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# European Court of Human Rights and Court of Justice of the European Union

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*Overview of Judgements relevant for the rights  
of victims*

**2021 REPORT**

## Table of Contents

Executive summary .....	3
Judgements from the European Court of Human Rights.....	4
Cases involving the Right to Life (Art. 2) .....	4
In the context of allegations of murder or suicide.....	4
Other investigations into cases of deaths .....	11
Cases involving the freedom from torture, degrading and inhumane treatment (Art 3).....	13
In the context of sexual violence and domestic violence .....	13
In the context of child sexual abuse .....	14
Cases involving the prohibition of slavery or forced labour: human trafficking (Art. 4).....	17
Cases involving the right to respect for private and family life (Art. 8) .....	18
In the context of sexual offences .....	18
In the context of domestic violence .....	20
In the context of harassment/bullying .....	21
Cases involving discrimination (Art. 14).....	22
Discrimination on the basis of sexual orientation.....	22
Discrimination in the context of ethnic and religious groups/minorities .....	25
Judgements from the Court of Justice of the European Union (CJEU) .....	26

## Executive summary

In 2021, VSE continued to monitor European Court of Human Rights (ECHR) and European Court of Justice (ECJ) victims' rights judgements which were of interest to our advocacy work and that of our members. We identified over 25 cases that covered various issues concerning investigation into cases of child sexual abuse, secondary victimisation during criminal proceedings, investigation into hate crimes and into murders, and their consequences on, among others, the victims' families. One particular case of interest, identified in ECJ caselaw, involved the right to residency for victims of domestic violence.

### ECHR caselaw:

On Article 2 (right to life), the Court has often reminded national authorities of their duty to conduct an effective investigation into violations of the right to life (cases involving death, murder, etc), especially when the circumstances of the death seem unclear. The Court has identified numerous flaws in investigations conducted by State parties, e.g. **the lack or absence of involvement by the victims' families in the investigations**; the lack of initiative by the authorities to launch investigations; the necessity to start investigations without delay. The Court additionally highlights the **systemic failure of the Russian authorities in preventing gender-based violence**.

Assessing cases linked to Article 3 (prohibition of torture and inhumane and degrading treatments), the ECHR reaffirms that **amnesty and pardon are not applicable** to cases of torture, degrading treatment and violent acts conducted either by the State or private individuals, nor consequently applicable **to rape**. The Court also insists on the obligation to conduct an effective investigation in the context of child sexual abuse, as well as on the **need to adapt procedural rules to children's needs** in order to guarantee children's safety in pre-trial, trial and investigations.

On Article 4 (prohibition of slavery and forced labour), emphasis was placed on the need to conduct a **proper assessment of potential victims of human trafficking**, as soon as there was credible suspicion of exploitation.

Linked to Article 8 (protection of private and family life) and Article 14 (prohibition of discrimination), the ECHR found that the lack of accompaniment of the victim before the police and the prosecutor and the preventive and protection measure during the trial of a victim of sexual abuse constituted **secondary victimisation**. A similar conclusion was reached in the case of discriminatory language used by judges in their decision on a case of sexual assault. The Court additionally condemned authorities over the **lack of protection from cyber-violence, from homophobic ill-treatment and of investigation into allegations of hate speech**.

### ECJ caselaw:

In the case of interest identified, the ECJ evaluates whether the difference of status – family reunification with an EU or other national – for third-country nationals, who are victims of domestic violence, infringes the principles of equality before law and non-discrimination guaranteed by the EU Charter of Fundamental Rights (Articles 20 and 21 respectively).

# Judgements from the European Court of Human Rights

## Cases involving the Right to Life (Art. 2)

In the context of allegations of murder or suicide

### [Case of Kaplatyy v Ukraine \(Application No 39997/17\)](#)

**Underlying issue:** Lack of effective investigation by the State authorities into allegations of murder.

**Legal matter:** Article 2 (procedural obligation by the State to conduct an effective investigation)

**Summary of facts:** The applicant, a Ukrainian national, was married to K. until 2011. K. died in her partner's house in September 2013, from an acute cardiac and pulmonary insufficiency, according to the death certificate. A criminal investigation was open the next day and terminated a few days later because of the lack of evidence of a crime and, in particular, of murder. The deceased's ex-husband challenged this decision, accusing her mother of murdering her, and alleging that this decision was taken based only on the death certificate and no forensic medical examination, and that not all persons had been questioned. A second investigation and forensic expert examination found no indication of murder or intoxication. A third investigation was later opened at the district police level, related to a second complaint by the ex-husband. However, the forensic medical examination could not be finished due to the refusal by forensic experts to provide the samples and medical documents. The investigation was closed due to a lack of proof and an incomplete investigation.

The victim's ex-husband requested the investigation be transferred back to Poltova. His request was never answered and therefore could not be brought to court. Under articles 2, 3 and 6 of the Convention, the applicant complained of an ineffective investigation into his ex-wife's death, K.

**Legal reasoning:** The Court examined the situation under the scope of Article 2. It appears that the authorities had never investigated the facts highlighted by the applicant, such as injection tracks on the deceased woman's arm, or an SMS he received in which she stated that her mother and brother wanted her dead. The Court also observes that only a limited number of investigative activities had been undertaken, and that the authorities themselves had reopened the investigation as the prior inquiry had been superficial. Consequently, the Court cannot conclude that the Ukrainian authorities did everything in their power to ensure the collection and security of evidence and to establish the circumstances of K's death; thus Article 2, in its procedural obligation to conduct an effective investigation, has been violated.

In addition, this case illustrates the difference in the definition of 'victim' used by the ECHR and the 2012 Victims' Rights Directive. In the latter, family members are included but only if they are spouses, partners – as in 'living within a committed intimate relationship' - relatives in direct line, siblings and dependents of the victim. The ECHR, on the other hand, receives complaints from direct and indirect victims of violations of the Convention, which is interpreted autonomously, regardless of national definitions, and evolves in light of the conditions of society.

### [Tomac v. the Republic of Moldova \(no. 4936/12\)](#)

**Underlying issue:** Igor Tomac, studying at the Police Academy of Chisinau, is found dead after a fight with a fellow student some days before. As several elements point to suicide, the police take only limited steps to conduct an investigation and consequently, his parents complain about the ineffective investigation into the circumstances of their son's death.

**Legal matter:** Article 2 (procedural obligation by the State to conduct an effective investigation)

**Summary of facts:** In February 2010, Igor Tomac, a student at the Police Academy of Chisinau, had a fight with a fellow student, M. He insulted M., M. beat him up. With the help of their teachers and the Academy's psychologist, the two students worked on their relationship in the days following the incident. A few days later, Igor Tomac was found dead, having committed suicide. An internal inquiry was launched, and examinations of the body revealed several wounds and traces of violence on his face and body; however, none of them were fatal. A suicide note was found on his phone, in a text message sent to his father. Based on these facts, the police advised the prosecutor not to open an investigation but his parents argued against that decision. A second internal inquiry revealed that his father believed the text had not been sent by his son, while the psychologist said her interview with him did not reveal any suicidal risks. A few months later, the prosecutor's office opened a criminal investigation for incitement to suicide, before closing it later because of a lack of proof. The applicants were not informed that the case had been closed.

Igor Tomac's parents complained to the ECHR that the State authorities did not conduct an effective investigation into the circumstances surrounding their son's death – for example, only five witnesses were interviewed, the blood discovered next to his body was never sampled and analysed, and the criminal investigation was opened over a year after his death.

**Legal reasoning:** The Court first notes that the circumstances of the death seemed *prima facie* unclear, and that various hypotheses were therefore possible. On this basis, the authorities were obliged to conduct an objective and precise investigation to clarify the circumstances of the death. The Court notes that the investigations did not clarify the origin of the injuries observed on Igor Tomac's body and that the explanations for these injuries were unclear, vague and contradicted with other expert conclusions. Additionally, as the authorities did not seek to analyse the blood found next to his body, the criminal investigation was not opened until one year and five months after the death, and the investigation did not manage to clarify the elements pre-cited, the Court confirms the violation of Article 2, in its procedural obligation to conduct an effective investigation.

Again, this case illustrates that a 'victim' before the ECHR is not necessarily a victim of a crime but rather of a violation of the rights enshrined in the Convention, therefore broadening the scope of who can be considered a victim.

### [Penati v. Italy \(no. 44166/15\) – Legal summary](#)

**Underlying issue:** After a child is killed by his father on public premises, questions are raised as to whether the municipal authorities could have prevented the event or not.

**Legal matter:** Article 2 (right to life and procedural obligation by the State to conduct an effective investigation)

**Summary of facts:** An eight-year-old child was killed by his father during a ‘protected’ visitation session organised on public premises, while the child was in the care of the social welfare department. The latter was responsible for organising the sessions because of the nature of the parents’ conflict. The child’s mother complained about the incompetence of the investigation, in view of the authorities’ failure to reconstruct the events and identify the persons responsible. She initially lodged a complaint with the District Court, following which numerous witness interviews took place. In total, the criminal proceedings lasted for four years, during which three individuals were acquitted and one, while identified as criminally liable during the appeal, was acquitted before the Court of Cassation.

**Legal reasoning:** The Court assesses that the authorities took all reasonable steps available to them to collect evidence, such as questioning witnesses, conducting an autopsy and toxicological examination, and reviewing reports, from social services and psychological experts, on both parents. For this reason, it seems that a violation of Article 2 cannot be characterised, as the acquittal of the suspects is not enough to find the criminal proceedings were ineffective.

[Case of Ribcheva and others V. Bulgaria \(Applications nos. 37801/16, 39549/16 and 40658/16\) – Legal summary](#)

**Underlying issue:** An officer, a member of the anti-terrorist squad, is killed by an individual during an operation, the shooter is convicted of aggravated murder. The officer’s family, however, insist on investigating whether officials might have contributed to their relative’s death by incorrectly planning the operation, they complain about the ineffective investigation of the operation.

**Legal matter:** Article 2 (right to life and procedural obligation by the State to conduct an effective investigation)

**Summary of facts:** An officer, a member of the anti-terrorist squad, was killed by a dangerous individual during a security operation. Following criminal proceedings, the shooter was convicted of aggravated murder and sentenced to life imprisonment. However, the victim’s family – mother, father, and daughter – insisted on investigating whether officials might have contributed to their relative’s death by incorrectly planning the operation. Although the Government conducted two internal investigations, the victim’s family complained about the ineffective investigation of the operation.

**Legal reasoning:** The Court first evaluates the argument of the ineffective investigation. It found that the investigation suffered from two serious flaws: it had been **launched because of the victim’s family’s complaints and not by the authorities themselves**, as required by Article 2 of the Convention; and more importantly, there had been **a complete absence of involvement of the victim’s family in both internal investigations**. The Court therefore concludes that Article 2, in its procedural obligation, is violated as the investigation has not been conducted effectively.

The Court then evaluates the potential responsibility of officials into the death of the victim. In examining the planning of the operation, it appears that the authorities took all reasonable steps and precautions to minimise the risk to the officer’s life: for instance, they had obtained precise intelligence about the target, had deployed a number of specially trained officers, who had acted in a coordinated manner, with an unbroken chain of command at all times. Therefore, while the authorities can be condemned for the failure to investigate the death of the officer, they cannot be held responsible for his death itself.

## [Case Of Bliznyuk v. Ukraine - \(Application No. 20789/14\)](#)

**Underlying issue:** After her son dies in suspicious circumstances, a mother makes allegations of State involvement in his death and complains about ineffective investigation into these events.

**Legal matter:** Article 2 (procedural obligation by the State to conduct an effective investigation), Article 6 (right to a fair trial), Article 13 (right to an effective remedy)

**Summary of facts:** In August 2001, the applicant's son, who was 34 years old at the time of the events, was driving home when he was stopped, by two different patrols, for breaches of road traffic rules. At both times, his alcohol level tested positive; therefore, he was taken to the City Drug Treatment Centre but was released as he refused medical assistance. The next day, he was found dead in his car. In the autopsy report, several experts demonstrated that he died from a heart disease complicated by issues with his blood circulation; however, two experts concluded that he died from an acute heart failure of toxic origin. The victim's mother requested a criminal investigation into her son's death be opened, as she alleged that he had been beaten and forced to consume alcohol by the police officers.

Three witnesses testified that they saw police officers pull the applicant's son out of his car and beat him with rubber truncheons before he was put in the police car. This was contradicted by another witness and a letter from the traffic police testifying that police officers were not provided with rubber truncheons at that time. The forensic examination revealed that he died from an acute heart disease complicated by an acute circulatory disturbance, with a background of heavy alcohol intoxication.

Between 2001 and 2020, investigations and proceedings were launched and terminated several times as they lacked the constituent element of crime. All decisions were however set aside by the District Court, as a result of which investigations are still ongoing.

In parallel, the Ministry of Internal Affairs launched criminal proceedings on the alleged failure to provide medical assistance to the deceased. A third forensic medical examination concluded that he was conscious at the medical centre, which followed the necessary medical procedures, and he refused further medical assistance. Considering the high level of alcohol found in his blood more than a day afterwards, it was suggested that he had continued consuming alcohol and did not seek help from any medical institution. On this basis, it was concluded that the narcologist could not be held responsible for his death.

The applicant complained, before the ECHR and based on Articles 2, 6 and 13, that State agents were involved in her son's death and that there has been no effective investigation in this aspect.

**Legal reasoning:** Regarding the cause of the death, the Court considers that the authorities provided a satisfactory and convincing explanation with insufficient evidence to the contrary. On the basis of this explanation, the Court dissolves any assertion of involvement by the police officers in the death of the applicant's son.

On the responsibility of the medical centre, the Court notes that as the victim was never diagnosed with any heart disease or issue, and that nothing indicated that his death resulted from any action or inaction by the medical centre, the medical centre cannot be held responsible for his death.

Evaluating the effectiveness of the investigation, the Court notes that for more than twelve years, the circumstances of the victim's death were examined through a pre-investigative inquiry, consequently

limiting the powers of the investigating officers and not granting the status of victim to the victim's mother, consequently limiting her participation in proceedings. Because of the substantial delay prior to opening the proceedings, the repeated discontinuations and re-openings, the inadequate investigative measures taken and their findings, the Court concludes that there is a violation of Article 2's procedural obligations.

### [Tkheldze v. Georgia \(No. 33056/17\)](#)

**Underlying issue:** In this judgment, the ECHR recognised the failure of the Georgian authorities to protect the applicant's daughter from domestic violence, recognising how it affects women disproportionately, and the failure to conduct an effective investigation into the case.

**Legal matter:** Article 2 (right to life and procedural obligation by the State to conduct an effective investigation), Article 14 (prohibition of discrimination)

**Summary of facts:** In 2013, M.T., the applicant's daughter moved into her partner's (L.M.'s) apartment with her six-year-old daughter. The next year, the police were twice called to the apartment, due to reports of L.M.'s threatening and abusive behaviour. After observing M.T.'s physical injuries and receiving her demands for a restraining order to be placed on L.M., the authorities failed to take any action and informed her it was not possible to arrest him or impose any other restrictive measure, considering it was only a 'minor' accident.

After M.T. moved to Tbilisi with her daughter, L.M. continued sending threatening messages to M.T., targeting her and her daughter. As M.T. lodged a complaint against L.M., a formal warning was issued against him – however, no criminal investigation was opened. After three additional reports of stalking and threats to the police and as L.M. almost crashed M.T.'s car, M.T. applied for State protection. Again, no protective or restrictive measures were implemented and, the next day, L.M. turned up at M.T.'s workplace and murdered her before committing suicide. After an investigation was opened, and discontinued, M.T.'s mother lodged a complaint against the police, citing their inaction as a form of gender-based violence.

**Legal reasoning:** M.T. and her mother asked the police for help 11 times over the six months preceding M.T.'s murder. On these occasions, the police were informed of the level of L.M.'s violent behaviour and his criminal record, mental instability, as well as the death threats against M.T.'s daughter. On this basis, the Court assesses that the police knew or ought to have known that L.M. was a real and immediate threat to M.T.'s safety. The Court finds that the **police inaction and failure to prevent gender-based violence against M.T can be considered as a systemic failure** and concludes that Articles 2 and 14 had been violated, in the failure to protect M.T.'s life and to effectively investigate her death. The Court insists on the need to conduct an inquiry into the fact that bias and gender-based discrimination might have been behind the inaction by the police.

### [Vassiliou and Others v. Cyprus \(no. 58699/15\)](#)

**Underlying issue:** Following the death of a Cypriot reservist, executed by Turkish troops, the Cypriot State is condemned over its failure to respect the right to private and family life; for instance, by notifying the family of the identification of the body and its grave, so they could arrange a proper burial.

**Legal matter:** Article 2 (procedural obligation by the State to conduct an effective investigation), Article 8 (obligation to inform the deceased's family about the progress of investigation), Article 13 (right to effective remedies)



**Summary of facts:** In 1974, Mr Pashias was mobilised by the Cypriot army due to hostilities with Turkish troops. He was captured by Turkish troops and it was established that he had been executed. After the ceasefire was declared, the bodies of those killed were taken to a military cemetery and buried in unmarked graves. In the following years, steps were taken to investigate what happened to Mr Pashias; in 2000 remains, showing signs of torture and execution, were examined, and identified as his. Mr Pashias' relatives lodged a complaint against the State for negligence and violation of their rights under Article 2, 3 and 8 (distress) and 9 (burial without proper ritual). After the Supreme Court absolved the State from the responsibility of battlefield clearance and burial, the deceased relatives brought their complaint to the ECHR.

**Legal reasoning:** According to the Court, the Cypriot authorities were indeed responsible for the steps taken to identify Mr Pashias' remains, after the ceasefire. The authorities had continuously collected evidence and examined witnesses, which led to a positive identification of his remains in 2000. In the context of the invasion and the high number of persons that went missing, the Court assesses that there has been no violation of Article 2.

Under Article 8, the Court evaluates the State's obligation to respect the private and family life in its actions. When someone's death is unknown to the relatives but known to the State, the latter has the obligation to notify the family so that they can, among other things, arrange a proper burial. While the Court recognises the sensitive issue that represents moving the multiple graves involved, it assesses that when a likely located had been identified in 1993, the family should have been informed that Mr Pashias might have died and been buried, therefore alleviating the family's suffering. Finally, unjustified 'political circumstances' do not represent sufficient motive to delay the body's exhumation. Article 8 is therefore violated.

Finally, the Court assessed that there had been no violation of Article 13 as the applicants were able to access and go through domestic proceedings successfully.

### [Estemirova v. Russia \(no. 42705/11\)](#)

**Underlying issue:** Following the abduction and murder of the human rights activist Natalia Estemirova, the ECHR condemns Russian authorities over the failure to effectively investigate her death and the failure to furnish all necessary materials for the examination of the case.

**Legal matter:** Article 2 (right to life/effective investigation), Article 38 (obligation to furnish necessary facilities for the examination of a case).

**Summary of facts:** As a well-known human rights activist in Russia, in the late 2000s, Natalia Estemirova denounced alleged crimes committed by insurgents and law enforcement personnel in Chechnya. Soon afterwards, she was abducted while travelling by bus; her body was found the next day. An investigation was opened, leading to an individual, a member of an illegal armed group, whose arrest was ordered. Natalia Estemirova's sister lodged a complaint before the ECHR.

**Legal reasoning:** Firstly, the Court estimates that there is not enough evidence of any State involvement in her abduction and murder and therefore affirms that there is no violation of the substantial limb of Article 2 (right to life) – meaning that the Court could not establish that Russian authorities were directly responsible for Ms Estemirova's death. Regarding the obligation to conduct an effective investigation under Article 2, however, the Court highlights that, while the investigation was rapidly opened and steps were

taken to identify and charge an individual, the Government did not give the majority of the casefile material to the court. For this reason, the Court is not able to assess whether the investigation has been complete and thorough, especially as regards to the individual who was identified and charged. Consequently, Article 2 is violated in its procedural aspect, because of the failure to demonstrate the investigation has been effective and complete.

#### [Case of Boychenko v. Russia \(no. 8663/08\)](#)

**Underlying issue:** After the death of her son during his military service, Ms Boychenko alleges that the investigation carried out failed to identify the true reason for his death, and that the two-years taken to carry out the investigation were excessive. In addition, she complains about the lack of recognition of her victim status and therefore of access to her procedural rights.

**Legal matter:** Article 2 (right to life/effective investigation)

**Summary of facts:** While fulfilling his military service obligations, Ms Boychenko's son committed suicide by firearm. His suicide followed several threats to kill himself because of his severe depression, which was due to his poor living conditions and the treatment by his superiors. An investigation was opened due to Ms Boychenko, who was granted the status of victim after eleven months; until that time she had been unable to exercise her procedural rights – such as to access information about the investigation and submit procedural applications.

**Legal reasoning:** While there was no evidence that Sergeant Boychenko suffered from any mental disorder or a history of self-harm, several fellow officers testified to the unjustified, excessive criticism he received from his superiors as well as to the suicidal thoughts expressed by him in three months prior to taking his own life. Despite being aware of these thoughts, his superior did not take any action to determine the severity of his mental state. In addition, domestic legislative and Governmental requirements for regular psychological evaluations of servicemen did not take place in this case. On these grounds, the Court concludes that the State failed to fulfil its obligation to take appropriate steps to safeguard Sergeant Boychenko's life.

Regarding the investigation, the Court notes that no investigative activities were conducted in the week following the sergeant's death, which is normally a crucial period for any investigation. Moreover, Ms Boychenko was granted the status of victim some time later and her right to be involved in the criminal investigation was not respected during the course of the investigation. Under these circumstances, the Court confirms the violation of Article 2 under the obligation to conduct effective investigation into the death of Sergeant Boyshenko.

#### [Derenik Mkrtychyan and Gayane Mkrtychyan v. Armenia \(application no. 69736/12\)](#)

**Underlying issue:** A pupil dies in a fight with his classmate while his teacher is absent from the classroom, there is no medical aid available in the school; questions on the public school's responsibility for his death, and the efficacy of the investigations conducted, only commence one and a half month after the incident.

**Legal matter:** Article 2 (right to life/effective investigation)

**Summary of facts:** Aged 10, in June 2010, Derenik G. was a fourth-grade pupil at a State School in Armenia. When the teacher briefly left the classroom, a fight broke out between the pupils, as a result of which

Derenik G. was beaten up and found unconscious by the teacher on her return to the classroom. Despite attempts to revive him, he was already dead when admitted to hospital.

The forensic medical examination, ordered by the police, showed that Derenik G. died from acute respiratory failure and oxygen deprivation. Following several medical examinations due to regular losses of consciousness since his early childhood, he had been diagnosed with syncope (fainting), a condition that required active supervision; however, his parents never applied to the school for such oversight.

The first investigations showed that Derenik G. effectively fainted as a result of the fight; however, as they were under the age of criminal responsibility, the two pupils who had beaten him up could not be prosecuted. His family contested the decision to terminate the investigation, complaining among other things that the administration had not taken any measures to prevent the fight – they were supported by the Court of Appeal, who assessed that the police had failed to properly investigate a number of issues, such the length of time the teacher was absent, the exact medical condition the child was suffering from and the role it could have played in the child's death.

**Legal reasoning:** The Court repeats that, in the context of public education, **school authorities have the obligation to protect the health and wellbeing of pupils, especially young children**, due to their vulnerability. As regards to the teacher's responsibility, the Court considers that **members of the teaching staff cannot be expected to ensure the permanent supervision of each pupil** and notes that in the present case, the teaching staff was not made aware of Derenik's health issues. Therefore, they were not able to take preventive actions. The Court therefore concludes that no violation of Article 2 took place, in its substance (right to life).

Regarding the investigation, the Court notes that the proceedings were only opened a month and a half after the incident, and only at the request of the child's family. In the materials presented before the Court, no elements indicated that the authorities had collected evidence at the scene nor questioned witnesses in a timely manner. Moreover, there was no indication that the authorities ever examined the school's responsibility for the incident or the fact that no medical assistance was available at the school on the day of the incident. There is therefore a violation of Article 2 in its procedural limb (effective investigation).

Other investigations into cases of death

#### [Case of Goropatskiy and others v. Ukraine \(Applications nos. 63243/13 and 5 others\)](#)

**Underlying issue:** Assessing several joint applications, the ECHR evaluates the effectiveness of investigations into the death of the applicants' relatives.

**Legal matter:** Article 2 (effective investigation), Article 6 (right to a fair trial), Article 13 (right to effective remedies)

**Summary of facts:** The judgement concerns six joint applications. The applicants all complained that the investigations into the death of their relatives (parents, sons) were ineffective, based on Articles 2, 6§1 and 13 of the Convention.

In all cases, the circumstances of the death had been examined during a pre-investigative inquiry, lasting up to a year, consequently meaning that the victim had no formal status. The authorities refused several times to launch a criminal investigation before then opening one. The investigations were closed and re-opened several times, transferred several times between different authorities, the failure to effectively collect and preserve evidence was observed as well as the progressive deterioration of any existing evidence. The failure to exhume and examine the deceased bodies had often been noticed

In 2008, an applicant's parents died in an apartment fire; the medical examination revealed that the cause of death was carbon intoxication and shock due to burns. The applicant claimed that they were murdered by his parents' neighbours, who robbed them and set the apartment on fire. Throughout the year, the authorities refused four times to launch a criminal investigation due to the lack of evidence of crime, while a pre-investigative inquiry was ongoing. In 2009, an investigation was finally opened; between then and 2015 investigations were re-opened and closed several times, mainly due to the failure to conduct a forensic examination, the failure to establish the origins of the fire and the cause of the parents' death.

**Legal reasoning:** The Court recalls that the obligation to conduct an effective investigation, under Article 2, relates to an obligation of means to be employed and not an obligation of results to be achieved. In the present cases, the Court notes the regular discontinuation of the investigations undermined the authorities' ability to determine the circumstances of the deaths. The Court therefore concludes that a violation of Article 2 of the Convention under its procedural limb took place, because of the ineffective investigation into the applicants' relatives' deaths.

#### [Veronica Ciobanu V République De Moldova \(Application no 69829/11\)](#)

**Underlying issue:** After her son drowned at a summer camp, Ms Ciobanu complains of the ineffective investigation into her son's death.

**Legal matter:** Article 2 (right to life/effective investigation)

**Summary of facts:** In 2010, Ms Ciobanu's son, then aged 15, spent time at a summer camp in Romania, which was managed by three agents of the Moldovan Government. With friends, he entered a body of water and drowned due to the strong currents; his body was never found. An investigation was opened by the Prosecutor and closed six months later, because Ms Ciobanu's son and his friends broke the camp rules regarding swimming, without oversight by camp staff, in a location where swimming was not authorised. Additionally, the offence only targeted management positions, which were not held by the three agents. Ms Ciobanu appealed several times and presented her case to the ECHR following the rejections she had received.

**Legal reasoning:** The Court first confirms the responsibility of the State of Moldova, as the incident happened under the aegis of three State agents from the Moldovan Ministry. Regarding the investigation, while facts and evidence about the circumstances of the incident were gathered, the Court notes that the crucial question as to whether there were any State agents present on the beach when and where the teenagers decided to go swimming and to whether, for instance, Ms Ciobanu's son could have disobeyed a direct order from the agents, was not clarified. For this reason and because of the State and its education authority's obligation to ensure and protect the teenagers' safety, the Court assesses that the investigation was not effective under the requirements of Article 2 of the Convention.

## Cases involving the freedom from torture, degrading and inhumane treatment (Art 3)

In the context of sexual violence and domestic violence

### [E.G. v. Republic of Moldova \(application no. 37882/13\)](#)

**Underlying issue:** A victim of sexual assault complains of the absence of enforcement of the sentence against her aggressor.

**Legal matter:** Article 3 and Article 8 (positive obligations to take measures to effectively sanction and investigate allegations of rape)

**Summary of facts:** In 2008, the applicant was victim of sexual assault by three individuals. After she lodged a complaint, a criminal investigation was launched against these individuals. They were found guilty of collective sexual assault and conditional sentences were imposed. After an appeal, the Court sentenced them to 5, 5 and a half and 6 years' imprisonment, respectively. One of the convicted offenders, V.B., was not arrested as he was not present at the trial. He submitted a demand for amnesty, based on a law adopted in 2008. After some back and forth between the Court of Appeal and the Supreme Court, his demand was rejected in 2013. However, when the applicant requested updates on his case, she was informed that he was never arrested in order to serve his sentence and that no action had been taken towards ensuring his arrest. The prosecutor's office established that the judges, who rejected his demand of amnesty, failed to notify the police of their decision and consequently of the need to arrest him within the established period of 10 days. In 2015, an international warrant was issued against V.B., who had returned to Ukraine in the meantime.

The applicant complains of the lack of enforcement of the judges' decision on V.B.'s arrest, leading to a failure of her protection, the inconsistency of the procedures regarding V.B.'s request for amnesty, and of the lack of action by the authorities after the request for amnesty had been rejected.

**Legal reasoning:** The Court first recalls that, in principle, **amnesty and pardon are not applicable to cases of torture, degrading treatment and violent acts conducted either by the State or private individuals, nor consequently applicable to rape.** For this reason, the domestic courts' indecision, which led to a year-long back and forth during which V.B. benefitted from the amnesty, conflicts with Articles 3 and 8 of the Convention. In addition, the Court notes that the judges' final decision from 2013 was communicated to the authorities more than two months after its adoption and that the international warrant was only released in 2015, with no justification for this delay. The Court therefore estimates that the measures taken by the authorities were not sufficient in view of their obligations arising from Articles 3 and 8 of the Convention.

### [Tunikova and Others v. Russia \(no. 55974/16 and 3 others\)](#)

**Underlying issue:** Facing the systematic lack of risk assessment upon and investigation into cases of domestic violence, the Court assessed that the Russian legal system did not meet the Convention's obligations on combatting domestic violence, leading to a violation of Article 3.

**Legal matter:** Article 3 (prohibition of torture and degrading treatment), Article 14 (prohibition of discrimination), Article 46 (binding force and execution of judgments).

**Summary of facts:** The four applicants are Russian nationals who have been victims of domestic violence. The four women were victims of threats, grievous bodily harm and various forms of psychological and physical violence and harassment. In each of the cases, the police either refused to investigate or prosecute the case, or told the victim to withdraw the complaint, on the grounds of the lack of significance and/or evidence of the allegations.

**Legal reasoning:** The Court first assessed that due to the lack of definition of 'domestic violence', adequate provisions to prosecute it and any form of restraining or protection order, the Russian legal framework for combatting domestic violence did not meet the Convention's obligations, leading to a violation of Article 3.

Due to the passive behaviour of the authorities while dealing with a known risk, the Court considered the police had allowed the abuse to continue and failed to conduct a comprehensive risk assessment of the applicants. The violation of Article 3 for failure to prevent ill-treatment was therefore characterised.

While being aware of the cases of violence against the applicants and confronted with strong evidence of the abuse, such as recorded injuries and death threats, the authorities rejected the institution of criminal proceedings and ended the investigations on the basis of ill-founded conclusions. On these grounds, the Court concluded that Article 3 was further violated for failure to effectively investigate ill-treatment of the applicants.

While evaluating these cases, the Court reiterated the systematic problems in addressing domestic violence against women in Russia, in conducting prosecutions and convictions, and the structural bias that was demonstrated in previous cases. On this basis, the Court confirmed the violation of Article 14 in conjunction with Article 3.

In the context of child sexual abuse

### [Case of X and Others against Bulgaria \(Application No 22457/16\) - Summary](#)

**Underlying issue:** Ineffective investigation into allegations of child sexual abuse.

**Legal matter:** Article 3 (obligation to conduct an effective investigation)

**Summary of facts:** X, Y and Z, three Bulgarian children living in an orphanage, were 9, 10 and 12 when they were adopted by an Italian couple. Soon after the adoption, the adoptive parents became suspicious about the traumatic experiences X, Y and Z might have had in the orphanage, with strong evidence indicating they had been subject to sexual abuse. The parents reported their suspicions to different Italian authorities. The children notably underwent therapy sessions with Italian psychologists. These sessions were recorded and transmitted to the Bulgarian authorities, with a request for them to conduct an investigation into the allegations which transpired from these sessions.

Additionally, the adoptive father contacted the Bulgarian State Agency for Child Protection (SACP) to report the alleged abuse. Months later, the SACP ordered an inspection of the orphanage and reported to the prosecutor's office. The Italian police authorities conducted an investigation which resulted in the discontinuance of the case, based on the lack of evidence that any abuse had been committed. A year later, the Bulgarian authorities confirmed this judgment.

**Legal reasoning:** Despite repeated requests by the Italian authorities, the Bulgarian authorities did not put any measure into place to assist and support the children, either in their qualities of victims and witnesses. The Court itself observes that they could have asked to interview the children themselves, to conduct a medical examination or to access the video recordings of the children's conversations with the Italian psychologists. Because of the seriousness of the allegations, the Court assesses that rigorous investigative measures should have been put into place, such as surveillance of the orphanage or interception of telephone and electronic messages, in compliance with the right to respect for private life.

The Court therefore concluded that the Bulgarian authorities "had not taken all reasonable measures to shed light on the present case and had not undertaken a full and careful analysis of the evidence before them", leading to inhuman and degrading treatment and a violation of Article 3 of the European Convention on Human Rights.

### [R.B. v. Estonia \(no. 22597/16\)](#)

**Underlying issue:** When examining a complaint of sexual abuse of a 4-year old child, allegedly committed by the applicant's father, the national authorities did not take into account the child's specific needs and vulnerability linked to her age and trauma, resulting in a violation of Articles 3 and 8.

**Legal matter:** Article 3 (prohibition of torture and degrading and inhumane treatment), Article 8 (private and family life), obligation by the State to safeguard the physical and psychological integrity of a person (Art 3 and 8 obligations), protection of children and particularly vulnerable victims.

**Summary of facts:** The applicant, a child named R.B., is the daughter of divorced parents. After their separation in 2010 (when she was three years old), she continued to live with her mother while meeting occasionally with her father. Her mother became suspicious of the father's behaviour when R.B. complained about bottom pain and later on noticing changes in her daughter's behaviour when returning from visiting her father. When questioned, R.B. revealed she had been sleeping naked with her father, that she had to massage him all over his body and that he inserted fingers in her genitals, causing pain to the child.

After R.B. reported the crime to the police - including an interview conducted with a senior investigator from the child protection services, a psychologist and the applicant's mother - criminal proceedings were opened against R.B.'s father.

In 2014, the national Court convicted the father as charged and sentenced him to imprisonment for six years, as R.B.'s testimony was confirmed by expert opinions, witnesses, and her mother. The applicant's father contested the decision, highlighting procedural issues, notably regarding the omission of informing the victim of her right not to testify against her parent and of the obligation to tell the truth, the child's testimony and possible influence by the presence of the mother and the status of witnesses (who had not directly seen the abuse). On that basis, the Supreme Court excluded her testimony and acquitted her father on procedural grounds.

**Legal reasoning:** In previous judgments, the Court has emphasized the States' obligations to adopt procedural rules that guarantee the child's testimony<sup>1</sup> and, under Articles 3 and 8, to conduct effective

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<sup>1</sup> See *G.U. v. Turkey*, no. [16143/10](#), § 73, 18 October 2016

investigation and prosecution into allegations of child sexual abuse, taking into account the children's vulnerability, dignity and their rights both as children and as victims.

To achieve effective protection of children's rights in line with international standards, the Court therefore considers that it is essential to ensure children's safety during the pre-trial period, as well as during the investigation and trial. Here, it can be noted that within the Estonian legal framework, general rules for questioning witnesses are also applicable to child witnesses and it does not provide any exception or adaptation for child witnesses. If, in practice, it has been recognised that their age and level of understanding must be taken into account, the applicant's testimony was excluded because of the strict application of procedural rules in this case.

Within this context, the Court considers that the authorities' procedural response to the allegations of rape and child sexual abuse did not sufficiently consider the applicant's particular vulnerability and needs as to provide her sufficient protection. The violation of the State's obligation under Articles 3 and 8 is therefore characterized.

[A.P. v. the Republic of Moldova \(no. 41086/12\) - Legal summary \(English\)](#)

**Underlying issue:** The efficiency of investigations conducted by the Moldavian authorities into allegations of child sexual abuse is questioned by a child's mother when the authorities refuse to open a criminal investigation.

**Legal matter:** Article 3 (prohibition of torture and degrading and inhumane treatment)

**Summary of facts:** The applicant had allegedly been raped and sexually abused at the age of five. A few years after the attack, the mother lodged two complaints with the prosecutor's office requesting an investigation that was refused on the grounds of insufficient evidence. The applicant's mother contested that decision, complaining that a psychological report had not been taken into account.

Two years later, a higher-level prosecutor upheld the decision not to initiate a criminal investigation. In that same year, after the applicant's mother lodged an appeal, the investigating judge upheld the prosecuting authorities' decisions, noting in particular that the applicant's mother had not submitted a complaint until several years after the alleged rape and sexual abuse had taken place. Relying on Article 3, the applicant complained to the ECHR that the investigation into the allegations of sexual abuse by the Moldovan authorities had been ineffective.

**Legal reasoning:** The Court first confirmed that, although the alleged perpetrator could not yet be prosecuted due to his age, the authorities had still been bound by the procedural requirement to shed light on the alleged facts given the seriousness of the allegations.

Looking at the thoroughness of the investigation, the Court found that the psychological report in question had constituted evidence which ought to have been taken into consideration by the police, the public prosecutor's office, and the investigating judge. The Court held that the authorities could have interviewed the psychologist, who had prepared the report, or ordered another psychological report to answer any additional questions. The Court furthermore held that the lack of any assistance to the applicant, a minor, during his interview with the authorities was especially unfortunate as there was nothing to suggest that the police officer who had interviewed him had had any special training for such situations.



Consequently, the Court concluded that the investigation conducted by the authorities had been ineffective because it had not been thorough and had failed to take account of the applicant's particular vulnerability, which had led to a violation of Article 3.

## Cases involving the prohibition of slavery or forced labour: human trafficking (Art. 4)

### [V.C.L. and A.N. v. the United Kingdom \(nos. 77587/12 and 74603/12\)](#)

**Underlying issue:** The ECHR condemned the United Kingdom over the failure to protect two minors, potentially victims of human trafficking, who had been arrested and prosecuted for drug offences.

**Legal matter:** Article 4 (prohibition of slavery and forced labour), Article 6§1 (right to a fair trial)

**Summary of facts:** Both applicants are Vietnamese nationals, who were minors at the time of their arrest. They were both found working in cannabis farms and charged with drug offences; both were advised to plead guilty by their respective counsels. Although they were examined by social services during the criminal proceedings, which concluded that they were potential victims of human trafficking, the Prosecution decided to pursue with their prosecution. One applicant's counsel discouraged him from appealing the decision to prosecute, because it would entail "a lengthy process which had little prospect of success". As for the second applicant, the appeal court agreed with the Prosecution and disregarded his potential victimisation. Both were sentenced to 20 and 18 months of juvenile detention respectively. It should be noted that the second applicant, after having served his sentence, was not eligible for a residence permit because his victim status had not been acknowledged.

**Legal reasoning:** The Court found a violation of Article 4 in both cases. The Court considered that the prosecution of potential victims of trafficking might be at odds with the State's duty to protect them, where there was credible suspicion of victimisation detected by a competent authority. The Court held that once the authorities had become aware of a credible suspicion that an individual had been trafficked, he or she should be assessed by a qualified person. Any decision to prosecute should follow such an assessment, and while the decision would not necessarily be binding, the prosecutor would need to have clear reasons in accordance with international law for reaching a different conclusion.

In the case of both V.C.L. and A.N., the Court found that despite the existence of credible suspicion that they had been trafficked, neither the police nor the prosecution service had referred them to a competent authority for assessment. Their decision to disregard the potential victimisation was based on the fact that the two boys were found in possession of cash and a cell phone and showed no signs of physical injury. For the Court, the fact that the applicants had been discovered on cannabis farms while still minors should, by itself, have given rise to a credible suspicion that they had been victims of trafficking.

Furthermore, when addressing the fairness of the criminal proceedings against the two applicants (under Art. 6 § 1), the Court found that the lack of an assessment as to whether the applicants had been victims of trafficking had potentially prevented them from securing evidence which might have helped their defence. Furthermore, this "unfairness" was not addressed on appeal.

## [Zoletic and Others v. Azerbaijan \(no. 20116/12\) - Legal Summary](#)

**Underlying issue:** The Court condemned the Azerbaijani authorities for the failure to conduct effective investigation into migrant workers' arguable claims of being cross-border human trafficking, and forced labour, victims.

**Legal matter:** Article 4 (prohibition of slavery and forced labour)

**Summary of facts:** 33 Bosnia and Herzegovina nationals were recruited, and taken to Azerbaijan, to work for a construction company. Until their departure from Azerbaijan, they claim they had worked without contracts and work permits, had not received any wages, had their documents taken away and their freedom of movement restricted by their employer. The applicants first brought a civil claim, against the construction company, before the Azerbaijani courts which was unsuccessful. A criminal investigation into allegations of forced labour and trafficking was initiated by the Bosnia and Herzegovinian Prosecutor's Office against 13 individuals in Azerbaijan. The alleged victims of trafficking therefore complain that the State of Azerbaijan failed in investigating their claims.

**Legal reasoning:** The ECHR first confirms that the victims' arguments constituted an 'arguable claim', because of the information provided, reports from other workers reporting to be in a similar situation, and reports from NGOs identifying the situation of forced labour and human trafficking by the construction company. While the applicants had not lodged a criminal complaint themselves, the Court found that they **had brought the situation and claim to the attention of the authorities at a sufficient level** that the authorities had an obligation, under Article 4, to investigate these allegations further. In addition, international and European reports had recently indicated the inactivity of Azerbaijani law enforcement authorities regarding potential cases of labour trafficking. The documents provided to the Court by the Azerbaijani authorities did not contain information of any attempts to identify and question the alleged victims or those implicated.

The Court therefore concludes to a violation of Article 4 of the Convention, for the Azerbaijani authorities' failure to institute and conduct an effective investigation into the applicants' claims.

## Cases involving the right to respect for private and family life (Art. 8)

In the context of sexual offences

### [Case of NC v Turkey \(Application no 40591/11\)](#)

**Underlying issue:** During criminal proceedings, a child victim of sexual abuse suffers from secondary victimisation and complains of the lack of preventive measures put in place for her protection.

**Legal matter:** Articles 3 (prohibition from torture, inhumane and degrading treatment), Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination)

**Summary of facts:** In 2002, two women forced N.C, a 14-year old girl, to work as a prostitute with them. Six months later, N.C filed a complaint against both women and the men with whom she had had sexual relations. N.C. notably held that she was raped several times and beaten by the two women. The public prosecutor opened a criminal investigation, and 28 suspects were identified.

On the day of the hearing, N.C. and her representatives were attacked by the relatives of certain defendants outside the court. N.C.'s lawyers received no answer to a request for protection measures. Later, the court dismissed a request for the trial to be moved to another region for safety reasons and released all defendants over the next two months, before dismissing the applicant's complaints of threats and insults from the defendants.

In 2010, the court reclassified the offences and held that N.C. had consented to remain in her situation, despite the victim's description of the psychological and physical abuse that she had suffered from the two women. The court held that the victim "had not been totally unwilling" to participate in the sexual acts, and that therefore, even if the victim was only 15 years old, the crime in itself (rape of/ committing a sexual act with a child under fifteen) was not qualified. Based on Articles 3, 6 and 13, the applicant alleges to the ECHR that she was threatened and humiliated before the defendants, with the knowledge of the judicial authorities, and that she received no professional support during the proceedings. Based on Article 14, she alleges that she was discriminated against because of her gender.

**Legal reasoning:** Due to her young age, the Court first characterises the vulnerability of the applicant. It recalls that the interests of the accused and of the victims must always be balanced, especially in the case of allegations of sexual offences. In its reasoning, the Court verifies that the authorities did take into account the child's best interest and her particular vulnerability as a child victim of sexual exploitation.

On violation of articles 3 (prohibition of torture, inhumane and degrading treatment) and 8 (prohibition of discrimination):

As the applicant **was never accompanied by either a psychologist, a social worker, or other expert**, whether in front of the police or the prosecutor; no practical measures were taken to **avoid contact between the applicant and the defendants**; the unjustified reconstruction of the rapes and abuses without measures minimising risks of humiliation; the excessive number of medical and psychological examinations; the **absence of preventive measures** to protect the applicant from threats and violence from the defendants; the excessive length of the procedures, and inadmissible legal reasoning adopted by the national authorities, inadequate thought to the seriousness and emergency of the case and to the need to protect the child's victim; the Court concluded that the national authorities' behaviour did not conform to the obligation to protect a child victim of sexual exploitation and abuse and that these facts constitute a severe case of secondary victimisation (violation of articles 3 and 8).

The Court therefore recollects that in the situation of a child victim of sexual abuse, the protection of dignity and psychological integrity requires specific attention by national authorities.

On violation of article 14:

The applicant complained that the judges' behaviour and decisions involved a discriminatory gender-based bias. However, the Court judges that information and proof are insufficient to characterise the violation of article 14 and that the complaint is unjustified.

The Court therefore confirms the violation of Articles 3 and 8 and no violation of Article 14.

[J.L. v. Italy \(NO. 5671/16\)](#)

**Underlying issue:** The Court condemned the Italian authorities over the violation of Article 8 of the Convention, because of the **disrespectful language used by judges towards a victim of sexual assault**, including discriminatory and accusatory comments on the victim's private life conveying stereotypes on women's role in society.

**Legal matter:** Article 8 (right to respect for private and family life)

**Summary of facts:** In 2008, J.L., an Italian national, lodged a complaint with the Italian courts against seven men who she accused of sexually assaulting her after a party she attended. She complained that the acquittal of her presumed attackers and the 'negative' and discriminatory attitude of the Italian authorities during the proceedings could be attributed to discrimination on grounds of gender.

**Legal reasoning:** In this case, the Court finds that during the proceedings themselves, the judges took necessary and appropriate measures to protect the victim's dignity and private life – such as banning journalists from filming the proceedings to protect the victim's intimacy and preventing the defence attorneys' from disrespectfully questioning the victim. However, the Court notes that the judges inserted disrespectful and inappropriate comments about the victim within the (public) courts' decisions, using a language conveying sexist stereotypes of women and women's role in society. The Court additionally noted that the judges, in these decisions, disclosed information relating to the victim's private and family life and sexual orientation, sometimes commenting on these elements and choices.

For this reason, the ECHR concluded that the victim's private and family life – and therefore Article 8 - was violated by the Italian authorities, **who didn't protect her from secondary victimisation throughout the proceedings**, as the court decision constitutes an important element in proceedings, notably because they are open to public inspection.

The ECHR recalls that national courts and authorities must always protect the victim's dignity and personal life, and that the language used by the judges conveying these stereotypes remains an obstacle to the full protection of the rights of victims of sexual violence. It also recollects the requirement for judicial authorities to avoid stereotyping, to exposing women to secondary victimisation by using sanctimonious/accusatory language.

In the context of domestic violence

[Volodina v. Russia \(no. 2\) \(no. 40419/19\) – Legal summary](#)

**Underlying issue:** Recognition that the Russian authorities have failed to protect the applicant, an identified victim of domestic violence, from repeated acts of cyber-violence committed by her husband.

**Legal matter:** Article 8 (right for respect for private and family life)

**Summary of facts:** In a previous judgment ([Volodina v. Russia](#)), the ECHR recognised that the applicant, a Russian national, had been physically and psychologically ill-treated by her husband and that the authorities failed in their obligation to prevent and protect her from the abuse. In a follow-up application, the applicant complains that the authorities have failed to protect her from, and investigate into, repeated acts of cyber-violence and stalking from her husband, which has been ongoing for three years. These acts include the publication of intimate photographs without consent, impersonation on fake social-media accounts and tracking her GPS device.

**Legal reasoning:** In the previous judgment *Volodina v. Russia*, the Court already found that the Russian legal framework didn't meet the requirements inherent in the State's positive obligation to establish and effectively apply a system punishing all forms of domestic violence. It notes that the existing framework granted the Russian authorities tools to investigate acts of cyber-violence.

The Court first concludes that the findings of the preceding case could apply, regarding the inaction of the Russian authorities. More precisely, it judges that the response by the authorities has been inadequate and that their inaction has allowed the applicant's husband to continue to threaten, harass and assault her.

Now regarding the investigation into the cyber-threat and harassment, the Court notes that the investigation was opened (two years) after the date the applicant first reported the fake profiles to the police and that the authorities did not act in good faith (e.g. trying to dispose of the request instead of genuinely reviewing the applicant's case). Moreover, the authorities concluded, without conducting an investigation, that no offence had been committed and failed to consider the possibility that these events were connected to the physical threats and assaults.

Based on these elements, the Court concluded that Article 8, as such as the positive obligations of the national authorities, was violated.

In the context of harassment/bullying

[F.O. v. Croatia \(no. 29555/13\) – Legal summary](#)

**Underlying issue:** Following verbal abuse by a teacher, a student's father complains to the authorities, who however only took limited measures to respond to the allegations.

**Legal matter:** Article 8 (right to respect for private and family life)

**Summary of facts:** A student in a public high school was subjected to verbal abuse by his teacher, R.V., that led him to require psychological treatment. His father first complained to the school and other administrations, including the Ministry of Education, and lodged an unsuccessful criminal complaint of harassment. He complains about the ineffective response by the authorities.

**Legal reasoning:** In view of the treatment the student received, in a public school, by a teacher who was in a position of authority, the situation represents an interference with the right to private and family life as guaranteed by Article 8. The Court notes that no concrete measures were taken by the school authorities until the student's father contacted the higher educational authorities; they did not respond to the student's request to be moved to another class or to assign another teacher for his class. Later, the only measure suggested was a reconciliation process that remained manifestly ineffective.

The Ministry of Education, after sending the case to the Education Agency for its input, did not take any other measures to address the complaints. The Agency did not conduct an effective investigation, it organized a questionnaire which was unsuccessful as students feared reprisals, and only suggested discussions between the school authorities and the student's father, characterised as an inadequate measure by the Court. Finally, neither the Ministry nor the Agency followed up on the case.

In conclusion, the Court finds a violation of Article 8, due to the failure of State authorities to respond with diligence to the student's allegations of harassment at school.

## Cases involving discrimination (Art. 14)

Discrimination on the basis of sexual orientation

### [Sabalić v Croatia \(Application no. 50231/13\)](#)

**Underlying issue:** After a woman suffered from a violent physical attack, motivated by hate crime and discrimination bias based on her sexual orientation, she complains that the police response was inadequate and that they failed to investigate the motive of the attack.

**Legal matter:** Article 3 (prohibition of torture and inhumane and degrading treatment), Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination)

**Summary of facts:** The applicant, a Croatian national, was physically attacked while being at a nightclub with her friends. She was approached by an unidentified man who, when she revealed her sexual orientation, started hitting her and kicking her, even after she fell to the ground. The incident was immediately reported to the police, who arrested the man, M.M. The police instituted minor offence proceedings against M.M. for breach of public peace, for which M.M. was found guilty and received a fine.

Months later, the applicant lodged a criminal complaint against M.M. for attempted grave bodily injury, violent behaviour motivated by hate crime and discrimination. However, the State Attorney's Office rejected her complaint on the grounds that M.M. had already been convicted for minor offences. While the applicant filed several complaints and appeals, arguing that the matter of attempted violence motivated by hate crime and discrimination had not been judged in the case for which M.M. had been convicted, they were always rejected or declared inadmissible by the Courts.

Relying on articles 3, 8 and 14 of the Convention, the applicant complains of a lack of response from the domestic authorities regarding the act of violence against her and based on her sexual orientation. She states that the authorities have failed to investigate the motive of the attack.

**Legal reasoning:** Firstly, the Court confirms the applicability of Article 3 of the Convention (prohibition of degrading and inhumane treatment), noting that degrading treatment can also be qualified in the presence of a treatment showing a lack of respect towards an individual, diminishing his human dignity. In that context, racist insults and discriminatory remarks must always be considered as aggravating factors. In this context, the attack that the applicant suffered from, directed at her identity, can be qualified as inhumane and degrading treatment, falling within the scope of Article 3 of the Convention.

The Court recalls that when investigating violent incidents, national authorities are obliged to take all reasonable steps to unmask any discrimination motives. It notes that in the present case, after their intervention and based on their initial findings, the police were confronted with acts of violence motivated or at least influenced by the applicant's sexual orientation. In that case, according to the national procedures, the police were required to lodge a criminal complaint to conduct further investigation. The Court also finds that M.M.'s sentence and fine were disproportionate compared to the gravity of the attack suffered by the applicant.

Overall, the Court finds that the **domestic authorities’ response did not demonstrate its commitment to guarantee that homophobic ill-treatment is not ignored and to guarantee effective protection to the victim.** The fact that the authorities decided to prosecute the offender for minor offences can be considered a response that fosters the impunity of violent acts of hate crime. Combined with the authorities’ failure to consider these motives in determining appropriate punishment for a violent hate crime, the Court finds a violation of Article 3 under its procedural aspect and in conjunction with Article 14.

#### [Association Accept and Others v. Romania \(No. 19237/16\) – Legal Summary](#)

**Underlying issue:** Members of an organisation promoting the interests of the LGBT community in Romania complain of discrimination based on sexual orientation and of the authorities’ failure to provide them adequate protection, after members of a former far-right party interrupt the screening of a movie portraying a same-sex family, threatening and insulting the participants.

**Legal matter:** Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination)

**Summary of facts:** In February 2013, an organisation promoting the interests of the LGBT community in Romania organised the public screening of a movie portraying a same-sex family. A group of 50 people interrupted the event by threatening and insulting participants and shouting homophobic remarks, while carrying the flag of a former far-right party (one which had been dissolved by court order because of fascist propaganda) as well as fascist and xenophobic signs. The event had to be rescheduled. Even though the applicants complained of incitement to discrimination and the public use of racist and fascist signs, their complaint was discontinued by the prosecutor.

**Legal reasoning:** The Court first notes that while an important number of policemen were present, that they were informed of possible opposition to the event and were never outnumbered by the intruders, the policemen remained outside the room and never intervened to stop the demonstrators. Police homophobic bias was confirmed by incident reports which did not contain reference to any homophobic threats, acts or insults, the ECHR concludes that the authorities failed to protect the applicants’ dignity against homophobic attacks.

Assessing the investigation, the ECHR highlights that while the incident was reported two weeks after it took place, no significant steps had been taken by the authorities for more than a year. During the investigation, the authorities argued that the alleged threats and remarks had not reached the level at which a criminal offence could be characterised. On this point, the ECHR underlines that, while not all hate speech must result in criminal prosecution and sanctions, comments that amounted to hate speech, racist speech and incitement to violence, and were clearly unlawful, require the State to take certain measures.

In conclusion, the authorities have failed to conduct an effective investigation into the verbal abuse suffered by the applicants and whether it constituted a criminal offence. They also failed to contain the intruders and ensure that the event could take place peacefully. The Court therefore confirms that Articles 8, 11 and 14 are violated.

#### [Genderdoc-M and M.D. v. the Republic of Moldova \(no. 23914/15\)](#)

**Underlying issue:** Authorities’ failure to conduct investigation into whether an assault by an individual constituted a hate crime motivated by homophobia.

**Legal matter:** Article 3 (prohibition of torture and inhumane and degrading treatment), Article 14 (prohibition of discrimination)

**Summary of facts:** M.D. was physically and verbally abused in the street by a group of minors, aged 12 to 14 years old, the verbal abuse included homophobic insults. After a video of the abuse was posted on the internet, a criminal investigation was initiated. A few days later, M.D. was insulted in the street, by A.P., who recognised him from the video. A few days later, he was again approached by A.P. who then physically abused him. M.D.'s injuries were qualified as minor during the forensic examination that followed. The Prosecutor's Office refused to open a criminal investigation, considering that A.P.'s actions did not amount to a criminal offence and that the abuse was not sexually orientated, considering that if that were the case, he would have done it the first time they met.

Both victims were represented by the same lawyer, who complained of the lack of investigative measures taken, such as the failure to identify witnesses, obtaining recordings from video cameras or adding the photos of the injuries to the file, in M.D.'s case. His requests were denied both before the lower courts and the Court of Appeal.

**Legal reasoning:** Regarding the second case, the Court firstly confirms that the violence suffered by M.D. amounted to degrading treatment as defined by Article 3 of the Convention. Noting the homophobic insults and statements made by A.P., based on the video in which he identified M.D. a few days before physically abusing him, it should have been obvious to the authorities that the violence was motivated by homophobia. In these circumstances, the domestic courts' reasoning suggests that the authorities never seriously examined the possibility that the violence from which M.D. suffered had been a hate crime. On this basis, the Court assesses that the authorities failed in their obligation to investigate, any discriminatory motives for, the violent attack on M.D.

#### [Women's Initiatives Supporting Group and Others v. Georgia \(nos. 73204/13 and 74959/13\)](#)

**Underlying issue:** Failure of the authorities to prevent and protect a group of peaceful demonstrators from a violent mob, in particular from homophobic and transphobic aggression.

**Legal matter:** Article 3 (prohibition of torture and inhumane and degrading treatment), Article 11 (freedom of association), Article 14 (prohibition of discrimination)

**Summary of facts:** Ahead of the International Day Against Homophobia, members from NGOs and women's support groups contacted the authorities to guarantee their safety during a march they wanted to organise, in particular safety against radical groups who were expecting to conduct counter-demonstrations. While the authorities guaranteed that the safety of all participants would be ensured, the applicants faced up to 40.000 counter-demonstrators who ran towards them chanting homophobic insults and threats and encircled them with wooden and iron sticks. As the riot police were not present, the applicants had to retreat in police buses and were chased by the counter-demonstrators across the city.

Based on a video taken by an independent journalist, the Ministry of Interior launched an inquiry into this violence which led to two sets of criminal proceedings. Based on Articles 3 and 14 the applicants complained that the authorities had failed to successfully protect them from the violent events, despite being aware of extreme homophobic views held by the public and, additionally, that they failed to successfully investigate the incident. Under Articles 11 and 14, they allege that the police failed to take successful measures to prevent the homophobic violence and the disruption of their peaceful rally.



**Legal reasoning:** The Court first confirmed the violation of Articles 3 and 14. While the authorities were made aware of the events, including the counter-demonstrators and their motives, only light measures were put in place (i.e. unarmed police officers, a fragile cordon and an ineffective dispersal plan). The video footage showed the police not only failing to react but sometimes opening up the security cordons. In addition, the police had particularly humiliated one applicant with use of homophobic threats and insults while they were helped to escape disguised as a police officer.

Regarding the investigation, while two proceedings were open, neither had tangible results. Noting that the investigation was carried out by the same Ministry of Interior's unit which promised to guarantee the applicants' safety, the Court questions the impartiality and independence of the inquiry. Importantly, the authorities did not investigate the possibility that discrimination might have played a role in the commission of the offence, despite the context of widespread homophobia in the country.

On Articles 11 and 14, the Court assesses that it was never the authorities' priority to effectively protect the applicants from aggression and that they failed to approve the necessary resources, limiting their role to creating a dispersal plan. Articles 11 and 14 are therefore violated.

Discrimination in the context of ethnic and religious groups/minorities

[Behar and Gutman v. Bulgaria \(Application 29335/13\) - Legal summary](#)

and [Budinova and Chaprazov v. Bulgaria \(Application no. 12567/13\) – Legal summary](#)

**Underlying issue:** The Court condemned the Bulgarian authorities for violating the positive obligation to respond to discriminatory public statements made by a politician, which personally affected individuals from Jewish and Roma minorities.

**Legal matter:** Article 8 (private and family life), Article 14 (Discrimination), Hate speech, Anti-semitism.

**Summary of facts:** The applicants, from Jews and Roma ethnicities, alleged that a political party leader had made discriminatory statements within two books, a television programme, speeches, and interviews. While these statements directly targeted Jews and Roma, the applicants say they have been personally affected by them. Their claims were rejected by the domestic courts.

**Legal reasoning:** The Court first assesses whether the applicants could have been affected personally by public statements, relying on three main criteria: the characteristics of the groups targeted, the precise content of the statements, and the context and form of the statements and their reach. In the present case and considering the level of severity of the statements, it is accepted that the applicants were personally affected<sup>2</sup>. On the action of domestic courts to afford redress to the applicants for discriminatory public statements, the Court recalls that any sweeping statements attacking ethnic, religious or other groups had no, or very limited, defence under Article 10 of the Convention, protecting the freedom of expression. For

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<sup>2</sup> In order to consider that hateful public statements have personally affected a group to the point of triggering Article 8, negative stereotyping has to reach a certain level. The criteria were laid down by the Court in [Aksu v. Turkey](#) and complemented by additional caselaw. The Court usually relies on the three criteria detailed above: the characteristics of the groups targeted, the precise content of the statements, and the context and form of the statements and their reach.

this reason, it considers that the domestic courts, which rejected the applicants' claims, did not afford them redress and did not respond adequately to discrimination.

## Judgements from the Court of Justice of the European Union (CJEU)

### Case C-930/19 X v Belgian State: the right of residence in the event of domestic violence

**Legal matter:** Difference of status for third-country nationals who are victims of domestic violence, depending on whether they were granted family reunification with an EU or a third-country national.

**Question referred:** The Belgian referring court questions whether this difference of status infringes the principles of equality before the law and the non-discrimination guaranteed by the EU Charter of Fundamental Rights (Articles 20 and 21 respectively).

**Summary of facts:** X., an Algerian national, married a French national and received his residence card from Belgium, where they were both living at that time. In 2015, after almost five years of marriage, including two years living together in Belgium, he was forced to leave the common home due to acts of domestic violence of which he had been the victim. He lodged a complaint in main proceedings for domestic violence. In October 2015, a cohabitation report confirmed that he and his wife no longer lived together, as his wife and daughter had returned to France in the September. In March 2016, the Belgian State terminated his residence card, which was initially valid until 2018, on the basis of the cohabitation report, and ordered him to leave the territory. This decision was annulled by the Belgian Council for Asylum and Immigration Proceedings.

In December 2017, the Belgian State terminated X's right of residence again, on the grounds that although he was in a difficult situation, he was unable to prove he had sufficient means to support himself. X. brought an action against that decision. During its assessment, the referring court notes that third-country nationals, who are victims of domestic violence, are accorded different treatment whether they have been granted family reunification with an EU national or with a third-country national. For the first category, conditions such as sufficient resources and comprehensive sickness insurance cover must be demonstrated while for the latter, only proof of domestic violence is needed. The Belgian referring court therefore passed the question to the CJEU: did this difference of status infringe Articles 20 and 21 of the EU Charter of Fundamental Rights, which guarantee the principles of equality before the law and non-discrimination, respectively.

**Legal reasoning:** Firstly, evaluating the application of Articles 20 and 21 of the Charter to the case, the Court notes that Article 21 (non-discrimination) is irrelevant in the present case. As the principle indeed relates to discrimination based on nationality, it is not intended to be applied to cases of discrimination between nationals of Member States and third-country nationals<sup>3</sup>. The EUCJ will therefore evaluate the argument using Article 20 only (equality before the law).

As the principle of 'equality before the law' can only be applied to two comparable situations, the EUCJ must then establish whether the two situations brought up in the present case are indeed comparable. To that end, the EUCJ compared the objectives of the Directives from which these two situations derive: Directive 2003/86 for family reunification with third-country nationals and Directive 2004/38 for family

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<sup>3</sup> For more information, please consult Court of Justice of the European Union, judgment of 4 June 2009, *Vatsouras and Koupatantze*, C-22/08 and C-23/08, EU:C:2009:344, paragraph 52

reunification with EU citizens. More specifically, it appears that Directive 2004/38's general objective is to facilitate the exercise of EU citizens' right to move and reside freely within the territory of another Member State; whereas Directive 2003/86's general objective is to facilitate third-country nationals' integration in Member States through family reunification. In light of this, the Court assesses that while both Directives set out rules related to residence in the context of domestic violence, their general objectives relate to different fields, and that their objectives and subject matter are different and therefore not comparable in view of Article 20 of the Charter. In addition, and while Directive 2003/86 sets out the option to grant an autonomous residence status for individuals in difficult situations including domestic violence, the conditions for granting this permit are at the discretion of national law, which the Belgian authorities made use of in the present case.

In conclusion, the two situations referred to are not comparable in view of Article 20, and there is consequently no violation of Article 20 (Equality before the law) of the Charter.