

Domestic violence

***Kontrová c. Slovaquie* - [7510/04](#) ([French](#)) ([Arabic](#))**

Arrêt 31.5.2007 [Section IV]

Article 2

Obligations positives

Article 2-1

Vie

Défaut de protection par la police de la vie des enfants de la requérante, qui ont été tués par leur père : *violation*

▪ *En fait* : En novembre 2002, la requérante porta plainte contre son mari pour coups et blessures. Elle fit également un long récit des violences physiques et psychologiques que son mari lui faisait subir. Accompagnée de son mari, elle tenta ensuite de retirer sa plainte. Sur le conseil d'un policier, elle la modifia et les actes allégués de son mari furent alors qualifiés d'infraction mineure n'appelant pas d'autre action. Dans la nuit du 26 au 27 décembre 2002, la requérante et un parent appelèrent la police locale pour signaler que le mari de l'intéressée détenait une arme à feu et menaçait de se donner la mort et de tuer ses enfants. L'époux de la requérante ayant quitté les lieux avant l'arrivée de la patrouille de police, les policiers emmenèrent la requérante chez ses parents et lui demandèrent de passer au poste de police en vue de la rédaction d'un procès-verbal officiel sur l'incident. Les 27 et 31 décembre 2002, la requérante se rendit au poste de police pour demander où en était sa plainte. Plus tard, le 31 décembre 2002, le mari de la requérante tua leurs deux enfants avant de se donner la mort. Les juridictions nationales jugèrent que cette tuerie était la conséquence directe de l'inaction des policiers. En 2006, les policiers impliqués dans l'affaire furent condamnés pour faute professionnelle. La Cour constitutionnelle rejeta pour incompétence les demandes de réparation pour dommage moral formées par la requérante.

▪ *En droit* : Article 2 – La police locale était au courant de la situation au sein de la famille de la requérante depuis le dépôt de plainte de novembre 2002 et l'appel d'urgence de décembre 2002. En réaction, la police était tenue, de par les dispositions du droit en vigueur, d'enregistrer la plainte de la requérante, d'ouvrir sur le champ une enquête et une procédure pénales contre le mari de la requérante, de noter scrupuleusement les appels d'urgence et d'informer la prochaine équipe de service de la situation et enfin de prendre les mesures nécessaires s'agissant de l'allégation selon laquelle le mari de la requérante avait une arme à feu et menaçait de s'en servir. Toutefois, l'un des policiers concernés avait même aidé la requérante et son mari à modifier la plainte déposée en novembre 2002 de sorte que les faits reprochés puissent être traités comme une infraction mineure n'appelant pas d'autre action. Comme les juridictions internes l'ont constaté et le Gouvernement l'a reconnu, les policiers avaient manqué à leurs obligations et la mort des enfants de la requérante avait été la conséquence directe de ces manquements.

▪ *Conclusion* : violation (à l'unanimité).

▪ Article 13 – La requérante aurait dû pouvoir demander réparation du dommage moral subi mais elle n'a bénéficié d'aucun recours à cette fin.

- *Conclusion* : violation (à l'unanimité).
- Article 41 – 25 000 EUR en réparation du dommage moral.

Branko Tomašić and Others v. Croatia - [46598/06](#) (French) (Arabic)
Judgment 15.1.2009 [Section I]

Article 2

Positive obligations

Failure to take all reasonable steps to protect lives of applicants' relatives from a person who had previously been convicted of threatening to kill them: *violation*

Facts: The applicants are the relatives of M.T. and her infant child, V.T., who were both killed in August 2006 by M. M., the child's father. M.T. and M.M. had lived together in the home of M.T.'s parents until July 2005, when M.M. had moved out after disputes with the members of the household. In January 2006 M.T. had lodged a criminal complaint against M.M. for death threats he had allegedly made. In the ensuing proceedings, the authorities had obtained a psychiatric opinion which stated that M.M. was likely to repeat similar offences in the future and stressed the need for his psychiatric treatment. On 15 March 2006 the Municipal Court had found M.M. guilty of repeatedly threatening to kill himself, M.T. and their child with a bomb. He was sentenced to five months' imprisonment and, as a security measure, was ordered to have compulsory psychiatric treatment during his imprisonment and afterwards as necessary. On 28 April 2006 the second-instance court had reduced that treatment to the duration of his prison sentence. M.M. served his sentence and was released on 3 July 2006. On 15 August 2006 he shot M.T. and V.T. dead, before committing suicide by turning the gun on himself.

Law: The findings of the domestic courts and the conclusions of the psychiatric examination undoubtedly showed that the authorities had been aware that the threats made against the lives of M.T. and V.T. were serious and that all reasonable steps should have been taken to protect them. The Court noted several shortcomings in the authorities' conduct. Firstly, no search of M.M.'s premises or vehicle had been carried out during the initial criminal proceedings against him, despite the fact that he had repeatedly threatened to use a bomb. In addition, although the psychiatric report drawn up for the purposes of the criminal proceedings had stressed the need for M.M.'s continued psychiatric treatment, the Government had failed to prove that such treatment was actually and properly administered. The documents submitted showed that his treatment in prison had consisted of conversational sessions with prison staff, none of whom was a psychiatrist. Further, neither the relevant regulations nor the court's judgment ordering compulsory psychiatric treatment had provided sufficient details on how the treatment was to be administered. Indeed, the general rules provided for in the Enforcement of Prison Sentences Act did not properly address the issue of the enforcement of obligatory psychiatric treatment as a security measure, thus leaving it completely to the discretion of the prison authorities to decide how to act. In the Court's view, such regulations needed to be sufficient in order to ensure that the purpose of criminal sanctions was properly satisfied. Lastly, M.M. was not examined prior to his release from prison in order to assess whether he still posed a risk to M.T. and V.T. The Court therefore concluded that the relevant domestic authorities had failed to take adequate measures to protect the lives of M.T. and V.T.

Conclusion: violation (unanimously).

Article 41 – EUR 40,000 in respect of non-pecuniary damage.

Opuz v. Turkey - [33401/02](#) (French) (Arabic)

Judgment 9.6.2009 [Section III]

Article 2

Positive obligations

Article 2-1

Life

Fatal injuries sustained by applicant's mother in domestic violence case in which authorities had been aware of the perpetrator's history of violence: *violation*

Article 3

Degrading treatment

Inhuman treatment

Positive obligations

Failure of authorities to take adequate measures to protect applicant and her family from domestic violence: *violation*

Article 14

Discrimination

Failure of judicial system to provide adequate response to serious domestic violence: *violation*

Facts: The applicant's mother was shot and killed by the applicant's husband in 2002 as she attempted to help the applicant flee the matrimonial home. In the years preceding the shooting the husband had subjected both the applicant and her mother to a series of violent assaults, some of which had resulted in injuries which doctors had certified as life-threatening. The incidents had included beatings, an attempt to run the two women down with a car that had left the mother seriously injured and an assault in which the applicant was stabbed seven times. The incidents and the women's fears for their lives had been repeatedly brought to the authorities' attention. Although criminal proceedings had been brought against the husband for a range of offences, including death threats, serious assault and attempted murder, in at least two instances they were discontinued after the women withdrew their complaints, allegedly under pressure from the husband. However, in view of the seriousness of the injuries, the proceedings in respect of the running down and stabbing incidents continued to trial. The husband was convicted in both cases. For the first offence, he received a three-month prison sentence, which was later commuted to a fine, and for the second, a fine payable in instalments. The violence culminated in the fatal shooting of the applicant's mother, an act the husband said he carried out to protect his honour. For that offence, he was convicted of murder in 2008 and sentenced to life imprisonment. He was, however, released pending appeal and renewed his threats against the applicant, who sought the authorities' protection. It was

not until seven months later, following a request for information from the European Court, that measures were taken to protect her.

The Committee of Ministers Recommendation on the Protection of Women against Violence (Rec(2002)5 of 30 April 2002) stated that member States should introduce, develop and/or improve national policies against violence where necessary. It recommended, in particular, the penalisation of serious violence against women and the introduction of measures designed to ensure that victims can initiate criminal proceedings and receive effective protection, and that prosecutors regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute.

Law: Article 2 – The Court reiterated that where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

(a) *Foreseeability of risk:* The case disclosed a pattern of escalating violence against the applicant and her mother that was sufficiently serious to have warranted preventive measures and there had been a continuing threat to their health and safety. It had been obvious that the husband had a record of domestic violence and there was therefore a significant risk of further violence. The situation was known to the authorities and, two weeks' before her death, the mother had notified the public prosecutor's office that her life was in immediate danger and requested police intervention. The possibility of a lethal attack had therefore been foreseeable.

(b) *Whether the authorities took appropriate measures:* The first issue was whether the authorities had been justified in not pursuing criminal proceedings against the husband when the applicant and her mother withdrew their complaints. The Court began by examining practice in the member States. It found that, although there was no general consensus, the practice showed that the more serious the offence or the greater the risk of further offences, the more likely it was that the prosecution would proceed in the public interest even when the victim had withdrawn her complaint. Various factors were to be taken into account in deciding whether to pursue a prosecution. These related to the offence (its seriousness, the nature of the victim's injuries, the use of a weapon, planning), the offender (his record, the risk of his reoffending, any past history of violence), the victim and potential victims (any risk to their health and safety, any effects on the children, the existence of further threats since the attack) and the relationship between the offender and the victim (the history and current position, and the effects of pursuing a prosecution against the victim's wishes). In the applicant's case, despite the pattern of violence and use of lethal weapons, the authorities had repeatedly dropped proceedings against the husband in order to avoid interfering in what they perceived to be a "family matter" and did not appear to have considered the motives behind the withdrawal of the complaints, despite being informed of the death threats. As to the argument that the authorities had been prevented from proceeding by the statutory rule that prevented a prosecution where the complaint had been withdrawn unless the criminal acts had resulted in a minimum of ten days' sickness or unfitness for work, that legislative framework fell short of the requirements inherent in the State's positive obligations with regard to protection from domestic violence. Nor could it be argued that continuing with the prosecution would have violated the victims' rights under Article 8 of the Convention, as the seriousness of the risk to the applicant's mother had rendered such intervention necessary.

Turning to the Government's submission that there had been no tangible evidence that the mother's life was in imminent danger, the Court observed that it was not the case that the authorities had assessed the threat posed by the husband and concluded that detention was disproportionate. Rather they had failed to address the issues at all. In any event, in domestic violence cases perpetrators' rights could not supersede victims' rights to life and physical and mental integrity.

Lastly, the Court noted that the authorities could have ordered protective measures under the Family Protection Act (Law no. 4320) or issued an injunction restraining the husband from contacting, communicating with or approaching the applicant's mother or entering defined areas. In sum, they had not displayed due diligence and had therefore failed in their positive obligations to protect the applicant's mother's right to life.

(c) *Effectiveness of investigation*: The criminal proceedings arising out of the death had been going on for more than six years and an appeal was still pending. This could not be described as a prompt response by the authorities to an intentional killing where the perpetrator had already confessed.

In conclusion, the criminal-justice system, as applied in the applicant's case, had not acted as an adequate deterrent. Once the situation had been brought to the authorities' attention, they had not been entitled to rely on the victims' attitude for their failure to take adequate measures to prevent threats to physical integrity being carried out.

Conclusion: violation (unanimously).

Article 3 – The authorities' response to the husband's acts had been manifestly inadequate in the face of the gravity of his offences. The judicial decisions had had no noticeable preventive or deterrent effect and had even disclosed a degree of tolerance, with the husband receiving a short prison sentence (commuted to a fine) for the running down incident and, even more strikingly, a small fine, payable in instalments, for stabbing the applicant seven times. Furthermore, it had not been until 1998, when Law no. 4320 came into force, that Turkish law had provided specific administrative and policing measures to protect against domestic violence, and even then, the available measures and sanctions were not effectively applied in the applicant's case. Lastly, it was a matter of grave concern that the violence against the applicant had not ended and that the authorities had continued to take no action. Despite the applicant's request for help, nothing was done until the Court requested the Government to provide information about the protective measures it had taken. In short, the authorities had failed to take protective measures in the form of effective deterrence against serious breaches of the applicant's personal integrity by her former husband.

Conclusion: violation (unanimously).

Article 14, in conjunction with Articles 2 and 3 – The Court noted that under the relevant rules and principles of international law accepted by the vast majority of States, a failure – even if unintentional – by the State to protect women against domestic violence breached their right to the equal protection of the law. Reports by the Diyarbakır Bar Association and Amnesty International, which were not contested by the Government, indicated that the highest number of reported victims of domestic violence was in Diyarbakır, where the applicant had lived at the relevant time. All the victims were women, the vast majority of Kurdish origin, illiterate or of a low level of education and generally without any independent source of income. The reports also suggested that domestic violence was tolerated by the authorities and that the available remedies did not function effectively. Police officers did not investigate complaints but sought to assume the role of mediator by trying to convince victims to return home and drop their complaints. Delays in issuing and serving injunctions were frequent and the courts treated such proceedings as a form of divorce action. Perpetrators of domestic violence

did not receive deterrent sentences, which were mitigated on the grounds of custom, tradition or honour.

Domestic violence thus affected mainly women, while the general and discriminatory judicial passivity in Turkey created a climate that was conducive to it. The violence suffered by the applicant and her mother could therefore be regarded as having been gender-based and discriminatory against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors, as in the applicant's case, indicated an insufficient commitment on the part of the authorities to take appropriate action to address domestic violence.

Conclusion: violation (unanimously).

Article 41 – EUR 30,000 in respect of non-pecuniary damage.

***E.S. and Others v. Slovakia* - [8227/04](#) ([French](#)) ([Arabic](#))**

Judgment 15.9.2009 [Section IV]

Article 3

Positive obligations

Failure to provide adequate protection against domestic violence: *violation*

Facts – In March 2001 the first applicant left her husband and petitioned for divorce. The following month she lodged a criminal complaint against her husband alleging that he had ill-treated her and the children (the second, third and fourth applicants) and sexually abused one of the daughters. In May 2001 she sought an interim injunction requiring her husband to move out of their jointly rented council flat. However, the district court dismissed that application on the grounds that it had no power to restrict the husband's right to use the property. The applicants were therefore forced to move away from their home, family and friends and two of the children had to change school. The district court's decision was upheld on appeal, after the regional court had noted that the first applicant would be entitled to terminate the joint tenancy after a final decision in the divorce proceedings and, in the meantime, could apply for an order requiring her husband to "refrain from inappropriate behaviour". The first applicant was granted a divorce in May 2002 and later obtained custody of the three children. In June 2003 the husband was convicted of ill-treatment, violence and sexual abuse and given a four-year prison sentence. Following a constitutional complaint by the applicants that they had not received proper protection, the Constitutional Court ruled that there had been no violation of the first applicant's constitutional rights (as she could have applied for an order requiring her husband to refrain from inappropriate behaviour), but that the lower courts had failed to take appropriate action to protect the children. It made no award of compensation as it considered that the finding of a violation provided sufficient just satisfaction. In July 2003, following the introduction of new legislation in January 2003, the first applicant obtained an order excluding her husband from the flat.

Law – Articles 3 and 8: (a) *Admissibility* – The Government had argued that, by not applying for an order restraining the husband from inappropriate behaviour, the first applicant had failed to exhaust domestic remedies. In the Court's view, however, such an order would not have constituted an effective remedy. The husband stood accused of physical assault and sexual abuse. An order restraining the husband from inappropriate behaviour would only have required him to refrain from acts already prohibited by the criminal law, which had not proved an adequate deterrent in the past. It would also have afforded substantially less protection than an exclusion order.

Nor did the Court accept the Government's submission that the children had received adequate redress through the Constitutional Court's decision. They had not been awarded any financial compensation. Nor was there much force in the Government's submission that, by not applying for the correct form of order, the first applicant was partly responsible for the situation, as the Constitutional Court itself had found that the courts below should have granted the application for an exclusion order of their own initiative in order to protect the children. Neither the husband's conviction more than two years later nor the subsequent amendment to the Code of Criminal Procedure had afforded adequate redress to three minors who had been forced to leave the family home because of the State's protracted failure to protect them from an abusive parent.

Conclusion: admissible (unanimously).

(b) *Merits* – Given the nature and severity of the allegations, the first applicant and the children had required protection immediately, not one or two years later. The first applicant had been unable to apply to sever the tenancy until her divorce was finalised in May 2002, or to apply for an order excluding her former husband from the matrimonial home until after the law was amended in January 2003. She had been without effective protection for herself and the children during the interim. The respondent State had therefore failed to discharge its positive obligations towards them.

Conclusion: violation (unanimously).

Article 41: EUR 8,000 in respect of non-pecuniary damage.

***N. v. Sweden* - [23505/09](#) (French) (Arabic)**

Judgment 20.7.2010 [Section III]

Article 3

Expulsion

Risk of ill-treatment in case of deportation to Afghanistan of a woman separated from her husband:
deportation would constitute a violation

Facts – The applicant and her husband are Afghan nationals who arrived in Sweden in 2004. Their requests for asylum were refused several times. In 2005 the applicant separated from her husband. In 2008 her 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 the 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.

Law – Article 3: The Court had to establish whether the applicant's personal situation was such that her return to Afghanistan would contravene Article 3. Women were at particular risk of ill-treatment in Afghanistan if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. The United Nations High Commissioner for Refugees had observed that Afghan women, who had adopted a less conservative lifestyle, such as those returning from exile in Iran or Europe, continued to be perceived as transgressing entrenched social and religious norms and might, as a result, be subjected to domestic violence and other forms of punishment ranging from isolation and stigmatisation to honour crimes for those accused of bringing shame on their families, communities or tribes. As the applicant had resided in Sweden since 2004, she might be perceived as not conforming to the gender roles ascribed to her by Afghan society. Moreover, she had attempted to divorce her husband and had demonstrated a real and genuine intention of not living with him. However, if the spouses were deported to Afghanistan, separately or together, the applicant's husband might decide to resume their married life together against her wish. The new Shiite Personal Status Law required, *inter alia*, women to comply with their husbands' sexual requests and to obtain permission to leave the home, except in emergencies. According to various human-rights reports on Afghanistan, up to 80% of Afghan women were affected by domestic violence, the authorities did not prosecute in such cases and the vast majority of women would not even seek help. To approach the police or a court, a woman had to overcome the public opprobrium affecting women who left their houses without a male guardian. The Court could not ignore the general risk indicated by statistics and international reports. As regards the applicant's extramarital relationship, she had failed to submit any relevant and detailed information to the Swedish authorities. Nevertheless, should her husband perceive the applicant's filing for divorce or other actions as an indication of an extramarital relationship, adultery was a crime under the Afghan Penal Code. Should the applicant succeed in living separated from her husband in Afghanistan, women without male support and protection faced limitations on conducting a normal social life, including the limitations on their freedom of movement, and lacked the means of survival, which prompted many to return to abusive family situations. The results of such "reconciliation" were generally not monitored and abuse or honour crimes upon return were often committed with impunity. There were no strong reasons to question the veracity of the applicant's statement that she had had no contact with her family for almost five years and therefore no longer had a social network or adequate protection in Afghanistan. In the special circumstances of the

present case, 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 which fell under Article 3.

Conclusion: deportation would constitute a violation (unanimously).

A. v. Croatia - [55164/08 \(French\)](#) ([Arabic](#))

Judgment 14.10.2010 [Section I]

Article 8

Positive obligations

Article 8-1

Respect for private life

Failure of authorities to implement court orders intended to afford applicant protection from violent husband: *violation*

Facts – Between November 2003 and June 2006, the applicant’s husband, who has been diagnosed as suffering from severe mental disorders with a tendency towards violent and impulsive behaviour, subjected the applicant to repeated psychological and physical violence including death threats and blows and kicks to the head, face and body. She was often abused in front of their daughter, who was herself the subject of violence on several occasions. The marriage ended in divorce in 2006. Between 2004 and 2009 various sets of criminal and minor-offences proceedings were brought against the husband and a number of protective measures were ordered. However, only some were implemented. For example, an eight-month prison sentence handed down in October 2006 following death threats was not served and the husband failed to undergo psycho-social treatment that had been ordered. He is currently serving a three-year prison sentence for making death threats against a judge.

Law – Article 8: In view of the applicant’s credible assertions that over a prolonged period her husband had presented a threat to her physical integrity and repeatedly attacked her the State authorities had been under a positive obligation to protect her from his violent behaviour. However, they had failed adequately to discharge that obligation. Firstly, in a case such as this, involving a series of violent acts by the same person against the same victim, the applicant would have been more effectively protected if the authorities had viewed the situation as a whole, rather than resorting to numerous sets of separate proceedings. Secondly, although various protective measures had been ordered, many of them – such as periods of detention, fines, psycho-social treatment and even a prison term – were not enforced, thus undermining their deterrent effect. There had been lengthy delays in securing compliance with the recommendations that had been made for continuing psychiatric treatment and even then this had only been in the context of criminal proceedings unrelated to the violence against the applicant. Indeed, it was still uncertain whether the husband had in fact undergone the treatment. In sum, the authorities’ failure to implement the measures aimed at addressing the psychiatric condition which appeared to be at the root of the husband’s violent behaviour and at providing the applicant with protection against further violence had left her at risk for a prolonged period.

Conclusion: violation (unanimously).

Article 14: The applicant had not produced sufficient prima facie evidence to show that the measures or practices adopted in Croatia in the context of domestic violence, or the effects of such measures or practices, were discriminatory.

Conclusion: inadmissible (manifestly ill-founded).

Article 41: EUR 9,000 in respect of non-pecuniary damage.

(See also *Opuz v. Turkey*, no. 33401/02, 9 June 2009, Information Note no. 120)

***Hajduová v. Slovakia* - [2660/03](#) ([French](#)) ([Arabic](#))**

Judgment 30.11.2010 [Section IV]

Article 8

Positive obligations

Failure to sufficiently protect wife from violent husband: *violation*

Facts – In August 2001 the applicant's former husband A. verbally and physically assaulted her in a public place. Although the applicant suffered only minor injuries, out of fear for her life and safety she and her children moved out of the family home and into the premises of a non-governmental organisation. A week later A. repeatedly made death threats against the applicant. Criminal proceedings were instituted against him and he was remanded in custody. In the course of the proceedings, expert witnesses established that A. was suffering from a serious personality disorder. On 7 January 2002 a district court convicted him and ordered him to undergo in-patient psychiatric treatment. A. was then transferred to a hospital, but did not receive any treatment and was released a week later. Following his release, A. repeatedly threatened the applicant and her lawyer. He was again arrested and the district court subsequently arranged for his psychiatric treatment in accordance with its previous order.

Law – Article 8: Even though A.'s repeated threats had never materialised, they were enough to affect the applicant's psychological integrity and well-being, so as to give rise to the State's positive obligations under Article 8. A. had been convicted as a result of his violent behaviour towards the applicant, but following his transfer to hospital the district court had failed to discharge its statutory obligation to order the hospital to detain him and provide him with the necessary psychiatric treatment. It was therefore the domestic authorities' inactivity that had enabled him to continue to threaten the applicant and her lawyer. Only after the applicant filed a fresh criminal complaint did the police take it upon themselves to intervene. Consequently, the lack of sufficient measures in response to A.'s behaviour, and in particular the district court's failure to order his detention for psychiatric treatment following his conviction, had amounted to a breach of the State's positive obligations under Article 8.

Conclusion: violation (unanimously).

Article 41: EUR 4,000 in respect of non-pecuniary damage.

***E.M. v. Romania* - [43994/05](#) (French) (Arabic)**

Judgment 30.10.2012 [Section III]

Article 3

Effective investigation

Failure in criminal proceedings to take measures necessary to assess credibility of an alleged act of domestic violence that was supported by forensic evidence: *violation*

Facts – The applicant alleged that at about 5 p.m. on 4 March 2004, while in the matrimonial home with her daughter, she received a telephone call from her husband asking her to leave and threatening to kill her. Her husband later returned to the flat and threatened to beat her until she required hospital treatment and to kill her if she did not move out. He threw several objects to the ground and struck her, all in the presence of her daughter,. On 5 March 2004 the applicant took her daughter for a medical examination, at which it was concluded that the child was psychologically traumatised. On 6 March 2004 the applicant went to hospital; the medical certificate stated that she presented traumatic injuries necessitating eight to nine days treatment that could have been sustained on 4 March 2004 and have resulted from repeated blows with a hard object. The couple divorced in October 2004.

On 6 March 2004 the applicant lodged a criminal complaint against her husband with the police. On 3 May 2004 she brought criminal proceedings accusing him of threats, insults, assault and other acts of violence. In a judgment of 14 March 2005, the court of first instance upheld her complaint in part and ordered her husband to pay a fine. He appealed. In a judgment of 9 June 2005, the county court upheld his appeal, quashed the judgment delivered at first instance and directed the husband's acquittal of the charges of assault and other acts of violence.

Law – Article 3 (procedural aspect): The applicant had complained to the national courts of domestic violence by her husband on 4 March 2004. She had joined to her complaint two copies of medical certificates confirming she had been assaulted. A statutory framework had been in place to enable her to complain about the assault and to seek protection from the authorities. Although she had complained only of one incident, the authorities were nonetheless under a duty to act with diligence and to take the matter seriously where the alleged existence of an act of domestic violence, supported by forensic evidence, was brought to their attention. By a judgment of 14 March 2005, the first-instance court, which had carried out the judicial investigation into the case and examined the evidence directly, had ordered the husband to pay a fine in respect of assault and other acts of violence. On appeal, however, the county court had overturned that judgment and, reinterpreting the evidence, ordered his acquittal. While the domestic authorities had had a difficult task in assessing the evidence, as they had been confronted with two conflicting versions of the events and had no "direct" evidence, the investigators nevertheless had a duty to take the necessary measures to evaluate the credibility of the different accounts and elucidate the facts. In addition, the county court had justified its decision on the grounds that there was no evidence that the husband had carried out the assault. In reaching that decision, it had rejected a witness statement on the grounds that it was not credible and found that the applicant's statement was not sufficiently detailed with regard to the offences charged. Without calling into question the outcome of the investigation, the county court had reached its decision on the basis of the same evidence as that which the first-instance court had found sufficient to find the husband criminally liable. It had thus had sufficient plausible information before it to make it aware of the need to conduct a thorough verification of the entire case. Yet, while noting failings in the investigation which might be considered

to undermine the first-instance judgment, the county court had closed the proceedings without taking steps to remedy them. Had it played an active role and used its powers under domestic law, especially where, as here, the possibility of domestic violence had been raised, it could have ordered that new evidence be sought in order to elucidate the facts. Instead, despite having sufficient elements to enable it to order further investigations, the county court had closed the case, so making the applicant bear the responsibility for the lack of evidence. Accordingly, the criminal-law system, as applied in the applicant's case, had proved incapable of leading to the identification and punishment of the person responsible for the assault, leaving possible avenues for investigation unexplored. Finally, when making the first of her complaints the applicant had requested assistance and protection from the authorities for herself and her daughter against her husband's aggressive conduct. Despite the fact that the statutory framework provided for cooperation between the various authorities and for non-judicial measures to identify and ensure action was taken in respect of domestic violence, and although the medical certificate provided prima facie evidence of the applicant's allegations, it did not appear from the case file that any steps had been taken to that end. This indicated a lack of cooperation between the authorities responsible for intervening in a sensitive area of public interest, which had impeded clarification of the facts. Such cooperation had been all the more desirable in the instant case, in that the alleged assault had occurred in the presence of a minor. Thus, the manner in which the investigation had been conducted had not afforded the applicant the effective protection required by Article 3.

Conclusion: violation (unanimously).

Article 41: EUR 7,500 in respect of non-pecuniary damage.

Valiulienė v. Lithuania - [33234/07](#) ([French](#)) ([Arabic](#))

Judgment 26.3.2013 [Section II]

Article 3

Degrading treatment

Inhuman treatment

Effective investigation

Investigative and procedural flaws resulting in prosecution of domestic-violence case becoming time-barred: *violation*

Facts – In February 2001 the applicant applied to a district court to bring a private prosecution after allegedly being beaten by her partner on five separate occasions in January and February 2001. In January 2002 the court forwarded her complaint to the public prosecutor, ordering him to start his own pre-trial criminal investigation; the applicant's partner was then charged with systematically causing the applicant minor bodily harm. The investigation was twice halted by police investigators for lack of evidence, but on each occasion was reopened on appeal on the grounds that it had not been sufficiently thorough. The public prosecutor discontinued the investigation in June 2005 as a legislative reform in May 2003 meant that prosecutions in respect of minor bodily harm now had to be brought by the victim privately unless the case was of public interest or the victim could not protect her rights through a private prosecution. The district court upheld that decision. When the applicant lodged a new request to bring a private prosecution, this was refused without examination of the merits as the prosecution had become time-barred.

Law – Article 3: The applicant had suffered ill-treatment that was sufficiently serious to reach the minimum level of severity required to engage the Government's positive obligation under Article 3. In reaching that conclusion, the Court took into account the physical injuries sustained by the applicant (in the form of bruising and scrapes to the face and body), the aggravating circumstance that the violence had continued over a period of time with five episodes within a month, and the feelings of fear and helplessness to which the applicant had been subjected. On this latter point, it noted that the psychological impact was an important aspect of domestic violence.

The Court went on to examine whether the domestic legal system, and in particular the applicable criminal law, had failed to provide practical and effective protection of the rights guaranteed by Article 3. The Court was satisfied that at the material time Lithuanian law provided a sufficient regulatory framework in that it was a criminal offence to cause minor bodily harm. Although after 1 May 2003 such offences could only be prosecuted on a complaint by the victim, who in turn became the private prosecutor, the public prosecutor nevertheless retained the right to open a criminal investigation if the offence was of public importance or the victim was unable to protect his or her interests.

As to the manner in which the law was implemented in the applicant's case, the applicant had contacted the district court almost immediately with a view to bringing a private prosecution and had provided specific descriptions of each incident and the names of witnesses. While the authorities had initially acted without undue delay, the case was transferred to a public prosecutor after the applicant's partner repeatedly failed to appear at court. Thereafter, the investigation was twice discontinued for lack of

evidence only to be reopened after senior prosecutors ruled that it had not been sufficiently thorough. This revealed a serious flaw on the part of the State.

Furthermore, even though the legislation had changed in May 2003, the prosecutor had decided to return the case to the applicant for private prosecution only in June 2005, two years after the legislative reform. That decision was upheld despite the risk of the prosecution becoming time-barred and despite the fact that, even after the reform, it was still possible for the public prosecutor to pursue the investigation if it was in the public interest. As a result of that decision and even though the applicant acted without delay, her application for a private prosecution was dismissed as being out of time.

The practices at issue in the instant case and the manner in which the criminal-law mechanisms had been implemented had therefore not provided the applicant adequate protection.

Conclusion: violation (six votes to one).

Article 41: EUR 5,000 in respect of non-pecuniary damage.

(See also: *Opuz v. Turkey*, no. 33401/02, 9 June 2009, Information Note no. 120; *Sandra Janković v. Croatia*, no. 38478/05, 5 March 2009, Information Note no. 117; *Hajduová v. Slovakia*, no. 2660/03, 30 November 2010, Information Note no. 135; *Kalucza v. Hungary*, no. 57693/10, 24 April 2012; and *Đorđević v. Croatia*, no. 41526/10, 24 July 2012, Information Note no. 154)

Eremia v. the Republic of Moldova - [3564/11](#) ([French](#)) ([Arabic](#))
Judgment 28.5.2013 [Section III]

Article 3

Inhuman treatment

Positive obligations

Failure of authorities to take adequate measures to protect applicant and her daughters from domestic violence: *violation*

Article 8

Positive obligations

Article 8-1

Respect for private life

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

Article 14

Discrimination

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

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

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

anxiety amounting to inhuman treatment within the meaning of Article 3, which was therefore applicable.

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

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

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

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

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

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

The combination of these factors clearly demonstrated that the authorities' actions were not a simple failure or delay in dealing with violence against the first applicant, but

amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman. The findings of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences only went to support the impression that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in the Republic of Moldova and its discriminatory effect on women.

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

Article 41: EUR 15,000 jointly in respect of non-pecuniary damage.

(See also: *E.S. and Others v. Slovakia*, no. 8227/04, 15 September 2009, [Information Note no. 122](#); *Opuz v. Turkey*, no. 33401/02, 9 June 2009, [Information Note no. 120](#); *A. v. Croatia*, no. 55164/08, 14 October 2010, [Information Note no. 134](#); *Hajduová v. Slovakia*, no. 2660/03, 30 November 2010, [Information Note no. 135](#); *Kalucza v. Hungary*, no. [57693/10](#), 24 April 2012; and *Valiulienė v. Lithuania*, no. 33234/07, 26 March 2013, [Information Note no. 161](#))

***Civek v. Turkey* - [55354/11](#) ([French](#)) ([Arabic](#))**

Judgment 23.2.2016 [Section II]

Article 2

Positive obligations

Authorities' failure to protect life of domestic-violence victim: *violation*

Facts – The applicants' mother was a victim of domestic violence. In 2009 she was residing with her three children in a reception centre for battered women. On 15 October 2010, further to her complaint, the applicants' father was remanded in custody and charged with inflicting grievous bodily harm on his wife. On 12 November 2010 the latter withdrew her complaint and he was released. This release was accompanied by a judicial supervision measure requiring him to report to the police or gendarmerie station at 5 p.m. every Tuesday and Friday. He was also ordered to refrain from any violent or threatening behaviour against his wife, and to leave the marital home immediately and stay away for a period of three months. Those measures were accompanied by a warning that he would be arrested and imprisoned if he failed to comply with the obligations imposed by the court. On 23 November and 17 December 2010 the applicants' mother lodged fresh complaints against her husband for harassment and death threats. The latter was charged with insult, threats and non-compliance with the protective measures ordered. On 26 December 2010 the applicants were heard as witnesses and confirmed their mother's submissions. On 14 January 2011 the applicants' mother was murdered in the street by her husband, who stabbed her 22 times. He was found guilty of murder and sentenced to life imprisonment.

Law – Article 2: Domestic violence is a phenomenon which may take a variety of forms – including physical attacks, psychological violence and insults – and which is not confined to the present case. It is a widespread problem confronting all member States, and is particularly alarming in contemporary European societies. It does not always come out into the open because it is frequently takes place in the framework of personal relationships or restricted circles. Moreover, it does not exclusively affect women: men too can be victims of domestic violence, as can children, who often suffer such violence directly or indirectly. The Court had regard to the seriousness of this problem in examining the facts of the case.

The police were aware of the acts of violence committed by the applicants' father against his wife. Moreover, they had been informed of the likelihood of the murder by the numerous complaints lodged by the applicants' mother and the applicants' witness statements. Consequently, the authorities knew, or ought to have known, that she was likely to suffer a lethal assault. In view of the circumstances, that risk could be considered real and imminent. However, although the authorities did take some action, they failed to adopt sufficiently practical measures to prevent the murder of the applicants' mother as from 12 November 2010, the date of her husband's release. The police merely registered a further complaint from the victim without taking any further action against her husband, even though he was already known to the police services. The prosecution at no stage adopted any practical, targeted measures to effectively protect the applicants' mother, whereas they could legally have arrested her husband for failing to comply with the court orders. The authorities therefore failed to take the steps which they could reasonably have taken in order to prevent the implementation of a definite and imminent threat to the life of the applicant's mother.

Conclusion: violation (unanimously).

Article 41: 50,000 EUR jointly in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

M.G. v. Turkey - [646/10](#) (French) ([Arabic](#))

Judgment 22.3.2016 [Section II]

Article 3

Positive obligations

Lack of access to protection measures against domestic violence for divorced or unmarried women: *violation*

Article 14

Discrimination

Lack of access to protection measures against domestic violence for divorced or unmarried women: *violation*

- *Facts* – The applicant, a victim of persistent domestic violence which had caused her multiple injuries, filed a criminal complaint in 2006 against her husband, after having left the family home for a shelter run by a voluntary association. She instituted divorce proceedings. Her physical and mental state was quickly recorded, and as a result she applied for and was granted the protection measures made available by law to the victims of domestic violence; these were renewed on several occasions until the marriage was dissolved. The injunctions issued in respect of her husband concerned, for example, his removal from the matrimonial home, with a ban on approaching or disturbing the applicants or her children by communicating with them, on pain of a prison sentence. In 2007 the divorce was pronounced. Following the entry into force, in 2012, of new legislation removing any distinction between married and unmarried persons in this respect, she was again granted protection measures, at her request. In 2012 the prosecutor brought criminal proceedings against the applicant's former husband; these were still pending.

- *Law* – Article 3: As the applicant's allegations were both credible and serious, Article 3 of the Convention was applicable. The State had therefore been under an obligation to ensure an adequate legislative framework and to react promptly.

- (a) *Absence of a prompt criminal-law response* – In judicial proceedings concerning cases which involved violence against women, the national authorities had a duty to take account of the victim's particular psychological, physical and/or material fragility and vulnerability, and to assess the situation as rapidly as possible. Indeed, the requirement for an appropriate and prompt response was expressly set out in the [Istanbul Convention](#)*.

- While the Criminal Code did not contain specific provisions on domestic violence, there existed a general offence of physical assault. It was clear from the medical reports issued shortly after the complaint was lodged that the applicant was suffering from physical injuries, a major depressive disorder and chronic post-traumatic stress as a result of the violence. Despite this, the public prosecutor waited five months before issuing a warrant for the applicant's ex-husband to be brought in for questioning. Similarly, when pronouncing the divorce in 2007 the family court found that the evidence established that the alleged violence had occurred. There was thus nothing to explain the public prosecutor's passivity for such a long period – more than five years and six months after the complaint – before bringing the criminal proceedings, which proceedings were still pending.

- In the Court's view, the manner in which the domestic authorities had conducted the criminal proceedings were also characterised by the generalised and discriminatory judicial passivity already noted in domestic-violence cases against Turkey and which created a climate conducive to such violence.

- (b) *Lack of access to protective measures after the divorce* – A civil-law procedure existed for applying to the family-affairs judge for protection. The applicant had used this procedure while she was still married. However, between the date her divorce was pronounced and the entry into force of the new law, the legislative framework did not afford the applicant, as a divorced woman, protection from domestic violence and the matter was left to the interpretation and discretion of the family-affairs judge.

- Although the applicant was not subjected to renewed physical violence by her former husband during this period, the psychological impact, an important aspect of domestic violence, had to be taken into consideration. Neither the state of fear in which the applicant had lived – she had taken refuge in a women's shelter for two and half years – nor the ongoing impact on her personal, social and family life of the violence to which she had been subjected could be ignored. The fact that the applicant had been granted protective measures against her ex-husband following the entry into force of the new law confirmed that her physical integrity continued to be threatened, a situation that could give rise to feelings of fear, vulnerability and uncertainty.

- (c) *Conclusion* – Violence against women was, as the Preamble to the Istanbul Convention made clear, one of the crucial social mechanisms by which women were forced into a subordinate position compared with men. It was unacceptable that the applicant should have been required to live in fear of her ex-husband's actions, many years after having complained to the national authorities about the violence to which she had been subjected.

- In the light of the above, the Court found that the respondent State had failed to comply with its positive obligations under Article 3.

- *Conclusion*: violation (unanimously).

- The Court also found, unanimously, that there had been a violation of Article 14 read in conjunction with Article 3 of the Convention.

- Article 41: EUR 19,500 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

- (See also *Opuz v. Turkey*, 33401/02, 9 June 2009, [Information Note 120](#); and *Durmaz v. Turkey*, [3621/07](#), 13 November 2014; see also the Factsheet on [Domestic violence](#))

- * Council of Europe Convention on preventing and combating violence against women and domestic violence, which was ratified by Turkey in 2012 and entered into force in 2014.

***Halime Kılıç v. Turkey* - [63034/11](#) ([French](#)) ([Arabic](#))**

Judgment 28.6.2016 [Section II]

Article 2

Positive obligations

Article 2-1

Life

Insufficient consideration given to risk of fatal injuries in context of domestic violence:
violation

Article 14

Discrimination

Persistent climate of impunity in matters of domestic violence, mainly to the detriment of women: *violation*

- *Facts* – Fatma Babatlı (the applicant’s daughter) lodged a criminal complaint alleging domestic violence and seeking protection measures. She had to repeat her request several times because her husband failed to comply with the protection orders and injunctions she had obtained. After he had been found to be in possession of knives, he was briefly placed in police custody and subsequently released. Several months later the applicant’s daughter was killed by her husband, who then committed suicide.

- *Law*

- Article 2: The protection orders and injunctions had turned out to be totally ineffective, firstly because of the excessive delays in serving them (19 days for the first order and 8 weeks for the second), and secondly because her husband was never punished for failing to comply with those measures.

- Furthermore, despite the fact that her husband had clearly been shown to represent a danger, the criminal court had refused to grant the prosecution’s request to place him in pre-trial detention, without assessing the risks for his wife, including the risk of death or further possible attacks. The climate of impunity thus created had allowed the husband to continue assaulting his wife without fear of prosecution.

- Regarding the victim’s alleged ability to seek refuge in a shelter with her seven children, neither the prosecutor nor the police had attempted to direct her to a facility adapted to her needs. The Court found that the national authorities had had a duty to take account of the particularly precarious and vulnerable psychological, physical and material situation in which the wife had found herself and to assess it accordingly, whilst offering her appropriate support.

- *Conclusion*: violation (unanimously).

- Article 14 in conjunction with Article 2: Following the judgment in *Opuz v. Turkey* – in which the Court had found that domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey had created a climate that was conducive to domestic violence – numerous initiatives had been taken in Turkey, such as the enactment of a new law offering greater protection (Law no. 6284) and the

ratification of the Istanbul Convention*. However, the facts of the present case had predated those reforms.

- Referring to reports by the NGO [Human Rights Watch](#) and the Committee for the Elimination of Discrimination against Women (CEDAW**), and producing figures recording the numbers of women who had lost their lives as a result of assaults, the applicant had provided prima facie evidence that at the relevant time women had not received effective protection against assault. The Court had itself been able to observe, in the light of those reports and statistics, the extent and persistence of violence against women, particularly domestic assault, in Turkish society; and the fact that the number of women's shelters, at the relevant time, was considered insufficient.

- The above finding of impunity reflected a certain denial on the part of the national authorities, both regarding the seriousness of instances of domestic violence and regarding the particular vulnerability of the victims. In regularly turning a blind eye to the repeated acts of violence and death threats against the applicant's daughter, the domestic authorities had created a climate that was conducive to domestic violence. It was unacceptable that the victim had been left to face her husband's violence without resources or protection.

- *Conclusion*: violation (unanimously).

- Article 41: EUR 65,000 in respect of non-pecuniary damage.

- (See also *Opuz v. Turkey*, 33401/02, 9 June 2009, [Information Note 120](#); *M.G. v. Turkey*, 646/10, 22 March 2016, [Information Note 194](#); and the Factsheet on [Domestic violence](#))

- * [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), ratified by Turkey in 2012 and entered into force in 2014.

- **Committee set up by the [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#), ratified by Turkey in 1985.

***Bălșan v. Romania* - [49645/09](#) ([French](#)) ([Arabic](#))**

Judgment 23.5.2017 [Section IV]

Article 14

Discrimination

Failure of authorities to take appropriate action to address domestic violence against women: *violation*

Article 3

Positive obligations

Failure of authorities to take adequate measures to protect applicant from domestic violence: *violation*

- *Facts* – The applicant reported that her ex-husband had been violent towards her throughout their marriage. During their divorce proceedings his assaults against her had intensified and she made various complaints to the police. Before the European Court the applicant complained that she had been subjected to violence by her husband and that the State authorities had done little to stop it or to prevent it from happening again.

- *Law* – Article 3: The physical violence suffered by the applicant had been documented in forensic medical and police reports. It was concerning that at the investigation level and before the courts the national authorities had considered the acts of domestic violence as being provoked and thus not serious enough to fall within the scope of the criminal law. The question of impunity for acts of domestic violence was at the heart of the case. The applicant had made full use of the remedy provided by criminal procedure but the national authorities, although aware of her situation, had failed to take appropriate measures to punish the offender and prevent further assaults.

- *Conclusion*: violation (unanimously).

- Article 14 read in conjunction with Article 3: The failure by a State to protect women against domestic violence breached their right to equal protection under the law. Official statistics showed that domestic violence was tolerated and even perceived as normal by a majority of people in Romania and that a rather small number of reported incidents were followed by criminal investigations. The number of victims of domestic violence had increased every year, the vast majority of victims being women. Those considerations were in line with previous findings by the United Nations Committee on Elimination of Discrimination against Women.*

- The national authorities had been well aware that the applicant's husband had repeatedly subjected her to violence. They had deprived the national legal framework of its purpose by finding that she had provoked the domestic violence, that the violence had not presented a danger to society and was not therefore severe enough to require criminal sanctions. In doing so, they had acted in a way that was clearly inconsistent with international standards on violence against women and domestic violence in particular.** The authorities' passivity in the case was also apparent from their failure to consider any protective measures for the applicant, despite her repeated requests to the police, the prosecutor and the courts. Bearing in mind the particular vulnerability of victims of domestic violence, the authorities ought to have looked into the applicant's situation more thoroughly.

- The violence suffered by the applicant could be regarded as gender-based violence, which was a form of discrimination against women. Despite the adoption by the Government of a law and national strategy on preventing and combatting domestic violence, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors, as found in the case, indicated that there was an insufficient commitment to take appropriate action to address domestic violence. The criminal-law system, as operated in the case, did not have an adequate deterrent effect capable of ensuring the effective prevention of unlawful acts by the applicant's husband against the personal integrity of the applicant.

Conclusion: violation (unanimously).

Article 41: EUR 9,800 in respect of non-pecuniary damage.

(See also *Opuz v. Turkey*, 33401/02, 9 June 2009, [Information Note 120](#); *T.M. and C.M. v. the Republic of Moldova*, [26608/11](#), 28 January 2014; *Talpis v. Italy*, [41237/14](#), 2 March 2017; and, more generally, the Factsheet on [Violence against Women](#))

* Thirty-fifth session of the United Nations Committee on the Elimination against Women, concluding comments in respect of Romania, [CEDAW/C/ROM/CO/6](#), 15 May to 2 June 2006.

** See the [Council of Europe Convention on preventing and combatting violence against women and domestic violence](#) ("the Istanbul Convention").

Talpis v. Italy - [41237/14](#) (French) (Arabic)

Judgment 2.3.2017 [Section I]

Article 2

Positive obligations

Article 2-1

Life

Failure to assess risk to life in time in domestic-violence case: *violation*

Article 3

Effective investigation

Positive obligations

Delays in mounting adequate response to acts of domestic violence: *violation*

Article 14

Discrimination

Shortcomings in protection of woman against domestic violence: *violation*

- *Facts* – In June and August 2012 the police were called out twice to the applicant's home to deal with instances of domestic violence. Her husband was fined for unauthorised possession of a lethal weapon and a knife was seized. The applicant left the matrimonial home and was provided with accommodation by an association. On 5 September 2012 she lodged a criminal complaint for bodily injury, ill-treatment and threats of violence, and requested emergency protection measures.

- During her first police interview in April 2013 the applicant altered her statements: she stated that she had been struck but not threatened and that she had since returned to the matrimonial home. In the light of those changes, which the applicant explained on pressure exerted by her husband, the investigation was partly discontinued (in respect of her complaint of ill-treatment and threats of violence) but continued in respect of her complaint of bodily injury (the husband was convicted in October 2015 and ordered to pay a fine).

- On 25 November 2013 the police were called out for the third time. A door had been broken down and the floor was strewn with bottles of alcohol, but neither the applicant nor the couple's son showed any traces of violence: the applicant merely stated that her husband had been drinking and needed a doctor, adding that she had lodged a complaint against him in the past but had since changed her allegations. The husband was taken to hospital. The same night he was fined for public drunkenness. He subsequently returned home armed with a kitchen knife, with which he stabbed the applicant several times. Their son had been killed while attempting to stop the attack.

- In January 2015 the applicant's husband was sentenced to life imprisonment: in addition to murder and attempted murder, he was found guilty of ill-treatment after witnesses attested to previous acts of violence.

- *Law*

- Article 2: The State has a positive obligation to take preventive operational measures to protect an individual whose life is at risk. The existence of a real and immediate threat to life must be assessed with due regard to the specific context of domestic violence: the aim must not be only to protect society in general, but consideration must also be given to the occurrence of successive episodes of violence over time within the family unit. The national authorities should have had regard to the applicant's situation of great mental, physical and material insecurity and vulnerability and assessed the situation accordingly, providing her with appropriate support. In such a context the assailant's rights cannot prevail over the victims' rights to life and physical and mental integrity.

- In the instant case, even though investigations were instigated against the applicant's husband for the offences of family ill-treatment, bodily injury and threats of violence, no protection order was issued and the applicant was not heard until September 2012, seven months after lodging her complaint.

- Such a delay could only serve to deprive the applicant of the immediate protection necessitated by the situation. Although no further physical violence occurred during that period, the Court could not disregard the fact the applicant, who was being harassed by telephone, lived in great fear while staying at the reception centre.

- Although it was true that the applicant had changed some of her statements during the police hearing thus causing the authorities to discontinue part of the investigation, the authorities had failed to conduct any assessment of the risks – including the risk of renewed violence – at a time when a prosecution was still under way for bodily injury. The Court therefore rejected the Government's argument that there had been no tangible evidence of an imminent danger to the applicant's life.

- The authorities' delays had deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of the husband's acts of violence, which reached its peak during the tragic night of 25 November 2013.

- During that night the police had nevertheless had to intervene twice, firstly when they inspected the devastated apartment, and secondly when they stopped and fined the applicant's husband for public drunkenness. On neither occasion did they make any particular attempt to provide the applicant with adequate protection consonant with the seriousness of the situation, even though they knew about the violence inflicted on her by her husband.

- The Court could not speculate on how things would have turned out had the authorities adopted a different approach. However, the failure to implement reasonable measures that might realistically have changed the course of events or mitigated the damage caused was sufficient to engage the State's responsibility.

- Having been in a position to check, in real time, the husband's police record, the security forces should have known that he constituted a real risk to her, the imminent materialisation of which could not be excluded. Accordingly, 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. By signally lacking in the requisite diligence, the authorities had failed to comply with their positive obligations.

- *Conclusion:* violation (six votes to one).

- Article 3: The applicant could be considered as belonging to the category of "vulnerable persons" entitled to State protection, in view, in particular, of the acts of violence which she had suffered in the past. Those violent acts, which had involved both

physical injuries and psychological pressure, were sufficiently serious to be classified as ill-treatment within the meaning of Article 3 of the Convention.

- Under the terms of the Council of Europe's Convention on preventing and combating violence against women and domestic violence ([Istanbul Convention](#), which was ratified by Italy and came into force in 2014), special diligence is required in dealing with complaints concerning such violence. In that sphere it is incumbent on the national authorities to consider the victim's situation of extreme mental, physical and material insecurity and vulnerability and, with the utmost expedition, to assess the situation accordingly.

- The Court had noted under Article 2 that the authorities' failure to take prompt action had voided the applicant's complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of her husband's acts of violence. In the present case there had been no explanation for the following delays: the seven months of official inertia before the instigation of criminal proceedings; and the three years of criminal proceedings for severe bodily injury after the applicant had lodged her complaint. This judicial inertia was utterly incompatible with the requirements of Article 3 of the Convention.

- *Conclusion:* violation (unanimously).

- Article 14 read in conjunction with Articles 2 and 3: The Court referred to its case-law on the gender- discrimination aspect of failures by the authorities to protect women against domestic violence.

- The extent of the problem in Italy was highlighted by the conclusions of the United Nations [Special rapporteur on violence against women](#), its causes and consequences, following his official visit to Italy in 2012, by those of the Committee established under the Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#); 49th session, 2010), and also by those of the National Institute of Statistics ([ISTAT](#), 2014).

- The applicant presented prima facie evidence in the form of statistical data demonstrating, first of all, that domestic violence primarily affects women and that despite the reforms implemented a large number of women were being murdered by their partners or former partners (femicide), and, secondly, that the socio-cultural attitudes of tolerance of domestic violence persisted. That prima facie evidence distinguished the present case from that of *Rumor v. Italy* ([72964/10](#), 27 May 2014), the circumstances of which were very different.

- The Court had noted under Articles 2 and 3 the domestic authorities' failure to provide the applicant with effective protection and the situation of impunity enjoyed by the perpetrator of the acts of violence. By underestimating, through their lack of response, the seriousness of those acts, the Italian authorities had effectively condoned them. The applicant had therefore been a victim of discrimination as a woman.

- *Conclusion:* violation (five votes to two).

- Article 41: EUR 30,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage rejected.

- (See also *Opuz v. Turkey*, 33401/02, 9 June 2009, [Information Note 120](#); *M.G. v. Turkey*, 646/10, 22 March 2016, [Information Note 194](#); *Halime Kılıç v. Turkey*, 63034/11, 28 June 2016, [Information Note 198](#); see also the factsheet on [Domestic violence](#))

***D.M.D. v. Romania* - [23022/13](#) ([French](#)) ([Arabic](#))**

Judgment 3.10.2017 [Section IV]

Article 3

Effective investigation

Excessive length of proceedings and other shortcomings in prosecution of domestic violence against minor child: *violation*

Article 6

Civil proceedings

Article 6-1

Access to court

Fair hearing

Refusal of domestic courts to award minor victim of domestic violence compensation in absence of a claim: *violation*

- *Facts* – The applicant was born in 2001. In February 2004 his mother called a child protection authority to report that he was being abused by her husband, the boy's father. Between March and July 2004 she also complained to the police on five occasions. After the fifth complaint, the authorities launched a criminal investigation. The prosecuting authorities heard evidence from six witnesses and examined psychological reports, which led to the indictment of the applicant's father in December 2007.
- The case was then examined at three levels of jurisdiction. The applicant's father was initially acquitted after the domestic courts found that his "occasionally inappropriate behaviour" towards his son did not constitute a crime. However, following a number of remittals of the case owing to shortcomings in the lower courts' decisions, the County Court ultimately convicted the father in April 2012 of physically and verbally abusing his child after finding that his behaviour was more severe than the type of "isolated or random" violence that could occur when parents were simply punishing their children.
- The proceedings eventually ended in November 2012 following an appeal on points of law by both parties. The Court of Appeal reaffirmed that the father had abused his child and gave him a suspended prison sentence whose length was reduced in order to take into account the excessive length of the proceedings. The applicant and the prosecutor complained that no compensation had been awarded. However, the Court of Appeal ruled that it did not have to examine the issue of damages as neither the applicant nor the prosecutor had requested compensation before the lower courts.
- *Law* – Article 3 (*procedural aspect*): The Court reiterated that the States should strive to expressly and comprehensively protect children's dignity. That, in turn, required in practice an adequate legal framework affording protection to children against domestic violence, including (a) effective deterrence against such serious breaches of personal integrity, (b) reasonable steps to prevent ill-treatment of which the authorities have, or ought to have, knowledge, and (c) effective official investigations where an individual raises an arguable claim of ill-treatment.

- The essential purpose pursued by the investigation into the allegations of abuse in the applicant's case could be considered to have been achieved as the person responsible for the abuse (the father) was ultimately convicted and sentenced to a term of imprisonment. However, despite this, the investigation had to be regarded as ineffective because it had lasted too long and been marred by serious shortcomings.

- (a) *Length of the investigation* – The authorities had first become aware of the applicant's situation in February 2004, when his mother called the child protection authority to report abuse. There was however no indication that anything concrete was done to verify that information, to transmit it to the police or to protect the victims. No action was taken by the authorities in respect of the first four criminal complaints lodged by the mother against the father from March to June 2004. When the investigation did eventually start in July 2004, it lasted for almost three years and six months. Overall, owing to significant periods of inactivity on the part of the investigators and the Forensic Medicine Institute and a series of quashed decisions following omissions of the lower courts, the proceedings lasted eight years and four months at three levels of jurisdiction. That period was excessive.

- (b) *Shortcomings* – Several shortcomings were apparent in the proceedings: (i) unlike his father, who received a reduction of sentence, the applicant was not offered any form of compensation for the extensive length of the case; (ii) the applicant received no compensation for the abuse to which he had been subjected; (iii) the domestic courts' approach to the issue of domestic abuse, which appeared to suggest that "isolated and random" acts of violence could be tolerated within the family, was not compatible with either domestic law or the Convention, both of which prohibited ill-treatment, including corporal punishment. Indeed, any form of justification for ill-treating a child, including corporal punishment, undermined respect for children's dignity.

- For these reasons, bearing in mind what was at stake for the applicant in the proceedings, the length and pace of the proceedings, and the difference in treatment between the applicant and the perpetrator in respect of that length, as well as the manner in which the courts had dealt with the issue of domestic abuse, the Court concluded that the investigation into the allegations of ill-treatment was ineffective.

- *Conclusion*: violation (unanimously).

- Article 6 § 1 (*fair trial*): The Court noted that according to the applicable law (Article 17 of the Code of Criminal Procedure) the domestic courts were under an obligation to rule on the matter of compensation in cases where the victim was a minor and therefore had no legal capacity, even without a formal request from the victim. Both the courts and the prosecutor had to actively seek information from the victim about the extent of the damage incurred. The law thus afforded reinforced protection to vulnerable persons, such as the applicant, by placing an extended responsibility on the authorities to take an active role in this respect. For this reason and in the light of the object of the investigation the proceedings went beyond mere litigation between private individuals and thus engaged the State's responsibility under Article 6 § 1 of the Convention

- Given such unequivocal wording in the domestic law, the Court of Appeal should have examined on the merits the applicant's complaint about the failure to award him compensation. Instead, it had simply observed that neither the applicant nor the prosecutor had requested compensation before the lower courts and thus failed to examine the role of the domestic courts or of the prosecutor in securing the applicant's best interests. That had amounted to a denial of justice, in violation of Article 6 § 1.

- *Conclusion*: violation (four votes to three).

- The Court also held unanimously that, in view of its finding of a procedural breach of Article 3, there was no need to give a separate ruling on the applicant's length-of-proceedings complaint under Article 6 § 1.

- Article 41: EUR 10,000 in respect of non-pecuniary damage.

Y.C. v. the United Kingdom - [4547/10](#) ([French](#)) ([Arabic](#))
Judgment 13.3.2012 [Section IV]

Article 8

Article 8-1

Respect for family life

Placement of child from abusive background with prospective adoptive parent: *no violation*

Facts – The applicant and her partner of several years had a son in 2001. In 2003 the family came to the attention of social services as a result of an “alcohol fuelled” incident between the parents. There were subsequent incidents of domestic violence and alcohol abuse which escalated from the end of 2007 with the police being called to the family home on numerous occasions. In June 2008 the local authority obtained an emergency protection order after the boy was injured during a further violent altercation between the parents. That order was followed up by an interim care order and the boy was placed in foster care. A guardian was appointed to protect his interests. The interim care order was repeatedly extended pending detailed reports by social services, the boy’s guardian and a psychologist. In April 2009 the family proceedings court decided not to make a full care order and a placement order after finding that the applicant, who claimed that she had separated from the father, should be given one last opportunity to have her parenting ability assessed in the light of that separation. It made a further interim care order instead. That order was overturned by the County Court on an appeal by the local authority and the child’s guardian after the judge found that “the only effect of postponing the decision to make a care order [would be] to delay, and therefore to jeopardise, the process of finding an alternative long term placement”. The applicant was refused leave to appeal to the Court of Appeal and her son was placed with a prospective adoptive parent in January 2010.

Law – Article 8: There was no doubt that the decision to refuse a further assessment and to make a care and placement order constituted a serious interference with the applicant’s right to respect for her family life. The interference was “in accordance with the law” and pursued the legitimate aim of protecting the rights of the child.

As to whether the interference was necessary in a democratic society, the County Court judge had noted when considering the child’s best interests that any further assessment would entail a degree of disruption to the child’s foster placement and a risk of emotional harm should the assessment break down. He considered that an assessment of the applicant would never be able to provide sufficient evidence to justify the refusal of a care order, given her shortcomings and the real risk that she would resume her relationship with the father, and would serve only to delay and jeopardise the prospect of finding a long-term placement. In the light of the history of the case and the reports, the judge’s view that a resumption of the applicant’s relationship with the father was likely and entailed a risk to the child’s well-being did not appear unreasonable. Accordingly, while it was in a child’s best interests that his or her family ties be maintained where possible, it was clear that in the instant case this consideration had been outweighed by the need to ensure the child’s development in a safe and secure environment. Attempts had been made to rebuild the family through the provision of support for alcohol abuse and opportunities for parenting assistance. The applicant did not appear to have accessed domestic-violence support despite being given the relevant details. The reports prepared by the social worker, the guardian and the psychologist

had highlighted the difficulties that had been encountered as a result of the parents' failure to engage with the authorities.

In reaching his decision, the County Court judge had directed his mind, as required by Article 8, to the child's best interests, had had regard to various relevant factors and made detailed reference to the reports and oral evidence of the social worker, the guardian and the psychologist, all of whom had identified the issues at stake. The applicant had been afforded an opportunity to seek any clarification she might require as to the reasons for the judge's decision and to seek a further review by the Court of Appeal. Accordingly, the decision to make a placement order had not exceeded the State's margin of appreciation and the reasons for the decision had been relevant and sufficient. The applicant had been given every opportunity to present her case and had been fully involved in the decision-making process.

Conclusion: no violation (six votes to one).

N.K. v. Germany - 59549/12

Judgment 26.7.2018 [Section V]

Article 6

Article 6-3-d

Examination of witnesses

Domestic violence conviction based on strongly corroborated untested evidence by victim refusing to testify, which had been reported by investigating judge: *no violation*

Facts – Proceedings were initiated against the applicant based on the suspicion that he had committed violent acts against his spouse, R.K. She was examined at the request of the public prosecutor’s office by the investigating judge, after the latter had decided to exclude the applicant from the hearing under the Code of Criminal Procedure, since there was a risk, given the nature of the reported offences, that R.K. would not testify or would not tell the truth in the applicant’s presence. The applicant was not appointed defence counsel to cross-examine R.K at this hearing as procedure required.

The main proceedings were opened against the applicant with R.K. informing the domestic court that she did not wish to give evidence. The right of a – current or former – spouse of the accused not to give evidence was enshrined in the Code of Criminal Procedure but case-law provided an exception for a “spontaneous utterance” made by the witness before or outside his or her formal testimony. The investigating judge was examined on the evidence he had obtained from his examination of R.K. as were the police officers present at the scene with statements made by R.K being qualified as “spontaneous utterance” and used by the domestic court. Subsequently, R.K. stated that she did not consent to the use of the evidence which she had provided to the investigating judge, to the police officers and to the court-appointed medical expert; nor did she consent to the use of the results of the medical examination.

The domestic court convicted the applicant of dangerous assault, coercion and maliciously inflicting bodily injury. He was sentenced to six years and six months’ imprisonment. All appeals were dismissed.

Law – Article 6 § 3 (d): The principles as set out in *Al-Khawaja and Tahery* and in *Schatschaschwili* concerning absent witnesses applied, *mutatis mutandis*, to the present scenario. R.K. had been entitled under the Code of Criminal Procedure to refuse to give evidence against the applicant because she was married to him. Thus, there had been a good reason for her not appearing for cross-examination at the trial and for admitting the evidence of R.K., as reported by the investigating judge and, in part, by two police officers, at the trial. In this regard, the Court could not discern any arbitrariness in the domestic court’s qualification of R.K.’s statement to the police officers as a “spontaneous utterance” and considered that there was no appearance that the applicant’s rights under the Convention had been disrespected by admitting that statement, as reported by the police officers, as evidence.

Regarding the significance of the untested evidence, R.K.’s pre-trial statements had not been the only evidence relied upon by the domestic court. That court had also relied on the statements of the counsellor of the women’s shelter to whom R.K. had provided a detailed account of the incidents and shown her injuries; R.K.’s son, who had heard screams and the applicant and R.K. having an argument; the statements of several neighbours who had seen R.K. immediately after her escape from the marital home with a bleeding head wound in a terrified state, and had seen the applicant leave that home

and drive off following that; the letter by R.K. in which she had given examples of the acts committed by the applicant in the period in question; a draft letter her husband had forced her to write to the wife of a former lover of hers; and R.K.'s statement to the police officers, which the court had qualified as "spontaneous utterance". The domestic court had concluded that the applicant's conviction could be based on R.K.'s statements, as reported by the investigating judge, for they were corroborated by other significant factors independent of them. This evaluation of the weight of the evidence had been neither unacceptable nor arbitrary. At the same time, R.K.'s statement made at the pre-trial stage had carried at least significant weight for the applicant's conviction and its admission might have handicapped the defence.

Regarding counterbalancing measures to compensate the handicaps for the defence as a result of the admission of the untested witness evidence at trial, the Government – and the domestic court itself – had agreed that counsel for the applicant should have been appointed who could have examined R.K. during the hearing before the investigating judge. By not doing so, the authorities had taken a foreseeable risk, given that R.K. had been married to the applicant and thus had a right to refuse to testify under domestic law – an eventuality which had subsequently materialised – that neither the applicant nor his counsel would be able to question R.K. at any stage of the proceedings. However, the domestic court had thoroughly and cautiously assessed the credibility of R.K. and the reliability of her statements as reported by the investigating judge and there had been ample and strong corroborating evidence. The applicant had been provided with the opportunity to present his own version of the events, which he had chosen not to do, and to cross-examine the investigating judge when he had given evidence as a witness.

In making an assessment of the overall fairness of the trial, the Court, having regard to the foregoing considerations – notably the weight of R.K.'s statement for the applicant's conviction, the domestic court's approach to assessing that statement, the availability and strength of further incriminating evidence and the compensatory procedural measures taken by the domestic court –, found that the counterbalancing factors had been capable of compensating for the handicaps under which the defence had laboured. The criminal proceedings against the applicant, viewed in their entirety, had not been rendered unfair by the admission as evidence of the statement by the untested witness R.K., as reported by the investigating judge.

Conclusion: no violation (unanimously).

(See *Al-Khawaja and Tahery v. the United Kingdom* [GC], 26766/05 and 22228/06, 15 December 2011, [Information Note 147](#); and *Schatschaschwili v. Germany* [GC], 9154/10, 15 December 2015, [Information Note 191](#))

D.M.D. v. Romania - 23022/13

Judgment 3.10.2017 [Section IV]

Article 3

Effective investigation

Excessive length of proceedings and other shortcomings in prosecution of domestic violence against minor child: *violation*

Article 6

Civil proceedings

Article 6-1

Access to court

Fair hearing

Refusal of domestic courts to award minor victim of domestic violence compensation in absence of a claim: *violation*

- *Facts* – The applicant was born in 2001. In February 2004 his mother called a child protection authority to report that he was being abused by her husband, the boy's father. Between March and July 2004 she also complained to the police on five occasions. After the fifth complaint, the authorities launched a criminal investigation. The prosecuting authorities heard evidence from six witnesses and examined psychological reports, which led to the indictment of the applicant's father in December 2007.
- The case was then examined at three levels of jurisdiction. The applicant's father was initially acquitted after the domestic courts found that his "occasionally inappropriate behaviour" towards his son did not constitute a crime. However, following a number of remittals of the case owing to shortcomings in the lower courts' decisions, the County Court ultimately convicted the father in April 2012 of physically and verbally abusing his child after finding that his behaviour was more severe than the type of "isolated or random" violence that could occur when parents were simply punishing their children.
- The proceedings eventually ended in November 2012 following an appeal on points of law by both parties. The Court of Appeal reaffirmed that the father had abused his child and gave him a suspended prison sentence whose length was reduced in order to take into account the excessive length of the proceedings. The applicant and the prosecutor complained that no compensation had been awarded. However, the Court of Appeal ruled that it did not have to examine the issue of damages as neither the applicant nor the prosecutor had requested compensation before the lower courts.
- *Law* – Article 3 (*procedural aspect*): The Court reiterated that the States should strive to expressly and comprehensively protect children's dignity. That, in turn, required in practice an adequate legal framework affording protection to children against domestic violence, including (a) effective deterrence against such serious breaches of personal integrity, (b) reasonable steps to prevent ill-treatment of which the authorities have, or ought to have, knowledge, and (c) effective official investigations where an individual raises an arguable claim of ill-treatment.

- The essential purpose pursued by the investigation into the allegations of abuse in the applicant's case could be considered to have been achieved as the person responsible for the abuse (the father) was ultimately convicted and sentenced to a term of imprisonment. However, despite this, the investigation had to be regarded as ineffective because it had lasted too long and been marred by serious shortcomings.

- (a) *Length of the investigation* – The authorities had first become aware of the applicant's situation in February 2004, when his mother called the child protection authority to report abuse. There was however no indication that anything concrete was done to verify that information, to transmit it to the police or to protect the victims. No action was taken by the authorities in respect of the first four criminal complaints lodged by the mother against the father from March to June 2004. When the investigation did eventually start in July 2004, it lasted for almost three years and six months. Overall, owing to significant periods of inactivity on the part of the investigators and the Forensic Medicine Institute and a series of quashed decisions following omissions of the lower courts, the proceedings lasted eight years and four months at three levels of jurisdiction. That period was excessive.

- (b) *Shortcomings* – Several shortcomings were apparent in the proceedings: (i) unlike his father, who received a reduction of sentence, the applicant was not offered any form of compensation for the extensive length of the case; (ii) the applicant received no compensation for the abuse to which he had been subjected; (iii) the domestic courts' approach to the issue of domestic abuse, which appeared to suggest that "isolated and random" acts of violence could be tolerated within the family, was not compatible with either domestic law or the Convention, both of which prohibited ill-treatment, including corporal punishment. Indeed, any form of justification for ill-treating a child, including corporal punishment, undermined respect for children's dignity.

- For these reasons, bearing in mind what was at stake for the applicant in the proceedings, the length and pace of the proceedings, and the difference in treatment between the applicant and the perpetrator in respect of that length, as well as the manner in which the courts had dealt with the issue of domestic abuse, the Court concluded that the investigation into the allegations of ill-treatment was ineffective.

- *Conclusion:* violation (unanimously).

- Article 6 § 1 (*fair trial*): The Court noted that according to the applicable law (Article 17 of the Code of Criminal Procedure) the domestic courts were under an obligation to rule on the matter of compensation in cases where the victim was a minor and therefore had no legal capacity, even without a formal request from the victim. Both the courts and the prosecutor had to actively seek information from the victim about the extent of the damage incurred. The law thus afforded reinforced protection to vulnerable persons, such as the applicant, by placing an extended responsibility on the authorities to take an active role in this respect. For this reason and in the light of the object of the investigation the proceedings went beyond mere litigation between private individuals and thus engaged the State's responsibility under Article 6 § 1 of the Convention

- Given such unequivocal wording in the domestic law, the Court of Appeal should have examined on the merits the applicant's complaint about the failure to award him compensation. Instead, it had simply observed that neither the applicant nor the prosecutor had requested compensation before the lower courts and thus failed to examine the role of the domestic courts or of the prosecutor in securing the applicant's best interests. That had amounted to a denial of justice, in violation of Article 6 § 1.

- *Conclusion:* violation (four votes to three).

- The Court also held unanimously that, in view of its finding of a procedural breach of Article 3, there was no need to give a separate ruling on the applicant's length-of-proceedings complaint under Article 6 § 1.

- Article 41: EUR 10,000 in respect of non-pecuniary damage.

Mohamed Hasan v. Norway - 27496/15

Judgment 26.4.2018 [Section V]

Article 8

Article 8-1

Respect for family life

Exceptional circumstances justifying adoption of children, victims of domestic violence, by foster parents: *no violation*

- *Facts* – The applicant and her husband, Iraqi nationals residing in Norway at the material time, had two daughters, born in 2008 and 2010. As the applicant’s husband was violent towards her and their children, she repeatedly spent time in crisis centres and her first daughter was twice placed in an emergency foster home. In late 2010 the authorities placed both children in emergency foster care. In 2011, during a contact visit with the applicant, the children were abducted by two masked individuals who forced their way in and attacked the applicant using an electroshock weapon. The children were later found and the father admitted he had orchestrated the abduction.

- Following this incident, the County Social Welfare Board issued an order, which was upheld on appeal, for both children to be taken into care in separate foster homes at secret addresses and no contact was allowed between them and their parents. A further decision was taken in 2014 to keep the children in foster care, remove parental authority and to allow their adoption by their foster parents. The applicant and her husband appealed unsuccessfully. In the domestic proceedings, the applicant acknowledged her children’s attachment to their foster homes and did not request that the children be returned to her.

- *Law* – Article 8: Concerning the decision-making process, the applicant had been present and represented by legal counsel at the proceedings before the Board and the City Court. Each body comprised of a professional judge or equivalent, a psychologist and a lay person with the case being heard over the course of two days. An expert had given written statements and appeared at the hearings to be questioned. The applicant had thus been sufficiently involved in the decision-making process, seen as whole, to be provided with the requisite protection of her interests and fully able to present her case. Moreover, she had also had access to review her case through leave-to-appeal proceedings before the High Court and Supreme Court.

- The factors motivating the authorities were clearly the need to protect the applicant’s daughters and ensure that they could be brought up in a safe environment suited to their particular vulnerability by the persons to whom they had attached as carers. The domestic authorities had also had due regard to individual factors relating to each child, such as their age and maturity, as well as the effects of the decision with regard to their cultural background and relationships with relatives.

- The decision to remove the applicant’s parental authority and to authorise the adoption of her daughters had been taken “in exceptional circumstances”. The domestic courts had referred to numerous incidents of domestic violence and abuse by the applicant’s husband, as a result of which the children had experienced several broken relationships and become particularly vulnerable. The children had lost their attachment to the applicant and had developed such an attachment to their foster parents that it would have been harmful for them to be removed. Moreover, the applicant would not be able to take care of two children with such a traumatic background and it was improbable that any of the parents would be able to exercise parental authority over

them in the future. Furthermore, the abduction risk was of such a nature that even if the children were to remain in temporary care, the applicant could not in any event be given access to them. Given that they had been living under a strict security regime because of that risk, and taking into account their history, it was especially important that stability and predictability be ensured. In that respect, an adoption, compared with long-term foster care, ensured a higher degree of security. While the applicant had established an independent life for herself after the final breakdown of the relationship with her former husband, she would not have been able to protect the children against him and his relatives.

- In sum, the decision-making process had been fair. The removal of parental authority and consent to adoption had been justified by exceptional circumstances and motivated by overriding requirements pertaining to the children's best interests. Therefore, the impugned measures did not amount to a disproportionate interference with the applicant's right to respect for her family life.

- *Conclusion:* no violation (unanimously).

- (See also *Strand Lobben and Others v. Norway*, 37283/13, 30 November 2017, [Information Note 212](#), referred to the Grand Chamber on 9 April 2018 (see the [summary](#) above); and the Factsheet on [Children's rights](#))