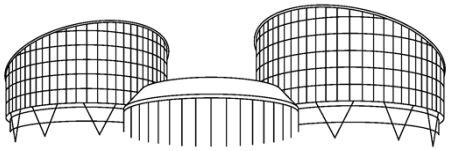

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF VIERU v. THE REPUBLIC OF MOLDOVA

(Application no. 17106/18)

JUDGMENT

Art 2 and Art 3 (procedural aspects) • Positive obligations • Failure to conduct an effective investigation into credible allegations of physical and psychological domestic violence and into circumstances of applicant's sister's death • Failure to ensure prompt prosecution and punishment of domestic violence perpetrator
Art 3 (substantive aspect) • Positive obligations • Failure to protect applicant's sister from domestic violence against backdrop of documented and repeated failure by domestic authorities to prevent and stop violence against women, including domestic violence as a form of gender-based violence • Domestic legal framework at the material time and manner it was put into practice failed to effectively address and prevent a pattern of domestic violence characterised by long-term but low-intensity physical violence and unaccounted psychological violence • Investigating authorities' failure to act rapidly, diligently and consistently in all instances of domestic violence • No assessment of the real and immediate nature of the risk of the recurrence of violence, taking due account of the specific domestic violence context and failure to take preventive and protective measures to avert that risk
Art 14 (+ Art 2 and Art 3) • Discrimination • Domestic authorities' failure to adequately address domestic violence against women • Applicant's prima facie case of a general institutional passivity and/or lack of awareness of domestic violence as well as gender-based violence not rebutted

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 November 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vieru v. the Republic of Moldova,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 17106/18) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Mr Viorel Vieru ("the applicant"), on 4 April 2018;

the decision to give notice of the application to the Moldovan Government ("the Government");

the parties' observations;

Having deliberated in private on 15 October 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the alleged failure of the Moldovan authorities to effectively protect the applicant's sister from domestic violence which culminated in her death and to conduct an effective investigation into the circumstances of violence leading to her death. The applicant relied on Articles 2, 3, 6, 8 and 14 of the Convention.

THE FACTS

2. The applicant was born in 1974 and lives in Chișinău. He was represented by Ms V. Andriuţa, a lawyer practising in Sângera.

3. The Government were represented by their Agent, Mr D. Obadă.

4. The facts of the case may be summarised as follows.

5. From 2012 the applicant's sister, T., was subjected to repeated episodes of domestic violence at the hands of her husband I.C., despite numerous protection orders. Their divorce was finalised on 24 November 2014 but the incidents of domestic violence continued. On 22 August 2016 T. fell from the fifth floor of her apartment and on 12 October 2016 she died from the sustained injuries.

6. The domestic authorities examined various elements of I.C.'s conduct in parallel proceedings, as described below.

I. PROCEEDINGS UNDER LAW No. 45 ON DOMESTIC VIOLENCE AND THE CODE OF ADMINISTRATIVE OFFENCES

A. First protection order

7. In September 2014 T. sought a protection order for herself and her two children, aged 14 and 5, against I.C., with whom she was in divorce proceedings at the time. In her request she noted that there had been a history of physical and psychological violence, including in the presence of the children, since 2012 and a recent occurrence of physical violence in September 2014, her injuries being confirmed by medical reports (bruises on the rib area and on the arms, with the largest measuring 7 cm by 2.5 cm, classified as insignificant injuries).

In court proceedings, the child protection authority confirmed that it had been known that there had been other incidents of domestic violence in the household and that the older child had confirmed witnessing violence between the parents, although he himself had not been subjected to violence at the hands of his father. A police officer confirmed that in July 2014 I.C. had been held liable for insignificant bodily injuries under the Code of Administrative Offences and that in August 2014 the police had been called to intervene because I.C. had refused to leave T.'s apartment.

8. On 26 September 2014 the Buiucani District Court granted her request, issuing a protection order valid for ninety days, for the duration of which I.C. was to refrain from any contact with T. or the children and to stay at least 300 metres away from them; he was also to follow a special psychological counselling programme for reducing violent behaviour and an alcohol rehabilitation programme.

9. On 31 October 2014 a neighbour called the police emergency number 902 to report another incident. The police came to T.'s apartment and concluded that I.C. had failed to comply with the protection order, in breach of Article 318 § 1 of the Code of Administrative Offences and referred the case to the court. On 2 December 2014 the Buiucani District Court found that on 31 October 2014 I.C. had entered T.'s home, in breach of the protection order, and the court found him guilty of failing to comply with the protection order, which constituted an administrative offence, and sentenced him to a fine of 1,000 Moldovan lei (MDL – equivalent to 50 euros (EUR)).

10. On 1 November 2014 the police issued a formal warning to I.C. to refrain from any domestic violence or conflict.

11. On 3 November 2014 the child protection authority sought the intervention of the police, as I.C. had continued to harass and physically abuse T. in the children's presence despite the protection order issued on 26 September 2014.

12. On 22 December 2014 T. called the police emergency number 902 to report that I.C. was forcing open the door to her apartment. On 26 December

2014 she submitted a formal complaint about the incident of 22 December, noting that I.C. had pulled her by the hair and pushed and hit her on her back with his legs in the presence of the applicant, who was visiting her from Germany.

13. On 24 December 2014 T. called the police emergency number 902 again to report another incident with I.C. in her home.

14. On 16 February 2015 T. saw a psychologist to whom she had been referred by the non-governmental organisation (NGO) Women's Law Centre. The assessment made on that date read as follows:

> "[T.] was married for fourteen years but divorced in November 2014 on account of domestic violence. ... During psychological counselling sessions T. described the physical and psychological abuse to which she was subjected during her marriage ... particularly in the last two years. She was beaten with fists, slapped with palms, kicked with legs, her head was pushed into a tree and she was strangled. The cause of the domestic violence was often jealousy, and for this reason her communications and telephone were controlled. She was stabbed with scissors, burned with a cigarette, strangled and threatened with gang rape and drowning. Her ex-husband took all her and her children's documents and hid them. While under the influence of alcohol, he often smashed things in the house; on one occasion he took and ripped [some of] her clothes, and stained [other clothes] with blood. Sometimes these scenes of violence occurred in the presence of the children. ... During counselling, [T.] was restless and agitated, with a pronounced sense of helplessness. ... [She manifested] shaking hands, palpitations and hyperventilation and she mentioned a partial paralysis of the facial muscles around her mouth and in her hands when she thought about the incidents of domestic violence. ...
>
> [She has] a moderate level of depression stemming from feelings of frustration and irritability combined with lack of self-confidence and vulnerability in respect of the physical and psychological violence [she experienced] at the hands of her former husband. The high level of restlessness ... is characterised by obsessive thoughts, psychological tension and fear. ... [T]here are also elements of post-traumatic stress, such as repeated memories of traumatising events accompanied by a heavy emotional load, irritability, flash-backs, increased sensitivity [and] sleep disorders. ..."

B. Second protection order

15. On 19 February 2015 T. sought another protection order with reference to numerous incidents of domestic violence, particularly since March 2014. She also referred to a recent occurrence on 3 February 2015 when I.C. had followed her and her younger child from the kindergarten and had punched T. in her face; she had been able to flee from him to the police station only when two men had intervened on the street. The police had informed her of the NGO, Women's Law Centre. She described the abuse she had suffered at the hands of I.C., giving examples of physical, psychological, sexual and economic violence.

16. On the same day the Buiucani District Court granted her request, issuing a protection order valid for ninety days, for the duration of which I.C. was to refrain from any contact with the applicant or the children and to stay at least 300 metres away from them; he was also to follow a special

psychological counselling programme for reducing violent behaviour and an alcohol rehabilitation programme.

17. On 2 April 2015 T. called the police emergency number 902 and the following day made a formal complaint in respect of two incidents: one on 31 March 2015, when I.C. had come to her apartment and disconnected the electricity, and another on 2 April 2015, when he had waited for her to return from the kindergarten and had hit her several times, after which he had fled and had come back later in the evening and hit her again several times in the face. A medical report of 3 April 2015 confirmed bruises on her face measuring 2.8 cm by 2.2 cm, which were classified as insignificant. On 3 April 2015 the police issued I.C. another formal warning and drew up an administrative offence report about his breaching of the protection order, contrary to Article 318 of the Code of Administrative Offences, and referred the case to the court.

18. T. called the police emergency number 902 again on 17 and 18 April 2015 to report similar incidents.

C. Third protection order

19. On 19 May 2015 T. sought another protection order against I.C., referring to the repeated breach of previous protection orders and the ongoing violence committed against her. Her statements were confirmed by the police. On 21 May 2015 the Buiucani District Court granted the request, issuing a protection order valid for ninety days, similar to the previous ones.

20. Despite the protection order, on 28 June 2015 in another incident, I.C. pushed T. on the street and she fell and hurt her head. A medical report from 29 June 2015 confirmed excoriations on T.'s elbows and bruises on her knee and leg, the largest measuring 3 cm by 2 cm; the injuries were classified as insignificant.

21. On 27 July 2015 the Buiucani District Court found that on 28 June 2015 I.C. had breached the protection order, which constituted an administrative offence under Article 318 of the Code of Administrative Offences, and sentenced him to a fine of MDL 1,000 (equivalent to EUR 50).

D. Fourth protection order

22. On 21 August 2015, at T.'s request, the Buiucani District Court issued another protection order valid for ninety days, similar to the previous ones.

23. T. called the police emergency number 902 on 14 October and 13 November 2015 and lodged a formal complaint in respect of an incident on 12 November 2015 when I.C. had twisted her fingers and arm and had taken money, her telephone and her keys, and another incident on 13 November 2015, when he had hit her on the face. A medical report from 14 November 2015 mentioned numerous bruises on T.'s face (the largest

measuring 5 cm by 1.5 cm), legs (measuring 10 cm by 6 cm) and arms (the largest measuring 6 cm by 4 cm). The injures were classified as insignificant.

24. On 18 November 2015 the Buiucani District Court found that only the judicial bailiff, and not the police, was authorised to draw up reports on the administrative offence provided for under Article 318 of the Code of Administrative Offences (breach of the protection order). The court, therefore, discontinued proceedings against I.C., concluding that he had not committed the administrative offence under that provision.

E. Fifth protection order

25. On 5 May 2016 T. sought another protection order. She referred to the criminal sentence of 23 March 2016 (see paragraph 38 below), following which I.C. had been released from detention and on 4 May 2016 had come to her apartment, intoxicated, had disconnected the electricity and had hit her again; the police had also been present. She referred to her constant fear and vulnerability. The police confirmed her statements and the child protection officer asked the court to grant the request.

26. On 6 May 2016 the Buiucani District Court granted T.'s request, issuing a protection order valid for ninety days, similar to the previous ones.

27. According to the Government, on 19 May and 18 July 2016 T. had been visited by a social welfare officer, who had enquired about her situation and informed her of her rights. During the last visit, the social workers had proposed a place in a shelter, which she had refused.

F. Refusal of a request for a sixth protection order

28. On 5 August 2016 T. sought the extension of the previous protection order. In addition to the history of violence, she referred to an incident of 23 May 2016, when I.C. had broken into her apartment and had taken belongings from her, in breach of the protection order, in respect of which the police initiated criminal proceedings on charges of theft. The police officer informed the court of I.C.'s violent behaviour and asked the court to grant the request.

29. On 8 August 2016 the Buiucani District Court rejected T.'s request. The court found that:

> "...[T]he reasons put forward for the extension of the previous protection order were declarative and unsupported by any pertinent evidence, such as police reports, witness statements and audio or video recordings proving [that] acts of domestic violence or a breach of the protection order of 6 May 2016 [had taken place].
>
> No decisions were given to confirm [I.C.'s] guilt in committing acts of domestic violence in respect of family members or other breaches to lead [the court] to the conclusion that he had committed domestic violence after 6 May 2016 or had failed to comply with the protection order of 6 May 2016.

No acts of violence were confirmed in court ... and the statements were declarative.

The court notes the statements made by the [police officer], that [T.] had made two complaints after 6 May 2016 and that, in respect of her complaint of 11 July 2016, the police had informed her that a criminal investigation had been initiated on charges of theft in respect of unknown perpetrators. ... [I.C.] does not have the procedural standing of suspect or of an indicted party in those proceedings ... In respect of the other complaint, a report on the commission of the administrative of offence of breaching the protection order, was drawn up in respect of [I.C.] but no further details on this are available.

The court concludes that the hostile nature of relations between [T. and I.C.] is insufficient to lead the court to order the extension of the protection order."

The decision was not appealed and became final.

G. Final protection order

30. On 26 August 2016 T. sought a new protection order, arguing that on the night of 22 to 23 August 2016 she had been subjected to physical and psychological violence, which had culminated in her falling from the fifth floor. In particular, she argued that I.C. had met her at the entrance to her apartment building and had beaten and insulted her; she had run from him but he had managed to follow her into her apartment, where he had isolated her in the kitchen and had beaten her again. As a result of these events, she had fallen from the fifth floor and suffered multiple traumatic injuries. She submitted that she had felt particularly vulnerable while in the hospital because both I.C. and his mother had visited and threatened her. Her lawyer clarified that I.C. had gained access to the apartment because the children had let him in.

31. I.C. attended the hearing and argued that there was no need for a protection order in respect of the children because he had taken care of them in the past. He submitted that the conflicts with T. had begun after she had returned from working in Italy, had started abusing alcohol and had tried to kill herself by cutting her veins or ingesting pills. He argued that on 23 August 2016 he had been called by a neighbour, G.S., who had indicated T., in a state of intoxication, lying at the entrance to her apartment building; he had brought her into her apartment and into the kitchen. While he had been speaking to his son, the neighbour G.S. had come in and told him that T. had jumped from the window.

32. On 27 August 2016 the Buiucani District Court granted T.'s request and issued a protection order valid for ninety days, which obliged I.C. to stay away from T. and her children. The court found:

"... [T.] has been in intensive care since 23 August 2016 and continues to be treated in the neurosurgery unit ... following her fall from the fifth floor.

The police officer submitted in court that [I.C.] had been registered as abusive for over a year; that he and [T.] had lived in the same apartment bloc, but in different sections; and that the police had been investigating [T.]'s emergency call, in which she

had said that she had fallen as a result of [I.C.]'s aggressive behaviour. ... [The police officer also submitted that] a further four protection orders had been issued in respect of [I.C.], one of which had been breached beyond any doubt. ...

The court has heard the [neighbour G.S.] , who stated that [T.] had been intoxicated on the evening of 23 [*sic*] August 2016, [but this] cannot be considered because it is rebutted by the medical certificate issued by the emergency hospital which does not reveal any alcohol intoxication in respect of [T.]. Moreover, this witness clarified that he had not seen what had happened after [T.] and [I.C.] had entered the apartment."

II. CRIMINAL PROCEEDINGS RELATED TO DOMESTIC VIOLENCE

33. Following T.'s complaint of 14 November 2014, on 12 December 2014 the Buiucani prosecutor ordered the initiation of criminal proceedings on charges against I.C. of domestic violence, with reference to physical and psychological abuse and, in particular, an incident which had occurred on 15 September 2014.

34. On 6 January 2015 the Buiucani police initiated criminal proceedings against I.C. on charges of deliberate failure to comply with a final court judgment (Article 320 § 1 of the Criminal Code). The decision referred to I.C.'s failure to comply with the protection order of 26 September 2014, the court's decision of 2 December 2014 to sanction I.C. for breaching the protection order and the incidents of 22 and 24 December 2014, when he had entered T.'s home while she was there.

35. On 22 May 2015 the Buiucani prosecutor initiated criminal proceedings against I.C. on charges of domestic violence, with reference to the incidents of 2 and 17 April 2015.

36. The three criminal cases were joined and referred to the court.

37. In the course of the proceedings, I.C. was remanded in prison from 26 November to 25 December 2015 and placed under house arrest from 25 December 2015 to 23 March 2016.

38. On 23 March 2016 the Buiucani District Court found I.C. guilty on three counts of domestic violence and sentenced him to two years' imprisonment, but suspended the enforcement of the sentence, placing him on probation for three years. The court obliged I.C. to follow a special treatment or counselling programme for reducing his violent behaviour. I.C. was released from house arrest. The court discontinued the proceedings on the count concerning deliberate failure to comply with a court judgment, concluding that it amounted to an administrative offence which was already time-barred. In respect of the charges of domestic violence, the court noted that under Article 133/1 of the Criminal Code, only former family members could be charged with the criminal offence of domestic violence. However, the court held that the indictment did not concern the incident of violence of 24 December 2014, but only the incidents of 15 September 2014 and 2 and 17 April 2015. The events had been proved by witness statements, medical reports and statements made by the victim and I.C. himself. Suspending the

sentence on probation, the court took note that the offence with which he was charged was less serious, that it was I.C.'s first conviction and that he was caring for two underaged children.

39. The prosecutor, T. and her lawyer appealed against the judgment of the first-instance court, contesting the leniency of the criminal sentence in respect of the charges of domestic violence and the incorrect assessment of evidence on the charges concerning the breach of the protection order. The prosecutor also noted that I.C. had admitted his guilt on both counts and argued that only a custodial sentence would serve the purpose of punishing and preventing new offences.

40. I.C. also appealed against that judgment, arguing that after the divorce on 24 November 2014, he had no longer lived together with T. and that, therefore, he did not qualify as a "family member" within the meaning of Article 133/1 of the Criminal Code.

41. In the course of the appeal proceedings the prosecutor changed his request and sought the requalification of I.C.'s acts of domestic violence as an administrative offence under Article 78/1 of the Code of Administrative Offences on account of the intervention of a more lenient criminal law and to discontinue the proceedings as time-barred. Also, owing to T.'s demise on 12 October 2016, the applicant sought to be acknowledged as her legal heir.

42. On 9 February 2017 the Chișinău Court of Appeal upheld the prosecutor's and T.'s appeals but rejected I.C.'s appeal, partially quashed the first-instance judgment and delivered a new judgment on the merits, finding I.C. guilty of domestic violence (in respect of the incidents of 15 September 2014 and 2 and 17 April 2015) and sentencing him to two years' imprisonment in a semi-open prison. The court rejected the award of any compensation in respect of non-pecuniary damage, arguing that T., and not the applicant, had sustained damage from the criminal offences. The court reiterated that I.C. qualified as a "family member" under Article 133/1 of the Criminal Code despite his divorce from T. The court concluded that only a custodial sentence would be adequate in the circumstances of the case of repeated recurrences of domestic violence. The appellate court upheld the first-instance judgment concerning the discontinuation of proceedings in respect of the charges of deliberate breach of the protection orders.

43. The applicant lodged an appeal on points of law against that judgment, arguing that the partial discontinuation of the criminal proceedings and the rejection of the civil claims had been erroneous. He noted that it had been, in particular, the absence of a firmer response from the authorities, for example the initiation of criminal proceedings against I.C., which had encouraged further acts of violence and he cited the protection orders which had been breached by I.C. Moreover, no authority had ever made sure that I.C. actually underwent a counselling programme to address his violent behaviour, in breach of the State's positive obligations under Article 3 of the Convention. This failure had resulted in the reoccurrence of violence. He argued that he

had the procedural standing of an indirect victim, which entitled him to compensation in respect of non-pecuniary damage.

44. The prosecutor and the defence also lodged appeals on points of law.

45. On 16 May 2017 the Supreme Court of Justice upheld all the appeals, quashed the appellate court's judgment and ordered a fresh examination of the case. The judgment noted that the appellate court had failed to consider the prosecutor's request (see paragraph 41 above), had failed to properly assess the circumstances in which I.C. had not complied with the protection orders and had improperly assessed the applicant's entitlement to compensation.

46. On 8 November 2017 the Chișinău Court of Appeal reheard the parties' appeals and delivered a new judgment, deciding to discontinue the criminal proceedings on the charge of breaching the protection orders as being time-barred; to discontinue the criminal proceedings on the charges of domestic violence, requalifying the acts as an administrative offence; to discontinue the administrative proceedings on charges of inflicting insignificant injuries as being time-barred; and to award the applicant compensation in respect of non-pecuniary damage in the amount of MDL 50,000 (equivalent to EUR 2,417 at the material time). In respect of the charges of domestic violence, the court referred to amendments in the domestic criminal legislation, in accordance with which, in the absence of injuries of a mild level of severity, I.C.'s deeds were to be reclassified as the administrative offence of inflicting insignificant body injuries (Article 78 of the Code of Administrative Offences), for which proceedings were already time-barred. The court argued that it was impossible to reclassify the acts as domestic violence under Article 78/ 1 of the Code of Administrative Offences because that provision had not existed at the time of the events and because after the divorce, I.C. and T. had no longer been considered family members. In respect of the charges of breaching the protection orders, the court noted that criminal liability was provided for only once the breach had continued after an administrative sanction had been imposed. While such responsibility would have been possible in respect of I.C. for the incident of 24 December 2014, the statutory limitation period in respect of this criminal offence had expired on 24 December 2016. The court concluded that the applicant was entitled to compensation as T.'s procedural successor and awarded him an amount commensurate to the level of the victim's suffering, her age, the perpetrator's capacity to pay, the socio-economic situation of the society in which the applicant lived, the nature of the acts committed, the psychological assessment of the victim and the amounts awarded in comparable cases.

47. The applicant lodged an appeal on points of law, reiterating his previous arguments (see paragraph 43 above) and noting that T. had been subjected to psychological violence, which had not been factored in the analysis of the appellate court and that the excessive length of proceedings had resulted in I.C.'s impunity, in breach of the State's positive obligations

under Article 3 of the Convention. He also submitted that the amount of compensation was disproportionately low.

48. On 28 February 2018 in a final decision, the Supreme Court of Justice upheld the appellate judgment in full.

III. CRIMINAL PROCEEDINGS CONCERNING INCITEMENT TO SUICIDE

49. On 8 September 2016 the police initiated criminal proceedings in respect of I.C. on charges of incitement to suicide or attempted suicide (Article 150 § 1 of the Criminal Code).

50. On 9 July 2018 the prosecutor closed the investigation, concluding that there was an absence of the elements of an offence. In particular, the prosecutor relied on witness statements made by a neighbour G.S. and T.'s eldest child, according to which on the evening of 22 August 2016 T. had been alone in the kitchen before she fell, on witness statements reporting that T. had not remembered how she had fallen and on medical data which had shown alcohol in her blood at the time of the events. The decision also referred to four witness statements attesting to the existence of a domestic violence situation. The prosecutor concluded:

> "... Analysing all the circumstances and materials of the case ... it is concluded that [I.C.] did not commit the offence under Article 150 of the Criminal Code.
>
> The elements of this offence include (1) action or inaction of incitement to suicide or attempted suicide, (2) resulting consequences such as (a) suicide or (b) attempted suicide; (3) a causal link between the action and the consequences; and (4) the manner of incitement consisting of (a) persecution, (b) defamation, (c) insult [and/or] (d) systemic debasing of the victim's dignity. At the same time, *incitement* refers to influencing the victim to take the decision to commit suicide, either by introducing the idea of suicide or by convincing the victim. ... *Systemic debasement of the victim's dignity* refers to harassment at work, the debasing and brutal refusal to terminate a marriage, accusations against the victim of committing reprehensible acts, or other insulting behaviour in respect of the victim.
>
> In the light of the [considerations] above, ... it has not been found that [I.C.], by his behaviour in respect of the victim, incited [T.] to commit suicide. ... [T.] did not remember how she fell ... [and] she was intoxicated. On the basis of witness statements, [the court finds that I.C.] did not physically abuse the victim on the night of 23 [*sic*] August 2016. For this reason, it is not to be excluded that [T.] accidentally fell from the fifth floor [italics in original]."

That decision was not appealed and became final.

RELEVANT DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK

I. DOMESTIC LAW

51. At the time of the events, Article 201/1 of the Criminal Code, enacted by Law no. 895 of 18 April 2002, defined domestic violence as follows:

> "[Domestic violence is] a deliberate act or omission, manifested physically or verbally, committed by a family member in respect of another family member, inflicting physical suffering resulting in mild bodily harm, psychological suffering, or pecuniary or non-pecuniary damage."

The offence of domestic violence was punishable by community service of 150 to 180 hours or by imprisonment for a term of up to two years. Paragraph 3 provided that the same act, if it incited someone to commit suicide or to attempt suicide, was punishable by imprisonment for a term of between five and fifteen years.

52. An amendment to the Criminal Code, enacted on 16 September 2016, redefined domestic violence as follows:

> "(a) ill-treatment and other violent acts which result in mild bodily harm; [or]
>
> (b) isolation or intimidation with a view to imposing one's will or establishing control over the victim; [or]
>
> (c) deprivation by economic means, including deprivation of basic means of survival and neglect, which result in mild bodily harm."

53. An amendment to the Code of Administrative Offences, enacted on 16 September 2016, included domestic violence as a minor offence (Article 78/1) defined as "ill-treatment or other violent acts, committed by a family member, which result in insignificant bodily harm".

54. At the time of the events, Article 133/1 of the Criminal Code and the Law no. 45 of 1 March 2007 on preventing and combating domestic violence defined divorced spouses as family members only if they lived together. The legal texts were amended to exclude the condition of cohabitation on 16 September 2016.

55. At the time of the events, Article 150 of the Criminal Code defined incitement to suicide as "influencing a person to commit suicide or to attempt suicide through systemic persecution, defamation, offence or debasement of the victims' dignity by the perpetrator" and was punishable by imprisonment for a term of up to four years.

56. At the time of the events, Article 320 of the Criminal Code criminalised the deliberate non-enforcement or evasion of the enforcement of a court judgment if it was committed after the application of an administrative sanction. The offence was punishable by a fine of from 550 to 650 conventional units or community service of from 150 to 200 hours or with imprisonment for a term of two years. An amendment to the Criminal

Code, enacted on 16 September 2016, criminalised, under Article 320/1, explicitly the non-enforcement of court orders for the protection of victims of domestic violence. The offence was punishable by community service of from 160 to 200 hours or imprisonment for a term of up to three years.

II. INTERNATIONAL MATERIAL

57. The relevant parts of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) Concluding Observations on the combined fourth and fifth periodic reports of the Republic of Moldova, UN Doc. CEDAW/C/MDA/CO/4-5, 29 October 2013, read as follows:

Violence against women

"19. While welcoming the adoption in 2008 of Law No. 45-XVI on preventing and combating domestic violence, through which new protection measures were introduced, in addition to the amendment to the Criminal Code in 2010 to criminalize domestic violence and marital rape, the Committee reiterates its serious concern about the high prevalence of domestic violence, including against older women, which is coupled with a lack of a comprehensive data on the magnitude and forms of violence against women. The Committee further expresses its concern at:

(a) The inconsistent application by courts, prosecutors and police officers of laws aimed at combating domestic violence, which undermines women's trust in the judicial system, in addition to the lack of awareness among women of existing legal remedies;

(b) The failure of the police and prosecutors to pay attention to low-level injuries and the fact that it often takes repeated acts of violence to initiate criminal investigations, in addition to the reluctance of the police to intervene in cases of domestic violence within the Roma community;

(c) The ineffectiveness of protection orders against alleged perpetrators, which are either not issued by courts or issued with delays; the failure of police officers to enforce such orders; the lack of sufficient services, including shelters, to support victims from rural areas and Transnistria; and the non-coverage by the State system of legal aid to victims of gender-based violence."

58. The Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), in its Baseline Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in the Republic of Moldova, GREVIO/Inf(2023)26, published on 14 November 2023, in so far as relevant, stated the following:

"94. One of these programmes [aimed at reducing violent behaviour for perpetrators convicted of domestic violence] was developed on the basis of the DULUTH Model and adapted to the Moldovan context. During the period 2020-2021, 57 perpetrators of domestic violence followed the programme. This programme adopts a gender-based cognitive behavioural approach to counselling and educating perpetrators on developing alternative skills to avoid violent behaviour.

95. ... Even so, the capacities of the available services are regarded as insufficient to meet the needs. Furthermore, there are no specific measures to evaluate the impact of the programmes on perpetrator behaviour and/or victim safety ...

98. **GREVIO strongly encourages the authorities in the Republic of Moldova to:**

...b. increase the number of perpetrator programmes for domestic violence and improve their availability across the country ...;

c. promote the attending of both mandatory and voluntary programmes by perpetrators by ensuring a more consistent application of existing referral mechanisms and by fostering the interplay between perpetrator programmes and criminal proceedings and other procedures, while prioritising the safety of victims and their access to justice ...

138. There are seven public institutions which provide shelter services for victims of domestic violence, victims of trafficking or single mothers who are in need of emergency accommodation. According to the information submitted by the authorities, the state-run shelters have an estimated total capacity of 182 beds, 57 are free of charge and victims can stay for up to three months, with the possibility of extending it to six months. In addition, there are 12 shelters run by non-governmental organisations. These, however, do not receive sufficient funding to provide specialist support for women victims of gender-based violence and rely mostly on private donors and international grants to support victims of violence.

184. GREVIO welcomes the inclusion of psychological violence in the domestic violence offence set out in Article 201/1 of the Criminal Code, the formulation of which appears to capture a pattern of repeated and prolonged abuse, by criminalising the conduct of causing 'isolation or intimidation with a view to imposing one's will or establishing control over the victim'. It further welcomes the inclusion of psychological violence in the definition of domestic violence provided in Article 2 of the Law on Preventing and Combating Family Violence. ...

186. GREVIO notes that it is difficult to verify whether psychological violence in all its manifestations is prosecuted and punished, as the convention requires. According to the national prevalence survey on domestic violence against women carried out by the National Bureau of Statistics in 2010, 57.1% of Moldovan women have suffered from psychological violence in their lifetime. According to the OSCE-led Survey on Violence against Women, the most prevalent form of violence committed by an intimate partner is psychological violence, mentioned by 71% of the respondents. The survey revealed that psychological violence is a widely spread form of intimate partner violence in the Republic of Moldova, indicating that women had experienced it with a current or previous partner. In the absence of data on the implementation of relevant offences, GREVIO is concerned that such a prevalent form of violence remains unrecognised by the Moldovan criminal justice system. This is confirmed by the information provided by the People's Advocate of the Republic of Moldova, which indicates that very few criminal cases end with sentences for psychological violence.

187. **GREVIO strongly encourages the authorities in the Republic of Moldova to:**

a. increase awareness, including through training, among judges, law-enforcement agencies and legal professionals, of the gendered nature and consequences of psychological violence as one of the most prevalent forms of violence against women in the Republic of Moldova, and to review the application of the existing criminal offences on psychological violence by the courts, in order

to ensure that the relevant provisions are effectively used to investigate, prosecute and punish all its manifestations, including its digital dimension. ...

191. ... GREVIO welcomes the criminalisation of domestic violence in the Moldovan criminal legislation, but notes, however, that the parallel qualification of domestic violence as a contravention raises a number of issues.

192. GREVIO observes that certain concerns were expressed by women's rights NGOs [according to which], since the introduction of a domestic violence provision in the Contravention Code, the number of criminal cases initiated has halved compared to previous years, while the number of contravention cases has doubled.

GREVIO wishes to draw attention to the difficulties that arise from the co-existence of two domestic violence offences. First, there appears to be no uniform criteria applied consistently to distinguish between the contravention and the criminal offence of domestic violence. Leaving the qualification of the legal nature of the act to practitioners solely based on the severity of bodily injury, and without clear guidance, may result in serious cases of physical violence being charged as a contravention and in turn, cases of psychological violence may go unpunished, despite their explicit criminalisation under Article 201/1 of the Criminal Code.

193. Second, the disparity between the sanctions imposed by the two laws raises questions about the effectiveness of parallel sanctioning regimes ... GREVIO thus expresses concern about this discrepancy and notes that penalties under the contravention offence should better reflect the gravity of the acts in question. ...

195. **GREVIO urges the authorities in the Republic of Moldova to ensure, through all available means such as protocols, training of professionals and legislative change, more operational clarity between the contravention and the crime of domestic violence. In addition, GREVIO urges the authorities in the Republic of Moldova to ensure more dissuasive sanctions for the contravention of domestic violence.** ...

223. GREVIO strongly encourages the authorities in the Republic of Moldova to take appropriate measures to ensure, through training and appropriate guidelines, that all circumstances listed in Article 46 of the Istanbul Convention are in practice considered and applied by the courts as aggravating circumstances for crimes of violence against women, and to adopt legislative measures to expressly include the commission of an offence against a former or current spouse or partner, family members and persons cohabiting with the victim as an aggravating circumstance in crimes of violence against women. ...

235. According to the information obtained by GREVIO, domestic violence incidents are primarily identified through the single emergency service phone number 112. In cases of domestic violence, it is common practice for two officers to attend, with a preference for at least one female officer, if possible. Usually, one officer will talk to the victim in one room while the other will be with the alleged perpetrator in another room. The risk-assessment questionnaire filled out by the officers at the scene also allows the police to record relevant evidence. ...

236. However, according to information provided by civil society sources, in 2020 there was a significant difference between the numbers of requests for police assistance for domestic violence – 12 970 – and the number of confirmed cases, 2 453. This resulted in 81% of reports being unconfirmed. This finding supports the indications provided by women's rights organisations and NGOs that the police turn up and talk to the parties but do not take meaningful action. Similarly, in terms of prevention, although the police co-operate with social workers, much of that work appears to involve talking

to the perpetrator and the victim, rather than taking actions backed with sanctions. The root cause of this stark difference stems from cultural attitudes that permeate both the police and society at large.

237. Women's organisations and NGOs explained that reporting, investigation and prosecution is still significantly hampered by stereotypes and prejudices, in what remains a patriarchal country. These include generalised views that women should endure violence, that they are inferior to men and that they will be judged if they report violence against them, and often these views are internalised by the women themselves. Specific concerns raised included victimisation, harassment and re-traumatisation by the police. In addition, GREVIO was alerted by experts in the field that even well-trained police officers do not have the awareness that societal pressures may constitute a barrier to reporting. This can result in women withdrawing their complaints. ...

239. In terms of psychological harm, particularly in rural areas, GREVIO was informed that this is not perceived as a form of harm and therefore is not taken seriously. ...

244. GREVIO was informed by women's organisations and NGOs that often police officers qualify domestic violence cases under the Contravention Code rather than the Criminal Code. One reason for this stems from an apparent over-reliance on forensic medical evidence to prove elements of the offence. GREVIO notes with concern that psychological violence seems not to be properly identified or penalised. To challenge this contravention qualification, the victims need to make a court application and pay stamp duty, which requires knowledge of the criminal justice system and financial means. As a result, domestic violence cases are not treated as seriously as they should be, penalties fall short of being dissuasive and women's access to justice is hindered. GREVIO stresses that this can lead to patterns of domestic violence being overlooked and escalating over time. ...

250. ... It is also reported that although one in five of the defendants had previously been convicted for domestic violence, this had not been effective in deterring them from committing further violence against women. The report notes that none of those convicted were required to participate in a probation programme for reducing violent behaviour. Concerns were also raised about the level of sentencing being insufficient to deter the offender from resorting to violence again in the future. NGOs and women's organisations were of the view that cases of violence against women tend to remain pending before the criminal justice authorities for years. ...

255. **GREVIO strongly encourages the authorities in the Republic of Moldova to swiftly identify and address all factors contributing to domestic violence being inappropriately penalised, either because the offending behaviour is not considered as sufficiently serious to warrant criminal prosecution or because the sentence handed down is not a sufficient deterrent and/or does not require participation in a recidivism reduction programme.** ...

257. Concern for the victim's safety must lie at the heart of any intervention in cases of all forms of violence covered by the Istanbul Convention. Article 51 thus establishes the obligation to ensure that all relevant authorities, not just law-enforcement authorities, effectively assess and devise a plan to manage the safety risks a victim faces on a case-by-case basis, according to standardised procedures and in co-operation with each other. ...

259. The General Police Inspectorate's Methodical Instruction on Police Intervention in Cases of Domestic Violence provides guidance on how to complete the risk assessment. GREVIO welcomes that this instruction was updated in 2023 with the aim

to better reflect the standards of the Istanbul Convention regarding risk assessment. ... NGOs and women's organisations informed GREVIO that although the form is welcomed, it is not sufficiently used in practice; although the police respond to the incident, there is no adequate follow-up as regards risk management.

260. An analysis of sentences carried out for the purposes of the National Analytical Study on Femicide showed that only 21 out of 50 defendants had been registered by the police as domestic violence perpetrators, and in only two of those cases had a protective order been applied. Similarly, emergency restraining orders had been applied against only two domestic violence perpetrators. This suggests that the risk of violence against women is being ineffectively identified, the risk of harm is underestimated and therefore the risk assessment and management process do not serve their purpose.

261. ... GREVIO ... stresses that proper risk assessment and management can save lives and should therefore be an integral part of the response by authorities to cases of violence covered by the Istanbul Convention. ...

276. ... GREVIO notes that attempts are being made to improve the use of protection orders and that action is taken in case of any breaches. However, it remains concerned that where protection orders are violated, the penalty applied by judges is usually unpaid hours of community service, which does not appear to be enough to prevent recidivism [bold text in original]."

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 § 1 OF THE CONVENTION

59. On 27 October 2022 the Court received a unilateral declaration from the Government asking it to strike the application out of its list of cases under Article 37 § 1 of the Convention.

60. The applicant disagreed with the terms of the unilateral declaration.

61. It may be appropriate in certain circumstances to strike out an application, or part thereof, under Article 37 § 1 of the Convention on the basis of a unilateral declaration by the respondent Government even where the applicant wishes the examination of the case to be continued. Whether this is appropriate in a particular case depends on whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*; see, among other authorities, *Tahsin Acar v. Turkey (preliminary issue)* [GC], no. 26307/95, § 75, ECHR 2003-VI). Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue (ibid., § 76).

62. The present application raises serious issues of systemic deficiencies which have not already been determined by the Court in previous cases as

regards the State's positive obligations in respect of domestic violence (see 101-106 below). The Court therefore considers that the unilateral declaration submitted by the Government does not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*). The Court therefore rejects the Government's request to strike the application out of the list of cases and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

63. The applicant complained that the Moldovan authorities had failed to prevent domestic violence in respect of his sister, T., or to protect her from domestic violence, which had culminated in her committing suicide, and that they had also failed to effectively investigate the circumstances of violence leading to her death. He relied on Articles 2, 3, 6 and 8 the Convention.

64. Having regard to the circumstances complained of by the applicant and the manner in which her complaints were formulated, being master of the characterisation to be given in law to the facts of a case, the Court will examine them under Articles 2 and 3 of the Convention (for a similar approach, see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, 19 December 2017; *Talpis v. Italy*, no. 41237/14, § 77, 2 March 2017 with further references). The relevant parts of these provisions read as follows:

Article 2

"1. Everyone's right to life shall be protected by law ..."

Article 3

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

65. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

A. The parties' submissions

1. The applicant

66. The applicant submitted that the police had known about T.'s husband's violent behaviour at least since November 2013 when she had reported a violent incident which left her with bruises as large as 5.5 cm by 3.7 cm on her face, as confirmed by a medical report of 22 November 2013.

In spite of the frequent calls to the police and the protection orders, T. had continued to be subjected to various forms of violence at the hands of I.C., in breach of the protection orders, even after they had divorced. I.C. had never been properly punished for his violent behaviour, which drove T. to suicide. The applicant submitted that T.'s son had also committed suicide in the meantime.

67. The applicant contended that T. had not been provided with adequate support and protection. In particular, the court, in refusing to grant T. a protection order on 8 August 2016, had referred to the absence of any additional violent incident, thus failing to carry out a proper risk assessment of lethality and of the possible reoccurrence of violence. He argued that the recurrence of physical violence in itself represented an increased risk of lethality. The applicant did not dispute that T. had refused the offer of placement in a shelter, submitting that T. had already been living separately from I.C. and that Law no. 45 provided that the perpetrator should leave the joint residence, not the victim.

68. The applicant asserted that the numerous protection orders and criminal investigations had proved ineffective in protecting T.'s life. The criminal investigations had indeed been initiated but none of them had resulted in actual punishment, as they had been discontinued for procedural reasons. I.C. had never been effectively punished for the violence he had perpetrated or for the breach of the protection orders. This situation of impunity had only enabled further domestic violence which resulted in T.'s suicide.

69. The applicant pointed to several flaws in the manner in which the domestic law had been applied to T.'s case. In particular, he noted the inconsistent interpretation of domestic violence as violence committed by former spouses. In respect of the legal requirement stating that sustained injuries had to attain a "minor" level for an act of domestic violence to be classified as a criminal offence, the applicant noted that this provision and its application had failed to take into account the history of domestic violence, marked by repeated acts of violence resulting in insignificant injuries, and the psychological violence, which had attained a level serious enough to lead to T.'s and, subsequently, her son's suicides.

70. In respect of the criminal investigation carried out in respect of T.'s suicide and, particularly, its discontinuation for lack of evidence that I.C. had incited T. to commit suicide, the applicant noted that it was the responsibility of the authorities to act on their own motion and to carry out an effective investigation. The applicant had not appealed against the prosecution's decision of 9 July 2018, not because he had agreed with its findings, but because he had no longer trusted the authorities to establish the truth.

2. The Government

71. The Government submitted that positive obligations under Article 2 of the Convention did not require the authorities to take operational measures in every circumstance of alleged risk to life to prevent that risk from materialising, otherwise the burden would be impossible and disproportionate. In this regard, the Government submitted that the authorities had not been aware of I.C.'s violent behaviour in respect of T. prior to the issuance of the protection order of 26 September 2014. Once the authorities had been informed, they took all reasonable measures to provide protection from violence and to prevent it from reoccurring by issuing several protection orders and by having the situation monitored by the police and social services. They noted in particular that the social services had offered T. placement in a shelter, but that she had refused.

72. The Government submitted that the authorities had promptly reacted to all the complaints and breaches of protection orders, with administrative and criminal proceedings being initiated in respect of I.C. on charges of domestic violence and failure to comply with a court decision. In the course of criminal proceedings, I.C. had been remanded in prison and subsequently placed under house arrest. The Government argued that the authorities had displayed special diligence and had taken into account the context of domestic violence, but that the risk assessment had not indicated a real and immediate risk of lethality for T.

73. The Government also submitted that the outcome of the proceedings in respect of I.C. had strictly followed the state of the law at the material time. They emphasised the State's commitment to taking all measures in order to tackle the phenomenon of domestic violence at domestic level and that the ratification and entry into force on 1 May 2022 of the Istanbul Convention had represented an important step in improving the legal framework.

74. In respect of the investigation into incitement to suicide, the Government noted the prosecutor's decision to terminate the investigation on 9 July 2018 in the absence of any evidence that an offence had been committed. They further noted that the investigation had been thorough and had relied on the testimony of four witnesses, who had stated that on the night of 22 August 2016 T. had not been subjected to any physical assault but that she had been intoxicated. For this reason, the prosecutor had correctly concluded that the fall might have been an accident. The Government construed the absence of an appeal by the applicant as signalling his agreement with the findings of the prosecutor. In any event, at this point, the outcome of such an appeal could not be surmised.

75. The Government argued that the domestic authorities had complied with their positive obligations, effectively investigating the circumstances of the case and appropriately reacting to all complaints and requests made by T.

B. The Court's assessment

76. The Court notes at the outset that the present case concerns a pattern of domestic violence, which had been documented by the authorities for over two years before T.'s death followed, in what the authorities concluded could have been an accident. The Court notes that there is an undisputed obligation under Article 2 of the Convention to investigate the suspicious circumstances of T.'s death (*Iorga v. Moldova*, no. 12219/05, § 26, 23 March 2010) and the described pattern of domestic violence comes within the scope of Article 3 of the Convention (see paragraph 99 below).

77. The Court will set out the general principles guiding the above-mentioned obligations and will subsequently assess the application of those principles in the instant case.

1. General principles

78. It emerges from the Court's case-law that victims of domestic violence are entitled to State protection, in the form of effective deterrence against such serious breaches of personal integrity (see *Opuz v. Turkey*, no. 33401/02, § 159, ECHR 2009). The authorities' positive obligations under Articles 2 and 3 of the Convention comprise, firstly, an obligation to put in place and to apply in practice a legislative and regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of ill-treatment contrary to that provision; and thirdly, an obligation to carry out an effective investigation into arguable claims of infliction of such treatment (see *Volodina v. Russia*, no. 41261/17, §77, 9 July 2019; *X and Others v. Bulgaria* [GC], no. 22457/16, § 178, 2 February 2021; and *Kurt*, cited above, § 165, with further references).

79. The scope and content of those obligations in the context of domestic violence were clarified in *Kurt* (cited above, §§ 157-89 and 190) and most recently summarised in *Y and Others v. Bulgaria* (no. 9077/18, § 89, 22 March 2022) as follows:

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

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

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

80. In *De Giorgi v. Italy*, the Court has explicitly decided to apply the same positive obligations in the context of examining positive obligations under Article 3 of the Convention and on the obligation to take reasonable measures to avert a real and immediate risk of recurrent violence (no. 23735/19, § 70, 16 June 2022).

81. The Court further reiterates that the obligation to conduct an effective investigation into all acts of domestic violence is an essential element of the State's obligations under Articles 2, 3 and 8 of the Convention (see, as a recent authority, *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, § 114, 14 December 2021). The Court has referred to the following elements concerning an investigation in a domestic violence context (see, among recent examples, *Gaidukevich v. Georgia*, no. 38650/18, § 58, 15 June 2023, and *Luca v. the Republic of Moldova*, no. 55351/17, § 75, 17 October 2023, both with further references):

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

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

(c) particular diligence is required in dealing with domestic violence cases and the specific nature of the domestic violence must be taken into account in the course of the domestic proceedings;

(d) the State's obligation to investigate will not be satisfied if the protection afforded by domestic law exists only in theory; above all, it must also operate effectively in practice;

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

2. Application of those principles in the circumstances of the case

82. The Court observes that the applicant's complaint refers to the absence of an appropriate response by the authorities to the continued abuse in respect of T. and to the fact that the absence of such appropriate response created a favourable climate for the recurrence of violence which culminated in her death. The Court will examine the factual aspects of each aspect of the complaint and considers it appropriate to first examine whether the applicant's complaints were adequately investigated by the authorities.

(a) Procedural obligations

83. The facts of the case concern two general sets of proceedings concerning I.C: one set concerns domestic violence – including proceedings for protection orders, administrative and criminal proceedings on charges of domestic violence, bodily injuries and breach of protection orders – and the other set concerning T.'s death.

(i) Article 3 of the Convention

84. In respect of domestic violence in particular, over a span of two years at least seven instances were documented of I.C. beating T., seven protection orders were requested and six ordered were issued against I.C. and repeated incidents of stalking, harassment and injuries, despite the issuance of protection orders, were reported to the police. Administrative proceedings for the infliction of insignificant injuries were instituted at least once and proceedings for the breaching of protection orders were instituted on at least three occasions. Criminal proceedings were instituted on charges of domestic violence in respect of psychological violence and three physical assaults (one in September 2014 and two in April 2015) and on charges of breaching one (the first protection order of 26 September 2014) out of the five of the protection orders issued.

85. As a result of those proceedings and complaints concerning domestic violence, on two occasions an administrative fine of EUR 50 was imposed on I.C. for breaching a protection order and he received two formal police warnings. Although the facts were undisputed, all the other proceedings were eventually discontinued and I.C. was never convicted and sentenced on any charges. At the same time, I.C. was ordered to pay the applicant compensation in respect of non-pecuniary damage in the amount of EUR 2,400.

86. The Court notes the Government's submissions as to the multiple proceedings initiated by the authorities in response to T.'s complaints. While there was certainly a large number of proceedings which were initiated promptly after relevant events, the Court is not convinced of their effectiveness, considering that in practice they did not result in better protection for T. or in accountability on the part of I.C.

87. The Court finds that the authorities never made a serious attempt to take a comprehensive view of T.'s case as a whole, which is required in this type of context. The Court notes that no investigation was prompted in respect of psychological violence or the physical assaults which occurred in November 2013 and in June and November 2015 or the breaches of protection orders, other than that of 26 September 2014. Furthermore, the investigations did not include any analysis of the various manifestations of violence, such as alleged psychological violence, stalking and harassment reported by T. to the police on multiple occasions. Acts of domestic violence should never be considered in isolation but rather as a single course of conduct or a series of related incidents (see *Luca*, cited above, § 78 with further references).

88. The subsequent discontinuation of criminal proceedings was on account of an unfortunate convergence of the failure to account for manifestations of violence other than physical injuries of a certain severity, the intervention of a more lenient criminal law and the expiry of the statutory limitation period (see paragraph 46 above).

89. For this reasons, the Court finds that there has been a procedural violation of Article 3 of the Convention.

(ii) Article 2 of the Convention

90. The investigation into the circumstances of T.'s death was equally deficient. The Court notes that T.'s fall from the fifth floor and her death as a result of sustained injuries occurred in the context of at least two years of recurring domestic violence and ineffective investigation. An investigation against I.C. on charges of incitement to suicide was promptly initiated but was discontinued almost two years later concluding that her death might have been an accident.

91. Despite the known background of domestic violence, the investigation was opened under Article 150 of the Criminal Code (incitement to suicide), which was certainly less well-fitted to the circumstances of the case, rather than under the provisions of the Criminal Code which criminalised domestic violence which culminated in suicide (Article 201/1 (3) of the Criminal Code; see paragraphs 51, 52 and 55 above). Even so, although the elements of the criminal offence provided under Article 150 of the Criminal Code required an assessment of possible systemic debasement which could have incited T. to commit suicide and the interviewed witnesses clearly gave evidence in respect of the background of the domestic violence, the investigation referred only to the events which occurred on 22 August 2016 to conclude that I.C. had not done anything on that day to incite T. to commit suicide. The prosecutor relied on hearsay evidence that T. had had no memories of the events while in hospital. But it does not appear that the prosecutor ever interviewed T. directly, although she had not succumbed to her wounds until more than one month after the investigation had been initiated. The prosecutor emphasised the victim's alleged intoxication with alcohol, which was mentioned in the medical file. However, the courts had previously cited information in the same medical file to conclude exactly the contrary when issuing the protection order on 27 August 2016 (see paragraph 32 above). The Government did not provide the Court with a copy of the medical file and did not provide any clarification as to the inconsistency between the prosecutor's and the court's conclusions.

92. In this respect, the Court was struck by the investigating authorities' readiness to accept that T.'s death was the result of her accidental fall without any other version being duly considered. The history of domestic violence over a prolonged period of time, which presented the characteristics of a form of gender-based violence, should have incited the authorities to respond with particular diligence in carrying out the investigative measures. In particular, they should have considered the possibility that they were dealing with a potential case of gender-motivated murder. In this latter respect, the Court notes that whenever there is a suspicion that an incident or death might be gender-motivated, it is particularly important that the investigation be pursued with vigour (see *Gaidukevich,* cited above, § 66 and the authorities cited therein).

93. The Court takes note of the Government's submissions as to the applicant's failure to appeal against the decision of the prosecutor of 9 July 2018 to discontinue proceedings on charges of incitement to suicide and the inadequacy of any speculation as to the outcome of those proceedings had such an appeal been made. At the same time, it is also noted that the Government have not formulated a preliminary objection as to non-exhaustion of domestic remedies.

94. In this context the Court reiterates that in cases concerning a death or life-threatening injury in circumstances that may give rise to the State's responsibility, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see, for example, *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 62, 15 January 2009, with further references; *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 164, 25 June 2019; and *Hanan v. Germany* [GC], no. 4871/16, § 201, 16 February 2021). Furthermore, the authorities must make all reasonable efforts given the practical realities of investigation work. The obligation to collect evidence ought to apply at least until such time as the nature of any liability is clarified and the authorities are satisfied that there are no grounds for conducting or continuing a criminal investigation (see *Nicolae Virgiliu Tănase*, cited above, § 162).

95. For these reasons, the Court finds that there has also been a procedural violation of Article 2 of the Convention.

(iii) Conclusions

96. Having regard to the manner in which the authorities dealt with T.'s reports of domestic violence – in particular their failure to conduct an effective investigation into credible allegations of psychological and, on several occasions, physical violence, to ensure prompt prosecution and punishment of the perpetrator and also to carry out an effective investigation into the circumstances surrounding T.'s death –the Court finds that the State has failed to fulfil its positive obligation under Articles 2 and 3 of the Convention.

(b) Substantive obligations

97. In the absence of an effective investigation into the circumstances of the applicant's sister's death and of any other factual elements it is not possible to discern without speculation if her death had resulted from an accident, a suicide, a crime or a gender-motivated crime. In these circumstances, the Court considers that it is not in a position to reach any conclusive findings under the Convention with regard to the alleged responsibility of the respondent State for the death of the applicant's sister.

For that reason, the Court has decided to confine its examination to an assessment of whether the domestic investigation was in compliance with the relevant standards under the procedural limb of Article 2 (see, *mutatis mutandis*, *Sakvarelidze v. Georgia*, no. 40394/10, § 50, 6 February 2020; *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 165, 18 November 2021).

98. Accordingly, the Court will not examine this complaint under Article 2 of the Convention and the analysis concerning the State's substantive obligations will be carried out only in respect of Article 3 of the Convention.

(i) Threshold under Article 3 of the Convention

99. The Court finds that the treatment at the origin of the applicant's complaint attained the threshold of severity required to engage Article 3, for the following reasons. The medical reports on the T.'s state after the incidents recorded numerous haematomas on her face, neck and limbs, and concluded that the injuries could have been sustained in the manner described by her, and had caused her pain and suffering (see paragraphs 7, 17, 20 and 23 above). The psychological report attested to her state of physical and emotional vulnerability and that she had experienced serious intimidation, harassment and distress (see paragraph 14 above and on the point of the psychological impact of domestic violence, *M.G. v. Turkey*, no. 646/10, § 99, 22 March 2016, and *Luca v. the Republic of Moldova*, no. 55351/17, § 60, 17 October 2023).

100. The Court notes that the applicant's complaint is two-fold. On the one hand, he complained that the legal framework governing State intervention in cases of complaints of domestic violence was deficient. On the other hand, he submitted that in practice the authorities had failed to effectively investigate his sister's specific complaints and to prevent the reoccurrence of violence against her. The Court will examine the two complaints separately below.

(ii) Obligation to establish a legal framework

101. The Court notes that in the present case the perpetrator of domestic violence was never held accountable for undisputed acts of domestic violence, including breaching protection orders, other than receiving two administrative fines and two formal police warnings (see paragraphs 46, 50, 85 and 87 above). The criminal proceedings were discontinued on account of the intervention of a more lenient criminal law and the expiry of the statutory limitation period (see paragraph 46 above). However, when deciding to discontinue the criminal proceedings, the investigating authorities failed to take into account the specific nature of domestic violence in the domestic proceedings (see paragraphs 87 and 91 above). These facts and the parties'

submissions (see paragraphs 69 and 73 above) reveal deficiencies in the legal framework on the prosecution of acts of domestic violence under the Criminal Code and the Code of Administrative Offences at the time of the events and in the manner how they were applied in practice.

102. In particular, before the 2016 amendments, the protection against domestic violence did not apply to T.'s situation because divorced spouses who did not live together did not qualify as "family members" for the purposes of the Criminal Code (see paragraphs 46 and 54 above). The Court notes that in spite of this deficient definition, the courts issued four protection orders after T. and I.C. had divorced. After 2016 the definition of "family members" was expanded to include divorced spouses irrespective of their living arrangements.

103. The same law amended the Code of Administrative Offences with new provisions criminalising domestic violence if it resulted only in insignificant bodily harm. This triggered the prosecutor in the present case to reclassify I.C.'s actions as an administrative offence, considering the amendment as a more lenient criminal law simply because it required the presence of less serious physical injuries, but in complete ignorance of the elements of psychological violence which were present only under the provisions of the Criminal Code (see paragraph 41 above).

104. The Court points to the CEDAW's conclusions in 2013 in respect of the Republic of Moldova concerning the failure of the police and prosecutors to pay attention to low-level injuries (see paragraph 57 above) and GREVIO's assessment in 2023 of the difficulties which may arise from the co-existence of two domestic violence offences without uniform criteria for distinguishing them other than the severity of the bodily injuries, which may ultimately result in impunity (see paragraph 58 above for GREVIO's assessment of the domestic legal framework, in particular, sections 184-87, 192-95, 244 and 255 of its Baseline Report). GREVIO particularly emphasised its concern that psychological violence, despite its prevalence, remained unrecognised by the Moldovan criminal justice system and that the overreliance on forensic medical evidence resulted in the non-identification or non-penalisation of this form of domestic violence. GREVIO strongly encouraged the authorities in the Republic of Moldova to swiftly identify and address all factors contributing to domestic violence being inappropriately penalised, either because the offending behaviour was not considered sufficiently serious to warrant criminal prosecution or because the sentence handed down was not a sufficient deterrent and/or did not require participation in a recidivism reduction programme. GREVIO equally noted the existence of insufficient deterrence against breaches of protection orders, which appeared to fail in preventing recidivism (see sections 223, 250 and 276 of its Baseline report cited in paragraph 58 above).

105. The present case demonstrates exactly how this system failed to address a pattern of violence characterised by long-term but low-intensity

physical violence and unaccounted psychological violence, which continued even after the perpetrator and the victim had divorced and were no longer sharing a residence, in spite of repeated protection orders.

106. Therefore, having regard to the elements above, the Court finds that the Moldovan legal framework in place at the material time and the manner in which it was put into practice by the national authorities had failed to effectively prevent a pattern of domestic violence consisting of psychological violence and physical violence which continued between the former spouses after they had stopped sharing a residence. In other words, the legal framework and its implementation fell short of the requirement inherent in the State's positive obligation to establish and effectively apply a system providing protection from domestic violence, contrary to Article 3 of the Convention.

(iii) Obligation to prevent a known risk of ill-treatment

107. In the light of T.'s complaints to the police and requests for protection measures in the present case, and as acknowledged by the Government, the domestic authorities were aware of the violence to which she had been subjected and had an obligation to assess the risk of its recurrence and to take adequate and sufficient measures for her protection at least as early as 22 November 2013 (see paragraph 66 above).

108. As to whether the authorities responded immediately to the various incidents of alleged violence, it transpires from the case file that on at least some fifteen occasions T. called the police emergency number to report incidents of domestic violence of varying degrees of gravity. It is apparent that on many occasions the police responded immediately by dispatching a patrol. A protection order was granted for the first time on 26 September 2014 after a formal request made by T. A criminal investigation was initiated on 12 December 2014, one month after a formal complaint had been lodged by T. The police and the child protection authority apparently supported T.'s requests for protection orders.

109. While the initial response appears to have been prompt in respect of certain incidents, the efficiency of the response is questionable. In particular, the presence of police patrols after T.'s calls and the formal warning they issued are commendable efforts but in the absence of any further documentation it is impossible to assess what happened after those calls (see also GREVIO's account of the effect of police patrols on such calls in sections 235-36 of its Baseline report cited in paragraph 58 above). Furthermore, the issuance of protection orders failed to provide any effective protection in the absence of any enforcement mechanism (see paragraph 84 above concerning the failure to take action against the breach of subsequent protection orders; see also the CEDAW's reference to this deficiency in 2013 cited in paragraph 57 above, and GREVIO's Baseline report sections 223, 250 and 276 cited in paragraph 58 above). Although all the protection orders obliged I.C. to

undergo a counselling programme to address his violent behaviour, it appears that perpetrator programmes were implemented only recently and even so they remain largely insufficient (see sections 94-98 of the GREVIO Baseline report cited in paragraph 58 above).

110. The delays in the criminal investigations, the inadequate legal framework and its inconsistent application ultimately resulted in I.C.'s impunity (see paragraphs 84-88 above). All subsequent incidents of alleged domestic violence had been simply left unremedied and there was a general failure to address the case as a whole.

111. After I.C. had been released from house arrest on 23 March 2016 with a sentence of probation (see paragraph 38 above), T. was granted a protection order on 6 May 2016 because I.C. had again harassed and beaten her (see paragraphs 25-26 above). However, when T. sought the extension of that order, on 8 August 2016 the court refused her request, failing to consider the case as a whole and relying on the absence of acts of violence in the previous ninety days, despite a break-in incident in T.'s apartment (see paragraph 29 above).

112. The Court takes note of the Government's submissions, undisputed by the applicant, that after I.C.'s release on probation the social services had visited T. and suggested her placement in a shelter, which she had refused because, according to the applicant, she did not wish to leave her home. The Government did not provide the Court with any further details on what exactly prompted the visit of the social services and what were the conditions and the purpose of the placement in the shelter (its duration or whether it would include the children). As GREVIO described the existing shelter system in the Republic of Moldova, the capacity of the shelters was limited and the duration of stay was up to three months, with the possibility of extending it to six months (see section 138 of the Baseline report cited in paragraph 58 above). For this reason, while it is commendable that certain efforts were made to support T., the Court is not convinced that one undefined offer of placement in a shelter could have offset the two previous years of documented violence with impunity. Apart from the referral to the NGO Women's Law Centre by the police and the support of the child protection service in proceedings for obtaining protection orders, the Government did not submit any evidence of other psychosocial support and psychological interventions for T. as a victim of domestic violence. There is also no indication that T. benefitted from any legal aid (see the CEDAW recommendations cited in paragraph 57 above).

113. In the Court's view, by failing to act rapidly, diligently and consistently in all instances of domestic violence, the national authorities contributed to the creation of a situation of impunity conducive to the recurrence of acts of violence by I.C. against T. (see *Talpis*, cited above, § 117, with further references).

114. As to the quality of the risk assessment, the Court notes that the domestic authorities were under a duty to protect the applicant's sister, as a victim of domestic violence, from a real and immediate threat of further violence. They had to conduct a risk assessment at regular intervals as an integral part of their obligations under the Convention, taking due account of the particular context of domestic violence (see *Volodina*, cited above, § 86) and its recurring nature. The Court has repeatedly stressed that the dynamics of domestic violence must be duly taken into account by the authorities when they assess the risk of a further escalation of violence, even after the issuance of a restraining order (see *Kurt*, cited above, § 175). There is nothing in the case file to suggest that on any of the fifteen above-mentioned occasions of alleged domestic violence the police attempted to analyse I.C.'s conduct through the prism of what it could portend about his future course of action (compare *Opuz*, cited above, § 147).

115. The Government did not submit any evidence of basic records showing that a risk assessment had been conducted (see *Kurt*, cited above, § 174) or that T. had been informed of the outcome of any such assessment (ibid.). They appear to have been concerned solely with the question of the seriousness of isolated incidents, overlooking the particular context of domestic violence and its dynamics (see *Levchuk v. Ukraine*, no. 17496/19, §§ 80 and 86, 3 September 2020; see also *Landi v. Italy*, no. 10929/19, §§ 88-90, 7 April 2022). Even assuming that some sort of risk assessment did take place, albeit informally, on some of the above-mentioned occasions, it was not autonomous, proactive or comprehensive, as required (see *Kurt*, cited above, §§ 169-74; see also GREVIO's Baseline report, sections 257-60, cited in paragraph 58 above, on the absence of proper risk management and follow-up to risk assessment). The direct result of this deficient risk assessment system, or rather the absence thereof, was that the police and the courts failed to assess the situation in its entirety, seriously underestimating the risk of harm, resulting in the domestic violence investigation being discontinued and the refusal of a protection order in a moment of particular vulnerability, when I.C. had been released from house arrest on probation (see paragraphs 29 and 46 above; see also *Tkhelidze*, cited above, § 54).

116. Turning to the question of whether the authorities knew or ought to have known that there was a real and immediate risk of recurrent violence, the Court notes that T.'s fall from the fifth floor occurred in I.C.'s presence in her home in circumstances of recurrent domestic violence. The relevant law-enforcement bodies knew or should have known about such a risk of violence reoccurrence. Had the authorities carried out a proper risk assessment of all the incidents cumulatively, it appears indeed likely that they would have assessed that I.C. posed a real and immediate risk to T., as those notions are to be understood in the context of domestic violence, and would have identified risk factors for T.'s physical and mental integrity in that context (see *Kurt*, cited above, §§ 175-76; compare *Tkhelidze*, cited above,

§ 53, and *Tërshana v. Albania*, no. 48756/14, § 151, 4 August 2020). After all, on five occasions the Buiucani Court found T.'s allegations in respect of the various incidents sufficiently credible to issue restraining orders against I.C. and a criminal court confirmed the allegations of domestic violence beyond reasonable doubt.

117. A proper assessment might have outlined the particular vulnerability, helplessness and entrapment T. must have experienced after I.C. had been released on probation on 23 March 2016 and had continued harassing and beating her and after her request for a protection order had been rejected on 8 August 2016, and when on 22 August 2016 he had followed her in her own home. It does not appear, however, that those who took charge of T.'s complaints had been specifically trained in the dynamics of domestic violence, as required under the Court's case-law, the importance of which has already been recognised by the Court (see *Kurt*, cited above, § 172).

118. As to whether the authorities took adequate preventive measures in the circumstances, the only operational measures taken to protect the applicant's sister were the six restraining orders issued against I.C., criminal investigations which were subsequently discontinued and an offer of placement in a shelter in undefined circumstances. Clearly, these were not enough and the failures have already been identified above (see paragraphs 96, 106, 111, 112, 115 and 117).

119. Acting on the elements identified above would have constituted appropriate measures to avoid the risk to the applicant's sister's physical and mental integrity, in the light of acts of recurrent domestic violence. While the Court cannot conclude with certainty that matters would have turned out differently if the authorities had acted on those elements, it reiterates that the test under Article 3 does not require it to be shown that "but for" the failing or omission of the authorities the ill-treatment would not have occurred. A failure to take reasonably available measures that could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 149, ECHR 2014 (extracts); *Tunikova and others*, cited above, § 135; see section 261 of the GREVIO Baseline report cited in paragraph 58 above). The Court cannot but observe that the deficient response of the law-enforcement authorities in the present case appears to be particularly alarming when assessed within the relevant domestic context of documented and repeated failure by the Moldovan authorities to prevent and stop violence against women, including domestic violence as a form of gender-based violence (see paragraphs 57-58 above and *Y and others*, cited above, § 122).

(iv) Conclusions

120. Having regard to the foregoing considerations, the Court concludes that the investigating authorities failed to act rapidly, diligently and consistently in all instances of domestic violence. In particular, they failed to

assess the real and immediate nature of the risk of the recurrence of violence, taking due account of the specific context of domestic violence, and failed to take preventive and protective measures to avert that risk.

The Court therefore finds that the respondent State has breached its substantive positive obligations under Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLES 2 AND 3 OF THE CONVENTION

121. The applicant complained under Article 14 of the Convention, read in conjunction with Articles 2, 3, 6 and 8, that the failure of the authorities to take effective measures with a view to averting domestic violence had been due to his sister being a woman.

122. Article 14 of the Convention provides:

Article 14

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex ... or other status."

123. In the light of its analysis under Articles 2 and 3 above, the Court will examine the applicant's complaint under Article 14, read in conjunction with Articles 2 and 3 only.

124. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

A. The parties' submissions

125. In addition to his submissions under Article 2 and 3 of the Convention, the applicant argued that the authorities' actions had reflected a discriminatory attitude towards T. because they had been passive and had failed to fulfil their positive obligations under the Convention to end domestic violence in a proactive way.

126. The Government submitted that there was nothing in the circumstances of the case to indicate a discriminatory attitude on the part of the authorities towards T., as they had properly addressed her complaints and had in no way been passive.

B. The Court's assessment

127. The relevant principles concerning the meaning of discrimination in the context of domestic violence can be traced back to the Court's judgment in the case of *Opuz* (cited above, §§ 184-91). They were further elaborated in *Volodina* (cited above, §§ 109-14) and were more recently summarised in *Y and Others v. Bulgaria* (cited above, § 122). In essence, they involve the

recognition that violence against women, including domestic violence, is a form of discrimination against women, and that the State's failure to protect women from such violence breaches their right to equal protection of the law. Once an applicant has shown a difference in treatment, it is for the respondent State to show that that the difference was justified (see *A.E. v. Bulgaria*, no. 53891/20, § 116, 23 May 2023).

128. The applicant's main complaint was that the failure of the authorities to provide his sister with protection, both in law and in practice, stemmed from a wider institutional tolerance of domestic violence and the Moldovan authorities' complacency in relation to such cases which undoubtedly affected women more than men. The Government contested these submissions.

129. The Court observes that this is the eighth case in respect of the Republic of Moldova in which it has found a violation of the Convention, stemming from the authorities' response to acts of domestic violence against women and of gender-based violence against women (see *Eremia v. the Republic of Moldova*, no. 3564/11, 28 May 2013; *Mudric v. the Republic of Moldova*, no. 74839/10, 16 July 2013; *B. v. the Republic of Moldova*, no. 61382/09, 16 July 2013; *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, 28 January 2014; *Munteanu v. the Republic of Moldova*, no. 34168/11, 26 May 2020; *G.M. and Others v. the Republic of Moldova*, no. 44394/15, 22 November 2022 and most recently, *Luca*, cited above). The Court also noted in the most recent of those judgments that there was little doubt that domestic violence in Moldova affected predominantly women (see *Luca,* cited above, § 103). There is nothing to suggest that the situation had substantially changed at the time of the facts in the present case.

130. Taking into account that it is the applicant who bears the initial prima facie burden of proving a difference in treatment, the Court is satisfied that there is a prima facie case that the applicant's sister, by virtue of being a woman victim of domestic violence in Moldova, was in an unequal position which required action on the part of the authorities in order to redress the disadvantage associated with her sex in this context. It reiterates that once it has been established that domestic violence disproportionately affects women, it is for the Government to demonstrate what remedial measures have been taken by the domestic authorities to address this disadvantage and to ensure that women can fully enjoy human rights and freedoms on an equal footing with men (see *Volodina*, cited above, § 111).

131. However, apart from the general submissions described in paragraph 126 above, the Government have not indicated what specific measures have been taken to protect victims of domestic violence and to punish the perpetrators, and to what effect. The Court notes its concern that the authorities' failure to initiate a proper investigation into the allegations of domestic violence and to take domestic violence into account in their investigation of T.'s death may have been motivated by gender discrimination

given the cultural attitudes which permeate both the police and society at large in Moldova (see paragraph 96 above and the sections 236-39 of GREVIO's Baseline report, cited in paragraph 58 above).

132. Further, the Court has also found that the legal framework and its practical application had failed to address the particular pattern of domestic violence to which the applicant's sister was subjected (see paragraph 105 above). While it could not be said that the Moldovan law had failed entirely to address the problem of domestic violence (unlike the *Volodina* judgment, cited above, §§ 128 and 132), the way in which the legal provisions assessed in the present case were drafted and interpreted by the competent authorities was bound to deprive a number of women victims of domestic violence of official prosecution and thus of effective protection (see paragraphs 102-103 above).

133. Finally, the Court also has regard to the reasoning and the language used by the domestic court when it refused to extend the protection order on 8 August 2016 (see paragraph 29 above). In particular, the court relied on the absence of acts of violence in the previous ninety days, which clearly reflects the court's failure to see the case beyond the "hostile nature of relationship between [T. and I.C.]", reflecting the cultural stereotypes also mentioned in GREVIO's Baseline report (see sections 236-39 of the report cited in paragraph 58 above).

134. The above elements, taken together, are sufficient for the Court to find that the authorities have not rebutted the applicant's prima facie case of a general institutional passivity and/or lack of awareness of the phenomenon of domestic violence and gender-based violence in Moldova. In such a case, it is not necessary for the applicant to prove that she was individually the target of prejudice on the part of the authorities (see *A.E. v. Bulgaria*, cited above, § 122).

135. The foregoing considerations, taken as a whole, lead to the conclusion that in the circumstances of the present case there has been a breach of Article 14 of the Convention, read in conjunction with Articles 2 and 3 thereof.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

137. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage for the beating and humiliation suffered by T. and for the authorities' failure to afford effective protection of her life. He undertook to transfer the awarded amount to T.'s daughter, currently in the care of her grandmother.

138. The Government disagreed with the claimed amount, noting that it had not been substantiated and that it did not take into account the amount of compensation already awarded at domestic level (see paragraph 46 above). In any event, the Government submitted that in the absence of a violation, no award should be made.

139. In the light of the circumstances of the case, the Court grants in full the applicant's claim in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

140. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the domestic courts and before the Court. He did not submit any piece of evidence to substantiate this claim.

141. The Government invited the Court to reject the claim in the absence of any evidence that those expenses had been actually incurred.

142. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-72, 28 November 2017).

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 2 under its procedural limb;

3. *Holds*, by five votes to two, that the Court will not examine the complaint under the substantive aspect of Article 2 of the Convention;

4. *Holds*, unanimously, that there has been a violation of Article 3 under its substantive and procedural limbs;

5. *Holds*, unanimously, that there has been a violation of Article 14 of the Convention read in conjunction with Articles 2 and 3 of the Convention;

6. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Krenc and Sarcu is annexed to this judgment.

JOINT PARTLY DISSENTING OPINION OF JUDGES KRENC AND SÂRCU

(translation)

1. With due respect for our esteemed colleagues, we cannot endorse the majority's conclusion as to the substantive aspect of the complaint under Article 2 of the Convention. Despite the national authorities' ineffective investigation, we consider the facts in the present case to have yielded sufficient material to warrant examination under the substantive limb of Article 2 of the Convention.

2. The case disclosed a lasting situation of domestic violence that had never ceased, even after victim and abuser had divorced, and had culminated in the tragic death of the applicant's sister. We note that the death of the victim followed a fall from her fifth-floor flat, where her aggressor was present during yet another episode of domestic violence. In these circumstances, the victim's death cannot be divorced from the context of recurring domestic violence.

3. While it is clear that not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising, the State party nevertheless has an obligation to take such measures where the authorities knew or ought to have known that someone's life was at real and immediate risk from the criminal acts of a third party (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII). The Court has previously held that, where there is a lasting situation of domestic violence, there can hardly be any doubt about the immediacy of the danger posed to the victim (see *Tkhelidze v. Georgia*, no. 33056/17, § 53, 8 July 2021). The Explanatory Report to Article 52 of the Istanbul Convention specifies that the term "immediate danger" in that provision refers to any situations of domestic violence in which harm is imminent or has already materialised and is likely to happen again. The Court has observed in numerous other cases that a perpetrator with a record of domestic violence posed a significant risk of further and possibly deadly violence. In order to be in a position to know whether there is a real and immediate risk to the life of a victim of domestic violence, the authorities are under a duty to carry out a lethality risk assessment which is autonomous, proactive and comprehensive (see *Kurt v. Austria* [GC], no. 62903/15, §§ 168 and 175-76, 15 June 2021).

4. In our view, an examination in the light of these requirements would have revealed the lack of a proper assessment of the risk to the victim's life, and not merely to her physical integrity, as found by the judgment from the

sole standpoint of Article 3 of the Convention. In addition, a proper risk assessment might have disclosed a risk to the victim's life, either by reason of a potential escalation of violence on the part of the aggressor, or by reason of the victim's susceptibility to suicide (see *Gaidukevich v. Georgia*, no. 38650/18, 15 June 2023, which concerned the alleged suicide of a victim of domestic violence).

5. There is a strong correlation between a woman's experience of violence and her mental distress, up to and including the risk of suicide. Women who have been the victim of violence by their intimate partner report significantly higher levels of emotional distress and are more likely to have contemplated and/or attempted suicide than women who have never suffered such abuse from their partner. Symptoms of depression are seen as strong predictors of suicidal behaviour (see the "WHO Multi-country Study on Women's Health and Domestic Violence against Women: Initial results on prevalence, health outcomes and women's responses", published in 2005, and that organisation's Factsheet on violence against women, published on 9 March 2021).

6. Our point, of course, is not to place an impossible or disproportionate burden on the authorities by holding them responsible for every act of suicide on the part of private individuals. It is consistent with the Court's case-law to consider that the positive obligation under Article 2 of the Convention arises where the authorities knew or ought to have known of the existence of a real and immediate risk of suicide, and the Court's task is to ascertain whether, in the light of the circumstances of the case as a whole, the authorities did everything that could reasonably be expected of them to prevent that risk from materialising.

7. From the case file it could be seen that the victim had previously attempted to commit suicide (see paragraph 31) and had shown signs of moderate depression more than a year prior to that (see paragraph 14). As the judgment rightly notes in paragraph 117, a proper assessment would have informed the authorities of the vulnerability, helplessness and entrapment the victim must have experienced after her aggressor had been released on probation and had continued harassing and beating her, and after her request for a protection order had been rejected on 8 August 2016, and when he had followed her into her own home on 22 August 2016. In those circumstances, the authorities knew or ought to have known that there was a risk not only that violence would recur, but of suicide as well. Aside from a visit from the social welfare services and a vague offer to place her in a shelter (see paragraphs 27 and 112 of the judgment), the victim received no support of any other kind, given that the protection orders were never complied with.

8. Admittedly, it is impossible to know whether any action on the part of the authorities would have proven appropriate to avert the risk to the victim's life. However, the Court's test under Article 2 does not require it to be shown that "but for" the failing or omission of the authorities the death would not have occurred (see *Boychenko v. Russia*, no. 8663/08, § 95, 12 October 2021, with further references).

9. For these reasons, it is our view that, in the present case, the Court has missed an opportunity to deal with the issue of suicide as it arises in the context of proven domestic violence and to reiterate the corresponding obligations on the authorities to provide support for the victims of such violence who, for the most part, feel isolated and trapped in their own private tragedy. Nor can the successive cycles of domestic violence be ignored, the frequency, acuteness and dangerousness of which all increase significantly over time. By bracketing out the question of suicide from the phenomenon of domestic violence, the present judgment is fraught with the risk of failing to consider that phenomenon as a whole, including in its most serious forms.