

# European Court of Human Rights



Vieru v. The Republic of Moldova

## Study Guide

# European Court of Human Rights Study Guide

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Distinguished Participants,

I would sincerely welcome each of you to the 21st annual session of the EUROsimA. My name is Elfin Selen ERMİŞ and I am a sophomore at Hacettepe University Faculty of Law. It is a great pleasure of mine to serve you as the Under-Secretary-General for the European Court of Human Rights.

This year, the ECtHR will hear the case of *Vieru v. The Republic of Moldova*, a vital case concerning domestic violence and its consequences. State responsibility to address domestic violence and the risk of suicide, state's substantive obligation to protect right to life are the issues that form the building blocks of the case and are expected to be discussed. Although it is a recently concluded case and naturally not well known, I strongly believe that it is vital because it is a case that conveys the effects of violence against women on family life and society and shows the necessity of strengthening mechanisms to prevent violence against women. I hope that the Study Guide in your hands will provide you with the necessary information for the case.

I would like to conclude my letter by thanking our exceptional Academic Team, it was a great honour working with each one of them. I would like to express my gratitude to my exceptional academic assistant and beloved friend, Ms. Rana Elif TAZE whom I have enjoyed preparing this remarkable case and our Secretary-General Mr Burak Eren CEYHAN, who has given me the opportunity to be a part of EUROsimA and supported us throughout the whole journey. I would also like to thank our Director-General Ms. Selin ÖRSÄK along with her committed Organization Team who have exceeded expectations to bring this conference to fruition.

Please do not hesitate to contact me via [elfinermis@gmail.com](mailto:elfinermis@gmail.com) in case you have any questions regarding the committee.

Sincerely,

Elfin Selen ERMİŞ

Under-Secretary-General for the European Court of Human Rights



Esteemed Participants,

I would sincerely welcome each of you to the 21st annual session of the EUROsimA. My name is Rana Elif TAZE, and I am a junior at Ankara University Faculty of Law. It is a great pleasure of mine to serve you as the Academic Assistant for the European Court of Human Rights.

This year, the ECtHR will hear the case of *Vieru v. The Republic of Moldova*, a vital case concerning domestic violence and its consequences. State responsibility to address domestic violence and the risk of suicide, and the state's substantive obligation to protect the right to life are the issues that form the building blocks of the case and are expected to be discussed. Another vital part of this case is to see the importance of the international conventions on women's rights and their practical role. Even though it is not one of the well-known cases, It reveals the tragic story of women trapped in their homes in a small country and their failure to fulfill their state's responsibilities. I hope that the Study Guide in your hands will provide you with the necessary information for the case.

I would like to conclude my letter by thanking our exceptional Academic Team, it was a great honor working with each one of them. I would like to express my gratitude to my exceptional academic assistant and beloved friend, Ms. Elfin Selen ERMİŞ, whom I have enjoyed preparing this remarkable case, and our Secretary-General Mr Burak Eren CEYHAN, who has allowed me to be a part of EUROsimA and supported us throughout the whole journey. I would also like to thank our Director-General Ms. Selin ÖRSÄK along with her committed Organization Team who have exceeded expectations to bring this conference to fruition.

Please do not hesitate to contact me via [ranaeliftaze@gmail.com](mailto:ranaeliftaze@gmail.com) in case you have any questions regarding the committee.

Sincerely,

Rana Elif Taze

Academic Assistant for the European Court of Human Rights

## INTRODUCTION

### A. Overview of the History of International Human Rights Law

The term ‘human rights’ is difficult to define, and there are still arguments about its roots among academics. Some academics like Peter Halstead say that human rights stem from natural law. However, other academics like Adam Smith say that the term ‘human rights’ is linked to the advent of the United Nations and the ratification of the Universal Declaration on Human Rights in 1948.<sup>1</sup>

United Nations Office of the High Commissioner for Human Rights defines human rights as ‘basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language or other status’.<sup>2</sup> The most common definition for the concept of human rights made by the United Nations clearly shows that human rights are universal, interdependent, and equal.

The idea behind the concept of human rights can be traced back at least as far as ancient philosophy. However, looking from our modern human rights perspective **Magna Carta Libertatum (1215)**, which is considered as a revolutionary document in its period, is accepted to be the first human rights document. Magna Carta Libertatum, also known as the Articles of Barons, is described as the foundation of the freedom of the individual against the arbitrary authority of the despot. The document outlines the safeguarding of church rights, protection of individuals from unlawful detention by barons, provision for prompt access to justice, and the regulation of feudal payments owed to the Crown.<sup>3</sup>

After the Magna Carta Libertatum, legal and juridical concepts had started to change. The rebellion movements against the English parliament and monarch, claims for life, property and religious freedom became louder in England. Peasants and their demands about their basic needs triggered the human rights movements. With the Great Revolution 1688, they fought for parliamentary and civil rights – later embraced by the **English Bill of Rights (1689)**.

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<sup>1</sup> Moriarty, B., & Massa, E. (Eds.). (2012). *Human rights law*. Oxford University Press, USA.

<sup>2</sup> What are human rights? (United Nations) <https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more> accessed 4 March 2025.

<sup>3</sup> Bozhinovski, A. (2015). The influence of Magna Carta Libertatum in the development of the principle of rule of law. *Seeu Review*, 11(1), 175-182.

Four vital eighteenth-century revolutionary documents—the **French Declaration *des Droits de l'Homme et du Citoyen* (1789)**, the **US Declaration of Independence (1776)**, the **Virginia Declaration of Human Rights (1776)**, and the **US Bill of Rights (1791)**—have generally been regarded as turning points in the history of human rights and the origin of modernity.

An important turning point in the development of human rights law has been the **Universal Declaration of Human Rights (1948)**. It was followed by a numerous declarations and agreements that sought to protect human rights for all people worldwide and to stop breaches of such rights. Leaders of the major nations launched massive efforts to maintain peace, safeguard human life and liberty after the end of World War II. The United Nations Charter, which was drafted in 1941 and signed in 1945, was the key movement to accomplish this goal.

Through the **Universal Declaration of Human Rights** in 1948, the global community achieved a new moment in the timeline of mankind, and civil liberties has emerged as a significant sign of the Zeitgeist<sup>4</sup>. Following that through the efforts of the Council of Europe, the **European Convention for the Protection of Human Rights** was proclaimed in 1950 and became effective in 1953. This agreement has been the fundamental safeguard for humanity.

## **B. European Convention on Human Rights**

The **European Convention on Human Rights** (hereafter referred to as ‘The Convention’) was the first comprehensive treaty for the protection of human rights to emerge from the post Second World War law-making process.<sup>5</sup>

The actual name of the convention is ‘**Convention for the Protection of Human Rights and Fundamental Freedoms**’ which is adopted on 5 November 1950, and it provides a list of definitions of several core human rights. The Convention primarily emphasizes rights based on national constitutions that are influenced by Enlightenment principles.

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<sup>4</sup> Cambridge Dictionary defines Zeitgeist as *the general set of ideas, beliefs, feelings, etc. that is typical of a particular period in history*.

<sup>5</sup> Schabas, W. A. (2015). *The European convention on human rights: a commentary*. Oxford University Press.

Some might argue that the **Convention on the Prevention and Punishment of the Crime of Genocide** is the first human rights treaty, but the Genocide Convention, which is adopted by the General Assembly of the United Nations in 1948 is much more similar to an international criminal law treaty<sup>6</sup>.

European Convention on Human Rights was a response to current and past events in Europe. It stemmed from the wish to provide a shield against communism, which had spread from the Soviet Union into European states behind the Iron Curtain<sup>7</sup> after World War II.<sup>8</sup> The Convention aimed to raise awareness among Western European states and take precautions for the human rights violations that Europe had witnessed during World War II. On 10<sup>th</sup> of December 1948 the **Universal Declaration of Human Rights** was adopted by the General Assembly of the United Nations and it became a remarkable milestone.

After the Council of Europe was founded in 1949, the urgent need for a commission on human rights was discussed during the first session of the Consultative Assembly<sup>9</sup> of the Council of Europe in August 1949.<sup>10</sup> Shortly after the Convention was drafted and the **European Commission of Human Rights (1954)**, and the **European Court of Human Rights (1959)** were chartered as the Convention's enforcement bodies.

## THE EUROPEAN COURT OF HUMAN RIGHTS

### A. Introduction

The European Court of Human Rights is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. Since 1998, it has been a full-time court, and individuals can apply to it directly. The Court has examined hundreds of thousands of applications since it was set up<sup>11</sup>. Its judgments are binding on the countries concerned and

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<sup>6</sup> Harris, D. J., O'boyle, M., Bates, E., & Buckley, C. (2023). *Law of the European convention on human rights*. Oxford university press.

<sup>7</sup> Cambridge Dictionary defines Iron Curtain as *the name of the border between Western Europe and the communist countries of Eastern Europe from 1946-1989*.

<sup>8</sup> Harris, D. J., O'boyle, M., Bates, E., & Buckley, C. (2023). *Law of the European convention on human rights*. Oxford university press.

<sup>9</sup> At present called the Parliamentary Assembly

<sup>10</sup> Van Dijk, P., & Van Hoof, G. J. (2023). *Theory and practice of the European Convention on Human Rights*. Martinus Nijhoff Publishers.

<sup>11</sup> European Court of Human Rights, Court in Brief

[https://www.echr.coe.int/documents/d/echr/Court\\_in\\_brief\\_ENG](https://www.echr.coe.int/documents/d/echr/Court_in_brief_ENG) accessed 6 March 2025



have led governments to alter their legislation and administrative practice in a wide range of areas. The Court's case-law makes the Convention a modern and powerful living instrument for meeting new challenges and consolidating the rule of law and democracy in Europe. The Court is based in Strasbourg and from here, the Court monitors respect for the human rights of 700 million Europeans in the 46 Council of Europe member States that have ratified the Convention.<sup>12</sup>

Prior to the adoption of the Convention, there were various viewpoints regarding the establishment of a European Court. A body for Human Rights ought to be established in any case. Most of the States were opposed to the proposal to establish a court with mandatory jurisdiction.

The European Convention on Human Rights has undergone several amendments over time, facilitated by the adoption of 11 supplementary protocols.

On November 1<sup>st</sup> 1998, Protocol No.11 to the Convention entered into force. This one is particularly striking since it empowered people to yield applications to the court. Anyone, whether an individual, a non-governmental organisation, or a group of individuals, who believes that their rights protected by the Convention or Protocols have been violated has the right to apply to the Court through an individual application. Although individuals lodge the majority of the applications, a state can also submit to the Court against another State Party to the Convention; this is called an **interstate application**.<sup>13</sup>

State Parties, which is the title given to nations that have completely approved the Convention, guarantee to satisfy the commitment to secure the rights within the Convention for not only their citizens but moreover foreigners. The rights secured by the Convention are **the right to life, the right to a fair hearing, the right to respect for private and family life, freedom of expression, freedom of thought, conscience, and religion, and the protection of property**.<sup>14</sup>

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<sup>12</sup> European Court of Human Rights, Court in Brief  
[https://www.echr.coe.int/documents/d/echr/Court\\_in\\_brief\\_ENG](https://www.echr.coe.int/documents/d/echr/Court_in_brief_ENG) accessed 6 March 2025

<sup>13</sup> The ECHR in 50 questions 2021

<sup>14</sup> European Court of Human Rights, Court in Brief  
[https://www.echr.coe.int/documents/d/echr/Court\\_in\\_brief\\_ENG](https://www.echr.coe.int/documents/d/echr/Court_in_brief_ENG) accessed 6 March 2025



**Figure 1:** The European Court of Human Rights in Strasbourg, France (Candice Imbert, title unknown, n.d., European Court of Human Rights)

## B. Structure

The European Court of Human Rights (ECtHR) is divided into five sections, administrative entities that handle multiple cases at the same time, each with its own courtroom. Each section is managed by a President, a Vice President, and a group of judges. The judges of the Court, totaling 47, are chosen by the Parliamentary Assembly of the Council of Europe from a list of nominees submitted by the Member States.

In the Court, judges operate in four distinct groups, known as 'judicial formations'.

Applications submitted to the Court are assigned to one of these formations:

1. **Single Judge:** only rules on the admissibility of applications that are clearly inadmissible based on the material submitted by the applicant.

2. **Committee:** composed of 3 judges, committees rule on the admissibility of cases as well as the merits when the case concerns an issue covered by well-developed case law (the decision must be unanimous).

3. **Chamber:** composed of 7 judges, chambers primarily rule on admissibility and merits for cases that raise issues that have not been ruled on repeatedly (a decision may be made by a

simple majority). Each chamber includes the Section President and the “national judge” ( the judge with the nationality of the State against which the application is lodged).

**4. Grand Chamber:** composed of 17 judges, the Grand Chamber hears a small, select number of cases that have been either referred to it (on appeal from a Chamber decision) or relinquished by a Chamber, usually when the case involves an important or novel question. Applications never go directly to the Grand Chamber. The Grand Chamber always includes the President and Vice-President of the Court, the five Section presidents, and the national judge.<sup>15</sup>

According to the European Convention on Human Rights, judges must “be of high moral character and possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence”<sup>16</sup>. To ensure that these standards are met, there are two phases to the election process .Firstly a national selection procedure, in which each state party chooses a list of three qualified candidates, and secondly the election procedure undertaken by the Assembly, in which a special parliamentary committee assesses the qualifications of the three candidates, as well as the fairness of the national selection procedure, before the Assembly proceeds with the election.

**National selection procedure:** When selecting their three candidates, states should ensure that their national procedure is fair and transparent, for example by issuing public and open calls for candidates. All candidates must have appropriate legal qualifications and experience and must have an active knowledge of either English or French – the languages in which Court judgments are drafted – and at least a passive knowledge of the other language. To ensure gender-balance on the Court, states are also asked to put forward at least one candidate from “the under-represented sex” unless there are exceptional circumstances. In order to help ensure candidates are fully qualified, an advisory panel of experts offers governments confidential advice on potential candidates before the final list of three is sent to the Assembly.

**Election by the Assembly:** Once the Assembly has received the list of candidates, the Committee on the Election of Judges of the European Court of Human Rights – a special parliamentary committee whose members have legal experience – firstly assesses the fairness

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<sup>15</sup> European Court of Human Rights, International Justice Resource Center <https://ijrcenter.org/european-court-of-human-rights/> accessed 7 March 2025

<sup>16</sup> Protocol No. 11 to the convention for the protection of human rights and fundamental freedoms

and transparency of the national procedure used to select them. It then interviews each of the candidates in person and scrutinises their CVs, which are submitted in a standardised format, to evaluate whether all three are sufficiently well qualified to do the job. If it finds all the conditions are met, the committee draws up a recommendation for the Assembly indicating which candidate or candidates it believes are the strongest. If not, it can recommend that a state be asked to submit a fresh list. The Assembly – made up of 324 parliamentarians – then proceeds to vote on the candidates in a secret ballot, held during plenary sessions, in the light of the committee’s recommendations. An absolute majority of votes cast is required in the first round. If this is not achieved, a second round is held and the candidate with the most votes is duly elected to serve on the Court for a single term of nine years.<sup>17</sup>

Applications to the European Court of Human Rights must comply with the requirements described in Article 47 of the Rules of Court. Applicants should be aware that the Court periodically modifies its rules and procedures; in 2014.

To apply, applicants should use the application form, which is available online and must be filled out in its entirety. Copies of all relevant documents must be included along with the application, which must be submitted by postal mail.

A substantial majority of the applications submitted to the Court are struck from the list or declared inadmissible because they fail to meet one or more of the admissibility criteria.<sup>18</sup>

### **C. Proceedings Before the Court**

Court proceedings mainly occur in written form, with public hearings are uncommon. There is no cost associated with submitting an application and the applicant may apply for legal aid to cover expenses that arise later in the proceeding.

While a lawyer is not necessary to lodge a complaint, applicants should have representation after the case is declared admissible and must be represented by a lawyer in any hearing before the Court.

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<sup>17</sup>Election of Judges to the European Court of Human Rights [https://website-pace.net/en\\_GB/web/as-cdh/main](https://website-pace.net/en_GB/web/as-cdh/main) accessed 7 March 2025

<sup>18</sup> European Court of Human Rights, International Justice Resource Center <https://ijrcenter.org/european-court-of-human-rights/> accessed 7 March 2025

Applications to the ECtHR go through two phases: **admissibility** and **merits**. The specific nature of the case will dictate the speed and course of the proceedings. However, it may be months or years before an applicant receives a decision or judgment.

### **i-Admissibility**

When the Court receives an application, the Court must determine if it meets all of the admissibility requirements. An admissibility decision may be made by a single judge, a three-judge committee, or a seven-judge chamber. To be declared admissible, an application must meet the following criteria:

1. All domestic remedies must be exhausted before the application
2. Four-month application deadline should not be passed (from the final domestic judicial decision)
3. The complaint must be against a State party to the European Convention on Human Rights
4. Applicant must have suffered a significant disadvantage<sup>19</sup>

If an application fails to meet any of these requirements, it will be declared inadmissible and cannot proceed any further. There is no appeal from a decision of inadmissibility.

### **ii-Merits**

If an application is not taken off the docket or deemed inadmissible at an earlier stage, it will be allocated to one of the five sections of the ECtHR, and the relevant State will be informed of the complaint. At this stage, both parties will have a chance to present their observations to the Court. These observations might include specific information requested by the Chamber or the President of the Section, as well as any additional material deemed pertinent by the parties. The Chamber can choose to assess admissibility and merits either separately or at the same time, but it must notify the parties if it intends to examine both together. When a Chamber delivers a judgment on the merits, a three-month timeframe is established before the decision becomes final. During this timeframe, either party may request that the application be referred to the Grand Chamber; however, the Grand Chamber only deals with a limited

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<sup>19</sup> European Court of Human Rights, International Justice Resource Center  
<https://ijrcenter.org/european-court-of-human-rights/> accessed 7 March 2025



number of exceptional cases. If the Court eventually rules in favor of the applicant, it may grant just satisfaction through monetary compensation for the damages incurred and require the State to pay the expenses associated with the case. If the Court concludes that no violation has occurred, the applicant will not be responsible for the legal costs of the respondent State. The Committee of Ministers of the Council of Europe oversees the enforcement of the Court's judgments. States are obligated to adhere to the rulings of the Court and must implement them accordingly. This often entails modifying legislation to prevent the continued occurrence of the violation. However, the Court lacks the authority to overturn a national decision or revoke national laws.

Prior to a decision on the merits, the Court will try to facilitate the arrangement of a **friendly settlement**. If a friendly settlement cannot be reached, the Court will then deliver a judgment on the merits. In instances where the Chamber hearing the case decides to issue an admissibility decision in conjunction with a judgment on the merits, the parties may include information about friendly settlements in the observation they submit to the Court.

In exceptional cases, the Court may grant applicants "interim measures," which are designed to protect the applicant from further harm while the case proceeds before the Court. Requests for interim measures are only granted when there is an imminent risk of irreparable harm such as death or torture. They are most often granted in extradition and deportation cases.<sup>20</sup>

## **D-Jurisdiction**

The Court has jurisdiction to decide complaints submitted by individuals and States concerning violations of the Convention for the Protection of Human Rights and Fundamental Freedoms, which principally concerns civil and political rights. It cannot take up a case on its own initiative apart from civil and political rights cases. Notably, the person, group or non-governmental organization submitting the complaint ("the applicant") does not have to be a citizen of a state party.

However, complaints submitted to the Court must concern violations of the Convention allegedly committed by State party to the Convention and that directly and significantly affected the applicant. As of October 2023, there are 46 State parties to the Convention; these

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<sup>20</sup> European Court of Human Rights, International Justice Resource Center  
<https://ijrcenter.org/european-court-of-human-rights/> accessed 7 March 2025

include the Member States of the Council of Europe and of the European Union. Some of these States have also ratified one or more of the Additional Protocols to the Convention, which protect additional rights.<sup>21</sup>

As of September 16, 2022, Russia ceased to be a party to the Convention, although the Court retains authority to decide complaints against Russia concerning alleged violations before that date. Separately, the European Union's accession to the Convention is a topic of ongoing negotiation between the EU and Council of Europe<sup>22</sup>.

As of August 1, 2018, the Court also has advisory jurisdiction. Under Protocol 16 to the European Convention, which entered into force on August 1, the highest domestic courts in the States that are a party to the Protocol may request European Court advisory opinions on questions of interpretation of the European Convention and its protocols. The questions must arise out of cases pending before the domestic court.<sup>23</sup>

## **i. Deliberations**

When a case is declared admissible and referred to the Chamber or the Grand Chamber, The Court deliberates on the merits of the case. Deliberations are in private and they might stay a secret. Only the judges take part in deliberations. The Registrar and other officials of the Registry, whose assistance is deemed necessary, such as interpreters, shall be present. If there are no special decisions made by the Court, no one else can take part in the deliberations.<sup>24</sup>

## **ii. Voting**

After the deliberations, the president can request the judges to state their opinions about the case. The court's decisions are made with the majority of the judges present. If there is a tie, a fresh vote shall be taken and if that also ends up with a tie, the president gets a casting vote. The decisions and judgments of the Chamber and the Grand Chamber are also made by the majority of the sitting judges. Abstentions are not allowed for final votes. The general rule for

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<sup>21</sup> European Court of Human Rights, International Justice Resource Center <https://ijrcenter.org/european-court-of-human-rights/> accessed 7 March 2025

<sup>22</sup> Council of Europe, Russia ceases to be party to the European Convention on Human Rights <https://www.coe.int/en/web/portal/-/russia-ceases-to-be-party-to-the-european-convention-on-human-rights> accessed 7 March 2025

<sup>23</sup> European Court of Human Rights, International Justice Resource Center <https://ijrcenter.org/european-court-of-human-rights> accessed 7 March 2025

<sup>24</sup> Council of Europe, 'Questions and Answers about ECHR' (2015)

the votes is by show of hands. The President may take a roll-call vote in reverse order of precedence<sup>25</sup>.

Judges may wish to draft an opinion concerning their votes, explaining why they voted with the majority or why they disagree with the majority of the judges. Within three months of delivery of the judgment of a Chamber, parties can request the case to be referred to the Grand Chamber. The panel of the Grand Chamber, which consists of five judges, examines the requests in question. The Grand Chamber may decide to try the case or dismiss the case.

### **E-Effects of Its Judgement and Enforcement**

The High Contracting Parties of the European Convention on Human Rights have pledged themselves to ensure that all individuals within their authority enjoy the rights and freedoms specified in Section I of the Convention, in this regard, has committed to “adhere to the final “decisions of the Court in any matter in which they are involved” as stated in article 46 paragraph Article 1 of the European Convention on Human Rights<sup>26</sup>.

## **KEY CONCEPTS OF THE CASE**

### **A-Domestic Violence**

Domestic violence is a broad concept that has different descriptions under different international or domestic documents. These documents can be exemplified such as international conventions or domestic legislations, like the criminal codes or special acts that prohibit such acts.

From the international sphere one of the most important document is the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). According to the Istanbul Convention; domestic violence means any forms of physical, sexual, psychological, or economic abuse that takes place within the family or household, or between current or former spouses or partners, regardless of whether the

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<sup>25</sup> European Court of Human Rights, International Justice Resource Center <https://ijrcenter.org/european-court-of-human-rights/> accessed 7 March 2025

<sup>26</sup> Council of Europe, ‘Questions and Answers about ECHR’ (2015)

perpetrator has lived with the victim or not.<sup>27</sup> Regarding that, UNWOMEN defines domestic violence as a pattern of behaviour in any relationship that is used to gain or maintain power and control over an intimate partner. These behaviours include the actions of physical, sexual, emotional, economic, or psychological violence or threats of actions that influence another person. Such actions also include any behaviours that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound the victim.<sup>28</sup> Also, it has to be pointed out that the victim can be from each gender, each race, or even each age group.

On the other hand if we would like to compare different domestic regulations, in the United States of America the Violence against Women Act (VAWA) defines domestic violence as acts of any misdemeanor or felony crimes of violence committed against current or ex-partner or a household member and it may contain physical, sexual, emotional, economic, digital assaults such as but not limited to stalking or threat.<sup>29</sup> In Germany it refers to all forms of physical, sexual and/or psychological violence between persons in a social relationship, mostly in a domestic setting including stalking and harassment.<sup>30</sup> Under the Turkish definition, in Law No. 6284 to Protect Family and Prevent Violence against Women, it is described as any physical, sexual, psychological and economical violence between the victim of violence and the perpetrator of violence and between the family members and the people who are considered as a family member whether they live or do not live in the same house.<sup>31</sup>

As it can be seen from both internal and international definitions, even though the wordings and the sentences are different, mainly all the definitions underline similar acts. If analysed further, domestic violence could be characterized as a consistent pattern of abusive and controlling behaviours, which encompass physical, sexual, and psychological assaults, in addition to financial coercion, that individuals of any gender may exert against their intimate partners and most of the time these are

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<sup>27</sup> Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) (2011) CETS No. 210.

<sup>28</sup> 'What is Domestic Abuse?' (United Nations) <https://www.un.org/en/coronavirus/what-is-domestic-abuse> accessed 23 February 2025.

<sup>29</sup> American Violence against Women Act (VAWA) Reauthorisation of 2021 H.R.1620 Section 2 Article 8.

<sup>30</sup> German Criminal Code (Strafgesetzbuch – StGB) (13 November 1998), Federal Law Gazette I, p. 3322.

<sup>31</sup> Turkish Law No. 6284 to Protect Family and Prevent Violence against Women (8 March 2012) Article 2 (b).

purposeful behaviours, directed at achieving compliance from or control over the victim(s).<sup>32</sup> For a better understanding, it might be categorised as physical, psychological, and economic violence. In the following paragraphs, these all would be explained with other subtitles of each of own.

### **a. Physical Violence**

Physical violence may emerge any kind of physical touch to the victim that involves patterns of acts that attempt to cause or result in pain and/or injury. As with all forms of violence, the main aim of the perpetrator is not only to cause physical pain, but sometimes also to limit the other's self-determination.<sup>33</sup> This type of violence demonstrates social power differences, or may intend to promote particular demands, sometimes regularly, through coercion.<sup>34</sup>

As previously stated, these acts may or may not intend to cause injuries, and sometimes, it does not cause any injuries. For instance, although a victim *pushed* by their partner violently, there would be no apparent injury; the perpetrator caused suffering through the victim and might gain control on them.<sup>35</sup>

### **b. Psychological Violence**

Psychological violence is any intentional conduct that seriously impairs the psychological integrity of victim through coercion or threats that cause psychological harm.<sup>36</sup> It is harder to detect this kind of violence because of the present psychological scare of victims, which are more difficult to observe and prove since there is no apparent mark.<sup>37</sup> Psychological and

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<sup>32</sup> Anne L. Ganley, 'Understanding Domestic Violence' (1995) Improving the health care response to domestic violence: A resource manual for health care providers p.15.

<sup>33</sup> 'Physical Violence' (Council of Europe) <https://www.coe.int/en/web/gender-matters/physical-violence> accessed 13 March 2025.

<sup>34</sup> *Ibid.*

<sup>35</sup> Anne L. Ganley, 'Understanding Domestic Violence' (1995) Improving the health care response to domestic violence: A resource manual for health care providers p.15.

<sup>36</sup> 'Psychological Violence' (European Institution for Gender Equality, 2016) <https://eige.europa.eu/publications-resources/thesaurus/terms/1241> accessed 14 March 2025.

<sup>37</sup> LC Casique and AR Furegato, 'Violence Against Women: Theoretical Reflections' *Revista latino-americana de enfermagem*, p. 950.



therefore emotional violence may occur in very broad sense and diverse manifestations of psychological violence may be defined as verbal abuse, intimidation, threats, disdain<sup>38</sup>, isolation, coercion, and defamation.<sup>39</sup>

Verbal abuse might be conducted in various ways; however, it generally contains activities such as humiliating, insulting and mocking, and shaming, using mental games and ironies to confuse.<sup>40</sup> Verbal abuse might be considered as the most extensive version of psychological violence and it includes the other types of violent acts as well. For instance, disdain, is to make the victim feel worthless<sup>41</sup> and not involve them in the decision-making process. While doing this, using underestimating sentences also might be in the scope of verbal abuse. Another example is threat. Threat is a specific version of psychological violence that includes threats of harm to the victim, the children and family of the victim, or the property of the victim. Most of the time these threats come as verbal abuse.

Another type of psychological violence is intimidation. It is very similar to threats, they both aim to cause fear in the victim, and intimidation does this with the gestures, looks and screams, and by other means.<sup>42</sup> Apart from that, isolation is another version to create control on the victim. In this case, the perpetrator does not let the victim go out, go to work, or see their friends even communicate with other people. The aim is to make the perpetrator the centre of the life of the victim, so that the victim would be under pressure and obey the perpetrator.<sup>43</sup>

Finally, since it mostly happens in a household sphere it may contain the use of children. This kind of abusive acts might be directed against the children or involve the children to control or punish the actual victim. The perpetrator may use the children as an instrument to maintain control on the victim. For instance, not paying the child support, using children as spies,

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<sup>38</sup> Wynter AE. 'La violencia desde una perspectiva de Género' (2001) *Revista de Enfermeras* p.23.

<sup>39</sup> 'Psychological Violence' (European Institution for Gender Equality, 2016) <https://eige.europa.eu/publications-resources/thesaurus/terms/1241> accessed 14 March 2025.

<sup>40</sup> *Ibid.*

<sup>41</sup> LC Casique and AR Furegato, 'Violence Against Women: Theoretical Reflections' *Revista latino-americana de enfermagem*, p. 950.

<sup>42</sup> Wynter AE. 'La violencia desde una perspectiva de Género' (2001) *Revista de Enfermeras* p.23.

<sup>43</sup> Anne L. Ganley, 'Understanding Domestic Violence' (1995) *Improving the health care response to domestic violence: A resource manual for health care providers* p.15.

threatening the victim by taking their children away, causing the long fights for custody of the child, or even kidnapping the children to force the compliance of the victim. Sometimes it is also possible for children to be drawn into the assaults and injured by involving the fight while they were together with the victim trying to settle the fight between their parents.

All these types of violence aim to coerce the victim to do or not do something. As stated, these acts mostly involve each other in different ways and since it is most hardest to prove victims would or could not report the violence because they are convinced that their reports will not be effective.<sup>44</sup>

### **c. Economic Violence**

Economic violence is another type of control the victim by making the victim dependent. It is when the abuser has complete control over the money and other financial activities of the victim.<sup>45</sup> As to domestic violence, it happens when the abuser has the maintenance and control of the family finances and/or refuses to cover the expenses of the family or only the victim. These happen regardless of the source of finance. The sources of the household income might be both the abuser and the victim but still, the victim would be abused regardless of their contribution to the income.<sup>46</sup> The abuser is the one and only actor who controls all the financial activities including the spendings and savings.<sup>47</sup> It should be noted that, in some cases the other reflection of economic violence is not allowing the victim to work or denying their access to loans and excluding them from financial decision making process, and damaging their property.<sup>48</sup> Under the economic violence sometimes the victim has to beg for money and, just like the other types, this would be a way of abuser to dominate.<sup>49</sup>

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<sup>44</sup> *Ibid.*

<sup>45</sup> OI Fawole, 'ECONOMIC VIOLENCE TO WOMEN AND GIRLS: Is It Receiving the Necessary Attention?' (2008), 9, *Trauma, Violence & Abuse* p.167.

<sup>46</sup> Anne L. Ganley, 'Understanding Domestic Violence' (1995) Improving the health care response to domestic violence: A resource manual for health care providers p.15.

<sup>47</sup> *Ibid.*

<sup>48</sup> Prince Edward Island Department of Health and Social Services, *Woman Abuse Protocols* (2000).

<sup>49</sup> OI Fawole, 'ECONOMIC VIOLENCE TO WOMEN AND GIRLS: Is It Receiving the Necessary Attention?' (2008), 9, *Trauma, Violence & Abuse* p.167.

There are several consequences of this type of violence. To begin with, economic violence leads to worsening poverty because it reduces the ability of the victim to access independent sources of income. Second, economic abuse tends to lead to an atmosphere of tension and general nervousness due to material concerns, which may spill over into physical violence.<sup>50</sup> Disagreements regarding financial support and domestic duties may trigger incidents of physical violence. Also, as an example, in some polygamous unions, competition by wives for the limited resources available and arguments over maintaining equality in care may result in violence.<sup>51</sup> Third, economic violence results in social inequality and promotes sexual exploitation or even human trafficking.

The manifestations of economic violence may vary such as but not limited to:

- i. economic control
- ii. economic exploitation
- iii. economic sabotage<sup>52</sup>

These are the most general categorisations of the sorts of economic violence as they mentioned in paragraphs above and for better understanding they will be explained further in the below.

#### **i. Economic control**

Economic control means preventing, limiting, or controlling the finances and decision makings of the victim.<sup>53</sup> The controlling activities might include restricting access to money, essential necessities, personal needs, financial assets, and information. In this case the abuser also prevents the victim from obtaining bank accounts by themselves or prevents them from ruling their

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<sup>50</sup> *Ibid.*

<sup>51</sup> ‘United Nations Children's Fund (UNICEF) Annual Report of 2000’ (FMOH/UNICEF)2000 <https://www.unicef.org/media/93356/file/UNICEF-annual-report-2000.pdf> accessed 16 March 2025.

<sup>52</sup> ‘Understanding Economic Violence Against Women’ (European Institution for Gender Equality) [https://eige.europa.eu/sites/default/files/documents/EIGE\\_Factsheet\\_EconomicViolence.pdf](https://eige.europa.eu/sites/default/files/documents/EIGE_Factsheet_EconomicViolence.pdf) accessed 16 March 2025.

<sup>53</sup> AE Adams, CM Sullivan, D Bybee, and MR Greeson, ‘Development of the scale of economic abuse’, (2008) 14, *Violence against Women*, No 5, pp. 563–588.

accounts.<sup>54</sup> Finally, in most general meaning abuser restrains the victim to control the amount of money that a victim can spend or track their usage.

## **ii. Economic Exploitation**

In this situation the abuser uses the economic resources of the victim to their advantage<sup>55</sup>, the abuser uses the victim as a source of income, so to speak. This kind of activity might be counted as opening a credit, applying for a loan, and building up debt in the name of the victim without any consent. Similar to these, taking wages, pensions, and any other kind of financial aid from the account of the victim without any consent or by force. In broad sense, stealing or damaging the property of the victim or resources sometimes even selling them without permission.<sup>56</sup>

## **iii. Economic sabotage**

Economic sabotage includes preventing the victim from pursuing, obtaining, or maintaining employment and/or education.<sup>57</sup> In other words, it can be explained as to not let the victim gain the skills to be economically independent. Several examples of this situation: preventing the victim from attending employment and educational activities or sabotaging items needed to fulfil these activities, interfering with the education or work of the victim and finally refusing the to contribute towards childcare/household care activities.<sup>58</sup> A more concrete example of this situation could be girls who are registered to school but are never sent to school. In such a case, children are registered out of necessity but are never allowed to attend classes to study in the end since they could not get the proper education it becomes harder for them to be economically independent.

## **B. Gender Based Violence**

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<sup>54</sup>‘Understanding Economic Violence Against Women’ (European Institution for Gender Equality) [https://eige.europa.eu/sites/default/files/documents/EIGE\\_Factsheet\\_EconomicViolence.pdf](https://eige.europa.eu/sites/default/files/documents/EIGE_Factsheet_EconomicViolence.pdf) accessed 16 March 2025.

<sup>55</sup> AE Adams, CM Sullivan, D Bybee, and MR Greeson, ‘Development of the scale of economic abuse’, (2008) 14, *Violence against Women*, No 5, pp. 563–588.

<sup>56</sup> *Ibid.*

<sup>57</sup> JL Postmus, SB Plummer, and AM Stylianou, ‘Measuring economic abuse in the lives of survivors: Revising the Scale of Economic Abuse’, (2016), 22, *Violence Against Women*, No 6, pp. 692–703.

<sup>58</sup> N Sharp-Jeffs, ‘Understanding the economics of abuse: an assessment of the economic abuse definition within the Domestic Abuse Bill’, (2021), 5, *Journal of Gender-based Violence*, No 1, pp. 163–173.

Gender-based violence is a specific term when the violence is caused because of the gender of the victim or the sexual orientation of the victim. The purpose is not only to harm the victim but also to harm the victim because of their gender. Mostly the idea behind of gender-based violence is the belief that the perpetrator has a right to do this because they are superior to the victim. The other motivation behind the violent acts might be the gender of the victim or their sexual orientation. Gender-based violence behaviors can sometimes resemble domestic violence or sexual violence.<sup>59</sup> At this point, it should not be forgotten that more than one type of violence can occur together or interwoven. All forms can occur both in the private sphere as in families and intimate relationships and sometimes in the public sphere, committed by undefined individuals in public space, or by organisations, institutions and even states by the hand of government officials.<sup>60</sup>

Gender-based violence in public is often related to assumptions and expectations concerning gender roles. Verbal abuse, name-calling, threats, and attacks may take place.<sup>61</sup> In the Istanbul Convention types of gender-based violence counted as psychological violence (Art. 33), stalking (Art. 34), physical violence (Art. 35), forced marriages (Art. 37), sexual violence, including rape (Art. 36), female genital mutilation (Art. 38), forced abortion and forced sterilisation (Art. 39), sexual harassment (Art. 40), aiding or abetting and attempt<sup>62</sup> (Art. 41), unacceptable justifications for crimes, including crimes committed in the name of so-called honour (Art. 42).<sup>63</sup>

### C. Suicide

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<sup>59</sup>‘Types of Gender Based Violence’ (Council of Europe) <https://www.coe.int/en/web/gender-matters/types-of-gender-based-violence> accessed 6 April 2025.

<sup>60</sup> *Ibid.*

<sup>61</sup>‘What is Gender-based Violence’ (European Commission) [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en) accessed 5 April 2025.

<sup>62</sup> *Aiding, abetting*: To assist someone in committing or to encourage someone to commit a crime. (See also: ‘Aid and Abet’ (Cornell Law School Legal Information Institute [https://www.law.cornell.edu/wex/aid\\_and\\_abet](https://www.law.cornell.edu/wex/aid_and_abet))

<sup>63</sup> Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) (2011) CETS No. 210.



Suicide is the type of act of an individual, knowing that the outcome will be death, that will lead to their own death.<sup>64</sup> According to World Health Organisation (WHO) every year more 720 000 people die due to suicide the number of attempts to suicide is more than this. Among the people between 15-29 years, suicide is the third most significant reason of death and 73% of global suicides occur in low and middle-income countries.<sup>65</sup> Also unfortunately accounts for 10%–20% of deaths in women up to one year after giving birth. To prevent suicides WHO recommends the regional strategy and development of a recording and reporting system, development of services for early recognition and management of mental, neurological and substance abuse disorders in primary care, special programmes for vulnerable populations such as adolescents, older people, and women and reducing access to the means of committing suicide.<sup>66</sup>

#### **D. Incitement to Suicide**

Incitement to suicide, with its most basic explanation, means to encourage another person to suicide. There is no common description of incitement to suicide however, in most jurisdictions it is a crime and each jurisdiction has their own description for the crime of incitement to suicide. Even though the name and definition of this act, or crime, the core is always the same and it is forbidden. There are some discussions on whether just incitement should be crime and as a response in most of jurisdictions it is suggested that this crime will only be committed if the incitement caused the actual suicide of another person.<sup>67</sup>

Under the jurisdiction of the United States of America, New York Penal Code, incitement to suicide attempt is named as the “promoting a suicide attempt”.<sup>68</sup> In many other jurisdictions incitement to suicide is not defined directly but is described as facilitating suicide. For instance, in German law, it is the acts of assisting another person in committing suicide or providing

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<sup>64</sup> Lippincott Williams & Wilkins *Stedman's Medical Dictionary* (28<sup>th</sup> Edition, 2021)

<sup>65</sup> ‘Suicide Key Facts’ (World Health Organisation) <https://www.who.int/news-room/fact-sheets/detail/suicide> accessed 6 April 2025.

<sup>66</sup> ‘Suicide’ (World Health Organisation Eastern Mediterranean Region) <https://www.emro.who.int/health-topics/suicide/feed/atom.html> accessed 6 April 2025.

<sup>67</sup> Paul McGorry and Marilyn McMahon, ‘Causing someone else to commit suicide: incitement or manslaughter?’ (2019), 44(I), *Alternative Law Journal* p. 23.

<sup>68</sup> New York Penal Law, § 120.00 (McKinney 2024).

procuring or arranging the opportunity for that person to do so.<sup>69</sup> Similar to German Penal Code, the Moldovan Penal Code described this offence as the action determining or intentionally facilitating suicide, including through electronic communication networks that result in suicide. It is also counted the aggravating. If these actions are carried out (on):

- a) knowingly on a minor;
- b) on a person who is in material dependence or other dependence on the perpetrator;
- c) for reasons of prejudice,
- d) to a minor under the age of 14.
- e) two or more people, then the sanctions would be heavier than the basic version of such offence.<sup>70</sup>

## **E-The State's Substantive Obligation to Protect the Right to Life**

**Right to life** is regulated in the European Convention on Human Rights Article 2.

Article 2(1) provides that: 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'<sup>71</sup>

It has been observed that 'relative to Article 2 of **the International Covenant on Civil and Political Rights (ICCPR)**, Article 2 of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** is weak with respect to implementation'.<sup>72</sup>

Four key human rights obligations arise from Article 2(1) namely: (i) the obligation to 'take steps ... by all appropriate means'; (ii) 'achieving progressively the full realisation' of **Economic Social and Cultural Rights (ESCR)**; (iii) the obligation to utilise 'maximum

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<sup>69</sup> German Criminal Code (Strafgesetzbuch – StGB) (13 November 1998), Federal Law Gazette I, p. 3322.

<sup>70</sup> Criminal Code of the Republic of Moldova, Law No 985-XV of 18 April 2002  
[https://sherloc.unodc.org/cld/uploads/res/document/criminal-code-of-the-republic-of-moldova\\_html/Republic\\_of\\_Moldova\\_Criminal\\_Code.pdf](https://sherloc.unodc.org/cld/uploads/res/document/criminal-code-of-the-republic-of-moldova_html/Republic_of_Moldova_Criminal_Code.pdf) accessed 4 April 2025.

<sup>71</sup> European Convention on Human Rights

<sup>72</sup> H. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals – Text and Materials*, 2nd ed. (Oxford: OUP, 2000), 275.

available resources'; and (iv) the obligation to seek (or provide) international assistance and co-operation.<sup>73</sup>

**Obligation to 'take steps ... by all appropriate means':** The first obligation of states is to "take steps" in the field of economic, social, and cultural (ESC) rights. This obligation is immediate and cannot be justified by social, cultural, or economic reasons within the state. Article 2(1) requires states to take necessary steps, which can be legislative or non-legislative, to respect, protect, and fulfil ESC rights. Legislative measures are crucial for protecting all human rights, including ESC rights, as they provide a solid foundation for enforcement in areas like housing, employment, and education<sup>74</sup>.

States must enact comprehensive anti-discrimination laws immediately, ensuring protection against discrimination in the enjoyment of ESC rights as stated in Article 2(2) of the Covenant.<sup>75</sup> This law should apply to all public and private actors and cover all grounds of discrimination listed in the International Covenant on Economic, Social and Cultural Rights (ICESCR). These grounds include race, sex, and other statuses, indicating that the list is not exhaustive. Discrimination hinders ESC rights for many, and anti-discrimination legislation should address such issues in both public and non-state sectors.

The CEDAW Committee<sup>76</sup> has called on countries with laws that discriminate against women to quickly review and change these laws in collaboration with parliament. However, just having laws is not enough to ensure economic, social, and cultural (ESC) rights. Additional actions are needed, such as implementing strategies and policies that support ESC rights, promoting economic growth, and increasing funding. States should also provide legal remedies like compensation and public apologies, as well as create institutions to address violations of ESC rights. It is crucial for states to make ESC rights enforceable by law. The Committee highlighted this in its recommendations, urging countries, including the UK, to

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<sup>73</sup> Ssenyonjo, M. (2011). Reflections on state obligations with respect to economic, social and cultural rights in international human rights law. *The International Journal of Human Rights*, 15(6), 969-1012.

<sup>74</sup> CESCR, Statement: An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant, UN Doc. E/C.12/2007/1 (10 May 2007)

<sup>75</sup> International Covenant on Economic, Social and Cultural Rights

<sup>76</sup> United Nations describes CEDAW as the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

ensure that ESC rights are fully integrated into domestic law and that victims can access effective remedies.<sup>77</sup>

The responsibility to act on ESC rights mainly depends on the political willingness of the executive and legislature to create laws for their protection and prioritize resource allocation. Many states have not yet taken these essential steps. For instance, while international law guarantees free and compulsory primary education, it is neither free nor compulsory in many developing countries. This has led to 72 million children being denied an education in 2007, with many in sub-Saharan Africa and Southern Asia.<sup>78</sup> Without basic education, these children struggle to assert their rights and improve their lives. Significant effort is needed to build political will to protect ESC rights.

**Progressive realisation:** The second obligation is to ensure that steps taken focus on achieving the full realization of ESC rights over time. The appropriateness of these steps should be assessed by the standard of "progressive realization". Progressive means moving forward or advancing in stages, indicating that states must continuously improve conditions related to ESC rights and avoid regressive actions. This concept acknowledges that full realization of these rights will generally take time and reflects the challenges countries face in achieving this. This obligation is different from the immediate requirements of Article 2(1) of the ICCPR, which demands that states respect and ensure these rights.<sup>79</sup>

The full realization of civil and political rights relies on available resources and the development of societal structures. Therefore, states must take positive measures to achieve these rights. For instance, the right to a fair trial, as stated in Article 14(1) of the ICCPR and Article 6 of the ECHR, includes access to court and free legal aid for those who cannot afford it. This ensures independent and accessible justice<sup>80</sup>. While obligations under the ICCPR are immediate, the ICESCR<sup>81</sup> promotes progressive achievement of economic, social, and cultural rights, although some rights require immediate action.

**Obligation to utilise 'maximum available resources':** The third obligation involves ensuring that 'maximum available resources' are used for the protection and fulfilment of

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<sup>77</sup> CESCR, Statement: An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant, UN Doc. E/C.12/2007/1 (10 May 2007)

<sup>78</sup> *ibid*

<sup>79</sup> International Covenant on Civil and Political Rights

<sup>80</sup> *ibid*

<sup>81</sup> International Covenant on Economic, Social and Cultural Rights

Economic, Social, and Cultural (ESC) rights, focusing on vulnerable individuals and groups. Under Article 2(1), state parties must progressively realize these rights to the maximum of their available resources.<sup>82</sup> Evaluating this progress can be complicated due to the need to assess resource availability and whether states are maximizing those resources. There are challenges in defining what is 'available' and determining if it is used to its fullest. However, states are not expected to exceed their resources, with higher expectations for wealthier nations compared to lesser wealthy ones.

The availability of resources includes not only those controlled by the state but also social resources from broad participation in development, important for fulfilling economic, social, and cultural rights. These resources come from both the public and private sectors, and it is the state's duty to mobilize them rather than solely relying on its own funds. A key issue in achieving ESC rights is how resources are distributed, so states must show that available resources are allocated fairly and effectively to meet the needs of vulnerable groups, such as women, children, the elderly, and those living in poverty.

States are encouraged to implement robust measures to promote good governance and fight corruption, which can hinder resource availability. This involves enforcing anti-corruption laws, prosecuting offenders, and ensuring transparency in public authorities. While states have flexibility in resource allocation, they must prioritize human rights, ensuring that vulnerable populations receive the support they need.

The CESCR<sup>83</sup> has provided useful indicators for assessing state compliance with using maximum available resources. One indicator examines the national budget percentage allocated to specific rights like health and education compared to military or debt expenses. Misallocation of resources often leads to problems, like spending on weapons instead of education or health services.

It is striking to note that when the Optional Protocol to the ICESCR enters into force, it would be possible for the CESCR to receive and consider communications submitted by or on behalf of individuals or groups of individuals under the jurisdiction of a state party,

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<sup>82</sup> International Covenant on Economic, Social and Cultural Rights

<sup>83</sup> Committee on Economic, Social and Cultural Rights



claiming to be victims of a violation of any of the ESC rights set forth in the Covenant against states parties to the Optional Protocol.<sup>84</sup> If a communication was brought against a state party to the ICESCR and its Optional Protocol, and the state used ‘resource constraints’ as an explanation for any retrogressive steps taken, the Committee has indicated that it would consider such information on a country-by-country basis in the light of objective criteria such as:

- (a) the country’s level of development;
- (b) the severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant;
- (c) the country’s current economic situation, in particular whether the country was undergoing a period of economic recession;
- (d) the existence of other serious claims on the state party’s limited resources; for example, resulting from a recent natural disaster or from recent internal or international armed conflict;
- (e) whether the state party had sought to identify low-cost options; and
- (f) whether the state party had sought cooperation and assistance or rejected offers of resources from the international community for the purposes of implementing the provisions of the Covenant without sufficient reason.<sup>85</sup>

The obligation to take steps to the maximum of a state’s ‘available resources’ means that in making any assessment as to whether a state is in breach of its obligations to fulfil the rights recognised under the Covenant of a particular individual or group, an assessment must be made as to whether the steps taken were ‘adequate’ or ‘reasonable’ by taking into account, inter alia, the following considerations:

- (a) the extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights;

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<sup>84</sup> Optional Protocol to the International Covenant on Civil and Political Rights(1966)

<sup>85</sup> CESCR, Statement: An Evaluation of the Obligation to Take Steps to the ‘Maximum of Available Resources’ Under an Optional Protocol to the Covenant, UN Doc. E/C.12/2007/1 (10 May 2007), para. 9.

(b) whether the state party exercised its discretion in a non-discriminatory and nonarbitrary manner;

(c) whether the state party's decision (not) to allocate available resources is in accordance with international human rights standards;

(d) where several policy options are available, whether the state party adopts the option that least restricts Covenant rights;

(e) the time frame in which the steps were taken; and

(f) whether the steps had taken into account the precarious situation of disadvantaged and marginalised individuals or groups and, whether they were non-discriminatory, and whether they prioritized grave situations or situations of risk.<sup>86</sup>

In the context of an Optional Protocol communication, where the Committee considers that a state party has not taken reasonable or adequate steps, the Committee could make recommendations, among other things, along four principal lines:

(a) recommending remedial action, such as compensation, to the victim, as appropriate;

(b) calling upon the state party to remedy the circumstances leading to a violation. In doing so, the Committee might suggest goals and parameters to assist the state party in identifying appropriate measures. These parameters could include suggesting overall priorities to ensure that resource allocation conformed with the state party's obligations under the Covenant; provision for the disadvantaged and marginalised individuals and groups; protection against grave threats to the enjoyment of economic, social and cultural rights; and respect for non-discrimination in the adoption and implementation of measures;

(c) suggesting, on a case-by-case basis, a range of measures to assist the state party in implementing the recommendations, with particular emphasis on low-cost measures. The state party would nonetheless still have the option of adopting its own alternative measures; and

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<sup>86</sup> CESCR, Statement: An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant, UN Doc. E/C.12/2007/1 (10 May 2007), para.8.

(d) recommending a follow-up mechanism to ensure ongoing accountability of the state party; for example, by including a requirement that in its next periodic report the state party explain the steps taken to redress the violation.<sup>87</sup>

### **F-State's Responsibility to Address Domestic Violence and the Risk of Suicide**

Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction. In broad terms, this positive obligation has two aspects: (a) the duty to provide a regulatory framework; and (b) the obligation to take preventive operational measures.<sup>88</sup>

## **IV. CASE BEFORE THE COURT: VIERU V. THE REPUBLIC OF MOLDOVA**

### **A. Overview**

Mr. Viorel Vieru filed a complaint against Moldovan authorities, alleging their failure to protect his sister, T., from domestic violence and to adequately investigate her death. T. had endured abuse from her husband, I.C., during and after their marriage, despite six protection orders—one of which was refused—leading to a seventh order following her fall from a fifth-floor window while trying to escape, resulting in her death on 12 October 2016.

The Buiucani prosecutor initiated a criminal investigation into I.C. for domestic violence in November 2014, focusing on an incident involving both physical and psychological abuse, and subsequent investigations addressed violations of the protection orders. On 23 March 2016, I.C. was convicted of domestic violence but received a lenient sentence of two years' imprisonment, suspended for three years. The court dismissed the charge of failing to comply with a court judgment as time-barred. At that time, the domestic violence law only applied to former family members who cohabitated, a provision that was lifted later in September 2016. I.C. contested the charges, asserting he was no longer considered a family member post-divorce. Initially, both the prosecutor and T. appealed the leniency of the sentence, but the

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<sup>87</sup> CESCR, Statement: An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant, UN Doc. E/C.12/2007/1 (10 May 2007), para.13.

<sup>88</sup> Guide on Article 2 of the European Convention on Human Rights

prosecutor later sought to downgrade I.C.'s actions and discontinue the proceedings, reflecting the legal ambiguities present in domestic violence cases.

The Chişinău Court of Appeal sentenced I.C. to two years in prison due to repeated violent incidents, designating him as a 'family member' under applicable laws. However, the Supreme Court of Justice overturned this ruling, indicating that the prosecutor's request for reclassification of I.C.'s actions was not considered, and errors were found in the evaluation of protection order violations. A subsequent examination of the case was mandated. On November 8, 2017, the Chişinău Court of Appeal dismissed the protection order violation charge as time-barred, stating that I.C.'s actions could be reclassified as an administrative offence rather than domestic violence because minor injuries were absent and I.C. and T. were no longer considered family members after their divorce. This decision was upheld by the Supreme Court of Justice on February 28, 2018. Additionally, criminal proceedings regarding incitement to or attempted suicide were initiated on September 8, 2016, but were closed in July 2018 due to insufficient evidence.

## **B. Facts of the Case**

- 1- The applicant's sister, T., was subjected to persistent domestic violence from her husband I.C., since 2012, despite numerous protection orders.
- 2- Their divorce was finalised on 24 November 2014 but the incidents of domestic violence continued.
- 3- T. fell from the fifth floor of her apartment on 22 August 2016.
- 4- T. died from the sustained injuries on 12 October 2016.

### **i. First protection order**

5- In September 2014, T. applied for a protection order for herself and her two children, ages 14 and 5, against I.C., with whom she was in the process of getting a divorce. In her request, she noted that there has been both physical and psychological violence in the presence of the children since 2012. The recent occurrence of physical violence in September 2014, her injuries being confirmed by medical reports.

6-During the court proceedings, the child protection agency recognized previous occurrences of domestic violence in the home and remarked that the older child had testified to witnessing violence between the parents, although he had not personally experienced abuse from his father.

7-A police officer confirmed that in July 2014, I.C. was found responsible for minor bodily injuries under the Code of Administrative Offences, and in August 2014, police intervened because I.C. refused to leave T.'s apartment.

8-On 26 September 2014, the Buiucani District Court granted T.'s request by issuing a protection order effective for 90 days, during which I.C. was to have no contact with T. and the children and maintain a distance of at least 300 meters from them. He was also required to participate in a special psychological counseling program aimed at reducing violent behavior and an alcohol rehabilitation program.

9-On 31 October 2014, a neighbor notified the police emergency number 902 about another incident. When the police arrived at T.'s apartment, they found that I.C. had breached the protection order, in violation of Article 318 § 1 of the Code of Administrative Offences. On 2 December 2014, the Buiucani District Court ruled I.C. guilty of entering T.'s home on 31 October 2014, thus violating the protection order, resulting in a penalty of 1,000 Moldovan lei (MDL – equivalent to 50 euros (EUR)) for the administrative infraction.

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

11-On 3 November 2014, the child protection agency requested police assistance since I.C. continued to harass and physically assault T. in front of the children, despite the protection order established on 26 September 2014.

12-On 22 December 2014, T. contacted the police emergency number 902 to report that I.C. was attempting to force open her apartment door. On 26 December 2014, she filed a formal complaint regarding the incident on 22 December, indicating that I.C. had pulled her hair and kicked and pushed her from behind while she had a visitor.

On 24 December 2014, T. called the police emergency number 902 once more to report another incident involving I.C. in her home.

## **ii. Second Protection Order**

13- On 19 February 2015, T. sought a new protection order due to several episodes of domestic violence that had occurred since March 2014. She mentioned a recent incident on 3 February 2015, when I.C. had followed her and her younger child from kindergarten and had struck T. in the face; she managed to escape to the police station only after two men intervened on the street. The police had suggested she contact the NGO, Women's Law Centre.

14- On that same day, the Buiucani District Court granted her request by issuing a protection order that extended for ninety days, similar to the previous one.

15- On 2 April 2015, T. called the police emergency number 902, and the following day, she filed a formal complaint regarding two incidents: one occurred on 31 March 2015, when I.C. had entered her apartment and cut off the electricity, and the other on 2 April 2015, when he had awaited her return from kindergarten and had physically assaulted her multiple times, after which he fled and returned later that evening to hit her again several times in the face. On 3 April 2015, the police issued I.C. another formal warning and prepared an administrative offense report for violating the protection order, in accordance with Article 318 of the Code of Administrative Offences, and referred the case to the court.

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

## **iii. Third Protection Order**

16- On May 19, 2015, T. filed for another protection order against I.C., citing the frequent violations of prior protection orders and the continuous violence 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.



17- Despite having a protection order in place, on June 28, 2015, an incident occurred where I.C. pushed T. in the street, causing her to fall and sustain a head injury.

18- On July 27, 2015, the Buiucani District Court determined that I.C. had violated the protection order on June 28, 2015, which constituted an administrative offense according to Article 318 of the Code of Administrative Offences and imposed a fine of MDL 1,000 (approximately EUR 50).

#### **iv. Fourth Protection Order**

19- The Buiucani District Court issued a new protection order on 21 August 2015 upon T.'s request, which remained valid for ninety days and was similar to previous orders.

20- T. contacted the police emergency number 902 on 14 October and 13 November 2015 to file a formal complaint regarding an incident that occurred on 12 November 2015, where I.C. twisted her fingers and arm, taking money, her phone, and her keys, as well as another incident on 13 November 2015 in which he struck her in the face.

21- On 18 November 2015, the Buiucani District Court concluded that only the judicial bailiff, rather than the police, was authorized to compile reports concerning the administrative offence referenced in Article 318 of the Code of Administrative Offences (breach of the protection order). As a result, the court dismissed the case against I.C., determining that he had not engaged in the administrative offence defined in that article.

#### **v. Fifth Protection Order**

22- On May 5, 2016, T. requested another protection order, citing the criminal sentence from March 23, 2016 (see paragraph 33 below), which led to I.C.'s release from detention. On May 4, 2016, he had come to her apartment while intoxicated, had cut off the electricity, and had assaulted her again, with police present during the incident.

She expressed her ongoing fear and sense of vulnerability. The police corroborated her account, and the child protection officer urged the court to approve her request.

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

24- According to the Government, T. received visits from a social welfare officer on May 19 and July 18, 2016, who checked on her situation and informed her of her rights. During the last visit, the social workers offered her a spot in a shelter, which she declined.

#### **vi. Refusal of a Request for a Sixth Protection Order**

25- On 5 August 2016, T. requested an extension of the previous protection order. In addition to citing a history of violence, she mentioned an incident on 23 May 2016, when I.C. unlawfully entered her apartment and took her belongings, violating the protection order, which led the police to initiate criminal proceedings against him for theft. A police officer informed the court about I.C.'s aggressive behavior and urged the court to approve the request.

26- On 8 August 2016 the Buiucani District Court rejected T.'s request due to lack of evidence that he had committed domestic violence after 6 May 2016 or had failed to comply with the protection order of 6 May 2016.

#### **vii. Final Protection Order**

27- On 26 August 2016, T. requested a new protection order, claiming that during the night of 22 to 23 August 2016, she experienced both physical and psychological violence, leading to her falling from the fifth floor. Specifically, she stated that I.C. confronted her at the entrance of her apartment building, where he physically assaulted and verbally abused her; she attempted to escape, but he was able to follow her inside her apartment, where he isolated her in the kitchen and assaulted her again. As a result of these incidents, she fell from the fifth floor and sustained numerous traumatic injuries. She argued that while hospitalized, she felt particularly vulnerable

due to visits from both I.C. and his mother, who threatened her. Her lawyer explained that I.C. had accessed the apartment because the children permitted him entry.

28-I.C. appeared at the hearing and contended that a protection order was unnecessary concerning the children, as he had previously taken care of them. He claimed that conflicts with T. began after her return from Italy, during which she started abusing alcohol and attempted suicide by cutting her arms or taking pills. He asserted that on 23 August 2016, a neighbor, G.S., had contacted him to report that T., inebriated, was lying at the entrance to her apartment building; he brought her back into her apartment and into the kitchen. While he was talking to his son, the neighbor G.S. came in and informed him that T. had jumped from the window.

29-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."

#### **ix. Criminal Proceedings in Moldovan Courts**

30-Following T.'s report on 14 November 2014, the Buiucani prosecutor ordered the start of criminal proceedings against I.C. on 12 December 2014 for domestic violence, citing both physical and psychological abuse, particularly regarding an incident that took place on 15 September 2014.

31- On 6 January 2015, the Buiucani police began criminal proceedings against I.C. for wilfully failing to comply with final court ruling (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.

32- On 22 May 2015, the Buiucani prosecutor initiated new criminal proceedings against I.C. for domestic violence, referencing incidents that occurred on 2 and 17 April 2015. The three criminal cases were consolidated and presented to the court. During the legal process, I.C. was imprisoned from 26 November to 25 December 2015 and subsequently placed under house arrest from 25 December 2015 to 23 March 2016.

33- In March 2016, I.C. was found guilty of three counts of domestic violence and sentenced to two years in prison. However, the sentence was suspended, and he was placed on probation for three years. The court ordered I.C. to undergo a special treatment or counselling program to reduce his violent behaviours. I.C. was released from house arrest, and the count concerning deliberate failure to comply with a court judgment was discontinued. The court noted that the indictment only concerned incidents of 15 September 2014 and 2 and 17 April 2015 and suspended the sentence on probation due to the lesser seriousness of the offense and I.C.'s involvement in caring for two underage children.

34- T. and her lawyer appealed against the first-instance court's judgment, contesting the leniency of the criminal sentence for domestic violence charges and the incorrect assessment of evidence. I.C. admitted guilt and argued that a custodial sentence would serve the purpose of punishing and preventing new offenses. I.C. also appealed, arguing that he no longer lived with T. after the divorce and does not qualify as a "family member."

35- The prosecutor sought to requalify I.C.'s domestic violence acts as an administrative offense due to lenient criminal law and time-barred proceedings. The

Chişinău Court of Appeal upheld both the prosecutor's and T.'s appeals but rejected I.C.'s appeal. The court found I.C. guilty of domestic violence and sentenced him to two years in prison. The court duplicated that I.C. qualified as a "family member" under Article 133/1 of the Criminal Code.

36- The appellant appealed the ruling, arguing that the cessation of criminal proceedings and dismissal of civil claims were incorrect. He emphasized that the authorities' inaction, including failing to prosecute I.C., led to continued violence and violations of protection orders. He noted the absence of oversight on I.C.'s counseling participation, breaching state obligations under Article 3 of the Convention, resulting in further violence. As an indirect victim, he claimed compensation rights. The prosecutor and defense also appealed, leading to the Supreme Court's acceptance of all appeals and a mandated case review.

37- On 8 November 2017, the Chişinău Court of Appeal reviewed the appeals, resulting in a new judgment that ended criminal proceedings for breaching protection orders due to time-bar limitations. Charges of domestic violence were reclassified as an administrative offence and similarly discontinued for injuries deemed insignificant and time barred. The court highlighted legislative changes regarding domestic violence, stating I.C.'s actions did not meet new criteria post-divorce. Criminal liability for breaching protection orders wasn't applicable as the necessary conditions weren't met. The applicant was awarded MDL 50,000 for non-pecuniary damages, reflecting the victim's suffering and circumstances.

38- The applicant appealed on legal grounds, highlighting unconsidered psychological violence and excessive proceedings leading to I.C.'s impunity, while arguing for disproportionately low compensation. The Supreme Court upheld the appellate decision.

39- On 8 September 2016, police began criminal proceedings against I.C. for incitement to suicide. However, on 9 July 2018, the prosecutor closed the case due to insufficient evidence. Key witness statements indicated that T. was alone before her fall, had no memory of it, and medical data revealed alcohol in her system, along with evidence of domestic violence.

## **C. Claims of the Parties**

### **i. Claims of the Applicant**

1- The applicant submitted that the police had known about T.'s husband's violent behaviour at least since November 2013. However I.C. had never been properly punished for his violent behaviour, which drove T. to suicide. The applicant also stated that T.'s son had also committed suicide in the meantime.

2- The applicant claimed that T. had not been provided with sufficient support and protection. Refusal of the protection order on 8 August 2016 especially failed to carry out a proper risk assessment of lethality and of the possible reoccurrence of violence.

3- 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.

4- The applicant highlighted several deficiencies in the application of domestic law to T.'s situation, particularly the inconsistent interpretation of domestic violence as solely acts committed by former spouses. He criticized the legal standard that required sustained injuries to be classified as a criminal offence only if they were deemed "minor." This standard, he argued, overlooked the context of a history of domestic violence marked by recurring minor injuries and significant psychological harm, which ultimately contributed to the tragic suicides of T. and her son.

5- The applicant highlighted that the authorities were obligated to initiate and conduct a thorough investigation regarding the discontinuation of the criminal inquiry into T.'s suicide, specifically noting the absence of evidence that I.C. had encouraged T. to take that step.

### **ii. Claims of the Government**



1- The Government argued that Article 2 of the Convention does not impose an obligation to take operational measures against every potential life risk, as such a requirement would be impractical.

2- Authorities claimed they were unaware of I.C.'s violent behavior towards T. before the protection order was issued on 26 September 2014. Upon being informed, the authorities took reasonable protective measures, including issuing multiple protection orders and monitoring the situation through police and social services. Social services offered T. a placement in a shelter, which she declined.

3- The Government asserted that authorities reacted promptly to complaints and violations of protection orders. I.C. faced administrative and criminal charges related to domestic violence and non-compliance with a court ruling. During criminal proceedings, I.C. was initially imprisoned and later placed under house arrest. The Government emphasized their diligence in addressing domestic violence concerns. Risk assessments indicated no significant or immediate lethality risk for T.

4- The Government stated that the proceedings regarding I.C. adhered to the legal standards in place at the time. They highlighted their commitment to addressing domestic violence comprehensively. The ratification of the Istanbul Convention on 1 May 2022 was noted as a significant advancement in enhancing the legal framework.

5- The Government highlighted the prosecutor's decision on 9 July 2018 to terminate the incitement to suicide investigation due to lack of evidence of an offence. The investigation was thorough, relying on four witnesses who indicated that T. had not faced physical assault and was intoxicated on the night of 22 August 2016. The prosecutor deemed the fall potentially accidental based on this testimony. The Government interpreted the applicant's lack of appeal as acceptance of the prosecutor's findings. It was noted that any outcome from such an appeal could not be predicted at this stage.

6- The Government contended that the domestic authorities had met their positive obligations by thoroughly investigating the case and adequately responding to T's complaints and requests.

#### **D. Matters to Address in the Judgment**

The Court shall decide on the below-mentioned questions and address these matters properly in the judgment:

- 1- Whether or not I.C. had been properly punished for his violent behaviours,
- 2- Whether or not T. had been provided with sufficient support and protection,
- 3- Whether or not the the court failed to carry out a proper risk assessment of lethality and of the possible reoccurrence of violence by the refusal of the protection order on 8 August 2016,
- 4- Whether or not positive obligations under Article 2 of the Convention require the authorities to take operational measures in every circumstance of alleged risk to life to prevent that risk from materialising,
- 5- Whether or not T.'s death was investigated properly,
- 6- Whether or not Article 2 of the European Convention on Human Rights had been violated,
- 7- Whether or not there has been a violation of substantive positive obligations under Article 3,
- 8- Whether or not the term 'immediate danger' which specified in The Explanatory Report to Article 52 of the Istanbul Convention was neglected by the refusal of the protection order on 8 August 2016,
- 9- Whether or not the authorities fulfilled positive obligations in the context of suicide risk,
- 10- Whether or not the numerous protection orders and criminal investigations had proved ineffective in protecting T.'s life,

11- Whether or not there had been flaws in the manner in which the domestic law had been applied to T.'s case,

12- Whether or not I.C. can be considered as a family member after their divorce?

## **V. APPLICABLE LAW**

### **A. European Convention on Human Rights**

#### **ARTICLE 2**

##### ***Right to life***

*1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*

*2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:*

*(a) in defence of any person from unlawful violence;*

*(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*

*(c) in action lawfully taken for the purpose of quelling a riot or insurrection.*

#### **ARTICLE 3**

##### **Prohibition of torture**

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

## ARTICLE 6

### Right to a fair trial

*1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

*2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law*

*3. Everyone charged with a criminal offence has the following minimum rights:*

*(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*

*(b) to have adequate time and facilities for the preparation of his defence;*

*(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*

*(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

*(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

## ARTICLE 8

### Right to respect for private and family life

*1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

## **ARTICLE 19**

### **Establishment of the Court**

*To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as “the Court”. It shall function on a permanent basis.*

## **ARTICLE 41**

### **Just satisfaction**

*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*

## **B. Relevant International Material**

a. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

### **Article 1**

*For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or*

*purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

## **Article 2**

*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

*(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;*

*(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*

*(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*

*(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*

*(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*

*(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*



*(g) To repeal all national penal provisions which constitute discrimination against women.*

### **Article 3**

*States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.*

### **Article 4**

*1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.*

*2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.*

### **Article 5**

*States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*

*(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.*

#### **Article 6**

*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.*

#### **Article 7**

*States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:*

*(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;*

*(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;*

*(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.*

#### **Article 8**

*States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.*

#### **Article 9**

*1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.*

*2. States Parties shall grant women equal rights with men with respect to the nationality of their children.*

### **Article 10**

*States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:*

*(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;*

*(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;*

*(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;*

*(d) The same opportunities to benefit from scholarships and other study grants;*

*(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;*

*(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;*

*(g) The same Opportunities to participate actively in sports and physical education;*

*(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.*

## **Article 11**

*1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

*(a) The right to work as an inalienable right of all human beings;*

*(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;*

*(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;*

*(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;*

*(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;*

*(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*

*2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*

*(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*

*(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*

*(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*

*(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.*

*3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.*

## **Article 12**

*1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.*

*2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.*

### **Article 13**

*States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

*(a) The right to family benefits;*

*(b) The right to bank loans, mortgages and other forms of financial credit;*

*(c) The right to participate in recreational activities, sports and all aspects of cultural life.*

### **Article 14**

*1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.*

*2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:*



- (a) To participate in the elaboration and implementation of development planning at all levels;*
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;*
- (c) To benefit directly from social security programmes;*
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;*
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;*
- (f) To participate in all community activities;*
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;*
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.*

## **Article 15**

- 1. States Parties shall accord to women equality with men before the law.*

*2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.*

*3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.*

*4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.*

#### **Article 16**

*1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*

*(a) The same right to enter into marriage;*

*(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*

*(c) The same rights and responsibilities during marriage and at its dissolution;*

*(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;*

*(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*

*(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;*

*(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;*

*(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.*

*2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.*

## **Article 17**

*1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.*

*2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.*

*3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.*

*4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.*

*5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.*

*6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.*

*7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.*

*8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.*

*9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.*

#### **Article 18**

*1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:*

*(a) Within one year after the entry into force for the State concerned;*

*(b) Thereafter at least every four years and further whenever the Committee so requests.*

*2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.*

#### **Article 19**

*1. The Committee shall adopt its own rules of procedure.*

*2. The Committee shall elect its officers for a term of two years.*

#### **Article 20**

*1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.*

*2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (amendment, status of ratification)*

#### **Article 21**

*1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.*

*2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.*

#### **Article 22**

*The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports*

#### **Article 23**

*Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:*

*(a) In the legislation of a State Party; or*

*(b) In any other international convention, treaty or agreement in force for that State.*

#### **Article 24**

*States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.*

#### **Article 25**

*1. The present Convention shall be open for signature by all States.*

*2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.*

*3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.*

*4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.*

#### **Article 26**

*1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.*



*2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.*

#### **Article 27**

*1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.*

*2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.*

#### **Article 28**

*1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.*

*2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.*

*3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.*

#### **Article 29**

*1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of*

*them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.*

*2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.*

*3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.*

**b. Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)**

***Article 18 – General obligations***

*1 Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.*

*2 Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.*

*3 Parties shall ensure that measures taken pursuant to this chapter shall: – be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim; – be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social*

*environment; – aim at avoiding secondary victimisation; – aim at the empowerment and economic independence of women victims of violence; – allow, where appropriate, for a range of protection and support services to be located on the same premises; – address the specific needs of vulnerable persons, including child victims, and be made available to them.*

*4 The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.*

*5 Parties shall take the appropriate measures to provide consular and other protection and support to their nationals and other victims entitled to such protection in accordance with their obligations under international law.*

#### **Article 46 – Aggravating circumstances**

*Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:*

*a the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;*

*b the offence, or related offences, were committed repeatedly;*

*c the offence was committed against a person made vulnerable by particular circumstances;*

*d the offence was committed against or in the presence of a child;*

*e the offence was committed by two or more people acting together;*

*f the offence was preceded or accompanied by extreme levels of violence;*

*g the offence was committed with the use or threat of a weapon;*

*h the offence resulted in severe physical or psychological harm for the victim;*

*i the perpetrator had previously been convicted of offences of a similar nature.*

#### **Article 49 – General obligations**

*1 Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.*

*2 Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.*

#### **Article 51 – Risk assessment and risk management**

*1 Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide coordinated safety and support.*

*2 Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.*

## ***Article 52 – Emergency barring orders***

*Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.*

## ***Article 56 – Measures of protection***

*1 Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:*

*a providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;*

*b ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;*

*c informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;*

*d enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;*

*e providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;*

*f ensuring that measures may be adopted to protect the privacy and the image of the victim;*

*g ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;*

*h providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;*

*i enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.*

*2 A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.*

## **C. Domestic Material**

### **a. Moldovan Criminal Code**

#### **Article 134**

## ***Kinship***

*(1) Kinship is the relation based on the descent of one person from another, or on the fact that several persons have one common relative on the ascending side. In the first case, kinship is direct while in the second case it is collateral.*

*(2) The degree of relationship shall be determined by the number of births.*

*(3) Relatives of a spouse are relatives-in-law of the other spouse. The lines and degrees of inlaw relationships are similar to relationship lines and degrees.*

*(4) Close relatives are the parents, children, adoptive parents, adopted children, brothers, sisters, grandparents, and their grandchildren.*

## ***Article 150.***

### ***Inciting Suicide***

*(1) Inciting suicide or an attempt at suicide through systematic persecution, slander, insults, or the humiliation of the victim's dignity by the guilty person shall be punished by imprisonment for up to 4 years.*

*(2) Inciting suicide or an attempt at suicide:*

*(...)*

*b) of a juvenile;*

*c) of a person in a position of material or some other form of dependence on the guilty person;*

*d) by cruel behavior;*

*(...)*



*shall be punished by imprisonment for 2 to 6 years.*

**Article 201/1**

*[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.*

*(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.*

**Article 320**

***Deliberate Non-Execution of a Court Decision***

*(1) The deliberate non-execution or the evasion from execution of a court decision shall be punished by a fine of up to 300 conventional units or by community service for 150 to 200 hours or by imprisonment for up to 2 years.*

*(2) The deliberate non-execution of a court decision by an official or hindering its execution shall be punished by a fine in the amount of 250 to 500 conventional units or by community service for 180 to 240 hours or by imprisonment for up to 3 years, in all cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years.*

## **b. Law no. 45 of 1 March 2007 on Preventing and Combating Domestic Violence**

### **Article 2**

#### **Main Notions**

*Family violence – acts of physical, sexual, psychological, spiritual or economic violence, with the exception of actions of self-defense or defense of another person, including the threat of such acts, committed by a family member against another member of the same family, through which material or moral damage was caused to the victim;*

*Physical violence - intentional injury to bodily integrity or health by hitting, biting, hitting, pulling hair, stabbing, cutting, burning, strangling, biting, in any form and of any intensity, by poisoning, intoxication, other actions with a similar effect ;*

*Psychological violence – causing mental suffering and/or tension, imposing will or control, intimidation, including through the use of information technology and/or electronic communications, manifested by acts of: swearing; insult; mockery; nickname; blackmail; demonstrative destruction of objects; involvement in personal life; jealousy; solitary confinement, including in the family home; isolation from friends, community; prohibition of contacting other family members, including creating impediments to the meeting of parents and children; deprivation of access to information; banning, creating impediments or controlling access to social networks; prohibition and/or creation of impediments in professional achievement or following the study program/professional training program; threat of death or bodily harm; threat of spreading, without consent, information about intimate, private and/or family life; persecution; deprivation of identity documents; ostentatious display of weapons or hitting of domestic animals; other acts with similar effect;*

*Economic violence - deprivation of economic means, including lack of primary means of existence, such as food, medicine, basic necessities; abuse of various situations of superiority to steal the person's assets; prohibition of the right to possess, use and dispose of common goods; unfair control over common goods and resources; refusal to support the family; imposition of heavy and harmful work to the detriment of health, including of a minor family member; other actions with similar effect;*

*Violence against women – act/acts of gender-based violence, which cause or may cause physical, sexual or psychological harm or suffering to the woman/women, including the threat*

*of such acts, coercion or arbitrary deprivation of liberty, committed in the public or private sphere;*

*Femicide - act of violence against women, including girls, which involves the death of the victim, as a result of the crime of intentional homicide or the crime of serious intentional injury to bodily integrity or health, or the crime of domestic violence, or the victim's suicide, as a result of determining or facilitating it or as a result of family violence, committed for reasons of prejudice based on gender;*

*(...)*

*Protection order - legal document by which the court applies protection measures to the victim;*

*Emergency restraining order – administrative act issued by the police, through which protective measures are applied to ensure the immediate removal of the aggressor from the home of the family subject to violence and the establishment of prohibitions provided by law, in order to prevent the repetition/commitment of acts of violence, guaranteeing thus safety of the victim and other family members in their home and outside it.*

### **Article 3**

#### ***Subjects of violence against women and domestic violence***

*(...)*

*(2) Family members, in the sense of this law, are:*

*a) in the condition of cohabitation: persons in marriage, in divorce, under guardianship and conservatorship, in respect of whom a judicial protection measure has been instituted, their relatives, relatives, spouses of relatives, persons in relationships similar to those between spouses (cohabitation ) or between parents and children;*

*b) in the condition of living separately: persons who are married, divorced, their relatives, relatives, adopted children, persons under guardianship, in respect of whom a judicial protection measure has been instituted, persons who are or have been in relationships similar to those between spouses (cohabitation).*

## **VI BIBLIOGRAPHY**

### **1. Primary Sources**

#### **a. Domestic Legislations**

- i. American Violence against Women Act (VAWA) Reauthorisation of 2021 H.R.1620 Section 2 Article 8.
- ii. Criminal Code of the Republic of Moldova, Law No 985-XV of 18 April 2002  
[https://sherloc.unodc.org/cld/uploads/res/document/criminal-code-of-the-republic-of-moldova\\_html/Republic\\_of\\_Moldova\\_Criminal\\_Code.pdf](https://sherloc.unodc.org/cld/uploads/res/document/criminal-code-of-the-republic-of-moldova_html/Republic_of_Moldova_Criminal_Code.pdf).
- iii. German Criminal Code (Strafgesetzbuch – StGB) (13 November 1998), Federal Law Gazette I, p. 3322.
- iv. Prince Edward Island Department of Health and Social Services, Woman Abuse Protocols (2000).
- v. New York Penal Law, § 120.00 (McKinney 2024).
- vi. Turkish Law No. 6284 to Protect Family and Prevent Violence against Women (8 March 2012) Article 2 (b).

#### **b. International Conventions**

- i. International Covenant on Economic, Social and Cultural Rights.
- ii. Optional Protocol to the International Covenant on Civil and Political Rights (1966).
- iii. Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms.
- iv. Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (2011) CETS no. 210.
- v. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

## 2. Secondary Sources

### a. Articles

- i. AE Adams, CM Sullivan, D Bybee, and MR Greeson, 'Development of the scale of economic abuse', (2008) 14, *Violence against Women*, No 5, pp. 563–588.
- ii. Anne L. Ganley, 'Understanding Domestic Violence' (1995) *Improving the health care response to domestic violence: A resource manual for health care providers* p.15.
- iii. A. Bozhinovski, (2015). The influence of Magna Carta Libertatum in the development of the principle of rule of law. *Seeu Review*, 11(1), 175-182.
- iv. H. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals – Text and Materials*, 2nd ed. (Oxford: OUP, 2000), 275.
- v. D. J. Harris, M. O'boyle, E. Bates, & C. Buckley, *Law of the European convention on human rights* (2023) Oxford university press.
- vi. JL Postmus, SB Plummer, and AM Stylianou, 'Measuring economic abuse in the lives of survivors: Revising the Scale of Economic Abuse', (2016), 22, *Violence Against Women*, No 6, pp. 692–703.
- vii. LC Casique and AR Furegato, 'Violence Against Women: Theoretical Reflections' *Revista latino-americana de enfermagem*, p. 950.
- viii. Lippincott Williams & Wilkins *Stedman's Medical Dictionary* (28th Edition, 2021)
- ix. Moriarty, B., & Massa, E. (Eds.). (2012). *Human rights law*. Oxford University Press, USA.
- x. N Sharp-Jeffs, 'Understanding the economics of abuse: an assessment of the economic abuse definition within the Domestic Abuse Bill', (2021), 5, *Journal of Gender-based Violence*, No 1, pp. 163–173.
- xi. OI Fawole, 'ECONOMIC VIOLENCE TO WOMEN AND GIRLS: Is It Receiving the Necessary Attention?' (2008), 9, *Trauma, Violence & Abuse* p.167.
- xii. Paul McGorry and Marilyn McMahon, 'Causing someone else to commit suicide: incitement or manslaughter?' (2019), 44(I), *Alternative Law Journal* p. 23.

- xiii. Schabas, W. A. (2015). The European convention on human rights: a commentary. Oxford University Press.
- xiv. Ssenyonjo, M. (2011). Reflections on state obligations with respect to economic, social and cultural rights in international human rights law. The International Journal of Human Rights, 15(6), 969-1012.
- xv. Van Dijk, P., & Van Hoof, G. J. (2023). Theory and practice of the European Convention on Human Rights. Martinus Nijhoff Publishers.
- xvi. Wynter AE. 'La violencia desde una perspectiva de Género' (2001) Revista de Enfermeras p.23.
- xvii. The ECHR in 50 questions 2021.
- xviii. Guide on Article 2 of the European Convention on Human Rights.

#### **b. UN Documents**

- i. 'United Nations Children's Fund (UNICEF) Annual Report of 2000' (FMOH/UNICEF)2000 <https://www.unicef.org/media/93356/file/UNICEF-annual-report-2000.pdf> accessed 16 March 2025.
- ii. CESCR, Statement: An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant, UN Doc. E/C.12/2007/1 (10 May 2007).
- iii. Council of Europe, 'Questions and Answers about ECHR' (2015) .

#### **c. Blogs and Web Pages**

- i. 'What is Gender-based Violence' (European Commission) [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en).
- ii. 'Physical Violence' (Council of Europe) <https://www.coe.int/en/web/gender-matters/physical-violence>.

- iii. 'Psychological Violence' (European Institution for Gender Equality, 2016) <https://eige.europa.eu/publications-resources/thesaurus/terms/1241>.
- iv. 'Suicide Key Facts' (World Health Organisation) <https://www.who.int/news-room/fact-sheets/detail/suicide>.
- v. 'Suicide' (World Health Organisation Eastern Mediterranean Region) <https://www.emro.who.int/health-topics/suicide/feed/atom.html>.
- vi. 'Understanding Economic Violence Against Women' (European Institution for Gender Equality) [https://eige.europa.eu/sites/default/files/documents/EIGE\\_Factsheet\\_EconomicViolence.pdf](https://eige.europa.eu/sites/default/files/documents/EIGE_Factsheet_EconomicViolence.pdf).
- vii. 'What is Domestic Abuse?' (United Nations) <https://www.un.org/en/coronavirus/what-is-domestic-abuse>.
- viii. Council of Europe, Russia ceases to be party to the European Convention on Human Rights <https://www.coe.int/en/web/portal/-/russia-ceases-to-be-party-to-the-european-convention-on-human-rights>.
- ix. Election of Judges to the European Court of Human Rights [https://website-pace.net/en\\_GB/web/as-cdh/main](https://website-pace.net/en_GB/web/as-cdh/main).
- x. European Court of Human Rights, Court in Brief [https://www.echr.coe.int/documents/d/echr/Court\\_in\\_brief\\_ENG](https://www.echr.coe.int/documents/d/echr/Court_in_brief_ENG).
- xi. European Court of Human Rights, International Justice Resource Center <https://ijrcenter.org/european-court-of-human-rights/>.
- xii. What are human rights? (United Nations) <https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more>.
- xiii. 'Types of Gender Based Violence' (Council of Europe) <https://www.coe.int/en/web/gender-matters/types-of-gender-based-violence>.