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COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on the case-law of the European Convention on Human Rights

Violence against women

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on a wide range of provisions of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") relating to violence against women. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The HUDOC database of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the HUDOC user manual.

∗. The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.
Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

1. The Court is frequently called upon to rule on complaints concerning various forms of violence against women. In examining such cases, the Court has regard to the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence ("the Istanbul Convention") and to reports by the Group of Experts on Action against Violence against Women and Domestic Violence ("GREVIO"),[1] the body of independent experts responsible for monitoring the implementation by the parties of the Istanbul Convention.

2. The Court has referred to the definition of the term "violence against women" under Article 3 of the Istanbul Convention, which understands it as a violation of human rights and a form of discrimination against women and which 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 (see, for instance, *Halime Kiliç v. Turkey*, 2016, § 114; see also *Bălșan v. Romania*, 2017, §§ 42, 79; *Association Innocence en Danger and Association Enfance et Partage v. France*, 2020, § 98).

3. The Istanbul Convention specifically addresses violence against *women*. While it does not define the term "women", the Istanbul Convention does contain a definition of "gender", which it describes as the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men. The scope of the Istanbul Convention does not extend to any forms of violence against men or children, although its Article 3 clarifies that the term "women" includes girls under the age of 18.

4. This Case-law Guide summarises and analyses the jurisprudence of the Court concerning violence against women. Its structure reflects the various forms of violence against women and how they relate to various Convention Articles.

[1] GREVIO - Istanbul Convention Action against violence against women and domestic violence.

I. Domestic violence[2]

Article 2 of the Convention - Right to life

"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.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 of the Convention - Prohibition of torture

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

Article 8 of the Convention - Right to respect private and family life

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

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

Article 14 of the Convention – Prohibition of discrimination

"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."

5. The Court has referred to the definition of domestic violence as stipulated in Article 3 of the Istanbul Convention: "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" (*Talpis v. Italy*, 2017, § 58; *Volodina v. Russia*, 2019, § 60; *Kurt v. Austria* [GC], 2021, § 79; *A.E. v. Bulgaria*, 2023, § 53).

6. 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 (*Kurt v. Austria* [GC], 2021, § 161; *Opuz v. Turkey,* 2009, § 132; *Volodina v. Russia*, 2019, § 71). Although women make up an overwhelming majority of victims, the Court acknowledges (for instance in *Opuz v. Turkey,* 2009, § 132) that men may also be the victims of domestic violence (see *Dornean v. the Republic of Moldova*, 2018, where the male applicant complained about the authorities' failure to investigate his allegations of having been the victim of assaults by his ex-wife and children) and, indeed, that children, too, are often casualties of the phenomenon, whether directly or indirectly. With respect to children, the Court has noted that children who are victims of domestic violence are particularly vulnerable and are

[2] For further case-law, see the Key Theme on Domestic Violence and the Key Theme on Discrimination through violence.

entitled to State protection (*Kurt v. Austria* [GC], 2021, § 163. For domestic violence cases concerning children, see the Guide on the Rights of the Child).

7. 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 (*Opuz v. Turkey,* 2009, §§ 72-86; *Bevacqua and S. v. Bulgaria*, 2008, §§ 64-65; *Hajduová v. Slovakia*, 2010, § 46).

8. The Court has previously taken up the issue of domestic violence under Articles 2, 3, 8, and 14 of the Convention (see, in particular, *Talpis v. Italy*, 2017, § 100). In various cases, it has found violations of the substantive provisions alone, or in conjunction with Article 14 of the Convention. Whether the Court applies Articles 2, 3, and/or 8 in a given case generally depends on the degree of severity and, in the case of Article 2, death/the risk to life involved. In some cases, the Court examines these Articles separately and in other cases the Court does not find it necessary to examine the same facts under several Convention Articles.

1. Article 2 of the Convention[3]

a. General principles

9. In the context of domestic violence, the positive obligations on the State under Article 2 are particularly relevant. Faced with a complaint of domestic violence, the authorities' positive obligations encompass the duties to: (1) carry out a risk to life assessment; (2) take operational preventive and protective measures that are adequate and proportionate to the level of assessed risk; and (3), under the procedural limb of Article 2, conduct an effective investigation.

10. The Court first articulated the positive obligation under Article 2 to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (not in the context of domestic violence) in *Osman v. the United Kingdom*, 1998, §§ 115-116: bearing in mind 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 held that the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. The authorities' positive obligation to take preventive measures would not therefore be triggered if the applicant has never brought the violent behaviour of her husband to the attention of the authorities prior to a life-threatening attack (*Tërshana v. Albania*, 2020, § 151). Accordingly, not every claimed risk to life entails an obligation for the authorities to take operational measures to prevent that risk from materialising. However, if the authorities know or ought to know 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, they must take measures within the scope of their powers which, judged reasonably, might be expected to avoid that risk.

11. *Opuz v. Turkey,* 2009, §§ 128-149, 158-176, a landmark judgment on violence against women, applied the *Osman* risk assessment in the context of domestic violence. As to the substantive limb of Article 2, the Court emphasised the State's obligation to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions, as well as the obligation to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

12. In *Talpis v. Italy*, 2017, § 122, the Court further tailored the *Osman* "real and immediate risk" test to the context of domestic violence. More specifically, it stated that in situations of domestic violence, the State's risk assessment must above all take account of the recurrence of successive episodes of violence within the family unit. Applying this principle to the facts in *Talpis*, the Court noted that the police had already intervened twice on the night of the assault of the applicant and the killing of her

[3] For further details, see the Guide on Article 2 - Right to life.

son and the police had been in a position to check the husband's police record to determine that he constituted a real and possibly immediate risk to the applicant's life. The Court therefore concluded that that the authorities had 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.

13. The scope and content of States' positive obligations in the context of domestic violence were clarified in *Kurt v. Austria* [GC], 2021, §§ 157-190, where the Court focused in particular on how the two-stage *Osman* test should be applied to situations of lethal domestic violence. These obligations have been summarised recently in *Vieru v. the Republic of Moldova*, 2024, § 79; *Gaidukevich v. Georgia*, 2023, § 57, and *Y and Others v. Bulgaria*, 2022, § 89) as follows:

a. The authorities must respond immediately to allegations of domestic violence;

b. When such allegations come to their attention, the authorities must check whether a real and immediate risk to the life of the identified victim or victims of domestic violence exists by carrying out an autonomous, proactive and comprehensive lethality risk assessment. They must assess the real and immediate nature of the risk, taking due account of the particular context of domestic violence;

c. If the risk assessment reveals that a real and immediate risk to life exists, the authorities must take operational preventive and protective measures to avert that risk. Those measures must be adequate and proportionate to the level of risk assessed.

14. The general principles set out by the Grand Chamber in *Kurt v. Austria* [GC], 2021, concerning the State's positive substantive obligations under Articles 2 of the Convention were comprehensively summarised in *Tkhelidze v. Georgia*, 2021, §§ 48-49 (see also *A and B v. Georgia*, 2022, § 42).

15. The Court has reiterated that victims of domestic violence, who fall into the category of vulnerable individuals, are particularly entitled to State protection against such serious breaches of personal integrity, namely in the form of effective deterrence (*Opuz v. Turkey,* 2009, § 159; *Talpis v. Italy*, 2017, § 99; *Tkhelidze v. Georgia*, 2021, § 48). Furthermore, in *Kurt v. Austria* [GC], 2021, the Court emphasised that *special* diligence is required when dealing with cases of domestic violence (§ 166). It further held that the application of the immediacy standard in this context should take into account the specific features of domestic violence cases, and the ways in which they differ from incident-based situations (§ 175). The Court reiterated that consecutive cycles of domestic violence, often with an increase in frequency, intensity and danger over time, are frequently observed patterns in that context (*ibid.*).

16. As special diligence is required in dealing with domestic violence cases, the specific nature of domestic violence must be taken into account in the course of the domestic proceedings (*Volodina v. Russia*, 2019, § 92; *Tërshana v. Albania*, 2020, § 153). Indeed, an immediate response to allegations of domestic violence is required from the authorities who must establish, as noted above, whether there exists a real and immediate risk to the life of one or more identified victims of domestic violence by carrying out an autonomous, proactive and comprehensive risk assessment (see *Kurt v. Austria* [GC], 2021, § 190). The effectiveness principle means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in acts of violence. Accordingly, in cases where the Court found that the authorities had failed to act promptly after receiving a complaint of domestic violence, it has held that this failure to act deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of acts of violence (*Kurt v. Austria* [GC], 2021, § 165; *Halime Kılıç v. Turkey*, 2016, § 99; *Talpis v. Italy*, 2017, § 117).

17. The Court has recently summarised the obligation to conduct an effective investigation into all acts of domestic violence (*Vieru v. the Republic of Moldova*, 2024, § 81; *Gaidukevich v. Georgia*, 2023, § 58; *Luca v. the Republic of Moldova*, 2023, § 75) by referring to the following elements:

a. the investigation must be prompt and thorough, to avoid unnecessary delays;

b. the authorities must take all reasonable steps to secure evidence concerning the incident, including forensic evidence;

c. particular 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;

d. 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, which requires a prompt examination of the case without unnecessary delays (*Opuz v. Turkey*, 2009, §§ 145-151, 168; *T.M. and C.M. v. the Republic of Moldova*, 2014, § 46; *Talpis v. Italy*, 2017, §§ 106, 129);

e. the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished.

18. Moreover, while the Court has reiterated that the rights of perpetrators of domestic violence cannot supersede the rights of their victims to life and to physical and psychological integrity (*Opuz v. Turkey*, 2009, § 147; *Talpis v. Italy*, 2017, § 123; *Tkhelidze v. Georgia*, 2021, § 49; *Vieru v. the Republic of Moldova*, 2024, § 70), the Court has also underlined the need for the police to exercise their powers in a manner which fully respects due process and other safeguards that legitimately place restraints on the scope of their actions, including the guarantees contained in Articles 5 and 8 of the Convention (*Osman v. the United Kingdom*, 1998, § 116; *Opuz v. Turkey*, 2009, § 129; *Kurt v. Austria* [GC], 2021, § 182).

19. The procedural obligation under Article 2 to investigate a death allegedly following domestic violence (*Branko Tomašić and Others v. Croatia*, 2009, § 62, and *Tkhelidze v. Georgia*, 2021, § 50) also applies where the victims have allegedly committed suicide in a known context of domestic violence (*Oghlishvili v. Georgia*, 2024, §§ 48-53; *Vieru v. the Republic of Moldova*, 2024, §§ 90-95).

b. Examples

20. The Court has found positive obligations to arise under Article 2 in, for example, the following domestic violence cases:

- *Opuz v. Turkey*, 2009, §§ 131-153, where the authorities' failure to protect the applicant and her mother from her husband, whose history of domestic violence had been known to the authorities, resulted in the death of her mother (violation of Article 2);
- *Branko Tomašić and Others v. Croatia*, 2009, §§ 52-61, which involved the death of a mother and a child at the hands of a former partner, and the authorities' failure to take all reasonable steps to protect their lives, especially considering that the partner had previously been convicted for threatening to kill them (violation of Article 2);
- *Durmaz v. Turkey*, 2014, §§ 66-68, about the authorities' failure to carry out an effective investigation into the death of a woman and to establish the cause of her death, which had allegedly been caused by domestic violence (violation of the procedural limb of Article 2);
- *Halime Kılıç v. Turkey*, 2016, §§ 93-102, which concerned the death of a woman at the hands of her husband after being the victim of recurrent violence: according to the Court, the authorities had given insufficient consideration to the risk of fatal injuries and had thus failed to prevent the murder (violation of Article 2);

- *Civek v. Turkey*, 2016, §§ 42-69, which concerned the authorities' failure to undertake operational measures to protect the applicant, who was stabbed (22 times) and murdered in the street by her husband (violation of Article 2);
- *Talpis v. Italy*, 2017, §§ 107-25, concerning the authorities' failure to protect against episodes of domestic violence, known to the police, leading to the attempted murder of the applicant, who survived her injuries, and the murder of the applicant's son, who was trying to stop his father from stabbing his mother (violation of Article 2);
- *Tërshana v. Albania*, 2020, §§ 147-162, which concerned the failure of the authorities to react with special diligence in conducting a thorough investigation following a serious acid attack against a woman by an unidentified assailant, although the woman had suspected that her former husband had been behind the attack (no violation of the substantive limb of Article 2, violation of the procedural limb of Article 2);
- *Tkhelidze v. Georgia*, 2021, §§ 48-60, where the applicant's daughter continuously suffered domestic abuse by her partner and complained to the police numerous times, and was eventually killed by him in a murder-suicide. The Court addressed the authorities' failure to take preventive action to protect against domestic violence and to investigate police inaction, against a backdrop of systemic failures and gender-based discrimination (violation of Article 2 read in conjunction with Article 14);
- *A and B v. Georgia*, 2022, §§ 43-49, where the victim's mother and son had reported to the authorities numerous incidents of domestic violence committed by the partner, who was a police officer at the time and ultimately murdered the victim. The Court scrutinised the authorities' failure to prevent gender-based violence by a police officer and to investigate the law-enforcement authorities' passive response (violation of Article 2 read in conjunction with Article 14);
- *Y and Others v. Bulgaria*, 2022, §§ 89-110, concerned a woman killed by her husband from whom she was *de facto* separated, and who had been harassing her for several months. The Court addressed the authorities' failure to protect the woman's life, despite her several complaints about domestic violence over a nine-month period (violation of Article 2);
- *Landi v. Italy*, 2022, §§ 78-94, in which the Court addressed the authorities' failure to take preventive action against recurrent domestic violence leading to the applicant's attempted murder and her son's murder by her partner (violation of Article 2);
- *Vieru v. the Republic of Moldova*, 2024, §§ 90-95, concerning the State's obligation to investigate the circumstances of an alleged suicide of a woman in a known context of prolonged domestic violence. The Court found that the authorities should have considered the possibility that they were dealing with a potential case of gender-motivated murder, which necessitated particular diligence in carrying out investigative measures (violation of the procedural limb of Article 2; no examination under the substantive limb of Article 2, as the lack of an effective investigation rendered it impossible to discern without speculation whether the victims' fall from the fifth floor and ultimate death was an accident, a suicide, a crime or a gender-motivated crime);
- *N.D. v. Switzerland*, 2025, where the applicant was kidnapped, tortured and shot with a crossbow by her ex-partner after she ended the relationship, unaware of the perpetrator's violent background. The authorities had known about both the applicant's intention to break up and the perpetrator's particular dangerousness for his partners at the end of relationships, *inter alia* in light of a previous conviction for femicide and two expert psychiatric reports. The Court held that the authorities, on account of both of the lack of sufficient coordination between the various services and of the shortcomings in the domestic law concerning information sharing, had failed to protect the applicant's life (violation of Article 2);

- As regards domestic violence against children,[4] see *Kontrová v. Slovakia*, 2007, §§ 52-55, concerning the authorities' failure to protect the lives of the applicant's children, who were ultimately killed by their father (violation of Article 2). See also *Kurt v. Austria* [GC], 2021, where the applicant did not complain about any delay or inactivity on the part of the authorities, but about the risk assessment and choice of protective measures taken with respect to her husband (who had previously been convicted for domestic violence against her and had been issued with a barring and protective order) who murdered one of their children outside the area of the barring order. The Court decided that, on the basis of what was known to the authorities at the material time, there were no indications of a real and immediate risk of further violence, let alone to life, against the applicant's son outside the areas of the barring order, let alone a risk to life (no violation of Article 2).

2. Article 3 of the Convention[5]

a. General principles

21. The Court has acknowledged that psychological violence and mental suffering – as well as physical injuries – form an important aspect of domestic violence (*Valiulienė v. Lithuania*, 2013, § 69; *M. G. v. Turkey*, 2016, §§ 99, 104, 106; *Luca v. the Republic of Moldova*, 2023, § 72). Accordingly, the minimum threshold for the application of Article 3 may be reached through psychological violence and stalking (*Buturugă v. Romania*, 2020, § 74), threats (*Tunikova and Others v. Russia*, 2021, § 119; *J.I. v. Croatia*, 2022, § 89) and fear of further assaults (*Eremia v. the Republic of Moldova*, 2013, § 54; *T.M. and C.M. v. the Republic of Moldova*, 2014, § 41; *Volodina v. Russia*, 2019, §§ 74-75; *Hasmik Khachatryan v. Armenia*, 2024, § 161).

22. The Court has held that the States' 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 – comprise:

a. the obligation to establish and apply in practice an adequate legal framework affording protection against violence by private individuals;

b. the obligation to take reasonable measures to avert a real and immediate risk of recurrent violence of which the authorities knew or ought to have known, and

c. the obligation to conduct an effective investigation into the acts of violence.

Generally speaking, the first two aspects of these positive obligations are classified as "substantive", while the third aspect reflects the State's positive "procedural" obligations (*Kurt v. Austria* [GC], 2021, §§ 164-165; *Talpis v. Italy*, 2017, §§ 100-106; *Bălşan v. Romania*, 2017, § 57; *Volodina v. Russia*, 2019, §§ 76-77; *Tunikova and Others v. Russia*, 2021, § 78; *Malagić v. Croatia*, 2022, § 57).

23. The Court has specified that 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, notably, 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 (*Volodina v. Russia*, 2019, § 78, with further references; *Tunikova and Others v. Russia*, 2021, § 86).

[4] For further cases on domestic violence against children, see the Guide on the Rights of the Child, Chapter IV. B.
[5] For further details, see the Guide on Article 3 - Prohibition of torture. For a recapitulation of the relevant general principles under Article 3, see *Tunikova and Others v. Russia*, 2021, §§ 75, 78, 86, 95, 103-105, 114, *De Giorgi v. Italy*, 2022, §§ 69-70 (abridged version for preventive operational duty) and also *Talpis v. Italy*, 2017, §§ 95-106. For an overview of the relevant international standards concerning domestic abuse against children, see *D.M.D. v. Romania*, 2017, §§ 25-35 and § 53. More detailed information can be found in the Guide on the Rights of the Child.

24. In addition, the Court must be satisfied that, in general, the domestic legal framework is adequate to provide protection against acts of violence by private individuals in each specific case. Accordingly, in so far as protection measures are concerned, the Court requires that the toolbox of legal and operational measures available in the domestic legal framework must give the authorities a range of sufficient measures to choose from, which are adequate and proportionate to the level of risk that has been assessed in the circumstances of that particular case (*Tunikova and Others v. Russia*, 2021, § 95).

25. The Court has clarified the scope and content of the positive obligation to prevent a real and immediate risk of recurrent violence in the context of domestic violence under Article 3 (*Tunikova and Others v. Russia*, 2021, § 104; *De Giorgi v. Italy*, 2022, § 70). The Court has had regard to certain factors to establish whether the State authorities ought to have been aware of the risk of recurrent violence, including:

- the perpetrator's history of violent behaviour and failure to comply with the terms of a protection order (*Eremia v. the Republic of Moldova*, 2013, § 59);
- an escalation of violence representing a continuing threat to the health and safety of the victims (*Opuz v. Turkey*, 2009, §§ 135-36);
- the perpetrator's access to weapons (*Kontrová v. Slovakia*, 2007, § 52);
- the victim's repeated pleas for assistance through emergency calls, formal complaints and petitions to the head of police (*Bălşan v. Romania*, 2017, § 62);

26. The authorities, confronted with a real and immediate threat that is or should be known to them, must conduct an autonomous, proactive and comprehensive risk assessment at regular intervals as an integral part of their obligations, acting with special diligence and taking due account of the particular context of domestic violence and its recurring nature (*M.S. v. Italy*, 2022, § 148; *Scuderoni v. Italy*, 2025, §§ 99, 103, 115; *J.S. v. Slovakia*, 2026, §§ 39, 54-59). For instance, in a case where the victim was either murdered or committed suicide in a context of domestic violence, a proper assessment of the circumstances (including five occasions where the national court had issued restraining orders and the perpetrator's conviction for domestic violence) might have outlined the victim's particular vulnerability, helplessness and entrapment that she must have experienced before her fall from the fifth floor, in the presence of her former husband (*Vieru v. the Republic of Moldova*, 2024, §§ 116-117).

27. Once it is determined that the domestic authorities were aware, or ought to have been aware, of the violence to which the applicant had been subjected and of the risk of recurrent violence, it then examines whether all reasonable measures were taken to protect the applicant and to punish the perpetrator. In particular, the Court has reiterated that the State authorities have a responsibility to take protective measures in the form of effective deterrence against serious breaches of an individual's physical or psychological integrity by a family member or by a partner (*Munteanu v. the Republic of Moldova*, 2020, § 70; *Tunikova and Others v. Russia*, 2021, § 103) or a former partner (*T.M. and C.M. v. the Republic of Moldova*, 2014; *Vieru v. the Republic of Moldova*, 2024, § 106).

28. In the context of domestic violence, 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 (*Talpis v. Italy*, 2017, § 122; *Volodina v. Russia*, 2019, § 86; *Munteanu v. the Republic of Moldova*, 2020, § 70; *Tunikova and Others v. Russia*, 2021, § 103). In verifying whether the national authorities have complied with their positive obligations under Article 3, the Court underlines that it will not replace the national authorities' choice of a particular measure to protect a victim of domestic violence to comply with their positive obligations under Article 3 (*Opuz v. Turkey,* 2009, § 165; *A. v. Croatia*, 2010, § 61; *Mudric v. the Republic of Moldova*, 2013, § 49; *T.M. and C.M. v. the Republic of Moldova*, 2014, § 45; *A.E. v. Bulgaria*, 2023, § 89).

29. The Court has also found on numerous occasions that, even when the authorities had not remained totally passive and had taken some measures, a failure to take other, reasonably available measures that could have had a real prospect of altering the outcome or mitigating the harm was sufficient to engage the responsibility of the State under Article 3 (*Vieru v. the Republic of Moldova*, 2024, § 119; see also *Opuz v. Turkey*, 2009, §§ 166-167; *Eremia v. the Republic of Moldova*, 2013, §§ 62-66; *B. v. the Republic of Moldova*, 2013, § 53; *Volodina v. Russia*, 2019, § 86; *Munteanu v. the Republic of Moldova*, 2020, § 70). Accordingly, the Court has reiterated that the test under Article 3 does not require it to be shown that "but for" the failing or omission of the authorities the ill-treatment would not have occurred: the State may have violated Article 3 even if the Court cannot conclude with certainty that matters would have turned out differently if the authorities had taken the appropriate measures to avoid the risk (*O'Keeffe v. Ireland* [GC], 2014, § 149; *Tunikova and Others v. Russia*, 2021, § 135; *Vieru v. the Republic of Moldova*, 2024, § 119).

30. Finally, the Court has stressed that an effective investigation into all acts of domestic violence is an essential element of the State's obligations under Article 3. To be effective, the investigation must be prompt and thorough, these requirements applying to the proceedings as a whole, including the trial stage (*M.A. v. Slovenia*, 2015, § 48; *Talpis v. Italy*, 2017, §§ 104-106; *Tunikova and Others v. Russia*, 2021, § 114; *Ubeda and Others v. Italy*, 2026, §§ 92-95). In that connection the Court has also stressed that, in cases involving domestic 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 (*Talpis v. Italy*, 2017, § 130; *P.P. v. Italy*, 2025, § 49).

b. Examples

31. The Court has examined the State's positive obligations in the context of domestic violence in, for example, the following cases:

- *B. v. the Republic of Moldova*, 2013, §§ 49-61, in which the authorities allowed the applicant's ex-husband, who had been consistently abusing her, to continue living in the same apartment, putting her at further risk of ill-treatment. Accordingly, the applicant's consequent fear of further ill-treatment by her ex-husband was sufficiently serious as to amount to inhuman treatment (violation of Article 3);
- *Eremia v. the Republic of Moldova*, 2013, §§ 53-66, in which the applicant had been repeatedly subjected to violence from her husband, a police officer. The Court found that the authorities had failed to take effective measures to protect her or to ensure his punishment – shielding him from criminal liability rather than deterring him – despite being aware of the risk of further violence by him (violation of Article 3 in respect of the first applicant);
- *Valiulienė v. Lithuania*, 2013, §§ 69-70, 73-86, where the manner in which the criminal-law mechanisms were implemented, along with investigative and procedural flaws, did not provide adequate protection to the applicant against acts of violence (violation of Article 3);
- *Mudric v. the Republic of Moldova*, 2013, §§ 44-55, concerned a particularly vulnerable person, aged 72, whose former husband broke into her house and physically assaulted her 22 years after their divorce. The Court pointed to the unexplained delays in enforcing court protection orders and in subjecting the perpetrator to mandatory psychiatric treatment (violation of Article 3);
- *T.M. and C.M. v. the Republic of Moldova*, 2014, §§ 46-47, where the police – who had clearly known about the allegations of abuse – had a duty to investigate of their own motion the need for action to prevent domestic violence, regardless of the lack of a formal complaint about domestic violence. However, the authorities had apparently been incapable of offering any kind of protection in the absence of a formal request by the applicants, even where they had become aware of acts of physical ill-treatment (violation of Article 3);

- *Rumor v. Italy*, 2014, §§ 60-77, which concerned the alleged failure by the authorities to take sufficiently effective measures in response to an incident of domestic violence against the applicant by her former partner. The Court established that the authorities had not remained passive after the incident, that the former partner had been immediately arrested and had remanded in custody, that he had been charged (with attempted murder, kidnapping, aggravated violence and threatening behaviour) and that the criminal proceedings had been conducted with due expedition and led to a sentence of over three years' detention (no violation of Article 3);
- *M.G. v. Turkey*, 2016, §§ 83-107, which addressed the lack of access to protection measures against domestic violence for unmarried/divorced women (violation of Article 3; see also *Vieru v. the Republic of Moldova*, 2024, §§ 101-102);
- *N.P. and N.I. v. Bulgaria* (dec.), 2016, §§ 79-87, where the Court found that the case file showed that neither the domestic courts, nor the social services, nor the police, nor the prosecutor's office had ignored the danger posed by the applicants' husband and son, and that the State authorities had implemented several appropriate measures at the right times to protect the physical integrity of the applicants (complaint under Article 3 manifestly ill-founded);
- *Talpis v. Italy*, 2017, §§ 126-31, where the authorities, due to their complacency for seven months after the applicant's complaint of domestic violence, deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of the husband's acts of violence against his wife and family, and had thus failed to comply with their obligation to protect the applicant (violation of Article 3);
- In *Bălşan v. Romania*, 2017, §§ 59-71, the Court found that the domestic authorities had deprived the national legal framework of its purpose by finding that the applicant had provoked the domestic violence against her, that the violence had not presented a danger to society and had therefore not been severe enough to require criminal sanctions, and by denying the applicant's request for a court-appointed lawyer (violation of Article 3);
- *Volodina v. Russia*, 2019, §§ 73-102, where the Court found a violation of Article 3 because the respondent State had fallen short of its positive obligations regarding: (a) the legal framework – which did not define domestic violence as a separate offence or an aggravating element and established a minimum threshold of gravity of injuries for launching a public prosecution; (b) the passive stance taken by the authorities despite their awareness of the risk of recurrent violence, allowing the former partner to continue threatening, harassing and assaulting the applicant without hindrance and with impunity; and (c) the authorities' failure to discharge their duty to investigate the applicant's ill-treatment (violation of Article 3);
- *Munteanu v. the Republic of Moldova*, 2020, §§ 68-74, involved the lack of prompt reaction by authorities, especially as regards enforcement of protection orders to prevent the risk of further violence inflicted on the applicants, the former wife of the perpetrator and her son. The Court noted that it was striking that, against the background of the former husband's repeated domestic violence against the applicants, the authorities adopted an order to protect the perpetrator and ordered the first applicant to leave the home, while later partly blaming her for provoking violence against herself by failing to leave home (violation of Article 3 in respect of both applicants);
- In *Tunikova and Others v. Russia,* 2021, §§ 74-122, the applicants, who had suffered physical and psychological violence at the hands of their partners and (former) husbands, complained that the domestic authorities had failed to protect them from acts of domestic violence due to a deficient domestic legal framework and a lack of legal remedies against domestic violence; that the authorities had failed to investigate these acts of violence; and that their ill-treatment should be characterised as "torture". While the Court acknowledged that such

an additional characterisation would be important for the applicants and would be capable of influencing the public perception of domestic violence, it considered that it was not necessary in the circumstances of that case, where there was no doubt that the treatment inflicted on the applicants attained the necessary threshold of severity to fall within the scope of Article 3 of the Convention (violation of Article 3 under its substantive and procedural limbs);

- *M.S. v. Italy*, 2022, §§ 118-151 the Court found that the authorities failed in their duty to undertake a risk assessment and to take preventive measures to mitigate the risk thus established in the period pertaining to the first reported acts of domestic violence. Despite a knife attack and the applicant's complaints of abuse, harassment and threats by her husband, he was not arrested and no precautionary or protective measures were applied for 13 months. In the ensuing, second period, however, the Court held that the authorities had conducted an autonomous, proactive and comprehensive risk assessment: the police did not merely rely on the applicant's account of the facts but based their assessment on several other factors and pieces of evidence, such as interviews of her parents and witnesses of violent episodes. The police further took into account that the applicant was terrified and had been threatened and explicitly noted a number of other relevant risk factors (reported violent acts, escalation of violence and stress factors affecting the household at the time, such as separation and civil proceedings concerning real estate). They requested protective measures, which were implemented, and the prosecution opened three criminal proceedings against the perpetrator. Conversely, the Court found that, after the police and prosecutors had acted with the required special diligence, the national courts failed in their obligation to ensure that the perpetrator was tried promptly, which resulted in the expiration of the statute of limitations and, thus, impunity (violation of the substantive limb of Article 3 limb during the first period, no violation of the substantive limb of Article 3 during the second period, violation of Article 3 under its procedural limb for both periods. See also *P.P. v. Italy*, 2025, §§ 49-55, concerning a violation of the procedural limb of Article 3 due to the statute of limitations system and procedural delays, leading to the domestic violence case being statute barred);
- In *Luca v. the Republic of Moldova*, 2023, §§ 68-74, the Court criticised the dismissal by the domestic courts of the applicant's request for protection measures partly because her violent partner had, at that stage, not been convicted in a final judgment. In this regard, the Court emphasised that protection orders should be based on the victim's evidence establishing the facts to a standard of proof which is not the criminal standard of proof, because a standard "beyond reasonable doubt" is excessively high (violation of Article 3);
- In *Vieru v. the Republic of Moldova*, 2024, §§ 102-119, the Court found that the legal framework, as well as its application by the authorities, had failed to effectively address and prevent a pattern of domestic violence comprising long-term but low-intensity physical violence and unaccounted psychological violence which continued between the former spouses after the ex-husband had moved out of their shared residence. The authorities had further failed to undertake a proper risk assessment and to take adequate preventive measures (violation of Article 3);
- *Hasmik Khachatryan v. Armenia*, 2024, §§ 206-217, where the Court confirmed that Article 3 laid down a positive obligation to enable a victim of domestic violence to claim compensation in respect of non-pecuniary damage from the perpetrator of such violence, either directly from the perpetrator or indirectly through the State. In this connection, the Court reviewed all 36 GREVIO baseline evaluation reports and held that they indicated a developing consensus between the Contracting States on providing victims of domestic violence with legal means of claiming compensation for non-pecuniary damage from the perpetrators of violence (violation of Article 3);

- *Ubeda and Others v. Italy*, 2026, §§ 76-100, in which the first applicant complained of physical and psychological violence against her and her children by their father and her former cohabitant, as well as sexual violence against her. The Court *inter alia* found that the State had failed to adopt adequate and proportionate protective measures: they had been placed in a shelter, which had restrictive operational rules, for more than three years, while the alleged perpetrator had apparently not been subject to any measures. The Court held that the authorities had neither undertaken a proportionality assessment nor had they considered alternative measures (such as assigning the family home to the applicants, authorising relocation or imposing a restraining order on the alleged perpetrator). The authorities had thus imposed a heavier burden on the alleged victims of violence than on the alleged perpetrator (violation of Article 3 and Article 8);
- As regards cases involving the abuse of children[6] see *M. and M. v. Croatia*, 2015, §§ 131-163, which concerned a child who had been exposed to physical and psychological abuse at the hands of her father when she was nine years old. The authorities failed to conduct an effective investigation into the allegations of ill-treatment (violation of Article 3 as regards the first applicant (procedural); and *A.E. v. Bulgaria*, 2023, §§ 90-108, where the applicant who was fifteen years of age at the time had been repeatedly beaten by her adult boyfriend, and where the authorities had failed to conduct an effective investigation into allegations of serious violence and provide adequate protection to the applicant, both in law and in practice (violation of Article 3).

3. Article 8 of the Convention[7]

a. General principles

32. In addition to Articles 2 and 3, Article 8 plays an important role in domestic violence cases since violence impacts on bodily integrity and the right to a private life.

33. The Court has held, including in the context of domestic violence, that the concept of private life includes a person's physical and psychological integrity (*A. v. Croatia*, 2010, § 60; *Hajduová v. Slovakia*, 2010, § 46, *B. v. the Republic of Moldova*, 2013, § 71).

34. The Court has reiterated that, in certain circumstances, interference by the authorities with private and family life may become necessary in order to protect the health and rights of a person or to prevent criminal acts, including domestic violence (*Opuz v. Turkey*, 2009, § 144; *Eremia v. the Republic of Moldova*, 2013, § 72; *Volodina v. Russia*, 2019, § 86). The Court has stressed, in particular, that the authorities' view that no assistance was required as instances of domestic violence concerned a "private matter" was incompatible with their positive obligations to secure the enjoyment of the victim's Article 8 rights (*Bevacqua and S. v. Bulgaria*, 2008, § 83; *Opuz v. Turkey*, 2009, § 144). From the perspective of the suspect in domestic violence cases, the Court has held that a police caution issued in stalking-prevention proceedings may fall within the scope of Article 8, as it was capable of affecting the applicant's family life and private social life, as well as his reputation (*Giuliano Germano v. Italy*, 2023, §§ 77-81).

35. Positive obligations are inherent in the right to effective respect for private life under Article 8: these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves (*Bevacqua and S. v. Bulgaria*, 2008, § 64; *A. v. Croatia*, 2010, § 59; *Hajduová v. Slovakia*, 2010, § 45). Accordingly, the authorities are under a duty to take measures for the protection of an individual whose physical or psychological integrity is at risk from the criminal

[6] For further cases on domestic violence against children, see the Guide on the Rights of the Child, Chapter IV. B.
[7] For further Article 8 cases in the context domestic violence, see Guide on Article 8 - Right to respect for private and family life, Chapter II.B.1.

acts of a family member or (former) partner (*Kontrová v. Slovakia*, 2007, § 49; *Opuz v. Turkey,* 2009, §§ 176; *Tunikova and Others v. Russia,* 2021, § 103).

36. In the case of *Hajduová v. Slovakia*, 2010, § 49, after distinguishing it from the previous case-law concerning domestic violence resulting in death (see, in particular, *Kontrová v. Slovakia*, 2007, and *Opuz v. Turkey,* 2009, in which it found violations of Articles 2 and 13 and Articles 2, 3, and 14, respectively), the Court observed in particular that, even though the applicant's former husband's repeated threats had never materialised, they sufficed to affect the applicant's psychological integrity and well-being, so as to give rise to the State's positive obligations under Article 8 of the Convention. In reaching this conclusion, the Court considered that the perpetrator's history of physical abuse, menacing behaviour and threats towards the applicant would arouse a well-founded fear in her.

37. The positive obligations under Article 8 require the State in particular to establish, and apply in practice, an adequate legal framework that provides protection against acts of violence perpetrated by private individuals (*Bevacqua and S. v. Bulgaria*, 2008, § 65; *A. v. Croatia*, 2010, § 60; *Hajduová v. Slovakia*, 2010, § 46). In accordance with the above-mentioned duty of the State under Article 8, the Court first examines the existence and adequacy of legal mechanisms for the protection from domestic violence and then the manner of their application in practice (*Ž.B. v. Croatia*, 2017, § 49). The Court has already held that the positive obligations in cases involving domestic violence would usually require the State to adopt adequate positive measures in the sphere of criminal-law protection. Bringing the perpetrators to justice serves mainly to ensure that such acts do not remain ignored by the relevant authorities and to provide effective protection against them (*A. v. Croatia*, 2010, § 67; *Ž.B. v. Croatia*, 2017, § 51).

38. In certain domestic violence cases where the Court found a violation of Article 8, it deemed it unnecessary to examine the complaints under Article 3, given that the essence of the issue had already been dealt with in the context of Article 8 (*A. v. Croatia*, 2010, § 57 and § 80; *Kalucza v. Hungary*, 2012 § 73; compare and contrast *E.S. and Others v. Slovakia*, 2009). In such cases, the Court relied on its earlier case-law where Article 8 had been applied and decided to examine the applicants' complaints under Article 8 rather than Article 3 (*Bevacqua and S. v. Bulgaria*, 2008, § 79; *Ž.B. v. Croatia*, 2017, § 47). The reverse has also been true: the Court has also considered it not necessary to examine the complaint separately under Article 8 having found an Article 3 violation (*Valiulienė v. Lithuania*, 2018, § 87).

39. In several cases, the Court has held that the domestic authorities should exercise an even greater degree of vigilance "owing to the particular vulnerability of victims of domestic violence" (*Hajduová v. Slovakia*, 2010, § 50). Acknowledging the vulnerability of domestic violence victims in general, the Court has also pointed out the need for active State involvement in their protection (*Bevacqua and S. v. Bulgaria*, 2008, § 65; *Hajduová v. Slovakia*, 2010, §§ 41, 46). This also applies to applicants who had to witness their mother being physically and verbally abused, even though the applicants – also vulnerable as children – had not been the direct victims themselves (*Eremia v. the Republic of Moldova*, 2013, §§ 72-73).

40. For a recapitulation of the general principles under Article 8, see *A. v. Croatia*, 2010, §§ 58-60 and *Malagić v. Croatia*, 2022, §§ 56-60.

b. Examples

41. The Court has found positive obligations to arise under Article 8 in cases such as:

- *Bevacqua and S. v. Bulgaria*, 2008, §§ 66-84, which concerned the authorities' failure to take sufficient measures to protect the first applicant from domestic violence and to adopt interim custody measures without delay in a situation which affected the well-being of the second applicant (the first applicant's child) as well as the husband's obstruction of the possibility for contact between the first applicant and her child (violation of Article 8);

- *E.S. and Others v. Slovakia*, 2009, §§ 43-44, where the first applicant, a victim of domestic violence at the hands of her husband, was unable, until her divorce was finalised, to apply to sever the tenancy of the apartment they shared; the husband could still therefore enter the apartment for about a year after the allegations of domestic violence. The Court found that, given the nature and severity of the allegations, the first applicant and her children required protection immediately and that no effective remedy had been open to the first applicant by which she could have secured protection for herself and her children at the relevant time (violation of Article 8 as well as Article 3);
- *A. v. Croatia*, 2010, §§ 61-80, where the applicant had been abused by her former husband over an extended period of time and where the authorities had failed to implement protective measures ordered by the national courts to provide the applicant with protection against further violence (violation of Article 8, no need to examine Articles 2 and 3);
- *Hajduová v. Slovakia*, 2010, §§ 45-52, which concerned the lack of sufficient measures in response to the applicant's former husband's behaviour, namely the repeated death threats against the applicant, and in particular the domestic court's failure to order his detention for psychiatric treatment following his conviction. Rather, the domestic court, after not imposing a prison sentence but mandating psychiatric treatment, released the perpetrator from detention on remand: he did not undergo the required treatment in the hospital he was transported to and the court did not order the hospital to carry out such treatment, culminating in renewed threats against the applicant and her lawyer after his release from hospital (violation of Article 8);
- *Kalucza v. Hungary*, 2012, §§ 60-70, where, even though the applicant had lodged criminal complaints against her partner for assault, had repeatedly requested restraining orders and had brought civil proceedings to order his eviction from their shared apartment, the authorities had not taken sufficient measures for her effective protection within a reasonable time (violation of Article 8, no need to examine Articles 2 and 3);
- *Eremia v. the Republic of Moldova*, 2013, §§ 74-79, in which the authorities failed to take adequate measures to protect the second and third applicants, the daughters of the first applicant, from the detrimental psychological effects of witnessing their father's assaults against the first applicant in the family home (violation of Article 8 in respect of the second and third applicants);
- *B. v. the Republic of Moldova*, 2013, §§ 71-75, where the applicant's physical and moral integrity had been affected by her ex-husband's periodic abuse. The domestic authorities, by allowing the abuser to stay in the same apartment, forced the applicant to either continue enduring the risk of violence or to leave her home (violation of Article 8 as well as Article 3);
- *Ž.B. v. Croatia*, 2017, §§ 49-63, where the conduct of the domestic authorities and the implementation of criminal law mechanisms were defective to the point that the alleged domestic violence against the applicant were never finally established by a competent court of law, resulting in the husband's virtual impunity (violation of Article 8);
- *Levchuk v. Ukraine*, 2020, §§ 77-91, which concerned the national courts' dismissal of a claim by a victim of domestic violence seeking to evict her husband from their shared social housing. According to the Court, the authorities exposed the applicant and her children to a risk of further violence pending proceedings that lasted over two years and failed to ensure the applicant's effective protection from domestic violence as well as to conduct a comprehensive analysis of the risk of future psychological and physical violence (violation of Article 8);
- *Malagić v. Croatia*, 2022, §§ 56-60, where the authorities had taken various types of appropriate measures at the appropriate times to protect the applicant's physical integrity from her former husband, with due account of the recurring nature of domestic violence. In particular, the Court held that the domestic court's decision to eventually lift the restraining

order, after having regularly assessed the need to prolong the precautionary measure, was not unreasonable or manifestly disproportionate under the circumstances; the domestic court had performed a fresh assessment of the risk to the applicant's physical integrity in light of the passage of time and had noted that the former husband had been complying with the said precautionary measure throughout the past two and a half years. The Court further noted that Article 8 did not require a specific right of appeal for victims of domestic violence in matters such as restraining orders against the alleged perpetrator (no violation of Article 8);

- In *H.W. v. France*, 2025, §§ 70-93, the Court considered the concept of "marital duties" from the perspective of the State's negative obligations under Article 8 (§ 72). The applicant complained that her divorce had been granted on the exclusive ground of fault attributed to her because she had refused sexual relations with her husband for many years, which was in breach of her "marital duties" under French case-law. The Court observed that the concept of "marital duties", as set out in the domestic legal order and reaffirmed in the present case, took no account whatsoever of consent to sexual relations. In this connection, the Court disagreed with the Government's argument that consent to marry implied consent to future sexual relations and that the criminalisation of sexual assaults committed within a couple was sufficient to ensure the protection of each individual's sexual freedom – since this criminal prohibition did not nullify the civil obligation of the "marital duty" (violation of Article 8);
- *Ubeda and Others v. Italy*, 2026, § 113-121, in which the Juvenile Court's final decision to withdraw the alleged perpetrator's' parental responsibility was taken three years after the filing of the custody proceedings by the first applicant, disregarding the domestic violence allegations thereby reinforcing and prolonging her suffering as well as her perception that the violence she had endured remained undetected (violation of Article 8);
- As regards cases involving child victims of domestic violence[8] – lodged either by the children themselves and/or their mothers – see, for example, concerning child contact in the domestic abuse context,: *I.M. and Others v. Italy*, 2022, §§ 109-141 and *Luca v. the Republic of Moldova*, 2023, §§ 85-95, where the authorities failed to take into account the background of domestic abuse in the determination of a child's contact rights (violations of Article 8).

4. Article 14 of the Convention[9]

a. General principles

42. The relevant principles concerning the meaning of discrimination in the context of domestic violence can be traced back to *Opuz v. Turkey,* 2009, §§ 184-191. They were further elaborated in *Volodina v. Russia*, 2019, §§ 109-114, and were more recently summarised in and *Y and Others v. Bulgaria*, 2022, § 122.

43. In essence, the general principles under Article 14 comprise the recognition that domestic violence is a form of gender-based violence, which is in turn a form of discrimination against women (*Opuz v. Turkey,* 2009, §§ 184-191; *M.G. v. Turkey*, 2016, § 115; *Volodina v. Russia*, 2019, §§ 110; *Tkhelidze v. Georgia*, 2021; *Tunikova and Others v. Russia,* 2021, § 127; *A.E. v. Bulgaria*, 2023, § 116). The Court has reiterated that a general policy or a *de facto* situation with disproportionately prejudicial effects on a particular group may constitute discrimination against that group within the meaning of Article 14 of the Convention, even where it does not specifically target that group and where no

[8] For further cases on domestic violence against children, see the Guide on the Rights of the Child, Chapter IV. B.
[9] For further details, see the Guide on Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination.

discriminatory intent has been established (*Volodina v. Russia*, 2019, § 109; *Tunikova and Others v. Russia,* 2021, § 127).

44. In the context of violence against women, the Court considers women victims of domestic violence – if it is *prima facie* established that such violence predominantly affects women in the respondent State – to be in an unequal position, which requires action on the part of the authorities in order to redress the disadvantage associated with their sex in this context (*Vieru v. the Republic of Moldova*, 2024, § 130). Thus, the State's failure to protect women against domestic violence, regardless of the intentional or unintentional nature of this failure, may breach their right to equal protection under the law (*Opuz v. Turkey,* 2009, § 191; *Eremia v. the Republic of Moldova*, 2013, § 85; *T.M. and C.M. v. the Republic of Moldova*, 2014, § 57; *M.G. v. Turkey*, 2016, § 115; *Talpis v. Italy*, 2017, § 141; *Bălşan v. Romania*, 2017, § 78). In the same vein, general and discriminatory judicial passivity creating a climate that is conducive to domestic violence renders women victims of discrimination and may thus amount to a violation of Article 14 (*Opuz v. Turkey,* 2009, § 191; *Talpis v. Italy*, 2017, § 145). The Court has also found a violation of Article 14 where it could be established that the authorities' actions were not a simple failure or delay in dealing with domestic violence, but amounted to repeatedly condoning such violence and where these actions reflected a discriminatory attitude towards the applicant as a woman (*Eremia v. the Republic of Moldova*, 2013, § 89; *Talpis v. Italy*, 2017, § 141; *Luca v. the Republic of Moldova*, 2023, § 106).

45. When considering the definition and scope of discrimination against women, the Court has also found that it must have regard, in addition to the more general meaning of discrimination as determined in its case-law, to the provisions of more specialised legal instruments and the decisions of international legal bodies on the question of violence against women (*Opuz v. Turkey,* 2009, § 185). In this connection, the Court regularly refers to the Istanbul Convention, GREVIO, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Committee (CEDAW Committee); these legal instruments and bodies define violence against women as a form of discrimination against women (*Opuz v. Turkey,* 2009, §§ 186-190; *M.G. v. Turkey*, 2016, § 116; *Halime Kılıç v. Turkey*, 2016, § 114; *Bălşan v. Romania*, 2017, § 79; *Volodina v. Russia*, 2019, § 110; *Vieru v. the Republic of Moldova*, 2024, §§ 131, 133).

46. As regards the burden of proof, the applicant must show that domestic violence affects mainly women. If the applicant provides *prima facie* proof that domestic violence disproportionally affects women, 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 (*Volodina v. Russia*, 2019, §§ 111).

47. It is for the applicant to provide the Court with those adequate and sufficient elements of a *prima facie* case of discrimination. Adequate evidence may come from statistical data from the authorities or academic institutions or from reports by international human rights organisations and legal bodies such as the CEDAW Committee or GREVIO or from non-governmental organisations. Such statistical information and reports may assist with substantiating the *prima facie* indication of a structural bias by showing that domestic violence affects mainly women and that the general attitude of the authorities has created a climate conducive to domestic violence. For instance, the authorities' general attitude may indicate discriminatory treatment through the manner in which women are treated at police stations when they report domestic violence, judicial or general institutional passivity in providing effective protection to victims, or the authorities' failure to appreciate the seriousness and extent of the problem of domestic violence (*Opuz v. Turkey,* 2009, §§ 192-198; *Halime Kılıç v. Turkey*, 2016, §§ 117-118; *Talpis v. Italy*, 2017, § 145; *Volodina v. Russia*, 2019, § 113; *Y and Others v. Bulgaria*, 2022, § 122; *Vieru v. the Republic of Moldova*, 2024, § 134).

48. The Court has clarified, however, that for a *prima facie* case of structural bias or disproportionate effect, it is not sufficient to establish, without more, that the vast majority of victims of domestic

violence are women, while most perpetrators are men. For a *prima facie* case, the evidence must also show that these statistics reflect discriminatory policies/conduct by the authorities or the disproportionate effect of general measures rather than a broader societal issue (*B.A. v. Iceland*, 2025, §§ 87-101; *M.A. v. Iceland*, 2025, §§ 89-104; *J.S. v. Slovakia*, 2026, § 72). In the same vein, statistical data showing lower prosecution rates for sexual violence cases, compared to those for homicide and physical assault (which more frequently occur in public settings with witnesses and/or forensic evidence), must be interpreted with considerable caution – as lower prosecution rates may be explained by objective factors unrelated to discriminatory attitudes or effects. Further, the Convention does not require the application of a different standard of proof in cases of sexual or domestic violence (*B.A. v. Iceland*, 2025, §§ 92-94, 98; *M.A. v. Iceland*, 2025, §§ 94-96, 100).

49. Once such a large-scale structural bias has been shown to exist, the applicant does not need to prove that she was individually the target of prejudice on the part of the authorities. If, however, there is insufficient evidence of the discriminatory nature of legislation and practices or of their effects, proven bias on the part of any officials dealing with the particular victim's case will be required to establish a discrimination claim. In the absence of such proof, the fact that not all sanctions or measures ordered or recommended have been complied with does not in itself disclose an appearance of discriminatory intent on the basis of sex (*A. v. Croatia*, 2010, §§ 97-104; *Volodina v. Russia*, 2019, §§ 114; *Y and Others v. Bulgaria*, 2022, § 122; *J.S. v. Slovakia*, 2026, § 73).

50. For more information on the burden of proof in relation to discrimination claims in domestic violence cases, see the Guide on Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination, Chapter IV.B.

b. Examples

51. The Court has considered Article 14 in conjunction with Article 2 in, for example, the following cases:

- *Opuz v. Turkey*, 2009, §§ 184-202, where the Court noted that the discrimination was not based on the – recently reformed – legislation *per se* but resulted from the general attitude of the local authorities. The Court stated that this general attitude was reflected in the manner in which women were treated at police stations when they reported incidents of domestic violence and judicial passivity in providing effective protection to victims as well as the impunity enjoyed by the aggressors. By citing undisputed statistical data from reports by the CEDAW Committee and NGOs, the applicant was able to prove the existence of a *prima facie* indication that domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence. In view of this general and discriminatory passivity, the Court considered that the violence suffered by the applicant and her mother was to be regarded as gender-based violence which was a form of discrimination against women (violation of Article 14, read in conjunction with Articles 2 and 3);
- In *Halime Kılıç v. Turkey*, 2016, §§ 112-122, the Court held that the findings concerning gender-based discrimination in Türkiye in *Opuz* remained valid. The applicant had further submitted statistical data from CEDAW and NGO reports on the number of women who had lost their lives to domestic violence, and thus established *prima facie* that women had not benefitted from an effective protection at the time of the events (violation of Article 14 in conjunction with Article 2);
- In *Talpis v. Italy*, 2017, §§ 141-149, the authorities had not carried out any investigation in the seven months following the applicant's lodging of her complaint of domestic violence and had not implemented any measure of protection, despite the applicant's request. As a result, the Court found that the Italian authorities had in effect condoned the violent acts of the applicant's husband by underestimating them through their complacency: the applicant

had therefore been a victim of discrimination, as a woman. The Court further considered undisputed statistical data from reports by international and national bodies to establish that the applicant had *prima facie* proven that domestic violence primarily affected women and that, despite reforms, a large number of women were murdered by their partners or former partners (which the Court referred to as "femicide", using this term for the first time). (violation of Article 14 taken in conjunction with Articles 2 and 3);

- *Tkhelidze v. Georgia*, 2021, §§ 52-60, where the Court referred to statistical data showing that domestic violence mainly affected women in Georgia, and to international monitoring bodies reporting that the causes of violence against women were linked to, *inter alia*, discriminatory gender stereotyping and patriarchal attitudes, coupled with a lack of special diligence on the part of the law-enforcement authorities. In the Court's view, the State had disregarded its positive obligation to investigate police inaction that preceded the murder: there had been a pressing need to conduct a meaningful inquiry into the possibility that gender-based discrimination and bias had also been a motivating factor behind the alleged police inaction (violation of both the substantive and the procedural positive obligation under Article 2 read in conjunction with Article 14);
- In *A and B v. Georgia*, 2022, §§ 43-49, the Court found that there was no meaningful investigation despite the indices pointing to possible gender-based discrimination as at least partly informing the police inaction and the fact that the police permitted the alleged perpetrator (a police officer and their colleague) to participate in the questioning of the victim of the alleged domestic abuse. In conclusion, the Court considered the case to be yet another vivid example of how general and discriminatory passivity of the law-enforcement authorities in the face of allegations of domestic violence can create a climate conducive to a further proliferation of violence committed against victims merely because they are women (violation of the procedural and the substantive limb of Article 2 read in conjunction with Article 14);
- In *Y and Others v. Bulgaria*, 2022, §§ 122-136, the applicants, relatives of a woman killed by her husband, alleged a general complacency towards violence against women. The Court held that no concrete evidence had been presented to suggest that the domestic authorities had remained generally complacent in domestic violence cases. It was established that the Bulgarian authorities did not collect or keep comprehensive statistics about the manner in which the law-enforcement authorities handled domestic-violence cases, which was a serious omission already criticised by a number of international actors in the field. However, in the absence of comprehensive statistics, it was for the applicants to substantiate their assertion with other kinds of *prima facie* evidence, such as specialised reports. The three international reports they had submitted urged the Bulgarian authorities to combat any discrimination against women, but they did not state that the police or other authorities were consistently downplaying or unwilling to deal with domestic violence cases. The Court held that the applicant had also not established any proof of anti-female bias by the State officials dealing specifically with the victim's case, or any issues with the existing legal framework for the protection of women from domestic violence in Bulgaria (no violation of Article 14 read in conjunction with Article 2);
- In *Landi v. Italy*, 2022, §§ 101-109, the Court noted that since the adoption of *Talpis* in 2017, the Italian State had taken numerous actions with a view to implementing the Istanbul Convention, thus demonstrating a genuine political will to prevent and combat violence against women. In such an amended legal setting, the applicant did not succeed in gathering the requisite *prima facie* evidence of continued widespread inertia in the justice system that impeded the provision of effective protection to female victims of domestic violence: neither had she succeeded in making a *prima facie* showing of the discriminatory nature of the measures or practices implemented in her case. The applicant provided neither statistics nor observations from non-governmental organisations. The Court thus concluded that there

was no proof that the prosecutors in the present case had acted in a discriminatory manner or with discriminatory intent *vis-à-vis* the applicant (complaint under Article 14 read in conjunction with Article 2 manifestly ill-founded).

- *Vieru v. the Republic of Moldova*, 2024, §§ 129-135, where the Court noted at the outset that this was the eighth case in respect of the Republic of Moldova in which it had found a violation of the Convention, stemming from the authorities' response to acts of domestic violence against women and of gender-based violence against women, and that there was nothing to suggest that the situation had substantially changed at the time of the facts in the present case. The Court observed that the authorities' failure to initiate a proper investigation into the allegations of domestic violence and to take domestic violence into account in their investigation of the applicant's sister's fatal fall from the fifth floor may have been motivated by gender discrimination, given the cultural attitudes which permeated both the police and society at large in Moldova. Further, the Court considered the domestic court's reasoning and language in its refusal to extend the protection order to reflect the cultural stereotypes mentioned in GREVIO's respective Baseline report: the domestic decision relied on the absence of acts of violence in the previous ninety days (after years of documented violence), which clearly reflected the domestic court's failure to see the case beyond the "hostile nature of relationship between [the victim and the ex-husband]" (violation of Article 14, read in conjunction with Articles 2 and 3).

52. The Court has considered Article 14 read in conjunction with Article 3 in, for example, the following cases:

- In *A. v. Croatia*, 2010, §§ 94-104, the Court found that there was insufficient statistical or other information that would disclose an appearance of discriminatory treatment of women who were victims of domestic violence on the part of the Croatian authorities. The Court thus proceeded to examine whether the applicant's arguments provided *prima facie* evidence of discrimination on the basis of gender. Although the authorities had not enforced all the sanctions and measures ordered against the perpetrator in response to his acts of domestic violence, the Court did not consider this in itself to disclose an appearance of discrimination or discriminatory intent on the basis of gender in respect of the applicant (complaint under Article 14 manifestly ill-founded, in a case that was analysed under Article 8, rather than Article 3);
- In *Eremia v. the Republic of Moldova*, 2013, §§ 82-91, the authorities had *inter alia* failed to enforce the protection order in the first applicant's name, allegedly pressured her to withdraw her complaint, insulted her by suggesting reconciliation with her husband, and shielded the perpetrator from all responsibility following the prosecutor's decision to conditionally suspend the proceedings. In the Court's opinion, these factors amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman (violation of Article 14 in conjunction with Article 3);
- In *T.M. and C.M. v. the Republic of Moldova*, 2014, §§ 57-64, the Court referred to the impression, backed by the UN Special rapporteur on violence against women and statistical data, that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women. In particular, the Court noted that a prosecutor had refused to start a criminal investigation against the first applicant's ex-husband because it did not regard the injuries on the first applicant's body as severe enough, which underlined the failure to realise, or to explain to the law-enforcement authorities, the specific nature of domestic violence, which does not always result in physical injury (violation of Article 14 in conjunction with Article 3 in respect of the first applicant);
- *M.G. v. Turkey*, 2016, §§ 108-118, concerned the lack of guaranteed access of divorced women to protection measures against their ex-husbands in situations of domestic violence (violation of Article 14 taken in conjunction with Article 3);

- In *Bălşan v. Romania*, 2017, §§ 78-89, the Court considered that the combination of the authorities' passivity in the case and official statistics on domestic violence demonstrated that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in Romania. The Court concluded that the authorities' actions reflected a discriminatory attitude towards the applicant as a woman and that the violence suffered by her could be regarded as gender-based violence. Despite the adoption by the Government of a law and a national strategy on preventing and combating domestic violence, which the Court appreciated, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors, as found in the instant case, indicated that there was an insufficient commitment to take appropriate action to address domestic violence (violation of Article 14, read in conjunction with Article 3);
- In *Volodina v. Russia*, 2019, §§ 117-133, the Court noted the absence of comprehensive nationwide statistics, which had been linked to the lack of any definition of domestic-violence offences in Russian legislation, preventing domestic authorities from classifying offences as such and from gathering any consistent data about the extent of the phenomenon. Given that this failure to collect adequate information was attributable to domestic authorities, the Court rejected 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. The applicant submitted official data that constituted the closest approximation to statistics on domestic violence, which led the Court to conclude that women made up a large majority of victims of "crimes committed within the family and household", that violence against women was largely under-reported and under-recorded and that women had a much lesser chance to secure prosecution and conviction of their abusers owing to the domestic classification of such offences (violation of Article 14, taken in conjunction with Article 3);
- In *Munteanu v. the Republic of Moldova*, 2020, §§ 78-83 the Court found that the authorities had condoned the domestic violence suffered by the first applicant, reflecting a discriminatory attitude towards her as a woman, by not treating her formal complaints seriously enough, stating that she had provoked her husband's violence and by trying to convince the first applicant to keep the family together by "being nice" to her husband (violation of Article 14 in conjunction with Article 3 in respect of the first applicant);
- *Tunikova and Others v. Russia*, 2021, §§ 127-130, concerned the authorities' continued failure to adopt legislation to combat domestic violence and the absence of any form of protection orders. The Court held that the findings in *Volodina v. Russia*, 2019, which related to the general situation of women prevailing in Russia at that time, were also applicable in the circumstances of the present case (violation of Article 14, taken in conjunction with Article 3);
- In *Luca v. the Republic of Moldova*, 2023, §§ 101-107 the Court had to ascertain whether there was any proof of bias against women by the State officials who dealt *specifically* with the applicant's case, since the applicant had not argued a *prima facie* case of general and discriminatory passivity on the part of the Moldovan authorities. In this connection, the Court noted the language employed in the authorities' refusal to grant the applicant protection orders or to investigate her allegations of domestic violence, which seemed to convey stereotypes, preconceived beliefs and myths about women abusing the system put in place to protect them from domestic violence (violation of Article 14 read in conjunction with Article 3);
- In *I.C. v. the Republic of Moldova*, 2025, §§ 216-223, the Court was called upon to determine whether the failure of the authorities to protect the applicant from servitude and to investigate her allegations about servitude and sexual abuse had been the result of a discriminatory approach, stemming from a wider institutional tolerance of violence against

women and neglect of persons with disabilities. The domestic courts had been of the view that it was lawful to remove a woman with intellectual disabilities from an asylum to make her a housewife and then rejected the claim of labour exploitation, opining that any unremunerated work carried out by that woman would not represent any material added value. To the Court, these views revealed preconceived ideas of the Moldovan authorities against women and women with disabilities, namely that persons with disabilities lacked agency, that a woman's role was that of a housewife who had to tend to the needs of the man and the family and that domestic work carried out by a woman did not have any economic value (violation of Article 14 read in conjunction with Articles 3, 4 and 8).

A. Cyberviolence as a specific form of domestic violence

Article 3 of the Convention - Prohibition of torture

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

Article 8 of the Convention - Right to respect private and family life

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

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

53. The State's positive obligations apply to all forms of domestic violence, whether offline or online (*Volodina v. Russia (no. 2)*, 2021, § 49). The Court has reiterated that the phenomenon of domestic violence is not confined solely to physical violence but also encompasses psychological violence and stalking, among other forms (*Buturugă v. Romania*, 2020, § 74). The Court has acknowledged cyberviolence, or online violence, as a type of violence against women, and determined that it is closely linked with offline, or "real-life," violence. It is, therefore, to be regarded as an aspect of the complex phenomenon of domestic violence. The State's positive obligations thus extend to protecting the applicant from acts of cyberviolence by a person's intimate partner (*Volodina v. Russia (no. 2)*, 2021, § 51).

54. The Court has also noted that, in the context of domestic violence, intimate partners are frequently the likely perpetrators of acts of cyberviolence. The Court has further pointed out that cyberviolence, particularly cyberbullying, can take a variety of forms, such as cyber violations of private life and the taking, sharing and handling of information and images, including intimate ones (*Buturugă v. Romania*, 2020, § 74 and §78; *Volodina v. Russia (no. 2)*, 2021, §§ 48-49). The Court therefore accepted that acts such as improperly monitoring, accessing and saving the spouse's or partner's correspondence could be taken into account by the domestic authorities when investigating cases of domestic violence: such allegations of breach of correspondence require the authorities to conduct an examination on the merits in order comprehensively to apprehend the phenomenon of domestic violence in all its forms (*Buturugă v. Romania*, 2020, § 76).

55. The Court has addressed cyberviolence as an aspect of domestic violence in the following cases:

- *Buturugă v. Romania*, 2020, was the first case in which the Court addressed cyberviolence perpetrated by a spouse. The case concerned serious acts of physical and psychological violence including cyberviolence. With respect to the latter, the applicant complained that her former husband had improperly consulted her electronic accounts, including her Facebook account, and had made copies of her private conversations, documents and

photographs. In the applicant's view, there was a direct link between this breach of her correspondence by her former husband and the acts of violence, threats and intimidation to which she had allegedly been subjected. The Court examined these complaints under Article 3 and Article 8 taken together. According to the Court, allegations of a breach of correspondence required the authorities to conduct an examination on the merits in order comprehensively to apprehend the phenomenon of domestic violence in all its forms. The Court considered it problematic that the domestic authorities had not carried out an examination on the merits of the applicant's allegations before categorising the relevant data and communications as public in nature, as the information had supposedly been posted on social media. The Court reiterated that acts such as illicitly monitoring, accessing or saving one's partner's correspondence (regardless of its public nature) can be taken into account by the domestic authorities when investigating cases of domestic violence; moreover, the Court believed that the applicant had complained about an alleged breach of a whole set of electronic data and documents, which was not confined to the data which she had published on social media. In conclusion, the Court found that the authorities had failed to examine the merits of the complaint and had been overly formalistic in dismissing any connection between the alleged breach of correspondence and the incidents of domestic violence already brought to their attention by the applicant. The authorities had thus failed to take into consideration the many forms that domestic violence may take and had failed to comply with the State's positive obligations under Articles 3 and 8 (§§ 73-79);

- The case of *Volodina v. Russia (no. 2)*, 2021, concerned repeated acts of cyberviolence by a former partner, including non-consensual publication of intimate photographs, stalking and impersonation on social media. The applicant complained that the authorities had failed to protect her and carry out an effective investigation into repeated cyberviolence by her partner, who had created fake profiles in her name, published her intimate photos, tracked her movements with the use of a GPS device, and sent her death threats *via* social media. The Court examined the complaint under Article 8 and considered that the acts of cyberviolence in the instant case had been sufficiently serious to require a criminal-law response on the part of the domestic authorities. The publication of the applicant's intimate photographs, calculated to attract the attention of her son, his classmates and their teacher, had sought to humiliate and degrade her: the tracking of her movements by means of a GPS device and the sending of death threats on social media had caused her to feel anxiety, distress and insecurity. The Court reiterated that both the public interest and the interests of the protection of vulnerable victims from offences infringing on their physical or psychological integrity required the availability of a remedy enabling the perpetrator to be identified and brought to justice, and that civil proceedings – which might have been an appropriate remedy in situations of lesser gravity – would not have been able to achieve these objectives in the present case. Further, the authorities had not considered at any point in time what could and should be done to protect the applicant from recurrent online violence. By failing to conduct the criminal proceedings with the requisite diligence, leading to the time-barring of the prosecution, the authorities failed to ensure that the perpetrator of acts of cyberviolence be brought to justice. The resulting impunity was enough to shed doubt on the ability of the State machinery to produce a sufficiently deterrent effect to protect women from cyberviolence. The Court concluded that, even though the authorities had the legal tools to prosecute the applicant's partner, the manner in which they had actually handled the matter – notably a reluctance to open a criminal case and the slow pace of the investigation resulting in the perpetrator's impunity – disclosed a failure to discharge their positive obligations under Article 8 (§§ 50-68);
- *M.Ş.D. v. Romania*, 2024, concerned the national authorities' response to the applicant's complaint about alleged acts of online harassment committed by her former intimate partner for revenge, consisting of the public dissemination – without her consent – of

intimate photographs of her. The Court examined the complaint under Article 8 and came to the conclusion that the respondent State had violated its positive obligations: it had not put in place an adequate criminal (rather than merely civil) legal framework capable of providing the applicant with the requisite protection against the specific acts of online violence; and the national authorities failed to mount an effective investigation into the applicant's allegations before the statutory limitation period expired (§§ 122-159).

56. For the relevant international and Council of Europe materials on cyberviolence against women, see *Buturugă v. Romania*, 2020, §§ 35-40 and *Volodina v. Russia (no. 2)*, 2021, §§ 22-24.

II. Rape, Sexual Harassment, Stalking

Article 3 of the Convention - Prohibition of torture

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

Article 8 of the Convention - Right to respect private and family life

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

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

57. The Court has emphasised that the sexual abuse of women is an undoubtedly grave offense, resulting in debilitating effects on its victims. It is recognised as a particular manifestation of violence against women (*Vučković v. Croatia*, 2023, § 57).

58. The Court has examined the States' positive obligation to protect from rape, sexual harassment and stalking in a number of different contexts. According to the Court's well-established case-law, acts of rape and serious sexual assault engage fundamental values and essential aspects of "private life" within the meaning of Article 8 and amount to treatment that falls within the ambit of Article 3 (*Y v. Bulgaria*, 2020, §§ 63-64, and the cases cited therein). Contrary to cases that involve domestic violence, the Court's judgments concerning rape and sexual assault have rarely entailed an examination of criminal proceedings for structural bias or a disproportionate effect vis-à-vis women under Article 14 (see, however, the Court's recent references to case-law on domestic violence in the context of rape and sexual assault in *R.E. and Others v. Iceland*, 2026, §§ 155-159; *Z v. Iceland*, 2026, §§ 56-59). Article 14 has, however, formed part of the Court's analysis with respect to complaints about secondary victimisation in criminal proceedings (see section 3 below).

59. The Court has also examined the State's compliance with the fair-trial guarantees under Article 6 of the Convention with regard to rape allegations. For instance, in *B.G. v. France*, 2026, §§ 61-77, the Court found that there had been a failure to afford fair trial guarantees during "caution" proceedings initiated by the public prosecutor against the applicant characterising her as the "perpetrator" of a false accusation of rape following the discontinuance of investigations into her rape complaint.

60. In parallel to the rights of rape victims, alleged perpetrators have a right to a fair trial under Article 6 of the Convention.[10] The Court has found a positive obligation to adopt a victim -or context-sensitive approach (*X v. Cyprus*, 2025, §§ 116, 123) in parallel to the rights of the accused under Article 6 of the Convention in the context of the prosecution of sexual offences (see, for

[10] For further details, see the Guide on Article 6 (criminal) - Right to a fair trial, sub-section "Witnesses in sexual abuse cases".

example, *Y. v. Slovenia*, 2015, §§ 103-104). In this connection, the Court must have regard to the special features of criminal proceedings concerning sexual offences (*Aigner v. Austria*, 2012, § 37; *Vasile Pruteanu and Others v. Romania*, 2025, §§ 58-60), in which the principles of adversarial procedure/equality of arms may take a different meaning: the authorities must balance the effective protection of the rights of the defence with the need to protect the image, dignity and private life of alleged victims of sexual violence (*L. and Others v. France,* 2025, § 200; *Y. v. Slovenia*, 2015, § 104).

1. Rape and sexual abuse committed by private individuals

61. The relevant principles regarding the State's positive obligation to prosecute and investigate cases of rape and sexual abuse are set out in *M.C. v. Bulgaria*, 2003, §§ 148-153. The Court reiterated that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal law provisions that effectively punish any non-consensual sexual act, and to apply them in practice through effective investigation and prosecution (*M.C. v. Bulgaria*, 2003, § 153; see *A and B v. Croatia*, 2019, § 11, and *K.M. v. North Macedonia*, 2025, § 72, concerning the obligation to enact criminal-law provisions for the effective punishment of sexual abuse of children).

62. The Court has examined cases relating to the State's positive obligation to protect the physical integrity of the individual and to conduct effective investigations into the cases of rape under Article 8 (see, for instance, *M.C. v. Bulgaria*, 2003, §§ 149-153; *Y v. Bulgaria*, 2020, §§ 62-65, and the case-law cited therein; see also, *D.J. v. Croatia*, 2012, § 84; and *M.N. v. Bulgaria*, 2012, § 34; as well as *A.P. v. Armenia*, 2024, §§ 117-122, concerning the effective protection of children, particularly those with disabilities, against sexual abuse at school). These positive obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrence against serious acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions (*M.C. v. Bulgaria*, 2003, § 150; *X v. Greece*, 2024, § 67).

63. States' positive obligation further requires the criminalisation and effective prosecution of all non-consensual sexual acts, including in the absence of physical resistance by the victim (see, *inter alia*, with regard to non-consensual sexual acts, *M.C. v. Bulgaria*, 2003, § 166, where the applicant alleged that she was fourteen years and ten months old when she had been raped by two men; see also, *I.C. v. Romania*, 2016, § 166; *J.L. v. Italy*, 2021, § 117; *Vučković v. Croatia*, 2023, § 50; *Z v. the Czech Republic*, 2024, §§ 56-58; *Y v. the Czech Republic*, 2024, § 67). The Court has previously observed that the evolving understanding of the way rape is experienced by the victim has shown that victims of sexual abuse often put up no physical resistance because of a variety of psychological factors or because they fear violence from the perpetrator (*M.C. v. Bulgaria*, 2003, § 164; see also, the comparative study of the legal definitions of rape and sexual assault in Europe in *L. and Others v. France,* 2025, §§ 142-147, 195, 227, where the Court noted that a significant number of Council of Europe member States defined rape in terms of the absence of freely given consent rather than the use of force, threat or coercion, thereby reflecting a growing recognition that traditional models failed to address situations in which victims experience paralysis or tonic immobility).

64. The Court has further noted that pursuant to Article 36 of the Istanbul Convention, any intentional non-consensual sexual act performed on another person amounts to "sexual violence" (*H.W. v. France*, 2025, § 87; *K.M. v. North Macedonia*, 2025, § 69). In this connection, the Court attaches particular importance to the authorities' central task of examining whether there had been consent when investigating and prosecuting allegations of rape and sexual abuse (*X v. Cyprus*, 2025, § 117; see also *I.C. v. the Republic of Moldova*, 2025, § 199, concerning a woman with an intellectual disability; *L. and Others v. France,* 2025, § 249, concerning minors; see also *B.G. v. France*, 2026, §§ 70-72). Between married spouses, the consent to become married does not imply consent to future sexual relations (*H.W. v. France*, 2025, § 91, in which the Court assessed the requirement of consent to sexual relations in the context of civil law for the first time; see also *S.W. v. the United Kingdom*, 1995, § 44;

and *C.R. v. the United Kingdom*, 1995, § 42, concerning lack of immunity from prosecution for marital rape).

65. The Court has established that the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part (*Rantsev v. Cyprus and Russia*, 2010, § 274). In its case-law on violence against women, the Court has often been guided by the relevant international law standards on the matter, notably the Istanbul Convention (see, for instance, *Kurt v. Austria* [GC], 2021, §§ 167-168; and notably, concerning the positive obligations under Articles 3 and 8 and their interpretation in the light of the obligations arising out of the Istanbul Convention, *X v. Greece*, 2024, §§ 66, 72).

66. Furthermore, the Court is mindful of and endorses the growing awareness of the importance of the protection of victims' rights, having regard to the gendered understanding of violence, and will take those rights into account in its assessment of the State's compliance with their positive obligations under Articles 3 and 8 (*X v. Greece*, 2024, § 72).

67. The Court has underlined that in the international arena sexual harassment is unequivocally condemned and States are urged to effectively punish perpetrators and thus put an end to impunity (*C. v. Romania*, 2022, § 85). In this regard, the Court is of the view that the State's failure to punish perpetrators in a manner that is both deterrent and proportionate to criminal offences committed against women could suggest a certain leniency in punishing violence against women, which might in turn discourage victims from reporting such acts (*Vučković v. Croatia*, 2023, §§ 64-65, where, despite the repeated and serious sexual violence suffered by the applicant, the prison sentence imposed on the perpetrator had been replaced with community service without giving adequate reasons and without considering the interests of the victim).

68. The Court has reiterated that, like domestic violence, cases of sexual harassment do not always surface, as they continue to be significantly underreported – they often take place within personal relationships and behind closed doors, which makes it even more difficult for victims to prove the their factual allegations (*C. v. Romania*, 2022, § 79; see, *mutatis mutandis*, *Opuz v. Turkey*, 2009 § 132).

69. When confronted with two conflicting versions of the events, the Court has held that the presence of two irreconcilable versions of the facts obviously called for a context-sensitive assessment of the credibility of the statements and for verification of all the surrounding circumstances (*M.C. v. Bulgaria*, 2003, § 177; *I.C.* v. *Romania*, 2016, § 54). The Court noted that certain important investigative measures could be undertaken to determine whether the sexual intercourse had been consensual. That could be done by questioning people known to the applicant and the perpetrators, such as friends, neighbours, teachers and others who could shed light on the trustworthiness of their statements or by seeking an opinion from a specialist psychologist. In this context, the authorities could also verify whether any reasons existed for the victim to make false accusations against the alleged perpetrators (see, in particular, cases concerning sexual assault of children, see *I.G. v. Moldova*, 2012, § 43; *I.C.* v. *Romania*, 2016, § 54). In this connection, see also *B.G. v. France*, 2026, §§ 70-72, concerning Article 6 § 1, where the public prosecutor's office considered it an established fact, without providing reasons, that the applicant had consented to the sexual act and had subsequently made untrue statements about having been raped.

70. The Court has found that the respondent State failed in its procedural obligation under Article 3 in several cases involving deficiencies in an investigation and/or a prosecution of acts of rape and sexual abuse committed by private persons, when:

- the domestic authorities failed to assess the credibility of conflicting statements in a context-sensitive manner and conduct a thorough investigation into the surrounding circumstances due to the investigation's restrictive approach, which placed disproportionate emphasis on "direct" proof of rape rather than primarily focusing on the critical issue of "non-consent" (*M.C. v. Bulgaria*, 2003, §§ 177-187);

- the domestic authorities put undue emphasis on the absence of proof of resistance from the applicant and failed to take a context-sensitive approach (*I.C.* v. *Romania*, 2016, § 58);
- the domestic authorities failed to discharge their duty to carry out an effective and prompt investigation into the allegations of rape and sexual abuse (*P.M. v. Bulgaria*, 2012, §§ 66-67; *D.J. v. Croatia*, 2012, §§ 103-104; *M.N. v. Bulgaria*, 2012, § 34, due to the inactivity of the investigative authorities over a period of ten years; *W.* v. *Slovenia*, 2014, §§ 76-85; *M.A.* v. *Slovenia*, 2015, §§ 51-52; *N.D.* v. *Slovenia*, 2015, §§ 59-62, due to the delays in the proceedings; *S.Z.* v. *Bulgaria*, 2015, §§ 41-53, where the total length of the criminal proceedings lasted fourteen years**;** *I.P.* v. *the Republic of Moldova*, 2015, §§ 28-36, which concerned rape by an intimate partner; *Y. v. Slovenia*, 2015, §§ 101-116; *S.M.* v. *Russia*, 2015, §§ 67-73.

71. The Court regularly finds a violation of both Articles 3 and 8 together:

- *D.J. v. Croatia*, 2012, § 104, and *M.N. v. Bulgaria*, 2012, § 50: a violation of the respondent State's positive obligations under both Articles 3 and 8 due to the lack of an effective investigation, which showed a passive attitude as to the efforts made to properly probe the applicant's allegations of rape;
- *E.G. v. the Republic of Moldova*, 2021, § 41, where the Court held that the enforcement of sentences for sexual offences (in this case gang rape) was an integral part of the positive obligation cast on States by Articles 3 and 8. The granting of an amnesty to one of the perpetrators constituted a violation of this obligation;
- *I.C. v. the Republic of Moldova*, 2025, §§ 195-203, in which the applicant, a woman with a moderate intellectual disability, was placed with a family on a farm after having lived in a State-run neuropsychiatric asylum for 24 years. The applicant complained that the authorities had neither protected her nor effectively investigated her allegations that she had been raped and sexually abused at the farm. The domestic courts concluded that the alleged sexual acts had not occurred at all, basing their conclusion exclusively on the fact that the suspect did not have the same sexually transmitted disease as the applicant. Further, the Court underlined that the Moldovan authorities had failed to investigate and prosecute the case based on the absence of consent, but rather questioned her in a manner that was clearly inappropriate, insensitive and harmful and had been dismissive of the applicant's credible and coherent accounts of the sexual abuse, instead of questioning the incoherent witness statements of the other persons involved (violation of Articles 3 and 8);
- *X v. Cyprus*, 2025, §§ 110-126 concerned the overly hasty termination of the authorities' investigation into the applicant's allegations of gang rape after the applicant had retracted her initial statements. The authorities initiated criminal proceedings and arrested and later convicted the applicant immediately after the retraction for the commission of the offence of public mischief. This conviction was ultimately overturned on appeal, raising significant concerns about the handling of the case, *inter alia* because the first instance court had wrongly found that the retraction had been voluntary, highlighting the fact that the applicant, who was nineteen at the time, had been called in for clarifications of her statement as a complainant days after the alleged rape but in reality had ended up being interrogated as a suspect for six hours, without a lawyer, until she retracted her earlier statement in the early hours of the next day. The Court considered that the authorities' disinclination to pursue the investigation further or to initiate criminal proceedings concerning the applicant's rape allegations had been based on the applicant's sexual liberty and conduct and that her credibility appeared to have been assessed through prejudicial gender stereotypes and victim-blaming attitudes. The Court concluded that the authorities had violated their positive obligation under Articles 3 and 8 to apply the relevant criminal provisions in practice through effective investigation and prosecution;

- *A.J. and L.E. v. Spain*, 2025, where the domestic authorities had failed to conduct an effective investigation into the applicants' complaints of sexual assault by means of chemical submission. Concerning the loss and manipulation of crucial digital evidence held in police custody, the Court observed that chemical-submission cases presented particular investigative challenges, heightening the need for swift and meticulous preservation of evidence. Since such cases often entailed the suspected administration of chemical substances in public places, there were potential opportunities for witness testimony and video evidence that may not be available in other categories of sexual offences, which typically occur in private settings with no witnesses present. Circumstantial digital evidence was of paramount importance in these cases, given the transient nature of the substances involved, coupled with the victims' impaired recollection (§§ 93-95; violation of Articles 3 and 8 under their procedural limb).

72. The Court occasionally examines allegations of sexual harassment under Article 8 alone:

- *K.M. v. North Macedonia*, 2025, §§ 68-78, concerned the authorities' failure to put in place a domestic legal framework which would have provided sanctions and redress for the non-consensual sexual physical contact of a 14-year-old girl by a worker, accompanied by statements with a sexual connotation. As the man had not used force or threats when he touched the applicant inappropriately, the criminal proceedings were discontinued and the civil proceedings were dismissed, given that the applicant's claim for compensation against the perpetrator was not covered by any statutory provision (violation of Article 8);
- In *Z v. Iceland*, 2026, § 27, the Court, having regard to the nature and substance of the applicant's allegations (which concerned non-consensual touching of a sexual nature), considered it appropriate to examine the case solely under Article 8. Rather than focusing on the alleged perpetrator's initiation of sexual contact without any prior indication of consent, the prosecuting authorities concluded that he had lacked the requisite intent to harass because he asserted to have stopped the touching upon perceiving the applicant's discomfort. The Court found that the authorities had thus failed to evaluate the admitted touching against the consent-based standard articulated in both the domestic and international legal framework (§§ 41-47; violation of the procedural limb of Article 8).

2. Sexual harassment and assault in the workplace

73. The sexual harassment and assault of women in the workplace have been addressed under different Convention provisions, including Articles 3, 8 and 10 of the Convention, in, for instance:

- *D.J. v. Croatia*, 2012, §§ 102-104, where the applicant, who was employed on a private boat, claimed to have been raped by a man working on the same boat. The Court found a violation of Articles 3 and 8 in relation to the lack of an effective investigation;
- *C. v. Romania*, 2022, §§ 67-87, which involved the application of the system put in place to protect against sexual harassment in the workplace. The Court held that, due to significant flaws in the criminal investigation, the State had failed to sufficiently protect the applicant's right to respect for her private life, in particular her personal integrity, which amounted to a breach of the States' positive obligation under Article 8;
- *Vučković v. Croatia*, 2023, §§ 62-68, which concerned sexual violence committed against the applicant by a colleague in her workplace. The Court, stressing the need to combat violence against women with efficient and deterrent actions, held that the State had not sufficiently discharged its procedural obligation to ensure that the repeated sexual violence she had suffered in her workplace was dealt with appropriately. Therefore, it found a violation of Articles 3 and 8.
- In *Allée v. France*, 2024, which raised the issue of reporting of sexual harassment in the workplace, the Court examined the applicant's complaint under Article 10 of the

Convention.[11] These complaints pertained to her criminal conviction for defamation as an employee due to her allegations of harassment and sexual assault directed against her supervisor. The Court stressed the need, under Article 10, to provide appropriate protection to individuals alleging that they had been subjected to psychological or sexual harassment in the workplace of which they believe they are victims. The Court considered that the domestic courts had placed an excessive burden of proof on the applicant by requiring her to provide evidence of the acts she wished to report. It further noted that her conviction had a chilling effect, which could discourage people from reporting such serious acts as those amounting, in their view, to psychological or sexual harassment, or even sexual assault (§§ 52-55). The Court thus found a violation of Article 10;

- *N.Ö. v. Türkiye*, 2025, § 52, where the Court held that assumptions or stereotypical thinking about how a victim of sexual violence should behave – namely that the applicant should have reported the alleged rape at her workplace without delay – were not appropriate. The Court noted that a context-sensitive investigation of sexual violence at the work place, by a superior, would have required the courts to consider the timing of the complaint in the context of fears of losing one's job, reprisals and other psychological factors related to the trauma that may play a role in a victim's decision to voice a complaint (violation of Article 8).

3. Secondary victimisation in criminal proceedings[12]

74. The Court has also accepted that the positive obligations under Articles 3 and 8 include the protection of the rights of victims during criminal proceedings. These obligations require a victim-sensitive approach and measures to avoid secondary victimisation. The Court has found violations of Article 3 and/or Article 8 *inter alia* in cases where the applicant was directly confronted or even cross-examined by the accused; where the authorities used guilt-inducing and moralising language; and where the applicant was exposed to repetitive medical examinations and lengthy and repeated questioning (see *Y. v. Slovenia*, 2015, §§ 97, 101-104; *J.L. v. Italy*, 2021, § 119; *X v. Greece*, 2024, § 85; *E.A. and European Association for Combating Violence Against Women at Work v. France*, 2025, § 138; *Ubeda and Others v. Italy*, 2026, § 96; *X v. Georgia*, 2026, §§ 116-131; *I.C. v. the Republic of Moldova*, 2025, §§ 199-200, with respect to a woman with an intellectual disability).

75. The Court has further considered the prejudices and sexist stereotypes conveyed in certain language and arguments used by the prosecuting authorities or courts to constitute discrimination on the ground of sex under Article 14 (*N.T. v. Cyprus*, 2025, §§ 83-84; *L. and Others v. France*, 2025, §§ 230-232).

4. Rape and sexual abuse committed by State officials

76. Rape and sexual abuse perpetrated by State agents also trigger the State's obligations under Article 3.

77. The Court has established that the rape of a detainee by an official of the State should be regarded as an especially grave and abhorrent form of ill-treatment, given the offender's ability to exploit the vulnerability and weakened resistance of the victim. Furthermore, the Court noted that rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. Accordingly, the Court has held that the cruel acts of repeated rape while in custody at the hands of the security forces, police or prosecution interrogators amounted to torture, in violation of Article 3 (*Aydın v. Turkey*, 1997; §§ 83-88; *Maslova and Nalbandov v. Russia*, 2008, §§ 106-108).

[11] For further details, see the Guide on Article 10 - Freedom of expression.
[12] For further details, see the Key Theme on Secondary Victimisation.

78. In the context of the State's negative obligations under Article 3 in armed conflict, the Court has qualified the use of rape as a weapon of war as an act of extreme atrocity that amounts to torture (*Ukraine and the Netherlands v. Russia* [GC], 2025, § 1078). With respect to the systematic rape of women as a weapon of war, the Court noted that this practice caused unthinkable physical, emotional, and psychological suffering and that victims risked double victimisation, not only sustaining potentially dangerous and long-lasting injuries and trauma, but also running the risk of stigmatisation and rejection by their families and communities (*ibid.*).

III. Slavery, servitude, forced labour, trafficking, and forced prostitution[13]

Article 4 of the Convention – Prohibition of slavery and forced labour

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

1. General principles

a. Slavery, servitude, and forced labour[14]

79. Article 4 explicitly refers to three concepts: slavery, servitude and forced or compulsory labour. As regards the definition of "slavery" and "forced or compulsory labour", see *S.M. v. Croatia* [GC], 2020, §§ 280-283.

80. The Court has reiterated that Article 4 entails a specific positive obligation on member States to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour (*C.N. v. the United Kingdom*, 2012, § 66; also in cases concerning children, *Siliadin v. France*, 2005, § 89 and § 112; *C.N. and v. v. France*, 2012, § 105).

b. Trafficking in women

81. In addition to the three concepts, namely slavery, servitude and forced labour that are enunciated under Article 4, the Court has established in its case-law that trafficking in human beings, irrespective of whether or not it is connected to organised crime, falls within the scope of Article 4 (*S.M. v. Croatia* [GC], 2020, § 296, 303; see *ibid*., §§ 113-114, for the definition of "trafficking in human beings" under international law and its three constituent elements).

82. The general framework of the State's positive obligations under Article 4 includes:

[13] For further details, see the Guide on Article 4 - Prohibition of slavery and forced labour.
[14] For further case-law, see the Key Theme on Domestic servitude.

i. the duty to put in place a legislative and administrative framework to prohibit and punish trafficking;

ii. the duty, in certain circumstances, to take operational measures to protect victims, or potential victims, of trafficking; and

iii. a procedural obligation to investigate situations of potential trafficking.

83. In *Krachunova v. Bulgaria*, 2023, § 173, the Court further decided that Article 4 entailed a positive obligation to enable victims of trafficking to claim compensation from their trafficker in respect of lost earnings.

84. As with Articles 2 and 3, Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking. In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention. When this is the case, there will be a violation of Article 4 of the Convention if the authorities failed to take appropriate measures within the scope of their powers to remove the individual from that situation or risk (*Rantsev v. Cyprus and Russia*, 2010, § 286, with further references; and *V.C.L. and A.N. v. the United Kingdom*, 2021, §§ 148-162, a case concerning minors). Notably, the Court has observed that under the Anti-Trafficking Convention's definition, "consent" of the victim is irrelevant and provides no defence to the offences if any of the "means" of trafficking (i.e., threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, vulnerability) have been used (*Krachunova v. Bulgaria*, 2023, § 153; *T.V. v. Spain*, 2024, § 93; *I.C. v. the Republic of Moldova*, 2025, §§ 153, 171).

85. However, bearing in mind the difficulties in policing modern societies and the operational choices which must be made in terms of priorities and resources, the obligation to take operational measures must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (*Rantsev v. Cyprus and Russia*, 2010, § 287).

86. The requirements of the procedural obligation under Article 4 are informed by the converging principles under Articles 2 and 3 (*S.M. v. Croatia* [GC], 2020, §§ 309-311). The procedural obligation to investigate situations of potential trafficking does not depend on a complaint from the victim or next of kin: once the matter has come to the attention of the authorities they must act of their own motion (*Rantsev v. Cyprus and Russia*, 2010, § 288).

87. The content of this procedural obligation concerning instances of human trafficking was first set out in *Rantsev v. Cyprus and Russia*, 2010, § 288. *Rantsev* concerned the alleged trafficking and death of a young Russian woman, who had been recruited to work as a "cabaret artiste" in Cyprus (which various organisations had denounced as a cover-up for prostitution) and who then died in suspicious circumstances following a conflict with the man for whom she had worked. The Court's analysis of the procedural obligation under Article 4 draws largely on the well-established case-law concerning the domestic authorities' procedural obligation as developed under Articles 2 and 3 (*Rantsev v. Cyprus and Russia*, 2010, § 288; see also *M. and Others v. Italy and Bulgaria*, 2012, §§ 157-58; *L.E. v. Greece*, 2016, § 68; *J. and Others v. Austria*, 2017, § 123; *B.B. v. Slovakia*, 2024, § 79).

88. The general principles concerning the procedural obligation under Article 4 were summarised in *S.M. v. Croatia* [GC], 2020, §§ 308-320).

c. Forced prostitution

89. In *V.T. v. France*, 2007, §§ 24-27 and § 35, the Court noted the substantial differences in legal systems concerning the State's approach to prostitution. In the circumstances of that case, the Court did not consider it necessary to enter into the debate as to whether prostitution in itself was contrary

to, in particular, Article 3. However, it stressed that prostitution was incompatible with the dignity of a person if it was coerced. It held that an issue arose under Article 3 where a person was coerced to engage in, or continue with, prostitution. Similarly, as regards Article 4, the Court found that in the absence of coercion of the applicant to continue with prostitution, she could not be considered to have been compelled to perform "forced or compulsory labour" within the meaning of that provision.

90. The Court has found that, given the conceptual proximity of human trafficking and forced prostitution under Article 4, the relevant principles relating to human trafficking are applicable in cases concerning forced prostitution (*S.M. v. Croatia* [GC], 2020, § 307 and § 310; see, *mutatis mutandis*, *C.N. v. the United Kingdom*, 2012, §§ 65-69, concerning domestic servitude).

91. In *S.M. v. Croatia* [GC], 2020, § 300, the Court further clarified that the notion of "forced or compulsory labour" under Article 4 aims to protect against instances of serious exploitation, such as forced prostitution, irrespective of whether they are related to the specific context of human-trafficking.

2. Examples

92. The Court has found a violation of Article 4 in the context of violence against women, for example, when:

- the authorities had failed to establish a suitable framework to combat trafficking in human beings or to take operational measures to protect victims, and had subsequently failed to conduct an effective investigation into the recruitment of a young woman on its territory by traffickers (*Rantsev v. Cyprus and Russia*, 2010, §§ 294-298, 307-309);
- the investigation into the applicant's complaints of domestic servitude had been ineffective due to the absence of specific legislation criminalising such treatment (*C.N. v. the United Kingdom*, 2012, §§ 70-82);
- there had been a lack of promptness in taking operational measures and shortcomings in the response to a criminal complaint concerning human trafficking (*L.E. v. Greece*, 2016, §§ 79-86);
- domestic courts had dismissed the compensation claim of a trafficking victim against her trafficker in respect of lost earnings from human trafficking and coerced prostitution (*Krachunova v. Bulgaria*, 2023, §§ 183-198);
- the domestic proceedings, which resulted in an acquittal of the accused, had exhibited significant flaws after the applicant had made an arguable claim supported by *prima facie* evidence that she had been subjected to human trafficking and/or forced prostitution by a former policeman (*S.M. v. Croatia* [GC], 2020). In its reasoning concerning the procedural limb of Article 4, the Court noted the authorities' failure to follow obvious lines of inquiry and overreliance on the victim's testimony without taking into account the possible impact of psychological trauma on her ability to consistently and clearly relate the circumstances of her exploitation (§§ 333-347);
- the authorities had failed to protect the applicant, an intellectually disabled woman, from servitude or forced labour and sexual exploitation when removing her from State care and placing her with a family on a farm without a proper risk assessment, and had failed to comply with a number of procedural requirements when investigating and prosecuting the perpetrators (*I.C. v. the Republic of Moldova*, 2025, §§ 146-177);
- the case of *A.I. v. Italy*, 2021, §§ 100-105, did not entail a complaint under Article 4 but gave rise to a violation of Article 8. The domestic courts had not taken into consideration the applicant's vulnerable position as a victim of trafficking when assessing her parental skills and her request to maintain contact with her children.

93. Applying the principles set out above, the Court held complaints to be inadmissible or found no violation of Article 4 in:

- *M. and Others v. Italy and Bulgaria*, 2012, where the applicants, members of a family of Roma origin and Bulgarian nationality, complained that, having arrived in Italy to find work, the first applicant was detained by private individuals at gunpoint, was forced to work and steal, and was sexually abused at the hands of a Roma family. The Court found that the evidence submitted by the parties did not suffice to establish human trafficking, which would have engaged the responsibility of Bulgaria had any trafficking commenced there; and the applicants had not complained that the Bulgarian authorities had failed to investigate any potential trafficking. Conversely, the Court noted that the Bulgarian authorities had assisted the applicants and had maintained constant contact and cooperation with the Italian authorities (§§ 154-170). Accordingly, the Court decided that the complaint under Article 4 against Italy and Bulgaria was manifestly ill-founded;
- *J. and Others v. Austria*, 2017, where the applicants, three Filipino women recruited as domestic workers in Dubai, complained that they had been victims of human trafficking and forced labour. The Court noted that the procedural limb of Article 4 did not require States to provide for universal jurisdiction over trafficking offences committed abroad. Therefore, the Court concluded that there was no obligation incumbent on Austria to investigate the applicants' recruitment in the Philippines or their alleged exploitation in the United Arab Emirates. The Court further held that, from the moment when the applicants contacted the police, the Austrian authorities had complied with their duty to identify, protect and support the applicants as potential victims of human trafficking. The Court thus found that the Austrian authorities had sufficiently investigated the case and that there had been no breach of Article 4.

IV. Medical procedures on women

Article 3 of the Convention - Prohibition of torture

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

Article 8 of the Convention - Right to respect private and family life

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

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

94. Regarding certain medical procedures as a form of violence against women, the Court has referred to the Istanbul Convention, which lists forced abortions and forced sterilisation as forms of gender-based violence and makes it an obligation for Parties to criminalise such intentional acts (Article 39), prohibiting the performance of an abortion or a sterilisation surgery on a woman without her prior and informed consent (*G.M. and Others v. the Republic of Moldova*, 2022, §§ 57, 88).

A. Forced sterilisation

1. General principles

95. The Court has established that in the sphere of medical assistance, even where the refusal to accept a particular treatment might lead to a fatal outcome, the imposition of medical treatment without the consent of a mentally competent adult patient would interfere with his or her right to physical integrity (*Pretty v. the United Kingdom*, 2002, § 63, § 65). It has emphasised that it is important for individuals facing risks to their health to have access to information enabling them to assess those risks (*Y.P. v. Russia*, 2022, § 50).

96. As regards, more specifically, sterilisation, the Court has considered such medical interventions under both Article 3 and Article 8.

97. Concerning Article 8, the Court has noted that it affects a person's reproductive health status and has repercussions on various aspects of the applicant's private and family life under Article 8 (*V.C. v. Slovakia*, 2011, § 143). As it concerns one of the essential bodily functions of human beings, it bears on manifold aspects of the individual's personal integrity under Article 8, including physical and mental well-being.

98. With respect to Article 3, the Court has considered forced sterilisation to be treatment reaching the level of severity which justifies its characterisation as degrading. Prior to coming to this conclusion, the Court has noted that the sterilisation procedure and the inability to conceive was liable to arouse feelings of fear, anguish and inferiority; that the inability to have children strongly diminished the applicant's position as a woman living within a Roma community and entailed mental suffering; or that the applicant had been susceptible to feeling debased and humiliated when she learned that she had been sterilised without her or her legal guardian's prior informed consent (*N.B. v. Slovakia*, 2012, § 80; *I.G. v. Slovakia*, 2012, § 123; see also *V.C. v. Slovakia*, 2011, § 119).

99. Although sterilisation constitutes a major interference with a person's reproductive health status, it may be legitimately performed at the request of the person concerned, for example as a method of contraception, or for therapeutic purposes where the medical necessity has been convincingly established. However, the Court has considered that the imposition of such medical treatment without the consent of a mentally competent adult patient is incompatible with the requirement of respect for human freedom and dignity, one of the fundamental principles on which the Convention is based (*V.C. v. Slovakia*, 2011, §§ 106-107, in the context of the assessment of the same complaint under Article 3; *Y.P. v. Russia*, 2022, § 50).

100. The Court has also determined that States have a positive obligation to ensure effective legal safeguards to protect women from non-consensual sterilisation. It put particular emphasis on the protection of the reproductive health of women of Roma origin, who required particular protection against sterilisation because of a history of non-consensual sterilisation against this vulnerable ethnic minority (*V.C. v. Slovakia*, 2011, §§ 154-155).

101. In determining whether a forced sterilisation has breached Article 3 and/or Article 8, the Court takes into account the particular circumstances of the cases concerned, including the fact that the applicants belonged to a vulnerable population group (Roma); their young age and the fact that they were at an early stage of their reproductive life; the absence of imminent medical necessity; and the serious medical and psychological after-effects of the sterilisation procedure. For a recapitulation of relevant principles concerning forced sterilisation, see *V.C. v. Slovakia*, 2011, §§ 100-105, with further references.

2. Examples

102. The Court has applied these principles in the following cases of forced sterilisation performed on women:

- *V.C. v. Slovakia*, 2011, §§ 106-120, 143-155, where the applicant, a Roma, was sterilised without her informed consent immediately after she had given birth *via* caesarean section. The Court concluded that, although there was no indication that the medical staff had acted with the intention of ill-treating the applicant, they had nevertheless acted with gross disregard for her right to autonomy and choice as a patient. Further, due to the absence of safeguards giving special consideration to the reproductive health of the applicant as a Roma woman, she had been unable to effectively enjoy her right to respect for her private and family life. The respondent State was therefore in breach of the substantive limb of Article 3 and Article 8. Similarly, in *N.B. v. Slovakia,* 2012*,* §§ 74-81, 92-99, the Court found that the sterilisation of the applicant, a minor, had not been a life-saving medical intervention and that it had been carried out in the absence of procedural safeguards and without the informed consent of the applicant and/or her representative. Such a procedure was found to be incompatible with the requirement of respect for the applicant's human freedom and dignity (violation of Article 8 and of the substantive limb of Article 3 of the Convention; see also *I.G. v. Slovakia*, 2012, §§ 120-134, 141-146, violation of Article 8 and both limbs of Article 3);
- By contrast, in *Y.P. v. Russia*, 2022**,** during a routine medical intervention performed on the applicant (namely a caesarean section), the health professionals were suddenly faced with an unexpected situation and considered that they had to make an urgent decision whether to sterilise the applicant. The applicant brought a civil claim against the hospital, seeking compensation in respect of non-pecuniary damage in connection with her sterilisation. She alleged that the doctors had acted in breach of existing legislation and regulations in sterilising her without her consent. Prior to the operation, the applicant had signed a consent form for a Caesarean section *without* sterilisation. The Court found that the sterilisation of the applicant without her consent failed to reach the requisite severity threshold under Article 3, given that the sterilisation of the applicant during a Caesarean section was driven by the doctors' genuine concerns for her health and safety in an unexpected and urgent context and given the absence of any additional elements, such as, for instance, the applicant's particular vulnerability (§§ 36-38). However, the Court found a violation of Article 8 concerning the applicant's sterilisation without her express, free and informed consent and the lack of an adequate judicial response in that connection (§§ 52-60).

B. Issues of abortion

1. General principles

103. The Court's case-law on abortion mainly centres on Articles 3 and 8 and mostly revolves around the practical enforcement of abortion laws, with very few cases directly concerning the substantive question of access to abortion.

a. Article 8 of the Convention[15]

104. The Court has established that abortion falls within the ambit of Article 8. In this regard, the Court has reiterated that the notion of "private life" encompasses, *inter alia*, the right to personal autonomy and personal development and concerns matters such as gender identification, sexual orientation and sexual life, a person's personal autonomy, physical and psychological integrity as well as decisions both to have and not to have a child or to become parents (*A, B and C v. Ireland* [GC], 2010, § 212 and § 216; *S.F.K. v. Russia*, 2022, § 92; *M.L. v. Poland*, 2023, § 91). Similarly, the Court has found that the decision of a pregnant woman to continue or terminate her pregnancy belongs to the

[15] More detailed information can be found in the Guide on Article 8 - Right to respect for private and family life, Chapter II. B.2.

sphere of private life and autonomy (*R.R. v. Poland*, 2011, § 181; *S.F.K. v. Russia*, 2022, § 92). Moreover, the involvement of individuals in the choice of medical care and consent to such treatment (see *A.K. v. Latvia*, 2014, § 63, and the cases cited therein; *S.F.K. v. Russia*, 2022, § 92) as well as the medical interventions, including those carried out without the consent of the patient, generally lend themselves to be examined under Article 8 (see, for instance, *G.B. and R.B. v. the Republic of Moldova*, 2012; *Csoma v. Romania*, 2013, §§ 45 and 46; *L.F. v. Ireland* (dec.), 2020, § 95; *G.M. and Others v. the Republic of Moldova*, 2022, § 84).

105. The Court has previously found that legislation regulating the termination of pregnancy touches upon the sphere of a woman's private life, since whenever a woman is pregnant, her private life becomes closely connected with the developing foetus. A woman's right to respect for her private life should be weighed against other competing rights and freedoms invoked, including those of the unborn child (*A, B and C v. Ireland* [GC], 2010, § 213; see also, *Vo v. France* [GC], 2004, § 76, § 80 and § 82; *Tysiąc v. Poland,* 2007, § 106; *M.L. v. Poland*, 2023, § 94).

106. While Article 8 cannot be interpreted therefore as conferring a right to abortion, the Court has held that the prohibition of abortion, where an abortion was sought for reasons of health and well-being, amounted to an interference with the applicant's right to respect for her private life (*A, B and C v. Ireland* [GC], 2010, § 214, 216; see also, *Vo v. France* [GC], 2004, § 76; *M.L. v. Poland*, 2023, § 94).

107. In particular, the Court has established in the context of abortion that the State's obligations include both the provision of a regulatory framework of adjudication and an enforcement machinery protecting individuals' rights, and the implementation, where appropriate, of specific measures (*A, B and C v. Ireland* [GC], 2010, § 245; *Tysiąc v. Poland,* 2007, § 110; *R.R. v. Poland*, 2011, § 184).

In this connection, a broad margin of appreciation is accorded to the State as regards the circumstances in which an abortion will be permitted in a State. Yet, once the State, acting within its margin of appreciation, adopts statutory regulations allowing abortion in some situations, it must not structure its legal framework in a way which would limit real possibilities to obtain an abortion (*Tysiąc v. Poland,* 2007, § 116; *P. and S. v. Poland*, 2012, § 99). Rather, the legal framework derived for this purpose should be shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention (*A, B and C v. Ireland* [GC], 2010, § 249; *R.R. v. Poland*, 2011, § 187; *P. and S. v. Poland*, 2012, § 99; *Tysiąc v. Poland,* 2007, § 116). In the context of access to abortion, the relevant procedure should guarantee to a pregnant woman at least the possibility to be heard in person and to have her views considered. The competent body or person should also issue written grounds for the decision (*Tysiąc v. Poland,* 2007, § 117; *P. and S. v. Poland*, 2012, § 99).

b. Article 3 of the Convention[16]

108. The Court has accepted that, under certain conditions, medical interventions – including abortions – can reach the threshold of severity to be regarded as treatment prohibited by Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (*A, B and C v. Ireland* [GC], 2010, § 164).

109. The applicant in *R.R. v. Poland*, 2011, §§ 159-161, was in a situation of great vulnerability and in deep distress when she learned that the foetus could be affected with some malformation. Due to the procrastination of the health professionals, she obtained the results of the tests confirming the foetus' condition when it was already too late for her to make an informed decision on whether to continue the pregnancy or to have recourse to legal abortion as the relevant time limit had already expired. The Court concluded that, having been so shabbily treated by the doctors dealing with her case, the

[16] More detailed information can be found in the Guide on Article 3 - Prohibition of torture, Chapter II. K.

applicant had been humiliated by this treatment, which reached the minimum threshold of severity under Article 3. Conversely, in *M.L. v. Poland,* 2023, §§ 84-85, the Court accepted that travelling abroad to terminate a pregnancy due to foetal defects was psychologically arduous and that the applicant had suffered emotional and mental pain, but did not consider the alleged facts to disclose a level of severity falling within the scope of Article 3 (see, in the same vein, *A, B and C v. Ireland* [GC], 2010, §§ 163-164; *Tysiąc v. Poland,* 2007, § 66).

110. In *S.F.K. v. Russia*, 2022, §§ 67-68, the applicant had undergone an abortion procedure against her will. The Court took into account her vulnerability at the relevant time, given her apparent dependence on her parents, her young age and the fact that it was her first pregnancy, and the indifference and negligence of the health professionals towards her situation, having failed to obtain her free consent and to ensure the necessary medical care. In light of the circumstances of the case, the Court came to the conclusion that the applicant's forced abortion, combined with her feelings of fear and helplessness, was sufficiently serious to reach the level of severity required to fall within the scope of Article 3.

111. In *G.M. and Others v. the Republic of Moldova*, 2022, § 89, the alleged non-consensual medical interventions, namely abortions and birth control, concerned women with intellectual disabilities who were victims of rape by a doctor in the psychiatric asylum where they were resident but who retained full legal capacity. The Court decided that the invasive medical interventions to which they had been allegedly subjected, if established, combined with the applicants' vulnerability – resulting from elements such as their gender, disability and institutionalisation – were sufficiently serious to come within the scope of application of Article 3.

2. Examples

112. The Court considered issues of abortion *inter alia* in the following cases:

- *Tysiąc v. Poland,* 2007, §§ 114-130, concerned the refusal to perform a therapeutic abortion despite risks of serious deterioration of the mother's eyesight. The Court held that the risk of the doctor's incurring criminal responsibility could have a chilling effect on doctors when deciding whether the requirements of legal abortion are met: further, no effective mechanisms capable of determining whether the conditions for obtaining a lawful abortion existed, causing the applicant severe distress about the possible adverse consequences on her health (violation of Article 8);
- The case of *A, B and C v. Ireland* [GC], 2010, concerned three residents of Ireland who travelled from Ireland to England in order to obtain legal abortions. The Court found that the prohibition in Ireland of abortion for health and well-being reasons, based on the profound moral values of the Irish people as to the nature of life and the need to protect the life of the unborn, did not exceed Ireland's margin of appreciation – even though the Court confirmed that there was a consensus amongst a substantial majority of the Contracting States of the Council of Europe towards allowing abortion on broader grounds than accorded under Irish law. However, the Court held that Ireland had violated Article 8 by failing to implement an accessible and effective procedure by which the third applicant could have established whether she qualified under the existing right to an abortion, which permitted abortion in the event of a relevant risk to the life of the mother (§ 267);
- In *R.R. v. Poland*, 2011, §§ 159-162, and §§ 209-218, the applicant had to endure six weeks of painful uncertainty concerning the health of her foetus, as a result of the procrastination of the health professionals: when she eventually obtained the results of the tests concerning the foetal malformation, it was already too late for her to make an informed decision on whether to continue the pregnancy or to have recourse to legal abortion. The Court observed that Polish law did not contain any effective mechanisms which would have enabled the applicant to seek access to a diagnostic service, which was decisive for the

possibility of exercising her right to take an informed decision as to whether to seek legal abortion (violation of Articles 3 and 8);

- In *S.F.K. v. Russia*, 2022, the applicant, a 20-year-old mother-to-be, was forced by her parents to have her pregnancy terminated after her partner (the would-be father) was arrested. The medical intervention was carried out by a duty doctor at a public hospital, even though the applicant had made it clear both to her parents and then to the medical personnel that she wished to continue her pregnancy. As the applicant's abortion had been carried out against her will and contrary to the applicant's human dignity, the Court considered it to be an egregious form of inhuman and degrading treatment which entailed long-lasting negative physical and psychological effects (§§ 80-82). Accordingly, there had been a violation of Article 3 in its substantive part. The Court also found a violation of Article 3 in its procedural limb due to the authorities' failure to open a criminal investigation into the applicant's credible claims of forced abortion and their failure to conduct an effective investigation and to take effective measures to ensure the punishment of the applicant's parents and the relevant health professionals (§§ 83-89);
- In *G.M. and Others v. the Republic of Moldova*, 2022, §§ 84-150, the applicants, women with intellectual disabilities institutionalised in a neuropsychiatric residential asylum, alleged that they were victims of forced abortions and forced contraception after having been raped by a doctor in the asylum. The Court observed that the allegations of non-consensual contraception could not be seen separately from those of non-consensual abortions, as they could raise issues about a systemic denial of agency to institutionalised women with intellectual disabilities concerning their reproductive rights (§ 90). The Court found that the applicable legal framework lacked the safeguard of requiring valid, free and prior consent from intellectually disabled persons prior to medical interventions, lacked adequate criminal legislation to dissuade the practice of non-consensual medical interventions carried out on intellectually disabled persons in general and women in particular, and lacked other mechanisms to prevent such abuse. Thus, the Court found a violation of the substantive limb of Article 3 (with respect to the forced abortions regarding all three applicants, with respect to forced contraception only regarding the first applicant, for lack of *prima facie* evidence provided by the other two), in addition to a violation of the procedural limb of Article 3;
- In *A.M. and Others v. Poland* (dec.), 2023, the applicants complained about a Constitutional Court judgment which removed one of the provisions legalising abortion and thus effectively banned access to legal abortion on the grounds of foetal malformation. The Court found that they had failed to advance any convincing evidence that they were at a real risk of being directly affected by the judgment and thus they could not arguably claim to be "victims" of a violation of the Convention (§§ 86-88);
- *M.L. v. Poland,* 2023, §§ 175-176, concerned the prohibition of abortion on grounds of a foetal abnormality following amendments introduced by the Constitutional Court, resulting in the applicant travelling abroad for an abortion. The Court noted the lack of required foreseeability, given that the Constitutional Court's ruling had interfered with the legal abortion procedure for which the applicant had qualified, deprived the applicant of the proper safeguards against arbitrariness (violation of Article 8; see also, *A.R. v. Poland*, 2025, §§ 118-120).

V. Specific forms of violence against women in the context of expulsion[17]

Article 3 of the Convention - Prohibition of torture

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

113. In certain cases, the expulsion of women may give rise to a risk of ill-treatment in the destination country that would qualify as violence against women.

114. In expulsion cases generally (beyond the specific context of violence against women), the Court has established a three-tier *ex nunc* risk assessment of the situation in the destination country: the situation in the country in general; the applicant's membership of a group that is systematically at risk of ill-treatment; and individual risk factors of the specific applicant (see *Khasanov and Rakhmanov v. Russia* [GC], 2022).

115. According to the Court, the first step of this assessment would be the examination of whether the existence of a group systematically exposed to ill-treatment has been established. The Court has specified that applicants belonging to an allegedly targeted vulnerable group should not describe the general situation, but the existence of a practice or of a heightened risk of ill-treatment for the group of which they claim to be members. As a next step, they should establish their individual membership of the group concerned, without having to demonstrate any further individual circumstances or distinguishing features. However, in cases where – despite a possible well-founded fear of persecution in relation to certain risk-enhancing circumstances – it cannot be established that a group is systematically exposed to ill-treatment, the applicant remains under an obligation to demonstrate the existence of further special distinguishing features which would place them at a real risk of ill-treatment (*Khasanov and Rakhmanov v. Russia* [GC], 2022, §§ 97-100).

A. Female genital mutilation ("FGM")

116. According to the Court's well-established case-law, subjecting a woman to female genital mutilation ("FGM") amounts to ill-treatment contrary to Article 3 of the Convention (*Collins and Akaziebie v. Sweden* (dec.), 2007; *Omeredo v. Austria* (dec.), 2011; *Izevbekhai and others v. Ireland* (dec.), 2011, § 73; *R.B.A.B. and Others v. the Netherlands*, 2016, § 54; *A.L. v. the United Kingdom* (dec.), 2018, § 36). In this regard, the Court has already acknowledged that women in Nigeria, Sudan and Guinea have traditionally been subjected to FGM and, to some extent, continue to be. In its case-law concerning applicants who feared being subject to FGM in their country of origin, which pre-dates the three-tier test established in *Khasanov and Rakhmanov v. Russia*, 2022, the Court has had regard, in the first place, to the legal position on FGM in respective countries, and then to the personal circumstances of the applicants (*Izevbekhai and others v. Ireland* (dec.), 2011, § 74 and § 76; *Sow v. Belgium*, 2016, § 68; *R.B.A.B. and Others v. the Netherlands*, 2016, § 55; *A.L. v. the United Kingdom* (dec.), 2018, §§ 38-39).

117. The Court has declared the applicants' complaints under Article 3 inadmissible as being manifestly ill-founded, in:

- *Collins and Akaziebie v. Sweden* (dec.), 2007, where a mother and her daughter complained that, if expelled from Sweden to Nigeria, there was a real risk that they would be subjected

[17] See the Guide on Immigration for more details.

to FGM. The Court concluded that the applicants had failed to substantiate that they would face a real and concrete risk of being subjected to FGM upon returning to Nigeria;

- *Omeredo v. Austria* (dec.), 2011, where the applicant, a Nigerian national, complained that she would be subjected to FGM if the Austrian authorities expelled her to Nigeria, where no effective protection would be available. The domestic courts had decided that, instead of requesting asylum in Austria, the applicant could have availed herself of an internal flight alternative and relocated to another part of Nigeria, where she would not be subjected to FGM. The applicant did not deny that she would be safe from FGM in other parts of Nigeria but argued that it was almost impossible to make a living in another area of Nigeria as a single woman without family support. The Court considered that, due to her education and work experience, there was reason to believe that she would be able to build up her life in Nigeria;
- *Izevbekhai and others v. Ireland* (dec.), 2011, §§ 72-81, which concerned the complaint that there was a real risk that the second and third applicants would be exposed to FGM if they were to be expelled to Nigeria. Having considered that the first applicant and her husband could protect the second and third applicants (i.e. her daughters) from FGM if the second and third applicants returned to Nigeria, the Court concluded that the applicants had failed to substantiate that they would face a real and concrete risk of being subjected to FGM;
- *R.W. and others v. Sweden* (dec.), 2012, where a mother and her twin daughters claimed that that they would be killed or subjected to FGM and ill-treatment if deported to Kenya. The Court concluded that the applicants had failed to substantiate that they would face a real and concrete risk of being subjected to FGM;
- *A.L. v. the United Kingdom* (dec.), 2018, §§ 35-44, where the applicant complained that if she were removed to Nigeria, she would be forced to undergo FGM. Having considered the option available to the family of relocating internally to another part of Nigeria, which would alleviate the risk of FGM, the Court concluded that the applicant had failed to substantiate that she would face a real risk of being subjected to FGM.

118. The Court has found no violation of Article 3 the following cases, which relate to expulsion due to an alleged risk of FGM:

- *Sow v. Belgium*, 2016, §§ 62-69, concerned a national of Guinea, who claimed asylum in Belgium as she had partially undergone FGM and complained that her return to Guinea would expose her to a further risk of FGM. In view of the applicant's personal situation at the time of the judgment (she was 28 years old, had received a progressive education, and was herself opposed to FGM, as was her mother, the only family member with whom she was still in contact), the Court concluded that the applicant could not be considered a particularly vulnerable young woman (§ 68). It further held that the applicant had not demonstrated that she would face a real and concrete risk of being subjected to FGM if returned to Guinea;
- Similarly, in *R.B.A.B. and Others v. the Netherlands*, 2016, §§ 54-59, the applicants, five Sudanese nationals, complained that their daughters would be at risk of being exposed to FGM if they were expelled to Sudan, due to tribal and social pressure. Taking into account the personal circumstances of the applicants and their situation as a family, the Court held that their removal would not give rise to a violation of Article 3.

B. Other forms of ill-treatment

119. The Court has examined several other complaints about an alleged risk of ill-treatment in cases of deportation that also concerned violence against women:

- The case of *H.N. and others v. Sweden* (dec.), 2012, was lodged by a woman and her five minor children. The first applicant, who had been raped in her home by five unknown men, alleged that the sixth applicant had been conceived when she was raped. The applicants arrived in Sweden later and applied for asylum and residence permits. They complained before the Court that if returned to Burundi from Sweden, they would be persecuted and killed by persons linked to the authorities. Claiming that the first applicant's mental health was fairly poor, they were also afraid of being marginalised and stigmatised because of how the sixth applicant had been conceived. The Court first considered that there were no indications that the situation in Burundi was so serious that the return of the applicants would constitute, in itself, a violation of Article 3. The Court also noted that medical treatment was available in Burundi and that the first applicant had previously received treatment there. It added that the fact that the first applicant's circumstances would be less favourable than those she enjoyed in Sweden could not be regarded as decisive from the point of view of Article 3. Thus, the Court declared the application inadmissible;
- *N. v. Sweden*, 2010, concerned two Afghan nationals, the applicant and her husband who separated following their arrival in Sweden. The applicant's request for a divorce was refused by the Swedish courts as they had no authority to dissolve the marriage as long as the applicant did not reside legally in the country. Her husband informed that court that he opposed a divorce. In the meantime, the applicant unsuccessfully requested the Migration Board to re-evaluate her case and stop her deportation, claiming that she risked the death penalty in Afghanistan as she had committed adultery by starting a relationship with a Swedish man and that her family had rejected her. The applicant complained that the enforcement of the deportation order to Afghanistan would be in violation of Article 3. Reports from international organisations indicated that women in Afghanistan, particularly those without male support or protection—due to divorce, separation or return from exile in Europe—faced significant challenges. In the special circumstances of the present case, the Court held that there were substantial grounds for believing that if deported to Afghanistan, the applicant would face various cumulative risks of reprisals from her husband, his family, her own family and from the Afghan society. Accordingly, the Court found that the implementation of the deportation order against the applicant would breach Article 3 (§§ 51-62);
- *R.D. v. France*, 2016, concerned a Guinean national who was married to a Christian and had suffered from several violent reprisals on the part of her Muslim brothers and father. Her father, an influential imam, had her husband arrested. The applicant left Guinea for France. The applicant claimed that a return to Guinea would expose her to a real risk of treatment contrary to Article 3. The Court concluded that returning the applicant to Guinea would amount to a breach of Article 3 for a combination of reasons, as the Court did not consider Guinea capable of ensuring protection for women in the situation of the applicant. Further, the Court did not consider it likely that the applicant's family would treat her better after her return to Guinea than before her departure.

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Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (https://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

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