Title 1: Human Rights

Chapter 1: The Physical Integrity of the Person

Three articles of the Convention guarantee the physical integrity of the person, one, article 2, protects his life, while the other, article 3, protects him from ill-treatment, the third, less commonly used, article 4, protects him from forced labour and servitude. These articles are, in the words of the European Court itself, among the most fundamental provisions of the Convention. These articles have in common that they enshrine intangible rights, that they form the hard core of fundamental rights; They are the ones who contribute most to respect for human dignity, which the European Court affirms, along with human freedom, is the very essence of the Convention.

Article 2 § 1 of the Convention states that "the right of everyone to life shall be protected by law". According to the European Court, the right to life is a right without which the enjoyment of the other rights guaranteed by the Convention would be illusory, underlining the sanctity of the life protected by the Convention, thus making the right to life the first of the human rights. One author was able to speak of the King of Rights. The Court had already affirmed in the judgment of 22 March 2001 in Strelettz and Krenz v. Germany that it was the supreme value in the international human rights scale. While the right to life requires States not to endanger the lives of its nationals, except in the very specific and circumscribed case of legitimate use of lethal force, it imposes a positive obligation on States to protect their lives against attacks by other persons or as a result of dangerous activities.

In addition, the right to life has led to an evolution of the case law and then of the text of the convention through the protocols to prohibit the death penalty in times of peace and then in times of war, whereas it was admitted in the original text. To the question of where the right to life begins, the European Court adopts a neutral position, notably in the VO v. France judgment of 8 July 2004 in which it affirms that the starting point of the right to life is a matter for the assessment of the States. On the other hand, the question of whether the right to life would have a negative aspect in the form of the right to cease to live was raised in the Court by Diane Pretty, who suffers from incurable sclerosis and sought assurances that her husband would not be prosecuted if he ended his suffering by assisting him to commit suicide, which the British authorities had refused. In the judgment of 29 April 2002 in Pretty v United Kingdom, the Court answered in the negative. She argued that article 2 could not be interpreted as a right to die or as a right to self-determination giving every individual the right to choose death over life. The Court considered that it was not possible to infer from Article 2 of the Convention a right to die, whether at the hands of a third party or with the assistance of a public authority, and concluded that there had been no violation of Article 2 of the Convention. Article 2 does not confer on the individual a right to require the State to permit or facilitate his death. The court relied on the distinction between right and freedom: if there is a freedom to die, there is no right to demand that you be given the means to do so.

Article 4 prohibits servitude and forced labour. Almost not applied from the outset, it has become effective because of its recent application to cases of domestic slavery, particularly in the *Siliadin* v France judgment of 26 July 2005. Other judgments have been handed down on this issue, in particular the judgment in *C.N. and V. v. France*, 11 Oct. 2012, which relates to

similar facts. These were young underage girls brought back to France and put at the service of a family without pay, deprived of their passports and for the most part of schooling and other contacts with the outside world. Prosecuted for abusively obtaining unpaid or insufficiently remunerated services from a vulnerable or dependent person (Art. 225-13 SCC) and for subjecting the person concerned to working or housing conditions incompatible with human dignity (Art. 225-14 SCC), the employers were acquitted of the criminal proceedings and only ordered to pay civil damages. Confronted for the first time with a case of "domestic slavery" involving only private persons, the Court gave life to Article 4 which, under the terms of a dynamic interpretation of the Convention, was thus to be applied to contemporary scourges such as that of "domestic slavery", the observance of which imposed on the State an obligation to protect against such practices. Such an approach makes it possible to qualify "domestic slavery" in the light of Article 4 and to condemn on the basis of positive obligations combined with the horizontal effect the shortcomings of the criminal legislation which did not allow these practices to be condemned, prompting the French legislator to change its repressive system on this point.

The Court brought trafficking in human beings within the scope of Article 4 in the Rantsev v. Cyprus and Russia judgment of 7 January 2010 and in the SM v. Croatia judgment of 25 June 2020 concerning acts of forced prostitution. The notion of servitude in Article 4 allows the court to offer the guarantee of the convention to the victims of the most detestable contemporary forms of enslavement of the person: pimping, domestic slavery, exploitation of begging, organ removal. Under Article 4, States are required to establish a legal framework to prohibit and punish acts falling within its scope, as well as to take appropriate concrete measures to protect victims.

Article 3 of the Convention lays down an absolute prohibition of torture and inhuman or degrading treatment or punishment. The Court thus condemns all attacks on physical integrity committed by agents of the State, specifying that when the person is deprived of liberty or more generally in a state of inferiority, the use of physical force, regardless of its seriousness, constitutes a violation of Article 3. France was condemned in the Selmouni v France judgment of 28 July 1999 for police brutality, which was qualified as torture by the European judge.

It is up to the state to demonstrate that the use of force was absolutely necessary and not excessive. Article 3 also imposes on the State the obligation to protect the physical and moral integrity of persons, particularly in vulnerable situations, which consists in preventing them from being subjected to ill-treatment but also in providing them with appropriate care. Article 3 also imposes a procedural obligation on States to carry out a thorough and effective official investigation with a view to identifying and punishing those responsible, including when it comes to of state agents whose impunity is prevented by the court.

When ill-treatment is not inflicted on a person deprived of his liberty, article 3 is applicable only if it reaches a certain degree of seriousness. Depending on the intensity of the suffering, the concept of torture, inhuman or degrading treatment or punishment will be applied. The Court has embarked on the path of dynamic interpretation of the concepts contained in Article 3. In particular, it has applied the concept of degrading treatment to acts that were not covered by Article 3, such as corporal punishment, which we will discuss later, or degrading living conditions or behaviour that is detrimental to dignity in the medical context (e.g. forced

sterilisation: VC v. Slovakia of 8 November 2011 or compulsory gynaecological examination: Yazgül Yilmaz v Turkey of 1 February 2011).

The risk of ill-treatment is greater for vulnerable people because of their condition, and in particular their age or situation, which places them in an inferior position. For this reason, the case law on Article 3 has developed particularly with regard to these categories of persons. But beyond the quantitative aspect of this case-law, its qualitative aspect must be noted in the sense that Article 3 is the subject of a specific reading in this particular context; the Court develops what may be called a categorical protection with regard to certain groups of persons. Four categories of people are concerned: foreigners, prisoners, children and more recently victims of domestic violence.

As far as detainees are concerned, the European Court has truly enshrined a new right: the right to enjoy conditions of detention in accordance with human dignity in the landmark judgment of 26 October 2000 in Kudla v. Poland.

With regard to aliens, recourse to article 3 allows the court to limit the excessive effects of expulsions or extraditions of aliens which in themselves are not prohibited by the convention. It was the Soering v. United Kingdom judgment of 7 July 1989 in which the Court held that the extradition of an individual by a State party to the Convention to a third State may give rise to the State party's responsibility under article 3 for ill-treatment to which the extradited person is likely to suffer in the country of destination, which constitutes the founding judgment of the indirect protection of the rights of foreigners by the European Convention on Human Rights. In the present case, the decision of the United Kingdom authorities to extradite Mr. Soering to the United States for trial in Virginia for a crime of murder punishable by death constitutes treatment contrary to Article 3 of the Convention in that it exposes him to "death row syndrome".

Section 1: Categorical protection of children based on article 3 of the Convention

The European Court of Human Rights has developed a categorical protection of human rights for the benefit of the child using general provisions of the Convention interpreted in the light of the International Convention on the Rights of the Child. The categorical approach to the protection of children's rights allows the European Court to recognise the specific nature of the child: he or she must be considered as a vulnerable person who is subject to change. It is on the basis of this specificity that the European Court has identified a categorical protection of the rights of the child. This protection will transform the child, who is the holder of rights protected by the European Convention like any other, into a subject of law that is different from the others. Because of their vulnerability, the European Court requires enhanced protection for children. This strengthening involves both the recognition of the specific rights of the child and the enhanced implementation for the benefit of the child of fundamental rights common to all subjects of law. This specific protection for minors is reflected in the substantial protection of the rights of the child on the basis of Article 8 read in the light of the principle of the primacy of the best interests of the child, within the framework of the right to respect for family life. The European Court has also enshrined specific rights, essentially procedural, for the benefit of minors who have committed criminal offences on the basis of Article 6. It also recognized, on the basis of article 3 of the Convention, which prohibits torture, inhuman and degrading treatment and punishment, a fundamental right of the child not to be subjected to ill-treatment, whether by private persons or in the context of the administrative detention of foreigners, and required States to protect minors against domestic slavery on the basis of article 4 in the Siliadin judgments c/ France and C. and V. v. France of 11 October 2012, both of which concerned young underage girls.

By a broad and specific interpretation of Article 3 of the Convention condemning inhuman and degrading treatment, the European Court has achieved enhanced protection of children against ill-treatment The right enshrined in Article 3 of the Convention not to be subjected to inhuman and degrading treatment thus takes on a particular scope and significance when applied to a minor, which is a direct result of the influence of the International Convention on the Rights of the Child on the European judge. The protection of children from ill-treatment applies both when the abuse is committed by private individuals and also to certain state behaviour.

§1. The obligation to protect children from abuse by private individuals

Through the play of the horizontal effect, the European Court has applied Article 3 of the Convention to acts of ill-treatment committed by individuals, particularly in the family context and, above all, has imposed on States a positive obligation to prevent ill-treatment committed against children as vulnerable persons.

A. Prohibition of abuse

Initially, the court ruled on corporal punishment, provided that it was of a sufficient degree of seriousness. Corporal punishment can be defined as severe punishment, corrections inflicted on the child's body for educational, disciplinary, or repressive purposes. Traditionally accepted as an educational tool in some schools or families, corporal punishment has been criticized in contemporary times for being generally prohibited more or less expressly in domestic law. The

Court was faced with the question of whether they could fall within the scope of Article 3. It has answered this question positively, especially when the punishment is inflicted in a public institution. However, the reasoning on the severity of the punishment could be transposed to cases where it would be inflicted by parents. The Court held in the Tyrer v United Kingdom judgment of 25 April 1978 that the judicial punishment of flogging a minor in the Isle of Man constituted degrading treatment and it did the same in the Y v United Kingdom judgment of 29 October 1992 in relation to disciplinary action in a school. On the other hand, it held in the Costello-Roberts v. United Kingdom judgment of 25 March 1993 that the punishment consisting of three blows with rubber-soled gymnastic shoes on the child's posterior over his shorts did not reach a sufficient degree of seriousness to constitute degrading treatment within the meaning of Article 3. The same solution was adopted in the Campbell and Cosans v. United Kingdom judgment of 25 February 1982. The fact remains that by bringing corporal punishment within the scope of protection of Article 3 as capable of constituting degrading treatment, the European Court has greatly extended the concept of degrading treatment far beyond what was provided for when the Convention was drafted in 1950. The court proceeded to a dynamic interpretation of the text and adapted it to the evolution of morals, condemning an education system that was nevertheless traditionally accepted and widely practiced for a long time in the various European countries. In the court's view, the fact that corporal punishment is widely approved and the deterrent effect of the sanction cannot justify an attack on the dignity and physical integrity of the child. Most European states have adopted specific legislation prohibiting corporal punishment of children. France has been slow to follow this voice and when it has done so, it is only on the civil level. Law No. 2019-721 of 10 July 2019 on the prohibition of ordinary educational violence only adds to Article 3741 of the Civil Code the assertion that parental authority is exercised without physical or psychological violence.

The European Court has applied Article 3 of the Convention by the effect of horizontal effect to acts of ill-treatment committed within the family, i.e. inflicted by a private person. Indeed, child abuse is most often committed by the child's relatives, thanks to the technique of the horizontal effect, they can be condemned on the basis of the article and this by virtue of the horizontal effect. This extension of Article 3 was enshrined in the A v United Kingdom judgment of 23 September 1998 and subsequently reaffirmed. In A., the United Kingdom was condemned for acquitting a father-in-law who had beaten his stepson with a baseball bat as a punishment. The court stated that the law did not sufficiently protect the applicant from treatment contrary to section 3, since British law allowed a person charged with assaulting a child to argue that the ill-treatment in question amounted to reasonable punishment and the stepfather had been acquitted on that basis.

B. Prevention of abuse

The Court makes a reference to Articles 19 and 37 of the International Convention on the Rights of the Child, according to which "States shall take all appropriate legislative, administrative, social and educational measures to protect the child against all forms of physical or mental violence, injury or abuse..." and "ensure that no child is subjected to torture or to cruel, inhuman or degrading treatment or punishment..." ». The obligation to prevent child abuse is thus directly imported into European case law from the provisions of the CRC, by way of creative

interpretation. In the judgment of *28 February 2019* in Khan v. France[1], the European Court also condemned the inertia of the local authorities in failing to locate the 12-year-old applicant who had lived for several months in the slum of the Calais Heath, which it considered to fall under the "category of the most vulnerable persons in society", as a violation of Article 3 of the European Convention.

It was in the judgment of 10 May 2001 in Z. and Others v. the United Kingdom of 10 May 2001 and the judgments in DP and JC v. the United Kingdom of 10 October 2002, and in the judgment in E and Others v. the United Kingdom of 26 November 2002, that the European Court established a positive obligation on States to take all necessary measures to protect children against ill-treatment. which it then reinforced in the judgment *Association Innocence en Danger and Association Enfance et Partage v. France*, 4 June 2020.

However, the occurrence of ill-treatment inflicted by private individuals, if it is a condition of it, is not in itself sufficient to engage the State's responsibility, the obligation of prevention is violated only when it is shown that the authorities could have taken certain measures to prevent its occurrence or limit its effects, provided, however, that the authorities were aware of the threats to children. In the Marina case, the European Court considers that the authorities were informed of the possibility of a danger concerning Marina by the report to the Public Prosecutor's Office of the school principal, to which were attached the four handwritten pages written by the teachers noting numerous marks on the child

The court condemned the fact that social services had not removed children threatened with abuse from their family environment, since they knew or should have known that the child was in danger. European judges have not hesitated to criticise the British social services for not having placed a child victim of abuse in the family home, considering that the measures that had been taken were insufficient (*Z. and others above*). By establishing a positive obligation for social services to intervene, the European Court of Human Rights has made child protection a supranational imperative that is binding on all Member States, and whose influence extends to cases in which abuse originates from private individuals. When ill-treatment is inflicted by a member of the family, in the broad sense, including the various persons living with the children and, where appropriate, the mother's husband or partner, the obligation of prevention based on article 3 of the Convention amounts to an obligation on States to interfere with the family life of the persons concerned. particularly where, as in *Z*, the only measure capable of satisfying this obligation is the placement of the child. However, the European Court has accepted in the context of settled case law (*Olsson v. Sweden*, 24 March 1988) that the placement of a child does not constitute a violation of the right to family life if it is the result of a measure provided for by law, justified by the interests of the child and proportionate. The obligation to protect children by intervening in the family is therefore not incompatible with the right to family life, since it is also based on the protection of the child, the child's right to his or her physical integrity prevailing over the parents' right to family life without any possibility of discussion.

LOSTE v. France, February 3, 2023

(..) The Court notes that, from the beginning of her placement, the applicant was in a situation of particular vulnerability, in view, on the one hand, of her very young age (five years at the

[1] Req. No. 12267.

beginning of the placement measure) and, on the other hand, of her situation as a child deprived of parental care. In that context, the sexual abuse which she had suffered over a period of several years, as revealed in the criminal proceedings and only partly disputed by M.B., was sufficiently serious to fall within the scope of Article 3 of the Convention, and this was not disputed.
As regards the positive obligation to establish an appropriate punitive legislative framework, the Court emphasises at the outset that the applicant does not call into question, from the point of view of Article 3 of the Convention alone, the existence in the domestic law of the respondent State of criminal legislation designed to ensure the prevention and punishment of sexual offences.
As regards the positive obligation to implement preventive protective measures, such as detection and reporting mechanisms, which is at the heart of the applicant's complaint, the Court notes that the applicant was placed under the protection of a department department, the ASE. This service, which had a legal obligation to ensure his safety, well-being and protection.
The Court considers that the lack of regular monitoring by the ESA services, combined with a lack of communication and cooperation between the competent authorities concerned, must be considered to have had a significant influence on the course of events. It adds that the implementation of the rules applicable in national law in order to ensure the protection of the applicant did not constitute an excessive burden on the competent authorities.
In the light of the foregoing, the Court concludes that, in the particular circumstances of the case, the French authorities failed in their obligation to protect the applicant against the ill-treatment to which she was subjected by M.B. during her placement.
It follows that there has been a violation of Article 3 of the Convention in its substantive aspect.

B. Condemnation of the State's abuse of children

Two hypotheses were dealt with by the European Court: that of a child alone in a detention centre and that of a child accompanying his parents while waiting to be deported to the border.

1° Administrative detention of unaccompanied minors

In the judgment of *12 October 2006 in Mubilanzila Mayka and Kaniki Mitunga v. Belgium*, the European Court affirmed that "detention in detention centres for foreigners awaiting deportation is acceptable only to enable States to combat illegal immigration while respecting their national commitments, which include those arising from the Convention and the 1989 New York Convention on the Rights of the Child". Article 3 has a positive obligation on States to take measures for effective protection, including of children and other vulnerable persons. In that judgment, the Court found a violation of Article 3 on account of the detention of a minor in a detention centre for aliens pending their removal. It noted that the conditions of detention of the applicant, who was five years old at the time, were the same as those of an adult, that the child had been detained for two months in a centre initially designed for adults while she was separated from her parents, without anyone having been appointed to take care of her, nor that psychological or educational supervision and support measures are provided by qualified staff, specially mandated for this purpose. In this judgment, the Court considered that the measure of detention of a foreign minor in a closed adult centre was not in the best interests of the child.

In the Khan *v. France judgment* of 28 February 2019[2], the European Court also condemned the inertia of the local authorities in failing to locate the 12-year-old applicant who had lived for several months in the slum of the Calais Heath, which it considered to fall under the "category of the most vulnerable persons in society"». In this judgment, the court affirmed that

[2] Req. No. 12267.

the care of unaccompanied minors is an obligation arising from Article 3 of the European Convention on Human Rights. The Court rejected the Government's argument that it was for the applicant to take the necessary steps himself to take care of him. She criticizes the authorities for not having complied with the placement order of the juvenile judge which had been referred to by the minor's *ad hoc* administrator .

Compare the reasoning of the European Court in these two judgments

2° Detention of foreign minors with their parents

The European Court also considers that children detained with their parents who are the subject of deportation proceedings may be victims of inhuman treatment due to the lack of a child-friendly structure, as in the Popov *v. France judgment* of 19 January 2012[3] relating to two children aged 5 months and three years held for 15 days with their parents in the administrative detention centre in Rouen. In this judgment, the European Court did not stop at the fact that the detention centre in question was "authorised" to receive families by virtue of Decree No. 2005-617 of 30 May 2005. It ruled on the basis of the reality of the situation in the detention centre set out in various reports, including that of the Controller-General of Places of Deprivation of Liberty and the CIMADE, and concluded that "the infrastructure available in the 'family' area of the centre is not adapted to the presence of children". The Court thus condemns, in the light of Article 3 of the Convention, not the administrative detention of the children in itself, but the material and temporal conditions in which it actually took place. The French Government took note of the *Popov* judgment by prohibiting, in a circular of 6 July 2012 issued by the Ministry of the Interior, the detention of children whose parents are illegally present on French territory. This has not prevented new condemnations of France, notably in the judgment N.B. v. France (ECHR, 31 March 2022, no. 49775/20).

[3] M. Farge and A. Gouttenoire, art. Back.

Section 2: Protection of women against domestic violence under article 3 of the Convention

More recently, and still through the play of the horizontal effect, the European Court has mobilized Article 3 to require States to strengthen the fight against violence of which women are victims by their spouses, which constitutes a scourge that modern societies are unable to contain. This issue is related to that of child abuse. Indeed, the latter are also victims of domestic violence, first of all because physically many of them also receive blows in this context, and the Landi v Italy judgment shows that sometimes they can even die as a result.

In the context of violence against women, the principles applicable are similar. The Court has drawn up a regime adapted to the singularities of this violence, the content of which is summarised and clarified in the Kurt (ECHR, gde ch., 15 June 2021, no. 62903/15, Kurt v. Austria) and Y (ECHR, 22 March 2022, no. 9077/18, Y. et a. v. Bulgaria) judgments, both substantively and procedurally. The definition of protection standards and the examination of cases are largely based on the work of the UN Committee on the Elimination of Discrimination against Women and GREVIO (the group of experts on combating violence against women and domestic violence).

The Court interprets Article 3 of the European Convention in the light of the Istanbul Convention of 11 May 2011 on preventing and combating violence against women and domestic violence, as it did with the CRC in relation to the protection of children against abuse. Even if it is not directly applicable before the Court, its content is binding on the Court in so far as it reflects the consensus of the States as to the level of protection to be offered to victims of domestic violence. Unfortunately, it also happens that it is Article 2 that is used when domestic violence has led to the death of the victim, as is the case in France with more than 100 women per year, without it being possible to reduce it, quite the contrary. Article 8 can sometimes be used in this context for violence of lesser gravity.

The Court imposes on States the obligation to protect women and considers that their failure to protect women constitutes discrimination.

§1: The obligation to protect women against domestic violence

A. The requirement of a sufficient legal framework

The Court considers that domestic violence falls within the scope of Article 3 when it is of a certain gravity: in the case of Hasmik Khachatryan v. Armenia (ECHR, 12 Dec. 2024, no. 11829/16), it was a case of serious attacks on the applicant's physical integrity committed by her partner. In the case of N.D. v. Switzerland (ECHR, 3 Apr. 2025, no. 56114/18), the applicant had miraculously survived the night of horror (kidnapping, rape and attempted murder) that her partner subjected her to when she informed him of her decision to break off their relationship. In the case of Vieru v. Republic of Moldova (ECHR, 19 Nov. 2024, no. 17106/18), the suicide of the applicant's sister was part of a serious context of violence and harassment by her ex-partner. In the case of P.P. v. Italy (ECHR, 13 Feb. 2025, no. 64066/19), in addition to multiple forms of physical violence, the applicant's companion exercised coercive control over her life and person. By using Articles 9 and 8 in combination, the Court intends to provide a comprehensive understanding of the phenomenon of domestic violence in all its forms. Taking into account the specific nature of domestic violence, it considers in the judgment in Bututuga v. Romania that it is not limited to physical violence but includes, inter alia, psychological

violence or harassment and may take the form of cyberviolence. Article 8 imposes an obligation on the State to protect women against all forms of violence.

Relying on the Istanbul Convention, the Court has ruled since the Opuz v. Turkey judgment of 9 June 2009 that States have a positive obligation to put in place a legal framework, both criminal and civil, to prevent and punish acts of domestic violence against women.

For example, Armenia (Hasmik Khachatryan) violates its obligations under Article 3 because no criminal offence specifically targets domestic violence and no action for compensation for moral damage was available to the victim, as did Moldova, whose legislation did not allow for the capture of patterns of violence characterized by long-term physical violence, but of low intensity, and intense psychological violence.

Several States have been condemned by the ECtHR for not having changed their legislation in this area. Thus, in the judgment of 14 December 2021 in Tunikova and Others v. Russia, the European Court noted that no progress has taken place in the implementation of preventive and curative measures for domestic violence in the country since the Volodina v Russia judgment of 9 July 2019. On the contrary, it notes in the judgment Talpis (ECHR, 2 March 2017, no. 41237/14) the efforts undertaken by Italy since then to reform its legal system with a view to preventing and punishing domestic violence.

B. The requirement of effective protection

The Court requires States to effectively implement the relevant legislation and to conduct effective investigations and procedures in order to offer protection to victims and punish those responsible. In the event of violence, an investigation must make it possible to clarify the facts and, if necessary, to put in place protective measures. Indeed, a legal mechanism intended to protect individuals from violence likely to befall them in the domestic space is nothing if it is not supported by a strong political will relayed by serious and rapid action by the police and social services.

In the Landi v. Italy judgment of 22 March 2022, the Court found a violation of Article 2 of the Convention after the attempted murder of the author's wife and the murder of her son, due to the inertia of the Public Prosecutor's Office, despite the fact that the Carabinieri had repeatedly alerted her to the violence suffered by the applicant and her children at the hands of her spouse. It did not take any protective measures and did not prosecute the aggressor, although it could have done so independently of the applicant's withdrawal of her complaints. What is also interesting in this judgment is that the court relativizes the applicant's attitude, in particular the withdrawal of her complaints and the resumption of living together with her spouse, which is found in many cases of domestic violence and which can be explained by the hold that the perpetrator exercises over the victim.

The protection order is one of the essential measures in the fight against domestic violence. Its absence would reveal a deficiency with regard to Articles 2, 3 and/or 8 of the Conv. HRE. If the system exists, it still has to be effective. In the judgment of 26 May 2020 in Munteanu v. the Republic of Moldova, it is the failure to enforce the protection order that is condemned. It must also not be lifted too quickly (Malagić v. Croatia *(ECHR, 17 Nov. 2022, No. 29417/17)*.

The Court's task is to assess the adequacy and relevance of the authorities' response in the light of the specificity of gender-based violence. It does not matter how responsive the

authorities are if the measures are ineffective, due to a lack of follow-up and a lack of sanctions commensurate with the stakes (Vieru and Hasmik Khachatryan, the Court stressing that granting amnesty to the perpetrator of violence violates the obligation to fight impunity; in the P.P. case, the Court notes that the slowness of the authorities associated with the statute of limitations system in force in Italy feeds the feeling of impunity of the perpetrators of violence in Italy. women).

However, it would be unrealistic to blame States for all domestic violence that takes place on its territory. Their responsibility depends first of all on what they know about the risk of harm to physical integrity or life or what they should have known about it. It also depends on whether the risk was real and serious and on the relevance and diligence of their reaction, as stated by the Court in the judgment of 15 June 2021 in Kurt v. Austria.

The State's commitment to combating domestic violence is reflected both materially and procedurally. The allegation of domestic violence triggers an obligation to conduct a prompt and thorough investigation and, if necessary, initiate legal proceedings. In the judgment in M.S. v. Italy (ECHR, 7 July 2022, no. 32715/19), it condemned the statute of limitations in relation to domestic violence that had been acquired due to the slow reaction of the public authorities.

§2 The discriminatory nature of the State's indifference to domestic violence

The court affirmed that domestic violence is a general problem that transcends individual cases in the Levchuk v Ukraine judgment of September 3, 2020. Through the increasing number of applications concerning domestic violence, the ECtHR assesses society's general attitude towards violence against women and the efforts undertaken by States to eradicate it. More specifically, it examines in the various judgments whether the failure reported to it is cyclical and isolated or general and indicative of discrimination against women. The law is insufficient, despite its symbolic and educational function, if it is not accompanied by a strong political will to ensure its concrete and effective application, training of the investigating and prosecuting authorities on the characteristics and dynamics of domestic violence, as well as a sensitivity of society as a whole to gender issues and equality between men and women. When the court finds generalized shortcomings and systematic failure, it concludes that there has been a violation of Articles 3 and 14 taken together, i.e. discrimination against women.

This is the case in the judgments of 10 February 2022 in Tunikova v. Russia and A and B v. Georgia (already Tkhelidze v. Georgia of 8 July 2021), in which the court found a situation that is still as alarming and revolting as ever: undermining of acts of violence against women, refusal to investigate and/or prosecute the perpetrators, insufficient incriminations. In these judgments, the court held that there had been a violation of the principle of discrimination because domestic violence mainly affects women and the laxity of the authorities was based on gender stereotypes.

Conversely, in the Landi v. Italy judgment, the court noted that even if women's exposure to violence remains critical, the failure of the public prosecutor's office to find a violation does not reflect a systematic and widespread practice or a socio-cultural attitude of tolerance towards violence against women. The court therefore ruled out a violation of the principle of non-discrimination.

In the Volodina v. Russia judgment of 9 July 2019, the court stated that in the presence of prima facie evidence that this domestic violence disproportionately affects women, the applicant does not have to prove the existence of individual harm.

In the case of Germano v. Italy (ECHR, 22 June 2023, no. 10794/12) the applicant denounced not the shortcomings of the legal protection of victims, but their excess. The preventive measures imposed on him, because his behaviour was potentially tantamount to harassment of his partner, were of such broad and indeterminate content (prohibition of contact with the mother of his children or with friends they had in common) that they compromised the exercise of his parental rights and seriously damaged his reputation. All the more so as they applied for an unlimited period of time and the applicant had not been heard at the time of their pronouncement, even though the urgency was not characterized. He was heard by the Court.