

VOLODINA

Applicant

-and-

RUSSIA

Respondent

WRITTEN SUBMISSIONS OF THE EQUAL RIGHTS TRUST

1. By letter dated 13 June 2018, the European Court of Human Rights (“the Court”) granted the Equal Rights Trust (“the Trust”) leave to make written submissions in the above proceedings. The Trust is an independent international organisation that works to combat discrimination and advance equality worldwide. The Trust has considerable expertise in the area of equality and non-discrimination in Russia, including recently publishing a Best Practice Guide for Lawyers on the rights to equality and non-discrimination in Russia, which includes discussion of gender-based violence in Russia.¹ The Trust also has a particular focus on researching the global phenomenon of discriminatory torture and ill-treatment.² The Trust is particularly cognisant in international and regional law and best practice on dealing with domestic violence as a form of discriminatory ill-treatment and was a Third Party Intervener before this honourable Court in the case of *Eremia and Others v Moldova* (No. 3564/11).
2. These proceedings concern a state’s response to complaints of persistent and serious gender-based violence. This violence was perpetrated by a private actor – the applicant’s ex-partner – and was reported to the police on a number of occasions. The applicant claims that the state authorities failed to protect her against such violence and that the police refused to institute criminal proceedings in connection with the allegations of abuse and battery against the perpetrator. The applicant also claims that the existing legal framework in Russia is deficient due to the absence of legal provisions dealing with domestic violence, including the absence of protective measures such as restraining orders. The Trust does not comment on the facts of the case, but seeks to make submissions which are relevant to the circumstances.
3. It is the Trust’s submission that it is essential for the allegations to be examined under Article 14 in conjunction with Article 3, rather than under Article 3 alone. Specifically, it is critical that Article 14 of the Convention be examined in cases of gender-based violence, which includes cases of domestic violence, given that discrimination is a fundamental aspect of such violence, and its acknowledgment is key to properly understanding the causes, consequences, solutions and impact of such violence. Consequently, the discriminatory nature of the violation gives rise to specific positive obligations of prevention, protection, investigation, prosecution and reparation.
4. It is the Trust’s submission that the present case provides the Court with the opportunity to further develop its jurisprudence on the positive obligations of the state in respect of domestic violence, taking

¹ Equal Rights Trust, *Equality and Non-Discrimination in Russia: Best Practice Guide for Lawyers*, March 2018, available at: http://www.equalrightstrust.org/ertdocumentbank/Russia%20BPG_EN%20FINAL.pdf.

² Equal Rights Trust, *Shouting Through the Walls: Discriminatory Torture and Ill-Treatment, Case Studies from Jordan*, March 2017, available at: http://www.equalrightstrust.org/ertdocumentbank/Jordan%20report_ENG_0.pdf.

into account recent developments in international best practice. In determining the extent of the state's obligations under the Convention, the Court has consistently stated that:

*[I]n interpreting the provisions of the Convention and the scope of the State's obligations in specific cases (...) the Court will also look for any consensus and common values emerging from the practices of European States and specialised international instruments (...) as well as giving heed to the evolution of norms and principles in international law (...)*³

5. Accordingly, in these submissions, the Trust will draw upon relevant specialised international instruments and best practice, as well as the Court's own relevant jurisprudence. The Trust submits that the following specialised instruments are of particular value:
- a. The Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"), which came into force on 3 September 1981 and has been adopted by 189 states (including by the Russian Federation in 1981), given its status as a specialised instrument in relation to the elimination of discrimination against women. The CEDAW Committee's 2017 General Recommendation No.35 on gender-based violence against women⁴ and the 2017 case of *O.G. v Russian Federation*⁵ – which concerns domestic violence in Russia – are of particular relevance to the present application.
 - b. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), which came into force on 26 June 1987 and has been adopted by 162 states (including by the Russian Federation in 1987), given its status as a specialised instrument in relation to the prevention of torture and ill-treatment.
 - c. Formal reports of the UN Special Rapporteur on violence against women, its causes and consequences, given the Special Rapporteur's expert status and mandate under the Special Procedures of the Human Rights Council to examine questions relevant to violence against women.
 - d. Formal reports of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, given the Special Rapporteur's expert status and mandate under the Special Procedures of the Human Rights Council to examine questions relevant to torture and other cruel, inhuman or degrading treatment or punishment.
 - e. The Council of Europe Convention on preventing and combating violence against women and domestic violence (the "Istanbul Convention"⁶) and its accompanying Explanatory Report.⁷ Whilst the Russian Federation is not a party to the Istanbul Convention, the Court has relied upon the provisions of this Convention in a number of cases, including invoking the Convention's definition of violence against women⁸ and referencing the scope of the state's obligations to investigate and prosecute gender-based violence as set out in Article 49 of the Istanbul Convention.⁹ The authority of the Istanbul Convention has been recognised by the CEDAW Committee, which applied the Convention's definition of domestic violence in *O.G. v Russian Federation*,¹⁰ and the Special Rapporteur on violence against women has also noted that the Istanbul Convention supplements the CEDAW and the jurisprudence of other regional mechanisms.¹¹

³ See, for example, *Opuz v Turkey* (No. 33401/02), § 164.

⁴ CEDAW Committee, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35 ("CEDAW Committee General Recommendation No. 35").

⁵ *O.G. v Russian Federation* (Communication No. 91/2015, 20 November 2017).

⁶ Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series No. 210 ("Istanbul Convention").

⁷ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, CM(2011)49 ("Istanbul Convention Explanatory Report").

⁸ *Bălşan v Romania* (No. 49645/09), § 79.

⁹ *Talpis v Italy* (No. 41237/14), § 129.

¹⁰ *O.G. v Russian Federation* (Communication No. 91/2015, 20 November 2017), §§ 5.8 and 7.4.

¹¹ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/HRC/2017, 2017 ("Report of the Special Rapporteur on violence against women 2017"), § 30.

6. It is our submission that it is through taking into account the above instruments that the significant international consensus regarding the state's obligations in respect of domestic violence – demonstrated in particular by the CEDAW Committee's General Recommendation No. 35 – becomes clear. It is our further submission that numerous elements of recent consensus reached through these instruments, as analysed in this submission, are relevant to the interpretation of the state's positive obligations under the Convention. The Trust accordingly refers primarily to these instruments, in addition to other indicators of the evolution of norms and principles, throughout its submission.

Importance of Consideration under Article 14

7. The Court has held that, “[w]here a substantive Article of the Convention has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14”.¹² However, the Court will consider Article 14 if there is an important legal purpose to determining whether the applicant has suffered discrimination, or if inequality of treatment is a fundamental aspect of this case and so Article 14 should be considered.¹³
8. The Court has previously recognised that domestic violence is a form of gender-based violence, and has considered state failures in respect of cases of domestic violence to violate Article 14 in conjunction with Article 3.¹⁴ This recognition is important. As the Trust has previously submitted to the Court, including in the case of *Eremia v Moldova*, it is crucial for the Court to examine domestic violence cases under Article 14 in conjunction with Article 3, as an acknowledgment of the discriminatory nature of the alleged breach is key to a proper understanding of its causes, consequences, solutions or impact. Indeed, it is the Trust's submission that allegations of domestic violence should *always* be examined under Article 14 in conjunction with Article 3, as discrimination is a fundamental aspect of any such case.
9. It is widely accepted, both by this Court and elsewhere, that gender-based violence – which includes domestic violence – “is a form of *discrimination* against women”:¹⁵ gender-based violence “impairs or nullifies the enjoyment by women of human rights and fundamental freedoms”, and thus falls within the prohibition of discrimination in Article 1 CEDAW.¹⁶ In its recent General Recommendation No.35, the CEDAW Committee noted that the prohibition of gender-based violence has evolved into a principle of customary international law.¹⁷ It is also now well-established under international law that gender-based violence may amount to torture or cruel, inhuman or degrading treatment, including in cases of domestic violence, and that a gender-sensitive approach is required to understand the level of pain and suffering experienced by women.¹⁸ In our submission, this includes a recognition that domestic violence impacts disproportionately and differently upon women.

¹² *Chassagnou and others v France* (Nos. 25088/94, 28331/95 and 28443/95), § 89.

¹³ *Dudgeon v United Kingdom* (No. 7525/76), § 49, *Chassagnou and Others v France (Ibid)*, *Aziz v Cyprus* (No. 69949/01).

¹⁴ See, for example, *Opuz v Turkey* (No. 33401/02), § 200; *Bălşan v Romania* (No. 49645/09), § 88.

¹⁵ *Opuz v Turkey* (No. 33401/02), § 200 (emphasis added); *Bălşan v Romania* (No. 49645/09), § 88; see also CEDAW Committee, *General recommendation No. 19: Violence against women*, 1992 (“CEDAW Committee General Recommendation No.19”), §§ 1, 6-7; CEDAW Committee, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28 (“CEDAW Committee General Recommendation No. 28”), § 19; CEDAW Committee General Recommendation No. 35, § 1; *O.G. v Russian Federation* (see above, note 5), § 7.3; Report of the Special Rapporteur on torture 2016, § 55; Istanbul Convention, Article 3(a); Istanbul Convention Explanatory Report, § 1.

¹⁶ CEDAW Committee General Recommendation No. 19, § 6.

¹⁷ CEDAW Committee General Recommendation No. 35, § 2.

¹⁸ See, for example, CEDAW Committee General Recommendation No. 35, §§ 16 and 17; Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 2016 (“Report of the Special Rapporteur on torture 2016”), §§ 8 and 11; Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/7/3, 2008 (“Report of the Special Rapporteur on torture 2008”), § 36; Human Rights Committee, *General Comment No. 28 on article 3: the equality of rights between men and women*, UN Doc. CCPR/C/21/Rev.1/Add.10.

10. The Court has recognised that a failure to protect women from domestic violence may engage the state's obligations under Article 14 of the Convention, on the basis that such a failure "breaches [women's] right to equal protection of the law",¹⁹ and that states which fail to act diligently in tackling gender-based violence may be considered to be tacitly condoning such violence.²⁰ It is submitted that the discriminatory nature of gender-based violence means that it requires a particular response and thus gives rise to specific positive obligations on the state. The CEDAW Committee has emphasised that states are required to take positive measures to eliminate all forms of violence against women and may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.²¹
11. In light of the above, the Trust respectfully submits that it is essential that the examination of the state's positive obligations with regard to domestic violence proceeds under Article 14, rather than under Article 3 alone. This is necessary in order to recognise the true discriminatory nature of the violence and the particular measures of prevention, protection, investigation, prosecution and reparation which are required to address it. It is also essential in order to alert the state to the need to implement effective gender-sensitive and gender-specific measures that address the particular needs of victims of gender-based violence in reaction to any finding that it has failed to comply with its obligations.

Positive obligations under Article 14, in conjunction with Article 3

12. The remainder of these submissions focus on the state's positive obligations of prevention, protection, investigation, prosecution and reparation under Article 14.

(a) Duty to prevent

13. The Court has recognised that states have a duty to prevent ill-treatment by private individuals, such as gender-based violence, including through establishing a legislative framework aimed at preventing such ill-treatment.²² The UN Special Rapporteur on violence against women has noted that the prevention of gender-based violence requires the "transformation and adoption of comprehensive, integrated and coordinated policies and laws based on international and regional human rights law commitments",²³ with the CEDAW Committee also noting that states must adopt and implement "diverse measures" to ensure that they have laws and institutions in place to tackle such violence.²⁴ The CEDAW Committee has emphasised that the obligation to eliminate gender-based violence against women is an obligation of an "immediate nature",²⁵ and encompasses all areas of state action including "at the constitutional level, the design of public policies, programmes, institutional frameworks and monitoring mechanisms".²⁶
14. It is well-established that the state must enact an effective and comprehensive system of criminal and civil law to prevent gender-based violence, including through: adopting specific legislation which prohibits all forms of gender-based violence against women and girls;²⁷ ensuring that all forms of

¹⁹ *Opuz v Turkey* (No. 33401/02), § 191; *Eremia v Moldova* (No. 3564/11), § 85; *T.M. and C.M. v Moldova* (No. 26608/11), § 57; *Bălşan v Romania* (No. 49645/09), § 78.

²⁰ See, for example, *Eremia v Moldova* (No. 3564/11), § 89. See also CEDAW Committee General Recommendation No. 35, § 24(b); Report of the Special Rapporteur on torture 2016, § 56.

²¹ CEDAW Committee General Recommendation No. 19, §§ 4 and 9; CEDAW Committee General Recommendation No. 28, § 17; *V.K. v Bulgaria* (Communication No. 20/2008, 25 July 2011), § 9.3; *Jallow v Bulgaria* (Communication No. 23/2011, 23 July 2012), § 8.4; *Goekce v Austria* (Communication No. 6/2005, 6 August 2007), § 12.1.1.

²² *Eremia v Moldova* (No. 3564/11), § 32; *Mudric v Moldova* (No. 74839/10), § 47; *T.M. and C.M. v Moldova* (No. 26608/11), § 43; and *Rumor v Italy* (No. 72964/10), § 63.

²³ Report of the Special Rapporteur on violence against women 2017, § 100.

²⁴ CEDAW Committee General Recommendation No. 35, § 24(b).

²⁵ *Ibid.*, § 21.

²⁶ *Ibid.*, § 26.

²⁷ *Ibid.*, § 26(a); Human Rights Committee, *Concluding observations of the Human Rights Committee: Yemen*, CCPR/CO/75/YEM, § 6; Human Rights Committee, *Concluding observations of the Human Rights Committee: Sri Lanka*,

gender-based violence against women are *criminalised*;²⁸ strengthening legal sanctions for gender-based violence; and ensuring that civil remedies are available for victims.²⁹ The legal framework should include provision for obtaining protective measures, such as restraining orders and other measures necessary to combat harassment and retaliation:³⁰ as noted by the UN Special Rapporteur on violence against women, states must enact “a coherent legal framework of aligned laws addressing protection services such as shelters and protection measures”.³¹ This may necessitate making amendments to domestic legislation to ensure, *inter alia*, that the authorities have the power to issue protection orders for all forms of violence; that such orders are easily obtainable and available regardless of the existence of other legal proceedings, and are not dependent on the initiation of a criminal case; that emergency orders are available *ex parte* for immediate protection in case of immediate danger; that other actors – such as family members – have standing to make an application for a protection order; and that breaches of protection orders are criminalised.³²

15. Further, the duty to prevent gender-based violence necessitates the repeal of laws that “support the discriminatory and patriarchal oppression of women”:³³ it has been recognised that discriminatory laws play a role in creating and sustaining the conditions under which women are subjected to gender-based violence,³⁴ and that states “fail in their duty to prevent torture and ill-treatment” where their laws and policies “perpetuate harmful gender stereotypes”.³⁵ As such, the CEDAW Committee has emphasised that states must repeal all laws which are discriminatory against women, including laws which “cause, promote or justify gender-based violence or perpetuate impunity for these acts”.³⁶ This is also required by the Istanbul Convention, which obliges states parties to abolish discriminatory legislation and practices in recognition of the fact that the enjoyment of the right to be free from violence is interconnected with the enjoyment of equality between women and men.³⁷
16. The CEDAW Committee recently considered an individual communication against the Russian Federation brought by an individual victim of domestic violence, who claimed that the state’s failures to address the issue of domestic violence in its legislation, to adequately respond to threats of violence against her, and to promptly examine her numerous complaints violated her rights under Articles 1, 2(b)-(g), 3 and 5(a) of the CEDAW.³⁸ In considering the merits of the communication, the CEDAW Committee assessed Russia’s extant legal framework for compatibility with its obligations under Article 3 of the CEDAW.³⁹ In this regard, the CEDAW Committee noted that the relevant legislation in Russia does not include a definition of domestic violence and that the decriminalisation of battery under Article 116 of the Criminal Code – which had previously been utilised to prosecute domestic violence cases, given the absence of a definition of domestic violence in Russian law – was a step “in the wrong direction and [would] lead to impunity for perpetrators of these acts of domestic violence”.⁴⁰ The CEDAW Committee also noted that it was not sufficient for a victim of domestic violence to have recourse to private prosecution, since private prosecutions place the burden of proof

CCPR/CO/79/LKA, § 20; and Human Rights Committee, *Concluding observations of the Human Rights Committee: Germany*, CCPR/CO/80/DEU, § 14.

²⁸ CEDAW Committee General Recommendation No. 35, § 29(a); Committee of Ministers Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence.

²⁹ CEDAW Committee General Recommendation No. 35, § 29(a).

³⁰ Report of the Special Rapporteur on torture 2016, § 73.

³¹ Report of the Special Rapporteur on violence against women 2017, § 101.

³² *Ibid.*, §§ 85, 89 and 112; see also Istanbul Convention, Articles 52, 53 and 56; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 1994 (“Convention of Belém do Pará”), Article 7(d); *Lenahan (Gonzales) v. United States of America* (Inter-American Commission on Human Rights, Case No. 12/626, 21 July 2011), §§ 163 and 215(4).

³³ Report of the Special Rapporteur on torture 2016, § 69; Convention of Belém do Pará, Article 7(e).

³⁴ Report of the Special Rapporteur on torture 2008, § 29; Istanbul Convention Explanatory Report, § 49.

³⁵ Report of the Special Rapporteur on torture 2008, § 10.

³⁶ CEDAW Committee General Recommendation No. 35, §§ 26(a) and 29(c); see also, for example, *Angela González Carreño v Spain* (Communication No. 47/2012, 16 July 2014), § 9.7; *O.G. v Russian Federation* (see above, note 5), § 7.5.

³⁷ Istanbul Convention, Article 4(2); Istanbul Convention Explanatory Report, § 50.

³⁸ *O.G. v Russian Federation* (see above, note 5).

³⁹ *Ibid.*, §§ 7.1-8.

⁴⁰ *Ibid.*, § 7.7.

on the victim and thus deny the victim access to justice.⁴¹ Having found that the state had violated the individual's rights under Articles 1, 2(b)-(g), 3 and 5(a) of the CEDAW, the CEDAW Committee made a number of recommendations to the Russian Federation, including that the state:

- a. adopt comprehensive legislation to prevent and address violence against women, including domestic violence;
- b. introduce *ex officio* prosecution of domestic violence;
- c. reinstate the criminal prosecution of domestic violence under Article 116 of the Criminal Code; and
- d. renounce private prosecution in cases of domestic violence, on the basis that this "unduly puts the burden of proof entirely on victims of domestic violence".⁴²

These recommendations echo those made by the CEDAW Committee in its concluding observations on the Russian Federation's eighth periodic report,⁴³ and by the Committee against Torture in its concluding observations on the Russian Federation's fifth periodic report, in which it urged the state to define domestic violence in its legislation.⁴⁴

17. It is well-established that the duty to prevent gender-based violence against women also entails an obligation to take other non-legislative measures aimed at eliminating such violence. Firstly, the state is required to adopt measures to tackle the root causes of gender-based violence, including "patriarchal attitudes and stereotypes, inequality in the family and the neglect or denial of women's civil, political, economic, social and cultural rights",⁴⁵ as well as policies which are aimed at eliminating institutional practices or conduct that implicitly condone gender-based violence.⁴⁶ The CEDAW Committee has noted that it is important that such measures are developed with the active participation of key stakeholders, such as women's organisations.⁴⁷ Specifically, it has been recognised that such measures should include the following:

- a. *Training and capacity-building*: the state should provide mandatory and recurrent training on gender-based violence for all relevant professionals who deal with victims and perpetrators of gender-based violence, including the judiciary, legislators, law enforcement officers, lawyers, social workers, forensic medical personnel, and health-care professionals.⁴⁸ In particular, training on gender-based violence should be mainstreamed into the training of police officers in order to eliminate police mistreatment and bias against female victims of violence.⁴⁹
- b. *Education and awareness-raising*: the state should integrate gender-equality into educational curricula, teaching materials and other awareness-raising programmes regarding different manifestations of gender-based violence in order to address and eradicate stereotypes and prejudices which condone or promote gender-based violence against women.⁵⁰
- c. *Data collection and research*: the state should establish a system to collect, analyse and publish disaggregated statistical data on the number of complaints about gender-based violence, the causes and effects of gender-based violence and the effectiveness of measures to prevent such violence, in order to improve and further develop preventive measures.⁵¹

⁴¹ *Ibid.*; see also CEDAW Committee, *General recommendation No. 33 on women's access to justice*, UN Doc. CEDAW/C/GC/33, § 15(g).

⁴² *O.G. v Russian Federation* (see above, note 5), § 9(b).

⁴³ CEDAW Committee, *Concluding observations on the eighth periodic report of the Russian Federation*, UN Doc. CEDAW/C/RUS/CO/8, § 22.

⁴⁴ Committee against Torture, *Concluding observations on the fifth periodic report of the Russian Federation*, UN Doc. CAT/C/RUS/CO/5, § 14.

⁴⁵ CEDAW Committee General Recommendation No. 35, §§ 26 and 30(a).

⁴⁶ *Ibid.*, § 26(b); Istanbul Convention, Article 12(1).

⁴⁷ *O.G. v Russian Federation* (see above, note 5), § 9(b)(xi).

⁴⁸ CEDAW Committee General Recommendation No. 35, § 30(e); *O.G. v Russian Federation* (see above, note 5), § 9(b)(vi); Report of the Special Rapporteur on violence against women 2017, § 106; Istanbul Convention, Article 15; Report of the Special Rapporteur on torture 2016.

⁴⁹ Report of the Special Rapporteur on violence against women 2017, § 106.

⁵⁰ CEDAW Committee General Recommendation No. 35, § 30(b); Report of the Special Rapporteur on torture 2016, § 69; Istanbul Convention, Articles 13(1) and 14.

⁵¹ CEDAW Committee General Recommendation No. 35, § 34(b); CEDAW Committee General Recommendation No. 19, § 24(c); Istanbul Convention, Article 11.

18. Importantly, the CEDAW Committee has emphasised that states must ensure that their legal framework and other non-legislative measures are effectively implemented: states parties must “[ensure] that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws”, including through the allocation of sufficient human and financial resources towards implementation.⁵² This has also been recognised by the Court, which has noted that domestic laws and policies relating to domestic violence must operate “effectively in practice”.⁵³

(b) Duty to protect

19. It is widely recognised that the state has an obligation to intervene effectively to protect individuals when they are at risk of gender-based violence from private individuals;⁵⁴ as noted by the UN Special Rapporteur on violence against women, for example, the obligation to combat all forms of discrimination includes an obligation to protect women against gender-based violence, including domestic violence and intimate partner violence, by ensuring their safety and human rights.⁵⁵ The Court has found that where the duty to protect is triggered, a failure to take reasonable measures “which could have had a real prospect of altering the outcome or mitigating the harm” will engage the responsibility of the state.⁵⁶

20. In determining whether the state’s duty to protect is triggered, it is submitted that it is necessary to take into account: (i) the specific nature of domestic violence; (ii) the facts of the particular case; and (iii) the broader context of gender-discrimination within the state:

- a. As regards (i), the specific nature of domestic violence – which includes the fact that it tends to escalate over time⁵⁷ and is often characterised by repetitive violence⁵⁸ – has implications when determining whether the state’s positive duty to intervene is triggered. The Court has emphasised that “special diligence” is required from the state in dealing with domestic violence cases, taking into account the “specific nature of domestic violence as recognised in the Istanbul Convention”.⁵⁹ The Istanbul Convention and its Explanatory Report highlight the need for “risk assessment and risk management [to] consider the probability of repeated violence, notably deadly violence, and adequately assess the seriousness of the situation”.⁶⁰ The UN Special Rapporteur on violence against women has stated that police officers and other professionals should carry out an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence in order to manage the risk and provide the necessary support to victims, and should take account of the fact that women face an “increased risk of reprisals” where they have sought official assistance from the authorities, the courts or the police.⁶¹
- b. As regards (ii), the Court has found the following factors, amongst others, relevant to its assessment of whether the state ought to have been aware that there was a risk of an individual being subjected to domestic violence: the fact that the history of the relationship indicated that the perpetrator had a record of domestic violence, which meant that there was a significant risk of further violence;⁶² the fact that the authorities were “well-aware” that the victim had been subjected to violence on a number of occasions;⁶³ and the fact that the victim made a number of pleas for assistance through making emergency calls, formal criminal complaints and petitions to the head of police.⁶⁴

⁵² CEDAW Committee General Recommendation No. 35, §§ 24(b) and 34(f).

⁵³ *Bălşan v. Romania* (No. 49645/09), § 88; *Talpis v Italy* (No. 41237/14), § 106.

⁵⁴ See, for example, *Opuz v Turkey* (No. 33401/02), § 159; *Eremia v Moldova* (No. 3564/11), § 49; CEDAW Committee General Recommendation No. 35, § 31; Istanbul Convention, Article 18.

⁵⁵ Report of the Special Rapporteur on violence against women 2017, § 19.

⁵⁶ *Opuz v Turkey* (No. 33401/02), § 136.

⁵⁷ Report of the Special Rapporteur on torture 2008, § 45;

⁵⁸ Meyersfeld, B., “Developments in International Law and Domestic Violence”, *Interights Bulletin*, Summer 2011, p. 108.

⁵⁹ *Talpis v Italy* (No. 41237/14), § 129.

⁶⁰ Istanbul Convention Explanatory Report, § 260.

⁶¹ Report of the Special Rapporteur on violence against women 2017, § 103.

⁶² *Opuz v Turkey* No. 33401/02), § 134.

⁶³ *Eremia v Moldova* (No. 3564/11), § 86; *Mudric v Moldova* (No. 74839/10), § 62

⁶⁴ *Bălşan v Romania* (No. 49645/09), § 62.

- c. As regards (iii), the UN Special Rapporteur on torture has noted that the state's "due diligence obligations" arise in cases "where States are or ought to be aware of patterns of continuous and serious abuse in a particular region or community".⁶⁵ It is relevant in the context of the present application to note the concerns that have been repeatedly raised by UN treaty bodies regarding the high prevalence of violence against women in Russia, in particular domestic violence,⁶⁶ with the Committee against Torture noting the "consistent reports of numerous allegations of many forms of violence against women throughout [Russia]".⁶⁷

21. Where the obligation to protect against gender-based violence is engaged, the state is required to take "reasonable measures to alter outcomes and mitigate harms", including taking protective and deterrent measures in individual cases.⁶⁸ The CEDAW Committee has emphasised that the authorities should conduct an immediate risk assessment and ensure that appropriate and accessible protective services are provided to victims in order to prevent further or potential violence.⁶⁹ A "wide range of effective measures"⁷⁰ should be considered for use as part of the state's duty to protect, including the following:

- a. *Protection orders*: these are "essential tools" in the protective toolkit,⁷¹ and must be provided for within the domestic legal framework as discussed at paragraph 14 above.
- b. *Shelters and support services*: the CEDAW Committee has emphasised that the provision of protective services includes ensuring that adequate shelters for women are available.⁷² Women should also be provided with access to specialist support services, including helplines and support centres.⁷³
- c. *Provision of legal, medical and psychosocial aid and services*: the state should ensure that victims are provided with access to financial aid and free or low-cost legal aid, medical, psychosocial and counselling services.⁷⁴

As with all aspects of its approach to tackling gender-based violence, international best practice indicates that the state should ensure that any protective measures are "based on a gendered understanding of violence against women and domestic violence", recognising the particular gender dynamics, impact and consequences of such violence.⁷⁵

22. Importantly, engagement of the state's duty to protect does not rely upon the victim having made a formal request for protection: as the Court has noted, the particular vulnerability of victims of domestic abuse means that the authorities are under a heightened obligation to verify whether a more robust approach is required, and to "investigate of their own motion the need for action".⁷⁶ Furthermore, the state's duty to take protective steps in cases of gender-based violence has been declared not to be contingent on the victim's willingness or ability to pursue legal proceedings against the perpetrator. The UN Special Rapporteur on torture has made clear that "when a State knows or should have known that a woman is in danger, it must take positive steps to ensure her safety, even when she hesitates in pursuing legal action".⁷⁷ The CEDAW Committee has also emphasised that

⁶⁵ Report of the Special Rapporteur on torture 2016, § 56.

⁶⁶ See, for example, CEDAW Committee Concluding Observations (see above, note 43), § 21; Committee against Torture Concluding Observations (see above, note 44), § 14.

⁶⁷ *Ibid*, Committee against Torture, § 14.

⁶⁸ Report of the Special Rapporteur on torture 2016, § 56.

⁶⁹ CEDAW Committee General Recommendation No. 19, § 24(b); CEDAW Committee General Recommendation No. 35, § 31(a)(ii).

⁷⁰ *Ibid*.

⁷¹ Report of the Special Rapporteur on violence against women 2017, § 20.

⁷² CEDAW Committee General Recommendation No. 35, § 31(a)(ii); CEDAW Committee Concluding Observations (see above, note 43), § 22(c).

⁷³ *Ibid*.

⁷⁴ CEDAW Committee General Recommendation No. 35, § 31(a)(iii).

⁷⁵ Istanbul Convention Explanatory Report, § 115.

⁷⁶ *T.M and C.M. v Moldova* (No. 26608/11), §§ 46 and 60.

⁷⁷ Report of the Special Rapporteur on torture 2016, § 12.

protection measures should be provided, regardless of whether a woman is able or willing to cooperate in proceedings against the perpetrator.⁷⁸

(c) Duty to investigate and prosecute

23. It is well-established that the authorities are required to conduct an “effective official investigation” into alleged violence, including where such violence is inflicted by private actors.⁷⁹ The principle of non-discrimination entails specific obligations in respect of the investigation and prosecution of alleged gender-based violence: any investigation and prosecution of gender-based violence must be non-discriminatory, “unaffected by gender-stereotypes”, and apply gender-sensitive procedures in order to be attentive to the specific nature of gender-based violence, and avoid re-victimisation and stigmatisation.⁸⁰
24. In assessing whether an investigation into gender-based violence is effective, the Court has noted that the obligation to investigate is one of means, rather than one of result; it is thus relevant to consider whether the authorities reacted promptly to the complaints at the appropriate time, whether due consideration was given to the opening of investigations, and the length of time taken in obtaining statements and in conducting the investigation.⁸¹ In determining whether or not to proceed with an investigation, it is submitted that the authorities must have due regard to the specific nature of domestic violence: it is essential that the authorities do not apply “preconceived and stereotyped notions of what constitutes gender-based violence against women”.⁸² In *T.M. and C.M. v Moldova*, the Court noted that domestic violence takes many forms, not all of which result in physical injury, and that the prosecutor’s failure to start a criminal investigation because they did not regard the injuries as “severe enough” highlighted a failure to understand the specific nature of domestic violence; in that case, the victim’s injuries were both psychological and physical, as she had been verbally abused and physically assaulted by the perpetrator, resulting in bruising and a defect to her teeth.⁸³ The Court has also held that, in underestimating the seriousness of domestic violence during an investigation, the state may be found to have condoned the violence in violation of Article 14 of the Convention, taken in conjunction with Article 3.⁸⁴
25. It is submitted that, in order to ensure that any investigation is gender-sensitive and attentive to the specific nature of domestic violence, the investigation should be conducted by state agents that have received comprehensive training on gender-based violence. The UN Special Rapporteur on violence against women has emphasised the need for judges and law enforcement personnel to be trained “on the realities of various forms of gender-based violence” and on the content and application of relevant national and international laws, including the CEDAW and the jurisprudence of the CEDAW Committee.⁸⁵ The Committee against Torture has noted that the state should ensure that such personnel are also trained on the impact of gender-based violence and on how to exercise sensitivity towards victims of such violence in order to prevent re-victimisation and stigmatisation.⁸⁶
26. The consensus amongst the CEDAW Committee and other international bodies is that the state’s duty to effectively investigate and prosecute gender-based violence exists irrespective of whether the victim initiates or wishes to pursue proceedings. The CEDAW Committee has emphasised that states

⁷⁸ CEDAW Committee General Recommendation No. 35, § 31(b); See also CEDAW Committee General Recommendation No. 33, § 10; Istanbul Convention, Article 18.

⁷⁹ See, for example, *Eremia v Moldova* (No. 3564/11), § 51.

⁸⁰ CEDAW Committee General Recommendation No. 35, § 26(c); Committee against Torture, *General Comment No. 3: Implementation of article 14 by States parties*, UN Doc. CAT/C/GC/3, § 33.

⁸¹ *Eremia v Moldova* (No. 3564/11), § 51.

⁸² CEDAW Committee General Recommendation No. 35, § 26(c).

⁸³ *T.M. and C.M. v Moldova* (No. 26608/11), § 47; similarly, in *O.G. v Russian Federation* (see above, note 5), the CEDAW Committee stated that the state’s failure to investigate the victim’s complaints about death threats and address the case in a gender-sensitive manner, the authorities “allowed their reasoning to be influenced by stereotypes”: § 7.6.

⁸⁴ *Talpis v Italy* (No. 41237/14), § 145.

⁸⁵ Report of the Special Rapporteur on violence against women 2017, § 98.

⁸⁶ Committee against Torture, *General Comment No. 3* (see above, note 80), § 34.

should ensure the possibility of an *ex officio* prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner in appropriate cases,⁸⁷ with the UN Special Rapporteur on violence against women adding that proceedings may continue even when a victim withdraws her complaint.⁸⁸ In *Opuz v Turkey*, the Court noted that there are certain factors which may be taken into account in determining whether to pursue a prosecution after a victim has withdrawn a complaint, including the seriousness of the offence, whether the perpetrator planned the attack, whether the perpetrator has made any subsequent threats, and the chances of the perpetrator offending again; “the more serious the offence or the greater the risk of further offences, the more likely that the prosecution should continue in the public interest, even if victims withdraw their complaints”.⁸⁹

(d) Remedy and Reparations

27. States have an obligation to provide effective and comprehensive reparations to victims and survivors of gender-based violence, which must be “adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered”.⁹⁰ Comprehensive reparations entail restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁹¹ It is imperative that such reparations are based on the gendered nature and consequences of the violence suffered, and that they take existing gender inequalities into account in order to ensure that they are not discriminatory in themselves.⁹² Compensation should be sufficient to compensate the victim for both pecuniary and non-pecuniary damage, including the reimbursement of medical expenses, and the costs of future medical or rehabilitative services.⁹³
28. Reparations must also have a transformative impact, in terms of addressing the underlying structural causes and consequences of gender-based violence:⁹⁴ as noted by the Special Rapporteur on violence against women, reparations “should aspire, to the extent possible, to subvert instead of reinforce” existing systemic and structural inequalities and marginalisation.⁹⁵ This is also essential to the state’s duty to prevent gender-based violence.
29. The availability of a claim for reparation should not be contingent on the existence or conclusion of criminal proceedings: effective and comprehensive reparations should be available independently of any criminal proceedings.⁹⁶

Conclusion

30. It is the Trust’s submission that, as a case relating to a state’s mechanisms for addressing domestic violence and its response to such violence, this application should be examined under Article 14 of the Convention in conjunction with Article 3, given that discrimination is a fundamental aspect of any such case, and the discriminatory nature of the violation gives rise to specific positive obligations of prevention, protection, investigation, prosecution and reparation.

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⁸⁷ CEDAW Committee General Recommendation No. 35, § 32(a); *Karen Tayag Vertido v Philippines* (Communication No. 18/2008, 16 July 2010); *S.V.P. v Bulgaria* (Communication No. 31/2011, 12 October 2012); *L.R. v Republic of Moldova* (No. 58/2013, 28 February 2017).

⁸⁸ Report of the Special Rapporteur on violence against women 2017, § 113.

⁸⁹ *Opuz v Turkey* (No. 33401/02), §§ 138-139.

⁹⁰ CEDAW Committee General Recommendation No. 35, § 33(a).

⁹¹ Committee against Torture, *General Comment No. 3* (see above, note 80), § 2.

⁹² Report of the Special Rapporteur on torture 2016, § 66.

⁹³ Committee against Torture, *General Comment No. 3* (see above, note 80), § 10.

⁹⁴ *Ibid.*, § 8; Report of the Special Rapporteur on torture 2016, § 68.

⁹⁵ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/HRC/14/22, 2010, § 85. See also the gender-sensitive approach adopted by the Inter-American Court of Human Rights, for example in *Gonzales et al v Mexico* (Inter-American Court on Human Rights, Case No. 281/02, 16 November 2009).

⁹⁶ Committee against Torture, *General Comment No. 3* (see above, note 80), § 26.