Handbook on Strategic Litigation in The Area of Women's Rights for Legal Practitioners in Türkiye

Prepared by:
Ivana Roagna, International consultant
F. Ceren Akçabay, Local consultant

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All other correspondence concerning this document should be addressed to the Directorate General of Democracy and Human Dignity, Gender Equality Division,Avenue de l'Europe F-67075 Strasbourg Cedex, France, Tel. +33 (0)3 88 41 20 00

E-mail: Horizontal.Facility@coe.int

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List of acronyms

AC	► Amicus Curiae
CAT	► Committee against Torture
CC	► Constitutional Court of Türkiye
CED	► Committee on Enforced Disappearances
CEDAW	► Committee on the Elimination of Discrimination Against Women
CERD	► Committee on Elimination of Racial Discrimination
CESCR	► Committee on Economic, Social and Cultural Rights
CMW	► Committee on Migrant Workers
CoE	► Council of Europe
CRC	► Committee on the Rights of the Child
CRPD	► Committee on the Rights of Persons with Disabilities
CSOs	► Civil Society Organization(s)
ECHR	► European Convention on Human Rights
ECSR	► European Committee on Social Rights
ECtHR	► European Court of Human Rights
EU	► European Union
GNAT	► Grand National Assembly of Türkiye
HRC	► Human Rights Committee
HUDOC	► Database of the case-law of the ECtHR
NAACP	► National Association for the Advancement of Colored People
NGOs	► Non-governmental Organization(s)
SL	► Strategic litigation
TPI	► Third party intervention
THREI	► Türkiye Human Rights and Equality Institution
UN	► United Nations

Contents

Introduction

This Handbook has been developed in the framework of the Council of Europe (CoE) action on "Fostering women's access to justice in Türkiye" under the joint European Union (EU) and CoE programme "Horizontal Facility for the Western Balkans and Türkiye 2019-2022". The action, aiming to strengthen women's access to justice in Türkiye in line with international and European standards.

This Handbook intends to support legal professionals, particularly lawyers and Civil Society Organisations (CSOs) in their endeavour to promote a strategic litigation (SL) approach to defend and advance women's rights. The output represents a substantive tool that will be later reflected in a training programme on SL, as part of the capacity building component of the action. Training seminars will thus be organised for the targeted beneficiaries, with a view to support their knowledge and capacity on how to carry out SL, case monitoring and advocacy on women's rights and use litigation as a tool to defend women's rights and facilitate women's access to justice and available remedies at domestic and international levels.

The present Handbook builds on the results of projects and activities that the CoE has been implemented as part of its Gender Equality Strategy over the past years. Of the six main objectives of the Strategy, one is specifically devoted to women's access to justice.[1] Some of the outputs produced in this framework were, when relevant to the focus of the present action, reflected and further elaborated. Although there are several publications dedicated to SL, very few of them address the topic of women's rights and women's access to justice and none appear to take into consideration the specificities of the Turkish legal system. The present work, therefore, aims at filling that gap as well as to raise the awareness of legal professionals on the discrimination women face when approaching a justice system that does not appreciate their individual conditions and the extra difficulties they encounter when claiming their rights.

How to use this Handbook

This Handbook is structured along two main parts. The first part provides a definition of what is meant by SL and how it differs from ordinary, individual case handling and litigation. It reviews its goals and functions as well as potential outcomes at individual, societal and institutional level. Considering the features of SL, a section is devoted to the resources whose mobilisation is key for a SL action. Legal issues around SL, including challenges and limitations, are also analysed.

The second part focuses on the practical side of SL before national and international fora and reviews the different forms that SL litigation can place in either setting. At international level, specific attention is devoted to the possibility to bring SL in front of the ECtHR and other quasi-judicial bodies in the form of ***amicus curiae*** (AC) or third-party interventions (TPI). Although the paradigm which is presented is that of the ECtHR, what is being said for the latter is in principle applicable also to the United Nations (UN) treaty-based mechanisms that Türkiye is a party to, mainly the Human Rights Committee, the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT), and the Committee on the Rights of Persons with Disabilities (CRPD).

This Handbook aims at becoming a long-lasting companion to all those involved, now or in the future, in SL in the area of women's rights and access to justice. Apart from a few narrative parts, its trademark is to be a user-friendly reference tool that enables the identification of cases suitable for SL, with a quick, yet thorough, assessment of the impact that the case might have beyond the individuals concerned. It also helps identifying the avenues that are worth exploring and sets up a framework needed for the SL action to succeed.

We hope that this Handbook represents the beginning or consolidation of a SL experience leading to reinforcing women's rights in Türkiye.

1 More information: Guaranteeing Equal Access of Women to Justice (coe.int)

Part I
An introduction to Strategic Litigation with a focus on women's rights

1. Strategic Litigation: definition, history, goals and impact

1.1 What is Strategic Litigation?

Strategic Litigation (SL) has been defined in different ways. The following seems a good definition, that emphasises the **difference between ordinary litigation and SL**:

Ordinary vs. SL

Litigation means taking cases to court. **SL is a method that can bring about significant changes in the law, practice or public awareness** via taking carefully selected cases to court. The clients involved in SL have been victims of [wrongs] that are suffered by many other people. In this way, SL focuses on an individual case in order to bring about social change. (Mental Disability Advocacy Centre [Validity], 2012)

A typical feature of SL is that **cases are brought by individuals or groups** of individuals **to test a legal point** that also applies to cases other than just their own. This is the reason why often SL is referred to as related to **case-testing** aimed at setting a precedent or establishing a new legal principle, which could benefit thousands of other people. (Matthews, 2022)

SL is also referred to as "impact litigation" as part of the "cause lawyering" toolbox. Cause lawyering can be defined as "public interest lawyering" or 'lawyering for social change'. It is marked by a desire to contribute to society by employing legal means. (Sarat and Scheingold, 1998)

What is Strategic Litigation for?

The aims of SL involve more than simply winning legal arguments in court: test case strategies might seek to create **long-lasting impacts** such as policy and legislative changes, through raising awareness about the cause for which the strategy is mobilised and encouraging public debate. By setting important precedents, they achieve changes for people in similar situations. Human rights and gender equality, unlike other sources of litigation, can pose difficulties when attempting to illustrate impacts. The success in court is not the sole impact: the endeavour of strategic human rights and gender equality litigation is to amplify these victories in court towards a more extensive agenda, from individual outcome to social justice impact. In these cases, SL involves identifying and pursuing cases on critical issues which, if successful, are likely to have a higher impact at the national, regional or international level. Successful litigation can establish important legal precedents or effect changes in legislation, policy or practice. It can also positively influence public opinion and impact the lives of individuals and communities worldwide.

In the area of gender equality and women's rights, women's rights movements worldwide have been using national and international SL as an invaluable instrument to protect rights and empower women, particularly in cases where other channels are ineffective or unavailable.

A strategic approach to litigation does not focus with the volume of litigation, or even the number of cases that are eventually won. It rather concentrates on the impact of that case on the lives of clients, on other victims beyond those involved in the case, as well as on the potential to improve standards.

In order to ensure the widest effect and make the best use of resources, SL is aimed at cases that are either symptomatic of widespread discrimination and human rights violations or which address gaps in protection.

Consider engaging in SL when you want to:

* Enforce the law

* Clarify the meaning of the law

* Challenge the law

* Create a new law (this even if the case is lost)

* Seek results with long-term impact

1.2 Brief history of Strategic Litigation in human rights

SL began to be used systematically by the civil rights movement in the United States during the 1950s and 1960s in challenging segregation and discrimination to achieve legal reforms. SL gained momentum with the emergence of the "advocacy for social change" movement in the 1970s, where the main driver was the issue of unequal access to justice for the marginalised groups lacking resources. Recognising the importance of litigation to pursue long-term goals, lawyers and activists conceived SL also as an advocacy tool. Civil society encouraged to have been organised in agencies to afford to pursue long-term litigation strategies by prioritising general interests above the immediate interests of a single litigant. This approach has since spread all over the world, including Europe. (Guerrero,2020)

Case-law examples

Roe v. Wade (1973)

Recently overturned by the United States Supreme Court, Roe v. Wade case was one of the leading examples of women's rights SL. The case had been filed by "Jane Roe" an unmarried woman who wanted to end her pregnancy safely and legally after seeking to have an abortion in Texas in 1969. At the time, it was illegal to have the procedure in the state unless it would save a woman's life. In the lawsuit filed for the right to access to abortion, whilst the lawyers strategically avoided the discussion of the right to life, they relied on the United States Supreme Court's recent decisions on birth control based on the right to respect for private life (Griswold v. Connecticut in 1963 and Baird vs. Eisenstadt in 1972). With the support of the women's rights movement, this legal argument succeeded. The decision was universally credited not only for declaring the criminalisation of abortion for the states to be unconstitutional, but also for drawing attention to women's rights.[2]

Michael Brown and Black Lives Matter

On 9 August 2014, an 18-year-old African American, Michael Brown was shot and killed by police officer after an altercation. After a short chase, the boy stopped and faced the police officer, who fired six times and killed him. The boy's body laid on the street for hours. The next day, fierce protests erupted in the suburb and candlelight vigils turned into weeks of

2 For more information: Roe v. Wade: History and Its Impact, Planned Parenthood Federation of America, 2014, https://www.plannedparenthood.org/files/3013/9611/5870/Abortion_Roe_History.pdf

violent clashes between protestors and police force, opposing against a long history of mistreatment and unlawful arrests of Black people. The demonstrations were reignited in October 2014 when a grand jury decided not to indict the police officer. In the aftermath of Brown's killing the Black Lives Matter movement was born, creating ongoing worldwide activism and awareness. Relying on international human rights standards, the Robert F. Kennedy Foundation Human Rights took this case to promote potentially powerful route to reform. In 2015, the organisation filed a petition on behalf of Michael's family before the Inter-American Commission on Human Rights, detailing the systemic failures of the US Justice Department and government to prevent Michael's death and its subsequent failure to effectively investigate and prosecute the officer responsible for his death.

A revised petition was completed in partnership with Howard Law School Thurgood Marshall Center Clinic in May 2019. The case is still pending.[3]

1.3 Why Strategic Litigation in the area of women's rights?

Recognition of women's rights in the international human rights protection agenda is a remarkable achievement of the past few decades. It challenged misconceptions, for instance, the notion that gender-based violence is an issue that only concerns the private sphere and national legal frameworks. Law, which often ignored women's experience or conditions, has ultimately begun to serve as a catalyst for the realisation of women's rights. Despite certain progresses made, gender-based violence and discrimination remain widespread and take new manifestations. This is also due to a number of factors such as (OHCHR, 2021):

- Gender stereotypes and gender roles traditionally attributed to women, which have led to their limited participation in public and political life and to the denial, invisibility, and minimisation of their experiences;
- Discriminatory legal framework and practices that fail to effectively protect women, prevent violence or to hold perpetrators accountable. This does not create an enabling environment for women to report violence, share their experiences and demand respect for their rights; and
- Lack of gender mainstreaming in law-making and establishing justice policies failing to include women's perspectives and opening the door to discriminatory judicial interpretations.

SL can play an important role to push for progress in women's rights and eradicate impunity for gender-based violence. It is expected to remain one of the key tools in the coming years to bridge the gaps between entitlements offered by the law and their realisation[4].

1.4 Goals of Strategic Litigation

When embarking in SL, actors aim at more than simply winning the case in court or obtaining reparation for the harm suffered by the victim: test cases might be a tool to raise awareness amongst the general public about the underlying situation and encourage public debate, set relevant precedents, achieve

3 For more information: Michael Brown Case Urges Justice Reform, https://rfkhumanrights.org/our-programs/strategic-litigation/michael-brown-case-urges-justice-reform

4 Strategic litigation could narrow the gap between ***de jure* equality** (sometimes called **formal equality** or equality under the law) and ***de facto* equality** (equality in practice). Equality does not mean that women and men are the same or that they become identical, but rather that their similarities and differences are recognised and equally valued and that their opportunities and their benefits become and remain equal.

changes for people in similar situations, promote institutional and legal changes. Eventually, particularly in the area of gender equality and women's rights, SL can promote accountability and contribute to ending impunity for gender-based violence and discrimination, including with reference to access to justice.

Aims of Strategic Litigation

- To clarify or establish a point of law/the meaning of a particular legal provision
- To effect a change in the law
- To obtain judicial clarity on the application of equality and non-discrimination law
- To establish the scope of application of a certain provision (for instance, non-discrimination law)
- To highlight a serious issue such as a policy or practice which has a negative effect on many people, as part of a wider campaign for legal and social change
- To ensure that non-discrimination law is upheld
- To overturn 'bad' case law
- To establish legal precedent, enabling others to enforce their rights more confidently
- To achieve social reforms
- To benefit disadvantaged social groups through access to justice
- To achieve social justice of a redistributive variety
- To complement and reinforce social activism
- The specific objectives in each case must be kept in mind throughout the litigation process to ensure adequate adjustment in the event of a change in circumstances. This may be the case where the legal issue in question is resolved in another case, or there are legal or political developments which impact the case or media's interest in it. (Equinet, 2017)

1.5 Strategic and non-strategic litigation in human rights

Since SL is about testing cases, CSOs, lawyers or other agents and their clients, must consider whether SL (as opposed to ordinary litigation) is the best approach for their intended objectives, given the specific challenges it bears. Actors must carefully review what role litigation will play in a wider campaign and whether it will help to achieve their long-term goals. With a judiciary that lacks independence, negative outcomes might be foreseeable. Will the goals of the campaign be negated if the courts rule against the petitioners? It may be that advocacy aiming at political rather than judicial actors, might be more effective in some cases. (ICJ, 2019a)

Remember!

Not all cases can or need to be strategic. It is also important to note that a lot of litigation is taken on behalf of individual clients, seeking individual relief and while such cases may not have "strategic value", they are important to the individuals concerned. These cases cannot be ignored in the search for the alluding strategic case – it goes without saying that **the needs of the client must come first for any lawyer**. A lawyer owes a duty to his or her client to act in their best interests and to provide a proper standard of service.

In the end, there is a balance to be struck between strategic and non-strategic litigation. Focusing only on strategic cases will not cover all cases where individual rights are violated. On the other hand, focusing solely on non-strategic cases will mean that resources will be available to bring cases of wider benefit to higher courts. Not all litigation can be strategic, and both types of litigation and other actions are still needed to protect human rights. (ICJ, 2019a)

1.6 Individual, societal and institutional impacts of Strategic Litigation in the area of gender equality and women's rights

Moving from a general to a more specific perspective, it can be said that SL well represents a tool that can help advancing gender equality, including from an intersectional perspective, closing the inequality gap, and eradicating discrimination, impunity, and corruption. SL in the area of women's rights can thus lead to the following impacts (Open Society Institute, 2017):

The impacts of Strategic Litigation for the victim

Individual impact on the victim, the complainant, their families and/or relatives

Impact on the victims takes various forms. The focus here is on recognising these individuals' dignity and meeting their expectations and wishes during the litigation process.

Judicial redress and recognition

SL at national and international level will in many cases lead to the cessation of the wrongdoing and stop violation. Moreover, having the facts acknowledged in a judgment by a judicial body can also help the victims' process of healing and empowerment.

Other forms of reparation

In addition to acknowledging and redressing violations, SL might prompt recognition of responsibilities by perpetrators, whether individuals or institutions, for instance in the form of apology or recognition. SL can also have an impact in terms of establishing accountability, leading to vindication and eliminating impunity. This may happen even if the action does not lead to a conviction or a penalty: such processes might have a positive impact for victims and help expose the impunity of certain violations.

Compensation

Litigation processes have an individual impact when the court grants reparation measures, such as compensatory damages, medical and/or psychological services, measures promoting access to education, recognition of the facts by state authorities or requests for pardon. Compensation can also have a symbolic value that goes beyond the financial relief. The symbolic nature of the compensation is particularly evident when the case is taken before an international body.

Empowerment

SL can create material changes for individuals and communities through compensation and other reparations, affirmations and rights, recognition of facts by state authorities or prosecution of perpetrators. In addition, the litigation process can also create non-material changes that will have an impact on individuals. These changes can increase the victim's sense of empowerment and agency, transform the public discourse, and positively influence the behaviour and attitudes of government officials and society towards that person.

The impacts of Strategic Litigation for institutions

Institutional impact

SL is ultimately designed to reinforce a State's human rights obligations and strengthen the institutions responsible for protecting citizens. Examples include changing legislative and public policy, developing jurisprudence on reparations, and amending policies and internal procedures on victim protection (such as interim measures, victim support and assistance protocols, and investigation protocols for specific crimes).

Indeed, the far-reaching change that can have the greatest impact on large numbers of people is often a change in policies, case law, institutions (including the judiciary itself), and a judicial decision.

In SL emphasis is placed on developing institutions that will protect citizens' rights by changing legislation and public policy, developing case law on compensation, and changing victim protection policies and internal procedures. (OHCHR, 2021) The instrumental changes achieved in these areas often provide visible evidence of the extent to which the objectives of SL have been met. However, according to studies conducted on a global scale, these effects are the most difficult to obtain due to the limitations in the jurisdiction of the courts. Moreover, global experience shows that they often overlook these instrumental implications when formulating their legal strategies. (OSI, 2017)

The impacts of Strategic Litigation on the society

Social impact

This relates to structural changes that arise because of litigation proceedings and that are conducive to preventing the recurrence of similar events in the future and act as deterrent. In the area of women's rights these include changing narratives about historical events and reinforcing messages of zero tolerance towards gender-based violence and impunity.

SL has the power to create space and opportunities for forms of social and cultural change, as well as its individual and institutional implications. SL is one of the possible tools of social change by prompting information on human rights violations, creating new opportunities for monitoring government compliance with human rights obligations, and raising public awareness.

However, in order to achieve these results, it is important to understand the complexity of any social change effort and the possibility of negative and unintended consequences of judicial relief. (OSI, 2017) Studies in the field of sociology of law and historical studies reveal the effect of law in providing social change, and it is underlined that the judiciary and judicial decisions have an important contribution to increase this effect. In particular, making the requested change, introducing the subject in the public debate and making the groups that support change visible in society. Nevertheless, the support of social movements is an absolute necessity, by using the law as a policy tool, to encourage social change, especially in an issue that has both social and cultural aspects, such as women's rights. (Akçabay, 2022)

2. The process of Strategic Litigation – challenges and solutions

SL is a process that goes beyond the individual case involved. Thus, several elements need to be considered in addition to the actual case. In particular, it is fundamental that a movement is created as part of the SL action in order to create a favourable setting that will be able to support the chosen action.

Key factors in Strategic Litigation - a checklist

International best practice indicates the following key factors are essential to SL actions. This can serve as a checklist of essential steps towards undertaking SL:

1. Creating a SL network of lawyers and CSOs
2. Choosing the "right case"
3. Undertake risk and safety assessment
4. Choice of forum
5. Engage the media and build a communication strategy

2.1 Creating a Strategic Litigation network of lawyers and CSOs

SL seeks to create change by combining a strategically calculated set of legal, political, and social techniques. In order to accelerate changes and ensure high impact, creating collaboration with NGOs, grassroots groups and academic institutions is as important as a rights-based approach and well-thought-out litigation strategies. Such synergies and resources are at the base of the notion of SL, as opposed to individual litigation related to cases whose outcome may incidentally be relevant for a large group of individuals.

A good tip on timing

Preparation of SL movement should even come before the case selection. Starting to look at the measures needed to support the SL or to address its special challenges only after the "right case" has been identified is not the right approach and will certainly undermine its success. **The creation of a movement able to support the SL upon demand requires time and effort and cannot be improvised** in view of the often short deadlines for bringing an action at both national and international level. For this reason, **the "selection of the case"**, which appears to most as the central issue in SL, **is not the first issue** that this work should discuss.

SL means going beyond the individual test case, it is therefore important from the outset to understand that the legal or judicial action is very rarely the complete and only solution. SL, in other words, never works in isolation. To maximise the prospects of a successful outcome but, most of all, of impact and contribute to the changes in law and attitude sought, the case must have a widespread support. This can come from a variety of individuals and groups, including academics, relevant professionals or

experts, politicians and journalists, as well as CSOs, charities and relevant associations.

Campaign strategies should be case-specific and be developed in every case as there is not one formula that fits for all. Nevertheless, there are general principles that can apply for all advocacy campaigns:

An established and sustained network between lawyers, civil society and the affected community is key to successful litigation. Experience shows that building a network of lawyers and a supportive advocacy network is essential to engage in complex and long-term strategy.

Responsible CSOs are often well informed about international standards and their potential to support advocacy. CSOs can be extremely well connected via essential community networks that have been established and built on trust over the years.

Lawyers can play an important role in building the legal capacity of CSOs, while CSOs can continue political and social advocacy and develop a legal strategy with lawyers.

Remember: good will alone is not sufficient!

Human and financial resources are central. Undertaking SL counting only on the availability of pro-bono lawyers will likely result in failure of the action, which in turn will also affect the victim. SL is a long process where the stamina of the client is as much important as the capacity of the lawyer to maintain the highest quality of work from beginning to the end.

2.2 Choosing the "right case"

Once decided that litigation is an appropriate strategy to support change or achieve redress, there are several key strategic considerations to be taken into account before selecting relevant cases. Before engaging in a long legal battle, the case should be tested against few key questions both legal and practical that allows for an assessment of whether the case is the right one for SL.

Principles of case selection
A check-list

1. Does the case fall within the mandate of the organisation?

2. Is there a legal issue involved that exemplifies or relates to a broader social or societal problem? Does the problem reveal a systemic or structural problem of the legal system (including compliance with international obligations)? Would many people be affected by the positive outcome of the case?

3. Would a court decision be able to address the problem?

4. Are your cause and the key issue in the case easy to understand for the media and the public?

5. What is the client's goal and how can the lawyer help the client clarify the goal(s)?

6. What level of commitment does the client have to achieving the goals?

7. Beyond litigation, are there are other methods of achieving the client's goal(s)? Are these more or less likely to be effective? or should be pursued together?

8. What are the strengths and weaknesses of the client's case?

9.What are the strengths and weaknesses of the opposition's position?

10. What are the legal claims and how strong are those claims on the merits, within the system and in public opinion?

11. Who are the opponents and what is the estimated level of commitment to that opposition? Who are their supporters?

11. Who are the allies? who else has an interest in the issue and what are those interests? Will they support the client's position?

12. Will the allies be willing to work together on reaching a solution? Are other actors with a less defined interest able to support the issue?

13. Are there additional CSOs or stakeholders that need to be mobilised to ensure financial or evidentiary resources?

14. How feasible is it for the SL agents to reach out to such actors?

15. How difficult will it be to prove the case and to bring the evidence?

16. How costly will it be?

17. Is there an alternative or compromise that will meet the needs of both sides? Is exploration of other avenues an option?

18. How likely is it that the court will look favourably on the action?

19. What political repercussions will follow either a win or loss in court? Is the legal theory clear and simple, and is the remedy easy to implement?

20. What are the potential risks or consequences that the exposure through the case will have on the client as an individual or on the social group?

21. How feasible is it for the SL to counter such consequences and to ensure the safety of the client?

If your case provides a positive answer to the first four questions, and the other answers indicate that taking the case forward is not unrealistic or too burdensome, **then you probably have a good strategic case at hand!**

The efforts of SL can be frustrated by a number of challenges, which have to be known and taken into consideration when planning the strategy and selecting the case

2.3 Undertake risk assessment: the challenges of Strategic Litigation

SL is not without risks. It is important to undertake a realistic risk assessment to determine whether SL is the right approach – or whether an alternative course of action might be indicated. The most obvious risk of SL is the danger of losing a case and creating a negative precedent, which in turn can lead to a cementation of the status quo, or – even worse – negative law reform / doctrinal change. Moreover, SL, as any litigation, is resource intensive, requiring financial means, expert knowledge, and personnel, among other things. This makes it necessary to carefully calibrate the possible benefits of litigation against the probable costs that such an approach requires.

The following are the risks that should be considered (Equinet, 2017):

Losing a case

This can lead to the establishment of a negative precedent, which in turn can lead to a cementation of the status quo, or – even worse – negative law reform/doctrinal change. This concern is exacerbated by the emergence of 'reactionary' SL. Nonetheless, losing a case can also have positive effects – by, among other things, generating publicity, sympathy and social movement mobilisation.

Costs of litigation

SL, as any litigation, is resource intensive, requiring financial means, expert knowledge, and personnel. Moreover, court proceedings can last for several years, particularly if several instances are involved. Therefore, SL requires serious commitment. This makes it necessary to carefully calibrate the possible benefits of litigation against the probable costs that such an approach requires. If the time and money spent on devising and executing a litigation strategy do not correlate with the possible positive effects of such an effort, then resources might be better spent elsewhere.

Conflict of interests

The prioritisation of a social change agenda might conflict with the achievement of an optimal result for the individual client. This is a delicate situation that may significantly influence the lawyer-client relationship. It is therefore very important that expectations are managed from the outset, and that options and agendas are communicated candidly. However, clients may themselves be activists or at least committed to the idea of contributing to sustainable social change, not just providing individual relief. In addition, a victim-centreed holistic approach in SL is also helpful in preventing a potential conflict of interest.

Practical considerations – a checklist

- Are the facts of the case clearly established or ascertainable?

- What are the legal avenues that can be used to reach the SL objective? What are the pros and cons of each?

- Is there sufficient evidence, and is of kind that is admissible in a court of law?

- Are the required resources available and proportionate to expected results? How costly will it be? Are the possible costs justified by the potential legal-policy gains?

- Is legal aid available for such type of action? If not, who is going to fund the action from beginning to end?

- Is collective procedure better or would individual claims be better suited? If a collective action is decided what are the practical and legal hurdles?

-Are there risks for the client that need to be considered, discussed and assessed?

2.3.1 Gender-specific legal challenges in Strategic Litigation[5]

Gender stereotypes and discriminatory attitudes in legal proceedings represent challenges specific to the area of women's rights litigation.

Keep in mind!

Litigation processes are influenced by preconceptions about the attributes and characteristics expected of victims of gender-based violence, as well as by the roles that men and women should play in society.

5 See, Strategic Litigation for Gender-Based Violence: Experiences in Latin America p. 10 -11.

The lack of gender sensitivity of justice actors risks re-victimising victims and/or complainants and can also prevent cases from reaching a satisfactory conclusion. Gender stereotypes often intersect with other stereotypes and/or forms of discrimination, for example, in the case of LBTI women, or women with certain political affiliations, whether these be their own or those of their family members. (OHCHR, 2021)

Stereotypes are expressed in various ways and at different stages of the proceedings, the most common being degrading comments made during oral hearings and defence strategies based on stereotyped reasoning. These defence strategies are aimed at undermining the credibility of the victims, bringing into question their motives for bringing a criminal complaint and even holding them responsible for the violence they suffered. Where a case has been seriously hindered by biases or prejudices from the judges, the legal representatives of victims have at times filed motions to recuse or disqualify them. These initiatives, while necessary and often successful, ultimately lead to lengthening already extensive legal proceedings and accentuate the victims' distrust in the authorities. (OHCHR, 2021)

2.3.2 Victim protection and risk/safety assessment

Remember!

SL not only bears legal and practical risks but might also have a detrimental effect clients and their communities. SL agents have the responsibility to conduct a thorough assessment and inform the clients accordingly, in compliance with the **"do not harm" principle that should guide any human rights intervention** and should refrain from exerting pressure of any kind. In addition, mitigating or special measures to ensure the safety of the client or minimize negative impacts should be put in place. The victims should be guided in understanding the social change goal behind the SL and given the chance to actively participate in the process.

The selection of clients must be a long-term process in which lawyers, NGOs and civil society engage with the community to prepare them to take a case and support them throughout litigation. Crucially, the support must continue after litigation to assist the community with the consequences. (ICJ, 2019a)

Risks are commonplace in SL. Although they will always be present, it is important to be clear and transparent about such potential risks that victims might face and to listen to their concerns. Equally it is essential to ensure that the complainants are informed and aware of the overall strategy and accept the dangers and complexities they might be facing because of their engagement. For it is the victims who may face the security forces, who may have their lives put into the public eye, and who must live in the community after the campaign is completed. (ICJ, 2019a)

A possible risk of SL is that it becomes a forum used by national and international advocates and lawyers to push solely for their own agenda, even where it might be at odds with the wishes and/or interests of the people on whose behalf they are purportedly acting. Litigation, even when strategic, must remain about representing the clients/victims, while doing so in manner that ensures to the extent possible their safety or well-being. It is important to ensure that the interest of the victims/clients align with the overall strategic goals, and that both will benefit. (ICJ, 2019a)

The Risks of Strategic Litigation

Aksoy v. Türkiye[6]

Aksoy v. Türkiye is known for its jurisprudential impact on the "torture" standard. Fewer people, however, are aware because of the application, the applicant was re-tortured and ultimately killed and her father repeatedly tortured and castrated for refusing to cede to threats to withdraw complaints.

Akkoç v. Türkiye[7]

The applicant suffered from public vilification for "betraying the country" through complaining to a foreign court.

Elçi and others v. Türkiye[8]

This case is a tragic example of the growing practice of bringing criminal complaints against lawyers and others for supporting "terrorist" applicants. The applicant was tragically executed after delivering an interview on torture and intimidation of lawyers.

Opuz v. Türkiye[9]

The death of the applicant, after complaints had been filed at national level, show the challenges arising from ineffectiveness of complaints procedures to secure protection. (Duffy, 2018)

2.3 Specificities of Strategic Litigation in the area of women's rights – the importance of victim-centred approach

Even more than in other areas, SL focussing on women's rights required the assessment of the safety of the victim and the adoption of a victim-centred approach. **Giving priority to the victims also means empowering them through the process**, ensuring their effective participation.[10] This, in turn, from a SL perspective, can also reinforce their stamina to pursue the case. This is particularly true for criminal litigation where, often, the focus is on establishing the guilt of the accused. Victims are therefore side-lined despite being formally recognised as rights-holders. A factor influencing the trust that victims place in judicial institutions and other public agencies is the degree of exposure and interaction they have had with these institutions prior to initiating the litigation process. Therefore, it is necessary to build victims' trust in justice institutions so that they feel part of the litigation process and can break their silence. (OHCHR, 2021).

6 Case no. 1987/93
7 Case no. 22947/93 and 22948/93
8 Case no. 23145/93 and 25091/94
9 Case no. 33401/02
10 The importance of empowering victims of crime, so they can report crime, participate in criminal proceedings, claim compensation and ultimately recover from the consequences of crime and working together for victims' rights are the two strands along which the first EU strategy on victims' rights is built. The Strategy was adopted by the Commission in June 2020 and is valid until 2025. More information can be found at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0258&from=EN

Guideline for a victim-centred approach

Respecting victims' notions of justice and letting them guide and set the agenda for the litigation process;

- Managing victims' expectations with respect to the potential outcome of the litigation process;
- Respecting each victim's personal processes and his or her choice on whether to become involved in legal proceedings;
- Informing victims of all procedural developments and providing them with knowledge and understanding of relevant legal or procedural issues;
- Informing victims of the risks of the litigation process, but also of the potential benefits that might result from their participation, even when the final outcome is not as expected;
- Simplifying legal concepts so that victims understand the meaning of legal terms;
- Communicating with victims in their own language and, if necessary, through interpreters;
- Integrating an intersectional approach, by drawing attention to the victims' gender and to other aspects of identity, including their age, ethnicity, and economic or social background; and
- Accompanying them through their process of emotional resilience and empowerment.

2.3.1 Addressing the holistic needs of victims

A holistic approach to SL puts the client's needs at the core of the legal claim, and the advocacy strategy. This is particularly important when dealing with victims of gender-based violence or discrimination. The needs of victims must be addressed timely, to acknowledge the wrongdoing/the violation they have suffered and to promote a broader sense of social justice, which entails meeting the needs of victims independently of the reparations granted in court rulings. Moreover, action should strive at ensuring that the right of victims to obtain reparations should not be dependent on finding an accused guilty, but that these two processes can, and should, occur in parallel. (Redress, 2021a)

Without seeking to relieve the state of its own obligations, it is important that a SL action encompasses the comprehensive support to the victims being represented. In the context described above, lawyers and activists must work closely with victims and their relatives to accompany them through SL that can take a long time.

Victims must be placed at the centre of the process, taking a leading role in setting the strategy and expressing their needs and expectations. Sometimes the goals of lawyers and victims may not coincide, and it is important to respect the wishes of the victim. The role of lawyers and activists should be to provide the expertise needed to inform the person and guide him/her to legal and illegal actions. Of course, it is important that the legal team is properly structured so that this support can be actively provided to the victim and their relatives throughout the duration of the case. (Redress, 2021b)

Good practices of a holistic approach

- Ensure psychological, medical and material welfare of the client through support. Victims often suffer severe trauma as a result of violence (amounting or not to torture) and need support (this can be done through referral pathways, of which the lawyer must be fully aware). It should be done throughout any form of engagement with the case and the victim.
- Ensure the safety of victims, which might require protection measures, including relocation, where possible.
- Inclusion of victims or affected communities throughout the process. This means involving them in the decision-making and strategy in every phase of litigation, so their needs and expectations are taken into account, informing them regularly of the evolution of the proceedings and advocacy routes, as well as involving them in other activities during the process.
- Claiming reparation for victims that corresponds to their needs (in its five forms – compensation, restitution, satisfaction, rehabilitation, and guarantees of non-repetition).

2.4 Choice of forum: national and international

The choice of the forum is an essential element of the strategy. SL litigation can take place any level: lower and higher national courts and/or as part of administrative adjudication processes. Submissions to a National Human Rights bodies or administrative or quasi- judicial mechanism can also play a role in SL. Officially documented record of complaints can be cited in courts or in communications to other mechanisms afterwards. SL can also involve international mechanisms. Regional and global legal avenues are also to be considered. This can include the use of non-judicial mechanisms, whether an executive oversight agency, a committee of a national parliament or an inter-governmental body, such as the human rights treaty bodies administered by the UN, and of course the ECtHR. These quasi-judicial and judicial international bodies can constitute subsidiary and last resort mechanism to act when a State has been unable or unwilling to effectively administer justice. (ICJ, 2019a)

2.5 Engage with national/international media and start media/public campaign

An important step in the strategy is to develop a carefully planned media and communication strategy. The media strategy should aim to enhance public knowledge and potentially contribute to public support. Supportive media can help develop a public campaign and raise awareness about how the litigation supports social change. The communication strategy needs to be developed early to ensure maximum impact and a positive follow up from the journalists. Media relations must be carefully managed. Community activists can get unfavourable press attention from some media, and bad press can undermine public's support for the case and make it more difficult for decisions makers. Lawyers should help media to understand legal processes, including rules on reporting at the Court, to ensure that media also know their rights and obligations regarding reporting on cases. (ICJ, 2019a)

Tips for developing a media strategy[11]

1. 1. Identify the key issues in your case and why they are important for the public. Try to encapsulate this in three or four short sentences. You can then use these sentences to describe the case in press releases, leaflets, on your website or social media pages and when speaking to journalists.

2. 2. Focus your press strategy around the different stages in the litigation and give regular updates about what stage the case is at and when the next stage will take place.

3. 3. Journalists will often be interested in a personal story so think about whether there is a back story that will make the case more human and accessible for the public. If there is, pitch the story as an exclusive to a journalist in the lead up to the litigation. This will lay the groundwork for press interest in the case when it goes to court.

4. 4. Research whether the issues in your case are being litigated or campaigned about elsewhere. If they are, incorporate this into your press materials to demonstrate the wider significance of your case.

5. 5. Draft a press release for journalists at each stage of the litigation. A press release should be short and informative. You should include a simple summary of the issues in the case, a narrative of what has happened so far and some powerful quotes that show why the case is important. You should also include the contact details of someone who could provide a journalist with more detailed information should they need it. If you are publishing the press release to announce the judgment in your case, consider attaching a copy.

Social media, particularly Facebook and Twitter, are powerful tools that can be adapted and utilised in campaigns, using traditional and emerging media strategies.[12]

11 Developed by the Public Law Project, https://publiclawproject.org.uk/content/uploads/data/resources/153/40108-Guide-to-Strategic-Litigation-linked-final_1_8_2016.pdf p. 21

12 The CoE has developed specific Guidelines on gender equality and reporting on cases of VaW for journalists". The Guidelines can be found at https://rm.coe.int/media-guideline-eng-final/1680a15260

Part II
Litigating strategically at national and international level

3. Strategic Litigation at national level

In Türkiye written law rules are superior to judicial decisions nevertheless, courts and case-law can still play an important role in supporting social change. Within the Turkish context, lawyers are uniquely positioned to identify both systemic barriers to women's access to justice as well as potential individual cases or groups of cases. Nothing bars them from engaging in SL. However, given the features of SL as opposed to individual cases as well as the obstacles in access to free legal aid, lawyers alone cannot pursue SL independently. Therefore, it is important that they become instrumental to the stakeholders and actors, such as CSOs, whose mission encompasses enhancing the protection of human rights through SL. Patterns of systemic violations can be detected more easily thanks to data and input from lawyers. Courts' knowledge of their position on certain issues is also key in enabling the selection of relevant cases.

3.1. Women's access to justice in Türkiye

In Türkiye, the Constitution is the fundamental document regulating and guiding all issues relating to gender equality. The Constitution contains a specific equality provision in **Article 10** which makes explicit the commitment to substantive equality, including the possibility to adopt affirmative action measures.[13] Several provisions of the Constitution reflect the principle of equality between women and men: the right to free and compulsory primary education for both men and women[14], the equal right of men and women to vote and be elected[15] , the equality between the spouses in the family on. Furthermore, **Article 90** of the Constitution ensures that international conventions concerning fundamental rights and freedoms have precedent in case of a conflict with national law, thus making ECHR and CEDAW superior to national law in gender policy.

In addition to the Constitution, the main legal documents regulating gender policy are: the Turkish Civil Law, Labour Law and the Criminal Law. Beginning with 2000's, in addition to amendments to the Constitution, the Turkish Civil Law and the Penal Law were completely changed and a number of amendments were made in the other legal documents. The 2005 Penal Law states clearly that "no discrimination shall be made between persons with respect of sex" among others to ensure gender equality[16] and the 2001 Civil Law adopted the legal measures to ensure gender equality in family.[17] The Labour Law, which is also among the fundamental laws, has been reconsidered having regard to implementations that includes discrimination against women. In this regard, no discrimination including sex discrimination is permitted in employer-employee relations considering fundamental human rights. [18]

The Law No. 6284 entered into force in Türkiye on 8 March 2012 after the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). The purpose of this law is to protect the women, the children, the family members and the victims of stalking, who have been subject to violence or at the risk of violence, and to regulate procedures and principles with regard to the measures of preventing the violence against those people.[19] However, Türkiye's withdrawal from the Istanbul Convention in 2021 has led to a significant decline in this field.

13 Article 41 of the Constitution.
14 Article 42 of the Constitution.
15 Article 67 of the Constitution.
16 Articles 5 and 122 of The Penal Law.
17 Articles 186, 188, 250,254 of the Civil Law.
18 Article 5 of Labour Law.
19 Article 1 of Law No. 6284.

Potential of Strategic Litigation in gender equality in Türkiye

Although there are important steps taken for the realisation of women's rights in Türkiye, there are still important gaps to fill in with regards to women's rights and the access of women to justice. There are issues in which even the equality before law is not provided. For example, legal situation of married women's surname (Civil Law, Article 187) or the ban on underground, underwater and dangerous jobs for women (Labour Law, Article 72). In addition, many difficulties are encountered in implementing the existing legal regulations and rights, especially on violence against women and the prevention of domestic violence. There are difficulties in obtaining and enforcing preventive and protective measures stipulated in the Law No. 6284 as well as the accessibility and quality of support services and referral mechanisms for victims of violence. Therefore, SL has the potential to be an important tool in bringing national laws, policies and implementation on women's rights in line with international standards. Through SL the rights remaining on paper can be implemented; new judicial decisions can be made on controversial issues and public opinion can be established for new regulations.To promote gender equality in Türkiye, it is important to seek compliance with international standards. In the absence of the Istanbul Convention, CEDAW and the ECHR stand out in this regard. In applications to be made before mechanisms that directly examine human rights violations, such as the Constitutional Court, the THRI and the Ombudsperson, preparations should be made within the framework of international conventions and court decisions, particular emphasis should be placed on the prohibition of discrimination in every application.

In this context, the ECHR and the Council of Europe standards, as well as the case law developed by the ECtHR can be advocated through SL. In addition, General Recommendations no. 35 and 33 and decisions adopted by the CEDAW Committee within the framework of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Türkiye is a party, can be used as international law references before the national courts.

Relevant global and regional human rights conventions superior to domestic law as required by Article 90 of the Turkish Constitution

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- Convention on the Elimination of All Forms of Discrimination Against
- Women (CEDAW) (and CEDAW Committee Recommendations)
- Convention on the Rights of Persons with Disabilities
- European Convention on Human Rights (and decisions by the European Court of Human Rights)
- European Social Charter
- Council of Europe Convention on Action against Trafficking in Human Beings

3.2. National avenues

Article 36 of the Turkish Constitution guarantees 'the right to legal remedies' which provides that "everyone has the right of litigation either as plaintiff or defendant before the courts through lawful means and procedure." Article 40 of the Constitution provides for "the right to request for access to the competent authorities" in case of breach of fundamental rights or freedoms sets out that the state has to specify which legal remedies and authorities that individuals will apply to and the deadlines.

Laws and secondary legislations provide detailed rules and procedures under civil, criminal and administrative law to operationalise the constitutional principles and ensure the right to remedy for individuals in case of breach of law.

In terms of ensuring women's access to justice, there are different judicial or quasi-judicial remedies and various legal options to seek implement the constitutional principles and laws, such as filing petitions in front of civil, criminal or administrative courts, the Constitutional Court (CC) as well as Türkiye Human Rights and Equality Institution (THREI) or the Ombudsperson.

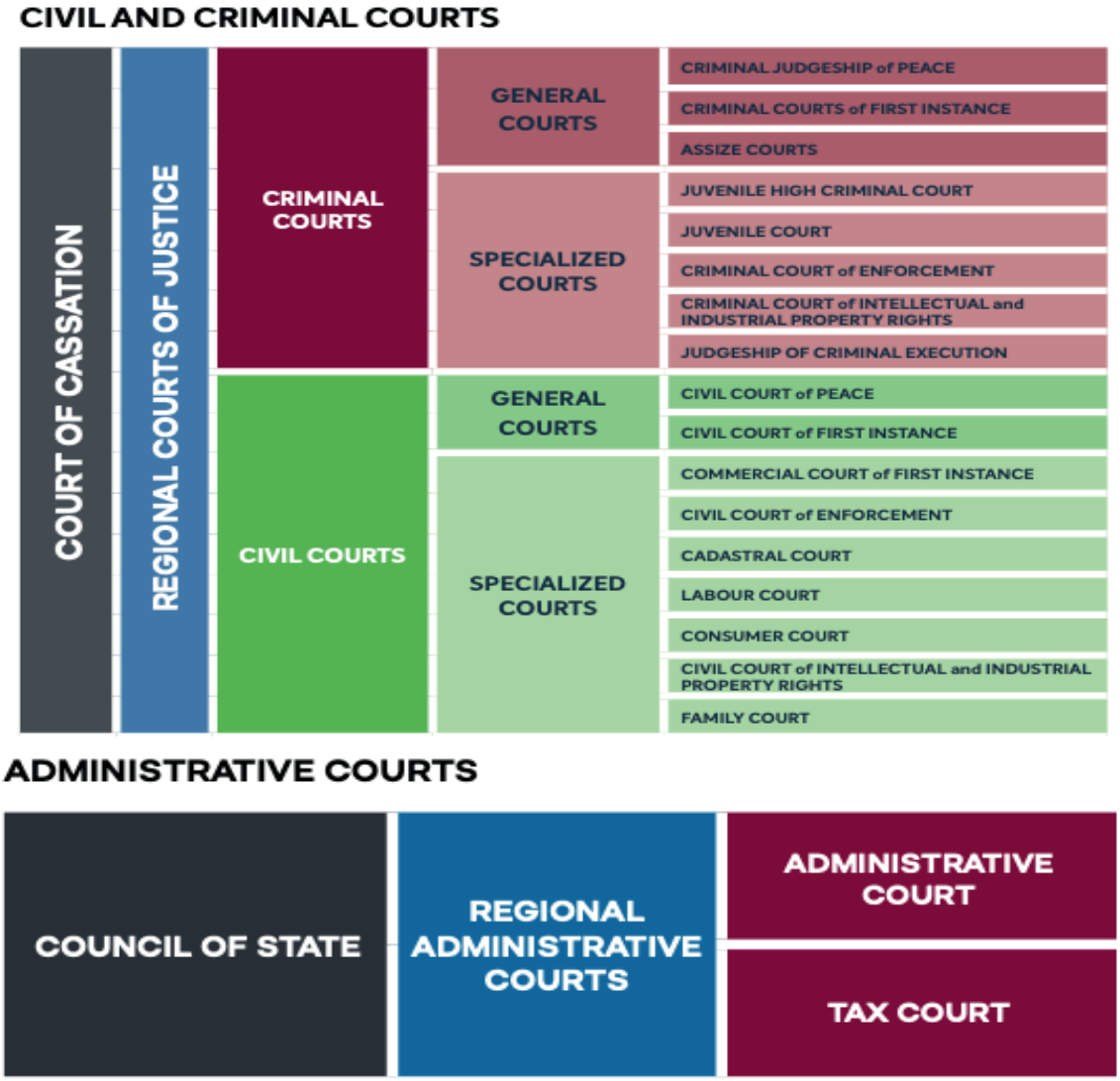
a. Courts

i. Civil, criminal and administrative courts

Courts of first instance in Türkiye are organised in different types within the judicial and administrative divisions. There are also three levels of courts operating hierarchically between civil, criminal and administrative courts. In addition to this hierarchical structure and division of fields, there are also special courts established in the field of both civil and criminal justice, apart from the general courts in the first instance.

Cases of violence against women and domestic violence, especially when it comes to physical and sexual violence, are decided by criminal courts. However, preventive measures related to cases of violence against women and domestic violence are given in family courts according to the law to protect family and prevent violence against women (Law No. 6284). While family courts, which act as private law courts, are mainly in charge in terms of issues related to family law, labour courts, which are also private law courts, are in charge of rights violations experienced by women in the workplace. Damages caused by different rights violations can be demanded from civil courts.

The correct determination of the court and jurisdiction is important in Turkish legal system in order to avoid delay in the process and loss of rights. When determining the mechanism to be applied, it is necessary to establish the authority which is competent to decide on the violation or dispute. Where recourse to different mechanisms is possible, priority should be given to the desired protection, procedural conditions such as admissibility or length of proceedings, and legal arguments that the relevant mechanism may use.



* The diagrams are taken from the Turkish Judicial System booklet prepared by the ministry of justice and justice academy as an example.

ii. The Constitutional Court

The Constitutional Court (CC) is one of the most important mechanisms to prevent human rights violations in Türkiye. The CC examines the constitutionality, in respect of both form and substance of laws, presidential decrees and the Rules of Procedure of the Grand National Assembly of Türkiye (GNAT). Constitutional amendments shall be examined and verified only with regard to their form. However, presidential decrees issued during a state of emergency or in time of war and international treaties, cannot be brought before the CC alleging their unconstitutionality as to form or substance.

An example of women's rights litigation under Turkish law is the case of "the surname of married woman": this was handled through norm review – eventually the CC decided that this regulation was not unconstitutional considering the unity of the family.[20] In a more recent norm review, the CC considered the compulsory medical intervention in the civil law for gender identity change to be a violation of rights and annulled the relevant part of the regulation.[21]

In addition to this norm review, the CC Court has started to accept individual applications regarding the violation of fundamental rights and freedoms after the constitutional amendment in 2010. The

20 Constitutional Court, 29.09.1998, case number: E.1997/61, K. 1998/59.
21 Constitutional Court, 29.11.2017, case number: E. 2017/130, K. 2017/165

individual applications encompass fundamental rights and liberties which are enshrined by both the Constitution and the ECHR. In individual application cases, the CC decides whether the fundamental rights of the applicant have been violated or not. If it finds violation, it may also decide what should be done to redress the violation and its consequences.

The CC may also take a different approach than the norm review in the individual applications it examines. That was the case with the application related to the surname of the woman: the decision was not annulled by the CC, which has started to issue violation decisions since 2014 in the applications made on the subject.[22]

In order to make an individual application to the CC, all available domestic remedies must be exhausted. The CC, just like the ECtHR, is thus the final mechanism in the litigation process. For this reason, SL proceedings regarding violation of rights should be initiated in the courts of first instance.

SL also encompasses bringing cases to regional or international fora, such as to the ECtHR and to UN treaty bodies, including the HRC, CEDAW, CRC and CRPD[23] since Türkiye has committed to multiple international human rights instruments that protect the women's rights. However often before taking a complaint to a regional or international fora, any effective domestic remedies must be exhausted. Individual application to CC is the last resort remedy to seek protection of individual's rights under Turkish legal order and necessary avenue to exhaust before the ECHR and other international remedies.

b. Quasi-judicial bodies

In addition to the judicial mechanism, the THREI and the Ombudsperson Institution, which are quasi-judicial institutions, have also to be considered in the context of a SL action.

These equality institutions are recognised as one of the basic mechanisms in the protection and development of human rights at the national level. The Ombudsperson Institution, which is an independent and effective complaint mechanism in the functioning of public services, was established for the first time in Türkiye in 2012. This institution's duty is to examine all kinds of actions, transactions, attitudes, and behaviours of the administration in terms of compliance with law, human rights and equity. In addition, the TIHEK which is the national prevention mechanism for the prevention of torture and discrimination, was established in 2016. The duty of the institution has been defined as the protection and promotion of human rights, guaranteeing the right of individuals to be treated equally, and preventing discrimination in the enjoyment of legally recognised rights and freedoms.

Importance of the quasi-judicial bodies

The functions of these institutions are to provide opinions or advice, evaluate and resolve complaints from individuals or groups. Institutions usually publicly announce non-binding decisions as a result of such complaints. In addition, these institutions can decide on complaints, examine them and refer applications to judicial bodies. Complaints are free of charge, unlike judicial procedures, thus minimizing access to justice problems. These institutions examine the actions and transactions of not only public institutions, but also real and private legal entities. Even though they are not very operational and effective in Türkiye, the quasi-judicial bodies can be an alternative to litigation processes due to the simplicity of the application processes and the speed of the mechanisms in SL.

In addition to these institutional mechanisms, there are other general remedies that can be exhausted for violations of women's rights. According to Article 74 of the Constitution, citizens and foreigners residing

22 Sevim Akat Eşki, App. No: 2013/2187, 19/12/2013.
23 Türkiye has signed the Optional Protocols to all of these Conventions, enabling individual complaints to be brought to the respective Committees.

in Türkiye, have the right to apply in writing to the competent authorities and the GNAT regarding themselves and the public. The Parliamentary Petition Committee is tasked with examining the petitions sent to the Presidency of the GNAT. In addition, the person who has been violated or their relatives can apply to the Presidency of the GNAT or directly to the Commission on Equal Opportunities for Women and Men, regarding gender equality violations and allegations of gender-based discrimination. (THREI, 2022)

Apart from the GNAT, it is possible to apply to the Presidential Communication Centre, to the Provincial and District Human Rights Institutions, to the Law Enforcement Surveillance Commission within the General Directorate of Security, to the Gendarmerie Human Rights Violations Investigation and Evaluation Centre, and to the Patient Rights Boards. (THREI, 2022)

c. Procedures

SL in women's rights and gender equality can be related to many different legal topics including, among others: domestic violence, divorce, child custody, labour rights, sexual harassment and maintenance rights, and access to justice. Within the differentiating fields of law, each of these topics could correspond to separate areas of expertise. Working with expert lawyers in the SL process is important to build successful litigation and not to make mistakes in complex litigation processes that work in different procedures.

In terms of violations of women's rights, more than one lawsuit can be filed in different jurisdictions to ensure women's access to justice. For example, in divorce proceedings, different lawsuits may be required for the sharing of assets, real estate and property, and compensation claims. The suitable lawsuit may depend on different procedures, periods and fees. For example, in cases of domestic violence, different authorities can be requested to issue injunction decisions, while the criminal justice is authorised in terms of acts constituting a crime. On the other hand, some types of violence against women and domestic violence correspond to crimes based on complaints. In these types of crimes, a criminal complaint must be filed with the prosecutor's office. As can be understood from these examples, the current judicial separation system, as well as the multiple avenues simultaneously available, make identification and preliminary preparation in SL particularly challenging, starting from the identification of the most relevant body to address.

i. Type of cases

As cases are heard in different ways in different jurisdictions, the requirements that lawyers must follow procedurally vary. Civil action is based on the principle that the parties to the dispute prepare their cases within a written procedure. While filing a civil lawsuit, the preparation of the case should be done in the best way and written evidence should be collected. When it comes to legal cases, attention should be paid to the statute of limitations, and since the amount of fees to be paid varies, preparations should be made within the financial means. Individuals can file a lawsuit for compensation in civil proceedings against tortious acts. Family law and inheritance law cases are also decided during civil proceedings.

Cases for annulment and full remedy regarding the acts and transactions of administrative powers are handled within the framework of administrative procedure in the administrative jurisdiction upon the application of the victim or the lawyer. Before filing an administrative lawsuit, an application must be made to the relevant administrative authority. Administrative action can be brought after the 30-day period for response. Administrative jurisdiction should be resorted to in cases where violations of rights arise from the actions and actions of administrative authorities.[24] It is possible to initiate administrative legal proceedings for the stay of execution which could assist to stop an ongoing violation. [25]

24 Article 10, Administrative Procedure Law.
25 Article 27, Administrative Procedure Law.

Criminal cases, on the other hand, are handled by criminal procedure in criminal proceedings. For the investigation to be opened by the prosecutor's office in terms of crimes subject to complaint, the victim or his/her representative must apply to the prosecutor's office. The duration of the complaint is accepted as six months. [26]In other crimes, the prosecution opens an investigation ex officio. Although the principle of ex officio examination is valid in criminal proceedings, the evidence in favour of the case should be prepared and presented to the prosecutor's office as much as possible.

Conciliation and mediation, which are alternative dispute resolution methods, exist in Turkey. Complaint-related offenses are within the scope of mediation, with the exception of sexual harassment and assault. All kinds of private law disputes that the parties can dispose of may apply to the relevant optional mediation. However, some requests that are the subject of commercial lawsuits and labor lawsuits are included in the scope of compulsory mediation. Although compulsory mediation is brought to the agenda in the field of family law, especially in terms of divorce and property division, studies show that most of the divorce and alimony cases involve violence. (Akçabay, 2019) Article 48 of the Istanbul Convention prohibits mediation and conciliation against violent acts.

For this reason, not only sexual crimes should be excluded from the scope of reconciliation, but also crimes such as threats, insults, simple intentional injuries, violations of the privacy of private life, which are frequently encountered in cases of violence against women and domestic violence, should also be excluded from the scope of reconciliation and mediation in family law should not be mandatory.

Points to be considered in legal proceedings in Türkiye

- Conciliation or mediation requests should not harm the victim.
- During the trial process, sexist approaches and prejudiced evaluations towards the victim should be prevented.
- It should be ensured that investigations and prosecutions are carried out in accordance with victims' rights regulations in criminal proceedings.
- Counterclaims should be pursued. Different cases should be followed simultaneously.
- It should be ensured that the evidence in favour of the victim is collected correctly, and witnesses are heard.
- Expert opinions should be sought in the case, and court cases and scientific works should be consulted in order to apply international standards.
- During the relations with the media and during the litigation process, the privacy of victims and their relatives should be protected.

ii. Group action

Beyond the existing rules for taking jurisdiction in unitary claims, there are some additional rules on jurisdiction for group action procedures. Even though Türkiye has no specific mechanism for class/collective actions such as those that are available in the common law legal systems, it is being slowly introduced in recent years following the trend in European legal system.

Although not a common practice in the Turkish legal system, the use of group actions to address systemic rights violations constitutes another potentially significant strategy. Group actions are provided for in the new Civil Procedure Law, allowing associations and other legal entities to file actions on their own

26 Article 73, Penal Law.

behalf to protect the rights of their members or the group they represent.[27] The Law does not, however, allow the claimant entity to claim compensation for damages suffered by its members or the group it represents or foresee the possibility for individuals to join in a class action lawsuit.

Although this form of litigation is not a widely used method in Türkiye, it is aimed at protecting the collective interest. Therefore, it can be considered as an option for SL if individuals whose rights have been violated are reluctant to file a lawsuit within the framework of their individual interests. For example, according to the current regulation, unions can file lawsuits on behalf of their female members regarding discrimination and harassment against women in the workplace.

iii. Legal aid

Legal aid plays an important role in eliminating barriers to women's access to justice. Legal aid provides free attorney services, including consultation and representation, as well as exemption from litigation fees and expenses before the courts[28]. Individuals as well as legal persons who are not able to afford necessary litigation or enforcement partially or totally and if their claims have a justifiable reason, may apply for legal aid.

The concept of "legal aid" in Türkiye is provided through three different legal frameworks. The applicant could request for legal aid from local bar associations as well as from the courts. The eligibility for legal aid in civil law proceedings is based on two criteria: lack of financial means and merits of claim. The legal aid lawyers and officials of legal aid commissions of local bar associations determine whether the applicant does not have sufficient financial means to cover the expenses of the litigation and whether their claim has reasonable prospect or merits. The second scheme involves courts granting an exemption from court fees in civil and administrative law procedures, referred to as "judicial assistance". The third option is the provision of a "mandatory public defender," which is foreseen in the Criminal Procedure Code, according to the category of crime or person, including children or persons with disabilities, victims of sexual violence and victims of a crime that requires minimum five years of imprisonment.[29] Since May 2022, women victims of violence, including domestic violence, can be provided legal aid in criminal law proceedings. [30]

iv. Third Party Interventions (TPI) and Amicus Curiae (AC) in National Law:

Under Turkish legislation, locus standi is determined by criminal, civil and administrative procedural legislation. Civil proceedings are based on the two-party system, with a plaintiff and a defendant. Yet, it is possible to intervene as a third party for those who are not directly affected by the case, or those whose legal interests clash with the parties or concerned sides regarding the issue or right in question in the proceeding. However, this regulation does not comprise secondary intervention and allow CSOs to participate in civil proceedings to support victims of disadvantaged groups. On the other hand, it is possible for third parties to participate in the case in administrative proceedings. For participation in the case, depending on which party the participant sides with, the intervener must have an interest in the outcome of the case. Legal entities can open cases through their authorised bodies where their interests are violated. Still, the condition of violation of interest for the proceedings does not allow for CSOs to appear before administrative judicial bodies on behalf of or instead of or together with victims

27 Article 113, Civil Procedure Law.

28 The Code of Civil Procedure (Arts. 334- 340), the Code of Criminal Procedure (Arts. 150 and 234/1), the Code of Lawyers (Arts. 176-181) as well as the Union of Turkish Bar Associations' Bylaw on Legal Aid are the main references regulating legal aid services in domestic law. For more information: Ministry of Justice website, https://adliyardim.adalet.gov.tr/index-english.html

29 See CoE, "Handbook for legal aid lawyers on women's access to justice in Türkiye", p.16.

30 Article 234 of the Code of Criminal Procedure , which regulates the rights of the victim and the complainant, has expanded the scope of the right to request a lawyer to be appointed by the Bar Association in the absence of a lawyer during the investigation and prosecution phase, and includes the crime of sexual assault and crimes that require a prison sentence of more than five years, with the lower limit of "sexual abuse of children or persistent pursuit crimes committed against women and crimes of intentional injury, torture and torment" were added. Official Gazette web site, https://www.resmigazete.gov.tr/eskiler/2022/05/20220527-7.htm; Article 234 Criminal Procedure Law.

of disadvantaged groups. (Karan and Ayata 2015)

In criminal proceedings, the person who demands to intervene in the criminal proceeding has to be one damaged by the crime along with the victim. According to the regulation, legal entities are also able to intervene in the case in addition to real persons if they have been directly harmed by the crime. However, since it is very difficult to prove that they have been directly harmed by crime within the framework of this regulation, it is not possible for CSOs to take part in a criminal proceeding to support a disadvantaged group. Nevertheless, women's organisations demand to participate in many cases, especially regarding femicide cases, by declaring that they are "harmed by the crime ".[31] Although these requests are rarely accepted by the courts, the involvement of the Ministry of Family and Social Policies as a legal entity in cases of violence against women and domestic violence is regulated in Law No. 6284. [32]

Another possibility for participating in judicial proceedings is presenting information on the dispute as a "friend of the court" or AC. In this case, CSOs could participate in the proceedings without being an actual party to the case. An AC it can be presented to the court by an organization with expertise on the matter even if it is not requested by the judge. The permission of the victim is not always necessary for this presentation. When considered in terms of Türkiye, the application mechanism in which amicus curiae is used the most is the Constitutional Court. [33]

Example of international expert opinion in Türkiye

On 20 August 2022 UN Experts[34] presented an opinion to the Council of State in response to the 10th Chamber of the Council of State's decision regarding the country's withdrawal from the Istanbul Convention. In the expert opinion, the importance of the Istanbul Convention in protecting the rights of women and girls was emphasized and the Council of State was asked to pave the way for Türkiye to return to its decision.[35]

Remember!

Statutes of limitations, locus standi (i.e. group actions as opposed to individual petitions), availability of free legal aid as well as financial resources available should be carefully considered, also in the light of the human resources available and that must be engaged in different procedures. The technical details and difficulties regarding the trial procedure should be shared with all components of the SL team, especially the victim and their relatives.

Strategic Litigation in Türkiye

- Applications to equality institutions should be encouraged.
- The financial and human resources of SL should be calculated taking into account the lengthy processes of litigation.

31 During the period when the Istanbul Convention was in force in Türkiye, some of the demands of women's organizations to participate in cases of violence against women within the framework of Article 55 of the Convention were accepted by the courts of first instance. The accepted request for participation in a sexual violence case by the Antalya Women's Counselling Center and Solidarity Association is an example of this. See, http://haberci07.com/kadin-dernegi-cinsel-saldiri-davasinda-mudahil/9446/

32 Article 20, Law No. 6284.

33 See, The Constitutional Court granted several national and a European CSO's leave to submit amicus curiae briefs until now. Türkiye Expert Report, 17.02.2017, https://www.equalitylaw.eu/component/edocman/?task=document.viewdoc&id=831&Itemid=

34 Reem Alsalem, UN Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences, Melissa Upreti, Chair-Report of the UN Working Group on Discrimination against Women and Girls, and Gladys Acosta Vargas, Chairman of the UN CEDAW Committee

35 Expert opinion to the Council of State of Türkiye on the withdrawal from the Istanbul Convention, 19 August 2022, https://www.ohchr.org

- Whether legal aid can be used in SL should be evaluated within the framework of different examples and financing should be adjusted accordingly.
- Lawyers who are referred from Bar Associations free of charge as a result of legal aid applications should be made a part of the legal team. The Bar Association should also be made a participant in the process through the attorney in charge.
- CSOs should be a part of the support network to be established for the case, taking into account the possibility of not being a party to the case due to the difficulty of third- party interventions within the framework of procedural laws. However, third-party intervention should be tried strategically, the decisions of the courts on this issue should be shared with the public and efforts should be made to pave the way for new regulations on this issue.
- In the SL process, CSOs should submit amicus curiae to the court in cooperation with academics, using their knowledge and human resources.
- When planning SL, associations and unions should be encouraged to take class action actions in the civil area to protect the rights of their members and partners or the interests of the groups they represent.
- Following the lawsuit, monitoring and reporting studies should be carried out by monitoring whether the decision is implemented or not.

4. SL at international level

As a complement, but not necessarily as part of the action since the beginning, SL can be taken up before international fora. There are several options available, each of which has to be assessed separately in the light of the strategic approach and goals pursued. Similar to the national level, action can be taken before different bodies (ICJ, (2019b):

Judicial mechanisms: International courts receive individual petitions or applications, and have competence to interpret and apply human rights instruments, declare whether the treaty has been violated, and prescribe appropriate remedies in the individual case considered. Their decisions are binding and must be executed by the concerned State. The European Court of Human Rights (ECtHR) is the typical example.

Quasi-judicial mechanisms: These bodies have all the characteristics of the judicial mechanisms, except that their decisions are not binding. They include: the CRC, HRC,CEDAW,CERD,CAT,ECSR,CMW,CRPD,CED and CESCR.

Non-judicial mechanisms: Non-judicial mechanisms are bodies or organs that have no specific mandate to supervise a particular treaty and whose decisions or views are not binding. Their legitimacy generally derives from the treaty establishing the international or regional organisations from which they emanate, rather than from a particular human rights treaty. This is the case with the Special Procedures established by the UN Human Rights Council.

Overview of international human rights mechanisms available to Turkish victims

	Judicial mechanisms	Quasi-judicial mechanisms	Non-judicial mechanisms
UN		Committee on the Rights of the Child (CRC): communication procedure and inquiry procedure	Special Procedures established by the UN
			Human Rights Council
CoE	European Court of Human Rights	European Committee on Social Rights (ECSR) (Collective complaints only)	

4.1 The choice of mechanism[36]

The choice of international for a will depend on a number of factors, procedural (time limitations, locus standi), substantive (prospects of success, practical impact of a positive outcome), personal (client's stamina and interest) and practical (funding, accessibility of lawyers who are proficient in the language of the procedure) (ICJ, 2019b). They are exemplified in the checklist available in the Annex.

5. Third Party Interventions (TPI)/ Amicus Curiae (AC) before the ECtHR

In addition to taking a case before an international body, those involved in SL can decide to intervene as third parties or AC e in a case brought but another applicant. This is common practices before the UN treaty-based mechanisms and the ECtHR. What follows are a few guidelines related to TPI before the ECtHR that can be easily adapted also to other international bodies.

5.1 The legal framework

Today, third-party interventions before the ECtHR are governed by article 36 ECHR and article 44 of the Rules of the Court.

Article 36 ECHR

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

3. The Commissioner for Human Rights may submit written comments and take part in hearings.

36 Adapted from Access to International Human Rights Mechanisms p. 34.

There are thus two different situations: one where the Court invites an amicus curiae submission and one where a third-party seeks to provide information to the Court on its own initiative. Acceptance of such briefs is "at the discretion of the President of the Court". Unfortunately, the procedure is not transparent so unless the intervener decides to publish the information on its website, the public will not be informed, for instance in the judgment rendered, about the unsuccessful request for interventions as well as the reasons why it was not accepted.

Rule 44 – Third-party intervention

1. (a) When notice of an application lodged under Article 33 or 34 of the Convention is given to the respondent Contracting Party under Rules 51 § 1 or 54 § 2 (b), a copy of the application shall at the same time be transmitted by the Registrar to any other Contracting Party one of whose nationals is an applicant in the case. The Registrar shall similarly notify any such Contracting Party of a decision to hold an oral hearing in the case.
(b) If a Contracting Party wishes to exercise its right under Article 36 § 1 of the Convention to submit written comments or to take part in a hearing, it shall so advise the Registrar in writing not later than twelve weeks after the transmission or notification referred to in the preceding sub-paragraph. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.

2. If the Council of Europe Commissioner for Human Rights wishes to exercise the right under Article 36 § 3 of the Convention to submit written observations or take part in a hearing, he or she shall so advise the Registrar in writing not later than twelve weeks after transmission of the application to the respondent Contracting Party or notification to it of the decision to hold an oral hearing. Another time-limit may be fixed by the President of the Chamber for exceptional reasons. Should the Commissioner for Human Rights be unable to take part in the proceedings before the Court himself, he or she shall indicate the name of the person or persons from his or her Office whom he or she has appointed to represent him. He or she may be assisted by an advocate.

3. (a) Once notice of an application has been given to the respondent Contracting Party under Rules 51 § 1 or 54 § 2 (b), the President of the Chamber may, in the interests of the proper administration of justice, as provided in Article 36 § 2 of the Convention, invite, or grant leave to, any Contracting Party which is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments or, in exceptional cases, to take part in a hearing.
(b) Requests for leave for this purpose must be duly reasoned and submitted in writing in one of the official languages as provided in Rule 34 § 4 not later than twelve weeks after notice of the application has been given to the respondent Contracting Party. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.

4. (a) In cases to be considered by the Grand Chamber, the periods of time prescribed in the preceding paragraphs shall run from the notification to the parties of the decision of the Chamber under Rule 72 § 1 to relinquish jurisdiction in favour of the Grand Chamber or of the decision of the panel of the Grand Chamber under Rule 73 § 2 to accept a request by a party for referral of the case to the Grand Chamber.
(b) The time-limits laid down in this Rule may exceptionally be extended by the President of the Chamber if sufficient cause is shown.

5. Any invitation or grant of leave referred to in paragraph 3 (a) of this Rule shall be subject to any conditions, including time-limits, set by the President of the Chamber. Where such conditions are not complied with, the President may decide not to include the comments in the case file or to limit participation in the hearing to the extent that he or she considers appropriate.

6. Written comments submitted under this Rule shall be drafted in one of the official languages as provided in Rule 34 § 4. They shall be forwarded by the Registrar to the parties to the case, who shall be entitled, subject to any conditions, including time-limits, set by the President of the Chamber, to file written observations in reply or, where appropriate, to reply at the hearing.

This latter provision, which is relevant for the purpose of the present work, allows for participation into the proceedings to any natural or legal person, entitling them to submit written observations about the application, provided that is "in the interests of the proper administration of justice".

The details of cases communicated to state parties are now published on the Court's website (HUDOC), which offers the option to search only for communicated cases. Also, a person directly concerned or affected by the facts in the case may apply for permission to intervene. This provision has occasionally been used by a victim of a crime where the applicant in the case was the perpetrator of that crime. To date, a little more than 140 human rights NGOs the CoE Human Rights Commissioner and GREVIO have been identified as third-party interveners before the Court: in addition to the traditional British-based charities and large transnational human rights organisations, the Court is more and more confronted with the presence of smaller and more specialised groups, as well as, recently, conservative groups.

In cases before the Grand Chamber, the time limit for requesting leave to intervene runs from the date of the notification of the parties of relinquishment to the Grand Chamber or of the decision of the panel of the Grand Chamber to accept a request for referral. The President can extend the time period for making such requests to intervene but only for exceptional reasons.

The substantive intervention, once submitted, will be sent to the parties to allow them to submit observations in reply. Those observations (if any) will be sent to the intervener but there will usually be no opportunity to respond.

Remember!

There is no prescribed form, no fee for requesting leave, and no need to seek the consent of the parties. The only requirements are that the request is "duly reasoned" and made in one of the official languages of the Court (French or English).

Interventions by NGOs or human rights bodies will be restricted to points of national or international law and will not be allowed to argue about the facts of the case or how the Convention applies to those specific facts. Such bodies will usually be restricted to written interventions with a ten-page limit and will be required to make the submission within a set period (usually three to six weeks). Sometimes the Court will require NGOs, particularly those likely to take a similar approach, to make joint interventions. On moral or sensitive issues, the Court will try to balance the interventions by allowing third parties from both sides of the argument.

Interveners are rarely allowed to put arguments in the hearing before the Court, although an exception is sometimes made for those who have a direct interest in the outcome of the case.

The AC can also take the form of a joint intervention, that is an amicus brief prepared and signed by more than one organisation. The advantage of doing so is that the third party can rely on more expertise, share the burden of work, avoid repetitions and give more weight to their intervention, so as to avoid being rejected. Another practice that can be observed are briefs signed by one NGO or an expert on behalf of other groups. Sometimes, when the number of interveners is significant, the Court can make

joint interventions conditional. Sometimes, the Court itself indicate on which aspects the interveners can elaborate in the briefs.

The requirement of an intervention ***rationae materiae***, to use the language of the Court, lies in the interest of the proper administration of justice. This means that here needs to be at least a connection between the issues considered by the Court and the object of the intervention. This rather abstract requirement leaves the Court with a wide discretion when it comes to acceptance or rejection of requests of interventions. This is illustrated by the fact that unsuccessful requests for intervention are usually turned down invoking that argument.

5.2 Selecting cases for interventions

Selecting cases for interventions is fundamental in order to achieve the desired results of an amicus, as stated at the beginning of this Handbook. Often the selection of a case falls within the SL objective of the institution.

For cases before the ECtHR a third party has twelve weeks from the date the notification has been 'communicated' to the state party. The details of cases communicated to state parties are now published on the Court's website (HUDOC). Remember that cases are published three weeks later, so 12 weeks is in fact 9, which is not much to assess the case, make decisions, and prepare the motivated request to intervene.

Factors to consider in selecting cases for a third-party intervention

* The practicality of developing methods and systems of identifying cases in advance and in sufficient time to intervene

* Whether the details and nature of the case are accessible

* Whether the case concerns or should concern human rights or equality principles

* Likelihood of getting permission from the court to intervene or the brief being considered

* Whether the court (or appeals courts subsequently) will make a decision that goes beyond the dispute between the parties

* Whether the decision between the parties inevitably impacts on a number of people

* Whether the court might make declarations of principles that will give guidance on the interpretation of human rights or equality law which might have a wider application

* Whether the case itself is itself important enough to intervene in regardless of the likely decision

* Whether the institution should be seen to intervene or whether the case provides an opportunity to make a statement about an issue or practice that is best provided in a brief to a court

* Practical issues such as time limits (for instance, in the ECtHR the 12-week time period after a case is communicated to the government)

5.3 How to seek leave to intervene?

The letter seeking permission to intervene should set out details about the intervener and outline the issues which the intervener proposes to address in the substantive intervention. The letter should be sent by fax and by post. The contact details of the court can be found on the website of the Court. In Annex I you will find an example of such communication.

When permission is granted, remember to:

* Submit your brief within three weeks;
* Limit it to 10 pages;
* Limit your submissions to the specific points raised by the Court, if the latter has specified them;
* Use short sentences, and break up sections with clear headings;
* Avoid verbiage, repetition, technical terms, legalese, and the use of other languages;
* Do not repeat the applicant's arguments but support them with new material;
* Avoid factual and legal errors at all costs.

5.4 The do's and don'ts of a third party intervention before the ECtHR: amicus curiae vs. animus curiae[37]

The ECtHR has generally been well served by third party interventions. However, in recent years, as an unfortunate consequence of the overall increase in third party interventions, the number of interventions which are not useful has increased. The well-established rule is that a third-party intervener should not comment on the facts or merits of the case. Yet, too often, that rule is either expressly or implicitly flouted: too often third-party interventions have passed from being welcome and valued amicus curiae to being animus curiae (literally enemy of the court). However sincere and well intentioned such interventions are, they often leave the impression that the intervention has been made, not out of a desire to assist the Court, but so that the intervener can be seen to have intervened.

A similar shortcoming concerns interventions in cases which concern sensitive ethical issues under either Article 8 or Article 9 ECHR, where the number of interveners can be extremely high. Often, in such cases, too many interventions rely almost exclusively on philosophical or religious arguments, thus providing little or no assistance at all.

The key to any effective third-party intervention is an appreciation of what courts do most of the time and how they go about it: the ECtHR, just like most legal institutions, does not decide cases based on the policy preferences of individual judges, but on a prudent consideration of the legal materials before them. These are, for the most part, the Court's own precedents, the general principles contained in those precedents, the views of the domestic courts and the international and comparative materials which are relevant to the case at hand. Almost 90% of the Court's cases in Strasbourg are decided on the first two (precedent and general principles); virtually all of its cases are decided on the basis of a combination of all four. The best third-party interventions, thus, assist the Court in that task.

The ECtHR, like most courts, values assistance. Even an expert tribunal, the Court cannot know all the laws or other materials that may have a bearing on the outcome of a case. The best third-party interventions supply those materials.

37 Adapted from Third Party Interventions before the ECtHR: A Rough Guide, https://strasbourgobservers.com/2015/02/24/third-party-interventions-before-the-ecthr-a-rough-guide/

A good third-party intervention helps the ECtHR with:

* **Scientific information** (for instance, the reports on the utility of DNA databases supplied in S. and Marper v. the United Kingdom: (http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90051) or **so called "Brandeis briefs" setting out statistics and other studies which show a particular policy or practice amounts to indirect discrimination** (see, for instance, D.H. and others v. the Czech Republic: (http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256), on placing Roma in special schools));

* **A focus on international and comparative law**. The Court will often look to the work of others international bodies in interpreting and applying the rights set out in the Convention. Comparative studies, as long as they are fully and impartially done, can provide great assistance in determining whether a Contracting State enjoys a broad or narrow margin of appreciation in a particular policy area. Of just as great assistance, but apparently not done nearly often enough, is providing relevant precedents from other courts around the world. Perhaps because of their long traditions in protecting human rights and, more prosaically, because they are given in English, the precedents of common law courts have dominated the Court's reliance on comparative law. But other courts now deserve to come to the fore. Third party interveners are well placed to supply the Court with such materials;

* **Statements of value**, for instance if the interpretation or application of a convention right should be informed by a human rights value (dignity, the rule of law etc.).

Requests for permission to lodge third party interventions will usually be made in relation to the merits stage of the proceedings. It is also possible, however, to be granted permission to lodge a third-party intervention for the purposes of deciding admissibility

5.5 Legal writing skills[38]

Good submissions need to be properly structured to ensure logical and clear thinking and reduce the risk of rejection from the court. Thinking through the structure of the submission my assist the court in structuring its own decision. An amicus curiae submission, like any well-written document, should have clearly identifiable parts arranged in a logical sequence and should respond the main principle of writing.

A few writing tips

1. Consider who is likely to be the reader of the submission and how he or she might be persuaded by what is contained in the submission;

2. **Use short sentences for complicated thoughts.** Do not put too many important ideas in one sentence. The sentence will become too long and difficult to read (and understand). State one important idea per sentence;

3. **Use active voice verbs.** Active voice verbs carry stronger meaning and impact than passive voice verbs. Writing in the active voice helps to shorten sentences. Make the doer of the action the subject of the verb;

38 Adapted from Principles of Clear Writing, OFR, https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html

4. **Remove redundant (legal) phrases.** Certain phrases pervade legal writing. Replace these phrases with one word (where possible) or remove them completely;

5. **Use everyday language.** Avoid jargon, Latin phrases and antiquated phrases where possible. Do not try to impress the reader. The goal is to ensure understanding;

6. **Avoid the use of too many subordinate clauses in one sentence.** This makes the sentence too long and difficult to follow. Using too many subordinating conjunctions (e.g., that, which) in one sentence can confuse the reader.

In order to keep the length of the submission within reasonable limits and to incorporate lengthy documents, textbooks passages, references or cases that may have been consulted or relied on use footnotes.

Annex I

Examples of third-party interventions before the ECtHR in relation to women's rights

Abortion rights

CoE Human Rights Commissioner

K.B. v. Poland and 3 other applications, K.C. v. Poland and 3 other applications and A.L. - B. v. Poland and 3 other applications
Available at https://rm.coe.int/third-party-intervention-by-the-council-of-europe-commissioner-for-hum/1680a460ef

European Center for Law and Justice

K.B. v. Poland and 3 other applications, K.C. v. Poland and 3 other applications and A.L. - B. v. Poland and 3 other applications
Available at http://media.aclj.org/pdf/ECLJ-Written-observations-K.C.,-K.B.-and-A.L.---B.-v.-Poland-September-2021.pdf

Domestic violence

Di.Re Donne in rete contro la violenza

Kurt v. Austria
Available at https://www.direcontrolaviolenza.it/wp-content/uploads/2022/02/2_DEF-Kurt-CEDU_intervento-finale.pdf

Talpis v. Italy
Observations to the Committee of Ministers in charge of the supervision of the execution of the judgment
Available at https://rm.coe.int/native/09000016809f49df

Equal Rights Trust

Mudric v. Republic of Moldova – domestic violence
Available at https://www.equalrightstrust.org/sites/default/files/ertdocs//ERT%20brief%20Mudric%20v%20The%20Republic%20of%20Moldova.pdf

Eremia and others v. Republic of Moldova – domestic violence
Available at https://www.equalrightstrust.org/sites/default/files/ertdocs//ERT%20brief%20Eremia%20v%20The%20Republic%20of%20Moldova.pdf

GREVIO

Kurt v. Austria – domestic violence
Available at https://rm.coe.int/third-party-intervention-by-the-council-of-europe-commissioner-for-hum/1680a460ef

Interrights

Opuz v. Türkiye
Overview available at https://www.interights.org/opuz/index.html

M.C. v. Bulgaria
Available at https://interights.org/news/mcvbulgariaamicus.html

The European Human Rights Advocacy Centre and Equality Now

Kurt v. Austria – domestic violence
Available at https://live-equality-now.pantheonsite.io/wp-content/uploads/2021/11/ECtHR_Third_Party_Submission_EN_EHRAC_KurtvAustria.pdf

Gender-based violence by State agents

Equal Rights Trust

Volodina v. Russia
Available at https://www.equalrightstrust.org/sites/default/files/ertdocs/Volodina%20v%20Russia%20-%20Written%20submissions%20of%20the%20Equal%20Rights%20Trust%20-%205%20July%202018.pdf

Sexual violence in schools

Irish Human Rights and Equality Commission

O'Keefe v. Ireland
Available at https://www.ihrec.ie/app/uploads/download/pdf/okeefe_v_ireland_30_september_2011_.pdf

Annex II

Checklist for the selection of international avenues

1. Choice of mechanism: procedural issues

a) Applicability of international obligations

1. What human rights treaties is the relevant State party to?
2. Have any reservations or interpretative declarations been made by the State concerned?
3. Are all such reservations and declarations valid and permissible (i.e. is it permitted by the treaty; is it contrary to the object and purpose of the treaty?)

b) Temporal jurisdiction

1. Have the relevant treaties already entered into force?
2. Had the treaty entered into force before the facts of the case took place?
3. If separate ratification or agreement is necessary for the individual or collective complaints mechanism relevant to the treaty, has this taken place?

c) Territorial jurisdiction

1. Did the acts complained of take place within the territory of the State concerned, or otherwise come under its authority or control so as to fall within its jurisdiction?
2. Does the human rights body to which the complaint is to be sent have jurisdiction over the State concerned?

d) Material jurisdiction

1. Do the facts on which the complaint is based constitute violations of human rights treaty provisions?
2. Which mechanisms are competent to hear complaint on these human rights claims?

e) Standing

1. Does the proposed applicant have standing to bring a case under the individual or collective complaints mechanism concerned?

f) Time-limits

1. Is the case lodged within permitted time limits for the particular international mechanism concerned? If not, are other international mechanisms still available?

g) Exaustion of domestic remedies

1. Does the procedure require that effective domestic remedies are exhausted? Have they been in the case at hand? Have allegations been raised before national courts or authorities?
2. If domestic remedies have not been exhausted, would the case fall within one of the permissible exceptions?

2. Choice of mechanism: strategy

a) One or more bodies?

1. Is it possible to submit the case to one or more mechanisms?
2. Do any of the mechanisms exclude complaints that have been or are being considered by others?
3. Can different elements of the same case be brought before different bodies?

b) Which body is more convenient?

1. Under which mechanism has the case strongest chances of success?
2. Which treaty or mechanism includes the strongest or most relevant guarantees, or the strongest jurisprudence on the relevant point?
3. Which mechanism provides the strongest system of interim measures if the case requires it? Are the interim measures of one or another mechanism more respected by the State?
4. Which mechanism can provide the strongest remedies to the applicant?
5. Which mechanism assures the strongest system of enforcement of final decisions?

c) Effect in the domestic system

1. Are the decisions of the court or tribunal concerned binding or non-binding?
2. What is the effect of the mechanism's decisions on the national system? Is there any possibility of re-opening national proceedings following the decision of the international tribunal?
3. What is the political impact of the mechanism's decision in the State concerned?

Note: the above is a non-exhaustive guide whose objective is to stimulate strategic reflection on the choice of mechanism. Its use requires a sound examination of the procedural requirements of the body to be addressed, together with its case-law, to determine how these requirements have been interpreted and applied in practice. The choice of mechanism, of course, will also be influenced to a certain extent, by the case-law on the subject matter. However, as SL is also functional to a change in the case-law, the current state-of-the-art should not be prevent assessing the possibilities to advance human rights protection.

Annex III

Template request for leave to submit third party intervention this example needs to be adapted to women's rights [39]

President
European Court of Human Rights
Council of Europe
F-67075 Strasbourg CEDEX
France

Date: …….

Application for leave to submit written comments in the case of Kurt v. Austria, Application No. 62903/15
Dear Mr. President,

X seeks the leave of the Court to submit written comments in the case of Kurt v. Austria, pursuant to Article 36 § 2 of the European Convention on Human Rights (the Convention) read with Rule 44 § 3 of the Rules of the European Court of Human Rights (the Rules).

Interest of amici curiae

X is a network of over 80 Italian women's NGO running women's specialized services to combat and prevent violence against women and domestic violence in Italy. The informal network has a long experience, as it was founded in 1990, the formal NGO X was constituted in 2008 with office in Rome. Every year X's members serve thousands of victims of violence against women and domestic violence. In their daily work, X experts have experienced that the dangerous nature of violence against women and domestic violence is not duly recognised by authorities responsible for protecting victims and preventing violence, and that victims, even if they have been victimised repeatedly, do not receive adequate protection. A critical aspect of X' activities involve the filing of ***amicus curiae*** briefs before national and international courts and tribunals on points of law of key importance to human rights protection, and on which our knowledge of international and comparative practice might assist the court (list of cases can be included).

The case of ***Kurt v. Austria*** raises a number of important issues related to the implementation of the Istanbul Convention, including in relation to the effective investigation and prosecution of cases of domestic violence and the protective measures afforded to victims (Chapter IV), as well as in relation to the prevention of violence against women and domestic violence (Chapter III).

X will demonstrate in detail how the standards of the Istanbul Convention, which entered into force in 2014 and which was ratified by Austria in XX, offer guidance on what it means for authorities to take due account of:

a. "the particular context of domestic violence";
and
b. "the recurrence of successive episodes of violence within a family" when dealing with cases of domestic violence.

39 Taken from Wadham, J. (2016). Training program for the staff of Public Defender's office of Georgia on Acting as Amicus Curiae, Council of Europe.

(a) "the particular context of domestic violence"

In Talpis v. Italy, the Court has emphasised that special diligence is required when dealing with domestic violence cases and has considered that the specific nature of domestic violence as recognised in the Preamble to the Istanbul Convention must be taken into account in the context of domestic proceedings. National authorities entrusted with countering these offences (from preventing to prosecuting to protection the victims) must take into account the specific dynamics of domestic violence as a manifestation of male violence against women.

X will assist the Court in delineating the cyclical nature of domestic violence, recurring in time and with a tendency to escalate. In particular, the submissions will discuss the three phases of the cycle, namely the "accumulation of tension", the "explosion" or "violent attack" and the "honeymoon" or reconciliation phase. Consecutive cycles of violence are generally the norm with an increase in frequency, intensity and danger over time

Under these circumstances, leaving an abusive relationship is a process and not a "one-off" event, often characterized by back and forth. The above explains why victims may not immediately report the violence (including in cases of sexual violence) or may withdraw their complaints or even forgive their violent partner. In this respect, research indicates that women typically seek protection orders after serious levels of victimisation and after abuse over a significant length of time.

The submission also intends to illustrate the importance of recognising and responding to the specific risks of children in the context of domestic violence, both as direct victims or witness of violence. Recent studies indicates that adult and child homicides that occur in the context of domestic violence have similar warning signs. That is the reason why it is important that State parties fully discharge their obligation to effectively assess the risk inherent to an individual domestic violence situation. This includes the adequate collection of all relevant information, using standardised tools with pre-established questions that the competent authorities must ***systematically*** ask and answer. Several internationally recognised tools exist, for example the Spousal Assault Risk Assessment (SARA), the Multi-agency Risk Assessment Conference (MARAC) developed in the United Kingdom, VioGen from Spain or the domestic violence screening inventory (DVSI, DVSI-R), and are applied to assess the risk, including the lethality risk, which perpetrators of domestic violence pose to their victims.

The possibility to conduct a continuous risk assessment require that law enforcement officials have clear guidelines and criteria governing the action or intervention in sensitive situations, such as cases of domestic violence, and are adequately trained on them. Article 15 of the Istanbul Convention stresses the importance of providing or strengthening training for professionals dealing with victims/perpetrators of domestic violence, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims and on how to prevent secondary victimisation. Training, moreover, should not only target police but also prosecutors and judges, who are asked to evaluate the risk of re-offending and order the necessary measures of protection

X, because of its mission and expertise, is well placed to assist the Court with submissions on how contracting states to the ECHR may implement their obligations under the ECHR in light of the Istanbul Convention's requirement to take due account of the "particular context of domestic violence"

b) "the recurrence of successive episodes of violence within a family" when dealing with cases of domestic violence.

Article 52 of the Istanbul Convention establishes the obligation, in cases of immediate danger, of equipping the competent authorities with the power to order a perpetrator of domestic violence to leave the residence of the victim/person at risk and to bar him or her from entering the residence or contacting the victim or person at risk. A ban not allowing the perpetrator to contact the victims in places other than the residence, would fall short of fulfilling the obligation under the Istanbul Convention.

Such no-contact orders have to be carefully monitored and enforced. In its latest Report on Austria, GREVIO commented the shortcomings in protecting child victims and witnesses from their abusive parent through the issue and implementation of emergency barring orders/protection orders, which appear to be linked to the difficulties by judicial authorities to evaluate the existence of a danger for the child at all stages and seek the adoption of protective measures, including pre-trial detention which is very rarely ordered in cases of domestic violence. Lastly, with a view to reducing recidivisms, Article 16 of the Istanbul Convention provides for the obligation of contracting States to develop preventive intervention and treatment programmes to help perpetrators change their attitudes and behaviour in order to prevent further acts of domestic violence, a requirement that is also in line with the positive obligation stemming from Article 2 of the European Convention of Human Rights.

We believe that an intervention on the above issues, based on our legal expertise in the area of international and comparative human rights law, would make a valuable contribution and would benefit the Court 'in the interests of the proper administration of justice' (Rule 44) in respect of these important issues under Article 2 of the Convention.

(If applicable) This request has been drafted in similar terms to the request being made by the Y and we would be happy to an intervention with that body should be Court consider this appropriate

Yours sincerely,

Signature

Position

Annex IV
Key Stakeholders of Gender Equality in Türkiye

In order to engage in strategic litigation, it is important to know the CSOs and public actors working on access to justice in the context of gender in Türkiye.

Amnesty International, UNDP, UNICEF, UN Women, UNFPA and UNHCR are the international organizations conducting work on access to justice in the context of gender in Türkiye.

In the national level there are many civil society organizations such as Association against Sexual Violence, Association of Women with Disabilities, Equal Rights Monitoring Association, Support to Life Association Human Rights Joint Platform (İHOP), İstanbul Convention Türkiye Monitoring Platform, Stop Feminicide Platform, Women's Solidarity Foundation, Centre for Legal Support to Women (KAHDEM), Women's Human Rights New Solutions Association, Kaos Gay and Lesbian Cultural Studies and Solidarity Association (Kaos GL), Red Umbrella Sexual Health and Human Rights Association, Mor Çatı Women's Shelter Foundation, Pembe Hayat, Association of Social Policy, Sexual Identity and Sexual Orientation Studies, Turkish Penal Code 103 Women's Platform against Pardoning of Crimes of Child Sexual Abuse, Turkish Union of Women, Turkish Federation of Women's Associations.

The Union of Turkish Bar Associations (TBB) and its member bar associations are the leading public actors in Türkiye. Although trade unions and professional associations could play a critical role in promoting gender equality in the world of work, It cannot be said that these institutions in Türkiye place gender equality and women's access to justice at the forefront of their institutional policies. (Uygur and Özdemir, 2021)

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ENG

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