and guilt through threats. Psychological forms of violence are common in hospital settings and are usually considered a 'precursor' to physical and/or sexual violence.

Examples of unacceptable communication include not only abusive/embarrassing statements by carers, nurses, doctors towards residents and patients, but also dismissive attitudes, restriction/refusal of communication, lack of distance through disrespectful language or inappropriate choice of words, and guardianship.

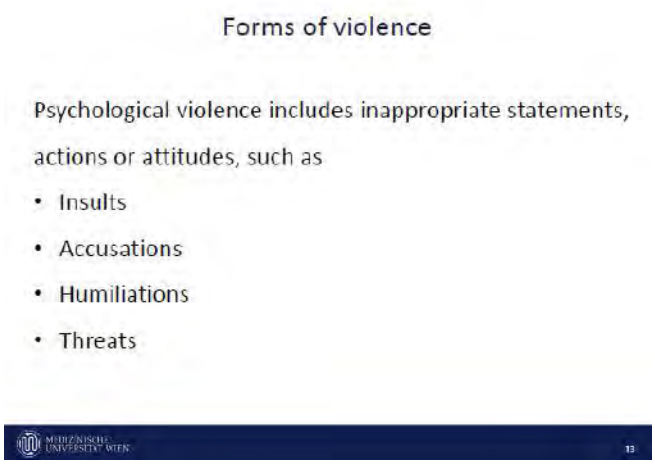
Humiliation is present if elderly or disabled people are ridiculed or mocked for their clumsiness. It is shameful and violates the privacy of the persons concerned if the door is left open when personal hygiene is being performed, or if a privacy screen is not put up in a room with many beds, or if the toilet door is not closed by care staff when people go to the toilet.



Neglect is also part of daily care. Neglect is inaction by carers that endangers or impairs the physical, mental and emotional development of the people they care for. Relevant lapses are: inadequate care, inappropriate clothing, nutrition, health care, and too little attention, supervision, stimulation and encouragement.

Errors in bed positioning can cause muscle contractures or pressure sores. If those in need of care are bathed or washed with water that is too hot, they can burn - as shown here: a second-degree burn.

Recently, three carers in Austria were charged with torturing and neglecting vulnerable people, including causing injury through gross negligence. They are alleged to have "disciplined" in a particularly cruel manner mostly residents in need of intensive care, by, among other things, failing to help them maintain proper personal hygiene. The defendants failed to take proper care of their victims and for weeks did nothing to prevent the appearance of scabies ticks, even though they suffered from severe itching and painful eczema.



The personal rights of persons in a helpless state were violated with regard to clothing when they had to spend the entire day in the nightgown or underwear of the nursing facility, or were allowed to wear only clothing appropriate for the elderly in nursing homes, that are easy or quick to put on and take off, do not wrinkle, are not ironed, and can be washed at high temperatures, thus having to give up shirts/blouses/jackets with many buttons, bras, delicate woolen items, etc. etc., or to avoid soiling their personal clothing, they are tied with bibs or plastic aprons while eating.

It is no coincidence that food intake is given high priority in almost all medical facilities. However, hot

food is sometimes served cold or lukewarm or, as reported in these newspaper articles, in too small portions or food is forgotten to be served altogether, so residents are sometimes left hungry.

The food served is often quite monotonous, and unimaginative. For example, the photo above left shows a lunch of dumplings with spinach, strips of vegetables, and an indefinable brown sauce, or the photo next to it, which shows a standard breakfast in a nursing home, or the photo below right, which shows a noodle soup made in 5 minutes from a baggie served for dinner in a facility for the disabled.

Other negative examples in relation to feeding are: giving food and drink too quickly, routinely giving passé food and force-feeding through a probe.

Many people, especially older people, have difficulty swallowing and can only eat purees. They usually look similar to the one in the two pictures.

Do you have any idea what food has been mashed in the photo below? - Beef roulade with dumplings and red cabbage. Although purees can be prepared and served in a very appetizing way. - As you can see from these illustrations.

Examples of neglect related to lack of support for independent behaviour are: if leisure activities are not offered in the care home, or if guidance on food intake is not given, or if care

leavers are not accompanied to the toilet, or if incontinence products are given even though they are not incontinent and can visit the toilet independently; or if indwelling catheters are inserted when this is not prescribed.

Do you think violence against vulnerable people can look like this too? What do you see? - Ceiling of a hospital room. - I would like to invite you to imagine that you are lying on your back in a hospital bed and you cannot turn over on your own. - In your line of sight are the vertical handle, the ceiling of the room with the bright lamp and the ventilation cover. You will remain in this position for several hours until a caregiver turns you onto your left side.

Then your new view over the bed rail will be the beige painted wall of the room and maybe even the edge of the bed.

When they turn you to your right side after another 2-3 hours, you're out of luck. You can look through the bars of your bed at the patterned door and floor of the room and the sparse furniture. In other words, you see what could be your room, your kingdom, your perimeter of movement. - But so what - the next time you change position, you'll be lying on your back again, staring at the ceiling. - Do you still wonder why bedridden people usually keep their eyes closed, withdraw into their own world, exhibit behavioral disturbances, and see things that don't exist?

A particular form of care violence is the use of measures that restrict the freedom against the will of vulnerable people. Bed bars are the most commonly used mechanical restraints. Belt systems - as you saw in the video - are mainly used in psychiatric wards. While chest, lap and shoulder belts, and seat and leg positioning belts are used primarily for the elderly and disabled.

Often 'covert' methods are used which are not at first sight recognisable as restraint measures, e.g. the fitting of glasses or walking aids and shoes which are intended to prevent the cared for person from moving.

Here you see a nice bench that invites you to rest during the day, and at night becomes a measure that restricts freedom as it blocks the exit to the outside for the residents of this facility.

I can give you many more examples of violations of personal and human rights in hospital settings. Most of the violations described are not criminalised, but they are probably not acceptable to all of us. However, we do not automatically categorise these abuses as violence, as the term 'violence' as such seems to us to be exaggerated or inappropriate.

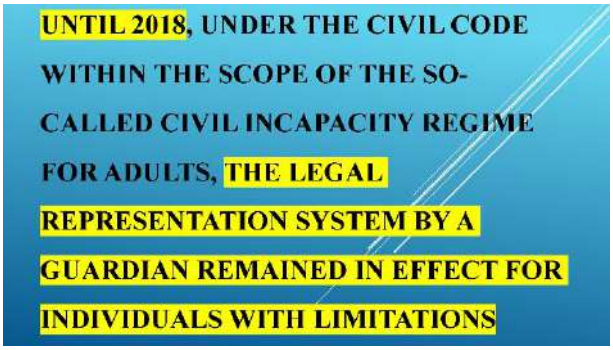
In future, I would like to see more focused and critical attention paid to respect for the personal rights and privacy of people in medical institutions. Only by pointing out the abuses that have been identified and putting an end to these human rights violations can the individuals concerned be protected from health consequences and their dignity preserved, while their quality of life is improved.

I would like to thank the organisers of the conference - in my own forensic way - for inviting me to come to Sofia and to thank you, ladies and gentlemen, for your attention and time.

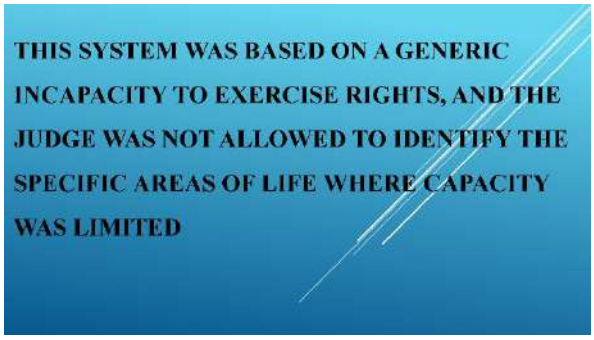
The legal framework for vulnerable people in Portugal

Presentation by Alexandra Neves - Assistant Attorney General, Court of Appeal of Evora, Portugal

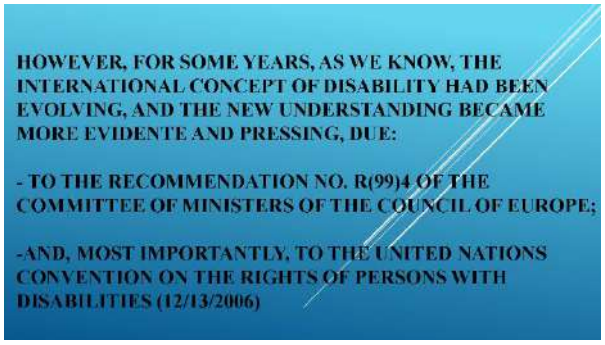
In Portugal, until 2018, under the Civil Code within the scope of the so-called civil incapacity regime for adults, the legal representation system by a guardian remained in effect for individuals with limitations.

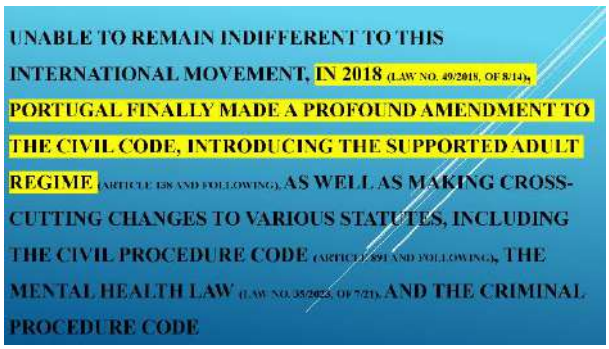


This system was based on a generic incapacity to exercise rights, and the judge was not allowed to identify the specific areas of life where capacity was limited—the will of the person with disabilities was, in every aspect, replaced by the will of the guardian.



However, for some years, as we know, the international concept of disability had been evolving, requiring paradigm shifts that called for the legal recognition of systems based on flexible protection, tailored to the exact limitations and concrete abilities of the individual.





This new understanding of disability emerged and evolved alongside changes in the conception of the human being, alterations in the notion and scope of equality and human rights, and social movements advocating for the rights of individuals and against

discrimination (starting with race and gender).

There are numerous legal instruments that set down this new understanding:

- First, due to its relevance to the regime of civil incapacity for adults, the Recommendation No. R(99)4 of the Committee of Ministers of the Council of Europe;

- And, most importantly, the United Nations Convention on the Rights of Persons with Disabilities (12/13/2006).

But also, among many others:

- The European Social Charter (Part I, Article 15, and Articles 10 to 15),

Or the Charter of Fundamental Rights of the European Union

- (Articles 21, 26, and 34).

Unable to remain indifferent to this international movement, in 2018 (Law No. 49/2018, of 8/14), Portugal finally made a profound amendment to the Civil Code, introducing the Supported Adult Regime (Article 138 and following), as well as making cross-cutting changes to various statutes, including the Civil Procedure Code (Article 891 and following), the Mental Health Law (Law No. 35/2023, of 7/21), and the Criminal Procedure Code.

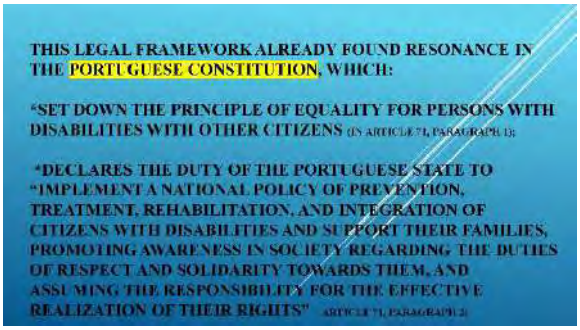
This legislative amendment further developed other existing statutes in Portuguese law related to the protection of persons with disabilities, such as:

- the Basic Law on Persons with Disabilities of 2004 – Law No. 38/2004, of 8/18;

- the regime prohibiting discrimination based on disability of 2006 – Law No. 46/2006, of 8/28;

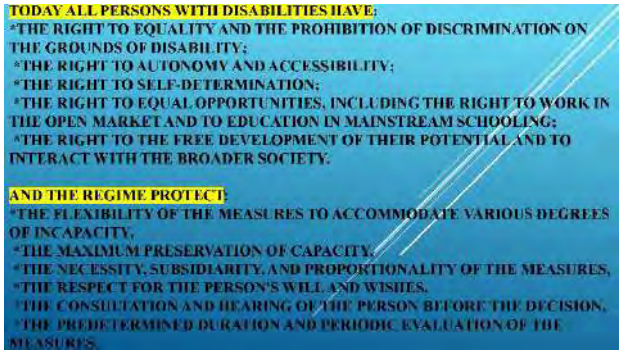
- the regime prohibiting discrimination in insurance contracts of 2008 – Decree-Law No. 72/2008, of 4/16 (Article 15);

- and the regime on accessibility to public spaces, equipment, and buildings of 2006 – Decree-Law No. 163/2006, of 8/8.

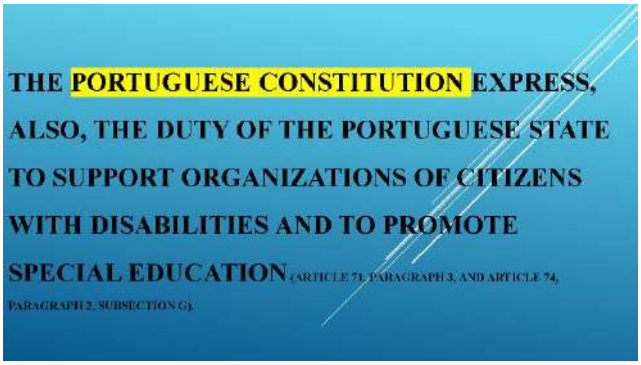


This legal framework already found resonance in the Portuguese Constitution, which:

- explicitly set down the principle of equality for persons with disabilities with other citizens (in Article 71, paragraph 1);



- and, on the other hand, declares the duty of the Portuguese State to "implement a national policy of prevention, treatment, rehabilitation, and integration of citizens with disabilities and support their families, promoting awareness in society regarding the duties of respect and solidarity towards them, and assuming the responsibility for the effective realization of their rights" – Article 71, paragraph 2;



- the Portuguese Constitution express, also, the duty of the Portuguese State to support organizations of citizens with disabilities and to promote special education (Article 71, paragraph 3, and Article 74, paragraph 2, subsection g).

This legislative framework (the Portuguese Constitution, the Civil Code, and various scattered laws) now ensures that persons with disabilities are full citizens, subjects of rights – enjoying and exercising civil, political, economic, cultural, and social rights – and any presumption of incapacity is prohibited.

Consequently, today all persons with disabilities have:

- the right to equality and the prohibition of discrimination on the grounds of disability;
- the right to autonomy and accessibility;
- the right to self-determination;
- the right to equal opportunities, including the right to work in the open market and to education in mainstream schooling;

- and the right to the free development of their potential and to interact with the broader society.

And the regime protect:

- the flexibility of the measures to accommodate various degrees of incapacity,
- the maximum preservation of capacity,
- the necessity, subsidiarity, and proportionality of the measures,
- the respect for the person's will and wishes,
- the consultation and hearing of the person before the decision,
- as well as a predetermined duration and periodic evaluation of the measures.

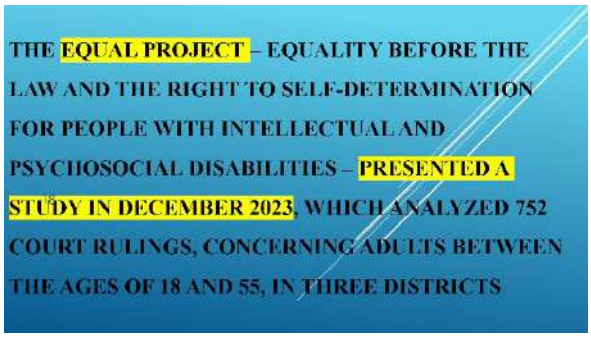
In the realm of civil law, in Portugal, the starting point is the recognition that all individuals possess some degree of self-determination, and then civil capacity is limited only to the extent necessary to safeguard the person and their property, taking into account the physical, intellectual, mental, or sensory impairments (and their degree) present in the specific case.

Today, the entire legal framework is based on the idea that the right to autonomy, self-determination, and the enjoyment and exercise of rights lies within the legal sphere of all persons with disabilities, even if the disability is intellectual or mental.

However, it is important not to view this legal regime as idyllic and overlook reality.

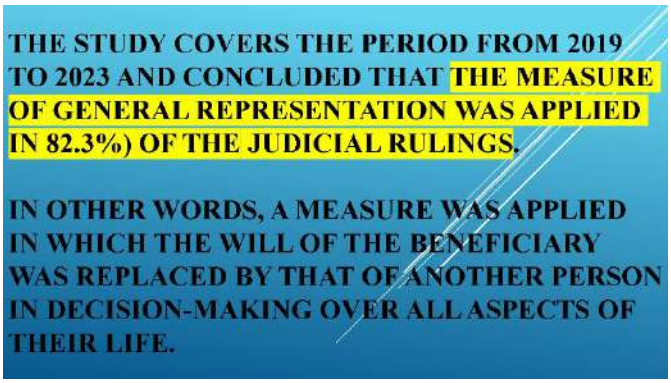
An assessment of reality raises some concerns.

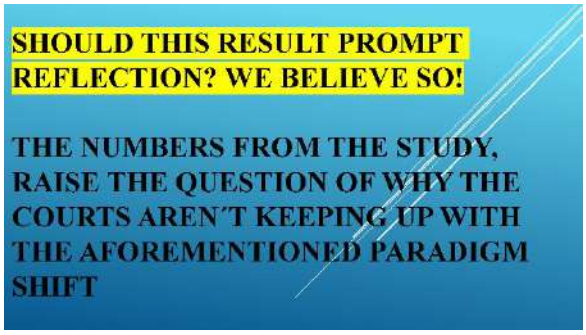
The EQUAL Project – Equality Before the Law and the Right to Self-Determination for People with Intellectual and Psychosocial Disabilities – presented a study in December 2023, which analyzed 752 (seven hundred and fifty-two) court rulings, concerning adults between the ages of eighteen and fifty-five, in three districts of the country (one of which was the capital, Lisbon, and the others were Évora and Viana do Castelo).



The study covers the period from 2019 to 2023 and concluded that the measure of general representation was applied in 82.3% (eight two point three percent) of the judicial rulings.

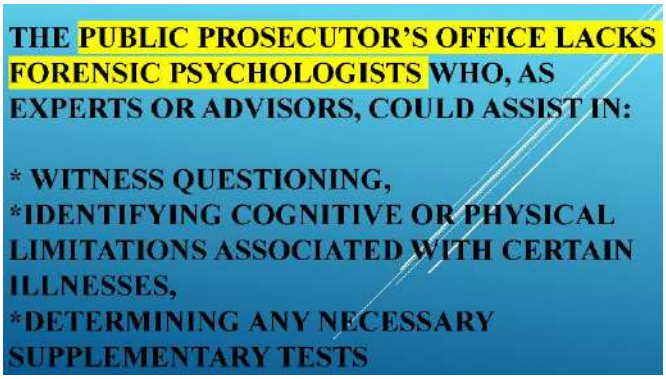
In other words, a measure was applied in which the will of the beneficiary was replaced by that of another person in decision-making over all aspects of their life.



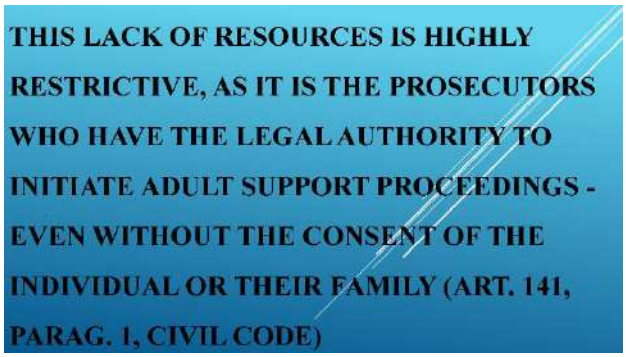


Should this result prompt reflection? We believe so, as this is the most restrictive measure of rights.

The cold, hard numbers from the study, raise the question of whether the courts are keeping up with the aforementioned paradigm shift or if they are still clinging to the old, now-revoked system.



Einstein once said that "it is easier to disintegrate an atom than a prejudice," and families and society in general—including judicial and public prosecutors magistrates—must abandon notions of overprotection that, rather than safeguarding individuals with disabilities, prevent them from adjusting socially and emotionally.



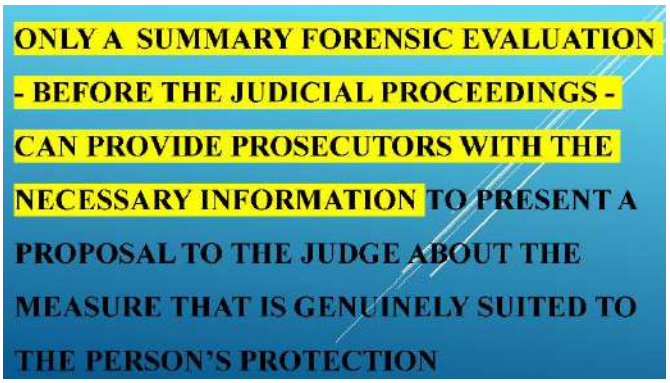
But is this mentality the only, or even the main reason for the application of general representation in over 80% (eight percent) of the court rulings? Certainly not!

In Portugal, there is a tendency to believe that problems can be solved merely by changing the law, forgetting that, more often than not, without economic, social, and political measures, legislative changes are ineffective.

No doubte that the law can drive social change, act as an instrument for social transformation and inclusion, but it needs support in the form of policy implementation.

In this specific case, it is not enough to approve the Regime of Supported Adults and demand that courts determine the appropriate, necessary, and proportional measure of support for each individual.

It's not sufficient because the Public Prosecutor's Office lacks forensic psychologists who, as experts or advisors, could assist in witness questioning, identifying cognitive or physical limitations associated with certain illnesses, and determining any necessary supplementary tests.



In Portuguese law, this lack of resources in the Public Prosecutor's Office is highly restrictive, as it is the magistrates who have the legal authority to initiate adult support proceedings - even without the consent of the individual or their family (Article 141, Paragraph 1 of the Civil Code).

In other words, a summary forensic evaluation before the judicial proceedings—internal to the Public Prosecutor's Office—is essential to provide magistrates with the necessary information to present a proposal to the judge about the measure that is genuinely suited to the person's protection.

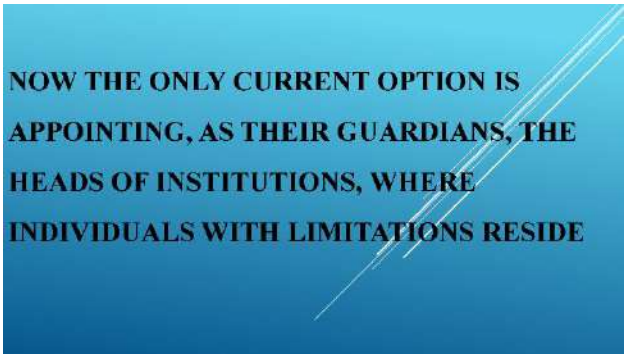
To grasp the true volume of cases that the Public Prosecutor's Office faces in filing these actions, one need only consider that in the Northern Lisbon District—just one of twenty-three districts in the country, and not even the largest like Lisbon or Porto—in 2023 alone, the Public Prosecutor's Office processed 748 (seven hundred and forty-eight) cases of Supported Adults and filed 421(four hundred and twenty-one) actions.

But the court faces another serious problem: the lack of someone within the family unit who can serve as a legal guardian or provide the support that the person with limitations needs.

It is urgent to think about and discuss solutions, such as the

creation of a pool of professionals (a solution adopted in other European countries like France).

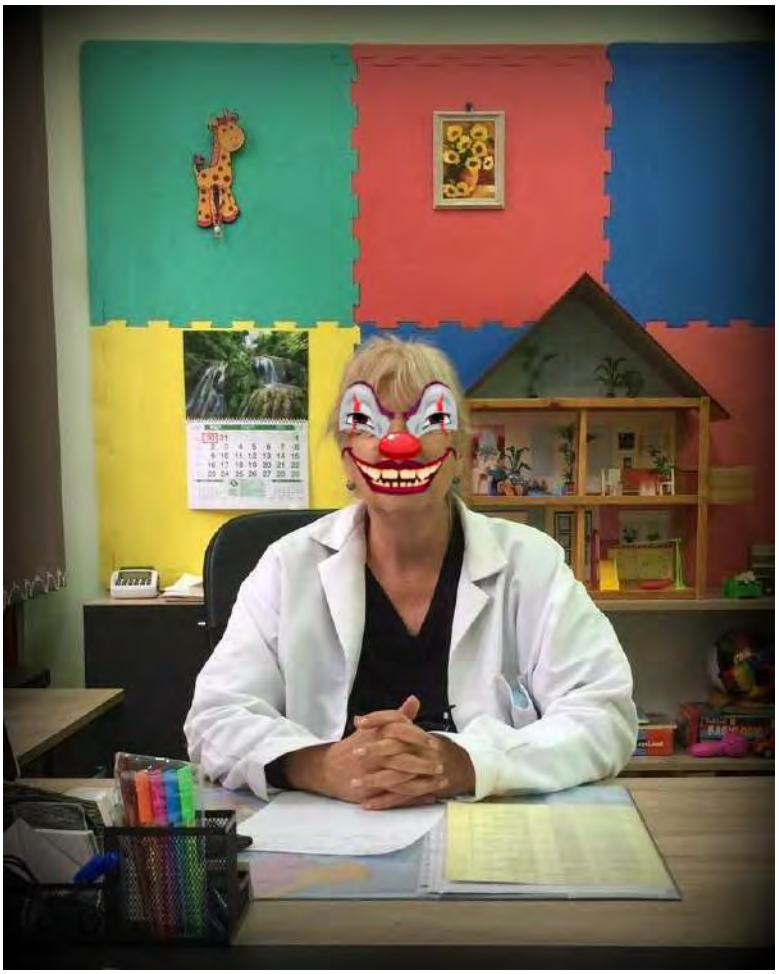
In fact, the State must create the necessary resources and mechanisms to allow courts to move away from the only current option: appointing the heads of institutions, where individuals with limitations reside, as their guardians—since, even they, do not have the capacity to provide personalized care to all the residents of the institution.



In short, the courts must be equipped with the appropriate resources to ensure and implement a society for all, and the guarantee of the rights of vulnerable people in Portugal still has a long way to go.

The necessary reform in the field of psychiatric care in Bulgaria

Presentation by Dr. Vladimir Sotirov, psychiatrist



Credo

Any true ability to help begins with **humility** before the one I want to help, and so I must be aware that the desire to help is not a desire to dominate, but a desire to serve.

Positive and negative historical examples of judges protecting vulnerable groups

Presentation by prof. Peter Graver, University of Oslo, Norway

Heros of the Law

Defence of the Rule of Law when under Attack

Is it not enough for judges and jurists to do their job?

- The Iraq War
- The Norwegian Social Security Scandal
- Nazi-Germany
- South-Africa
- Chile
- France
- Italy
- etc.

More that just their job:

Protecting the law against the state and the people

Schønnebøl, Horton, Barrios

Protecting the people against the state and the law

Calmeyer, Langeland, Lydia

The rule of law in the balance

Høyesterett i 1940, Barak, Gersdorf

James Edwin Horton

Hans Calmeyer

Malgorzata Gersdorf

Who is a hero?

- One who *thinks* (Arendt)
- Taking a risk
- Acting for the good

Collection of materials

INTERNATIONAL CONFERENCE

The role of magistrates' associations in nurturing legal culture and protection of vulnerable groups

Sofia, Bulgaria, 27th September 2024