La CEDU sulla violenza domestica
(CEDU, sez. V, sent. 3 settembre 2020, ric. n. 17496/19)

La CEDU si è pronunciata sul caso di O.L. donna vittima insieme ai suoi figli della violenza del marito. La ricorrente ha lamentato che il governo ucraino ha rigettato la domanda di allontanamento da lei avanzata nei confronti dell'ex marito per le continue violenze psicologiche e fisiche avvenute anche in presenza dei loro figli minorenni. La donna ha dunque lamentato la violazione dell'art. 8 Conv. per il quale "*ognuno ha diritto al rispetto della propria vita privata e familiare, della propria casa e della propria corrispondenza*". Ha inoltre sostenuto che per molti anni ha deciso di sopportare scene di ubriachezza e di violenza prima di decidere di chiedere l'allontanamento e solo dopo che gli avvertimenti e le altre misure adottate dalle autorità in risposta ai singoli incidenti non avevano portato a risultati tangibili. Il governo da parte sua ha ritenuto che le autorità hanno adottato tutte le misure necessarie per proteggere lei e i suoi figli.
La Corte EDU ricorda che le autorità hanno l'obbligo positivo, ai sensi della Conv., di mettere in atto ed applicare un quadro giuridico adeguato che offra un' efficace protezione contro gli atti di violenza domestica. In particolare c'è l'obbligo di valutare la situazione nella sua interezza, compreso il rischio che incidenti simili perdurino. Valutazione che deve tener conto soprattutto della vulnerabilità delle vittime (che spesso dipendono emotivamente ed economicamente dai loro aggressori) e dell' effetto psicologico che il rischio di ripetute violenze ed intimidazioni può avere sulla loro vita quotidiana.
La Corte ritiene che nel respingere la domanda di allontanamento presentata dalla ricorrente, le autorità giudiziarie nazionali non hanno condotto un'analisi completa della situazione e del rischio di future violenze psicologiche e fisiche affrontate dalla ricorrente e dai suoi figli. Ritiene inoltre che il procedimento è durato due anni durante i quali la ricorrente e i figli sonno rimasti a rischio di ulteriori violenze. Il giusto equilibrio tra tutti gli interessi privati e concorrenti in gioco non è stato quindi raggiunto. Lo Stato ha dunque violato l'obbligo positivo di garantire alla richiedente un'efficace protezione dalla violenza domestica. Vi è stata dunque una violazione dell'art. 8 Conv.

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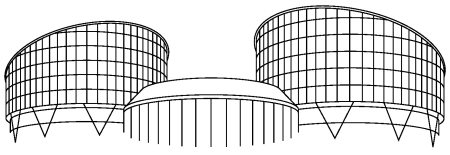

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF LEVCHUK v. UKRAINE
(Application no. 17496/19)

JUDGMENT

Art 8 • Respect for private life • Domestic violence • Positive obligation of protection • Dismissal of woman's claim for eviction of ex-husband • Domestic court's failure to conduct comprehensive

analysis of situation and assess risk of future psychological and physical violence towards applicant and children • Exposure to risk of further violence pending proceedings (over two years at three levels of jurisdiction) • Fair balance not struck

STRASBOURG

3 September 2020

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

In the case of Levchuk v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
Mārtiņš Mits,
Lətif Hüseynov,
Anja Seibert-Fohr,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Deputy Section Registrar,*

Having regard to:

the application (no. 17496/19) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Ukrainian national, Ms Iryna Mykolayivna Levchuk ("the applicant"), on 20 March 2019;

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

the decision to grant priority to the case under Rule 41 of the Rules of Court;

the parties' observations;

Having deliberated in private on 30 June 2020,

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

INTRODUCTION

1. The case concerns alleged breaches of Articles 6, 8 and 13 of the Convention on account of the dismissal of an eviction claim brought by the applicant against her ex-husband as he had repeatedly subjected her to psychological and physical violence in the presence of their minor children.

THE FACTS

2. The applicant was born in 1982 and lives in Rivne. She is a registered disabled person with a category 3 disability[1] who lives off her disability pension and child support allowances. She was granted legal aid and was represented by Ms N.A. Bukhta, a lawyer practising in Rivne.

3. The Government were represented by their Agent, Mr I. Lishchyna.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. In 2002 the applicant had a son.

6. On 26 May 2006 the applicant married O.L. The couple installed themselves in a flat in Rivne co-owned by O.L. and his mother.

7. In January 2007 the applicant and O.L. had triplets (three girls).

8. In view of the multiple birth, in February 2008 the Rivne City Council provided the applicant and O.L. with social housing – a flat which they could occupy as protected tenants, together with their triplets and the applicant's son.

9. According to the applicant, her relationship with O.L. gradually deteriorated because he abused alcohol and, under its influence, started arguments, harassed and threatened her and the children, and sometimes resorted to physical violence against her. On various occasions the applicant was so afraid of his violent outbursts that she fled to stay with relatives or acquaintances for periods of time.

10. On 18 March 2009 the Rivne regional forensic bureau certified that the applicant had a broken nose and haemorrhages around her eyes. According to the applicant, these injuries were the result of one of her arguments with O.L. It appears from the case file that this incident generated no formal follow-up proceedings.

11. On 13 January 2011 an acquaintance of the applicant, S.L., lodged a complaint with the Rivne police, informing them that O.L. had hit the applicant during an argument at home. The police refused to institute criminal proceedings, on the grounds that there was no *corpus delicti* in O.L.'s actions. That decision was not appealed against.

12. In April 2015 the applicant instituted civil proceedings, complaining that O.L. had not been contributing to meet the financial needs of their children.

13. In June 2015 the Rivne Town Court issued a judgment establishing how much O.L. should pay the applicant in child support.

14. On 10 June 2015 the applicant lodged a criminal complaint with the police, informing them that at about 9 p.m. on 31 May 2015 O.L. had kicked her during an argument at home.

15. On 11 June 2015 criminal proceedings were initiated against O.L. under Article 125 of the Criminal Code ("the CC") in relation to the alleged assault on the applicant.

16. On 16 June 2015 the Rivne regional forensic bureau certified that the applicant had a subcutaneous haemorrhage on her right thigh.

17. On 23 September 2015 the marriage between the applicant and O.L. was dissolved. Custody of all the children was given to the applicant. After the divorce, all the family members and O.L. remained living in the same flat.

18. On 16 October 2015 the Rivne police closed the criminal proceedings initiated against O.L. in June because the applicant had withdrawn her complaint. The relevant decision stated that while it appeared that O.L.'s conduct fell within the ambit of Article 125 of the CC, in view of the applicant's decision not to pursue her complaint as the injured party, the case material would be sent to a different police department for a decision on whether O.L. should be charged with an administrative offence. It appears that no further decision was taken in respect of this incident.

19. On 11 November 2015 the applicant complained to the Rivne police that O.L. had not been paying child support. She presented a certificate from the State Bailiffs Service indicating that O.L. was seven months in arrears with regard to these payments. She alleged that although O.L. was officially unemployed, in fact he regularly performed odd jobs and was concealing his income. On the same date criminal proceedings were instituted in relation to this matter.

20. When questioned by the police (in December 2015), O.L. acknowledged that he had not been paying child support. He explained that he was unable to make the payments which were due as he was unemployed and had no income. He assured the police that he would pay the arrears once he found a source of income and obtained the necessary means. It appears that the proceedings against O.L. were subsequently either closed or abandoned.

21. On 23 November 2015 and 2 February 2016 the applicant made further calls to the police complaining that O.L. was harassing and mistreating her at their home. In response, the police authorities visited the applicant's and O.L.'s home and carried out pre-emptive conversations.

22. On 23 February 2016 the applicant made a further call to the police, complaining that O.L. was behaving aggressively under the influence of alcohol.

23. On 12 March 2016 the applicant made a further call to the police, complaining that her husband had been harassing her. This call generated another police inspection and another oral warning for O.L., as indicated in a police report of 16 March 2016.

24. On 18 March 2016 the chief of Rivne police decided that O.L.'s actions on 23 February 2016 (insulting and threatening the applicant and piercing a blanket with a knife) could be categorised as psychological harassment. He charged O.L. with the administrative offence of domestic violence under Article 173-2 of the Code of Administrative Offences ("the CAO") and referred the case to the Rivne Town Court. It appears that no further decision was taken in respect of this police report.

25. On 14 March 2016 the applicant complained to the Rivne municipal family, child and youth welfare service ("the family welfare service") that her husband frequently acted abusively under the influence of alcohol, and she solicited their help in finding a structured solution.

26. Between 14 and 22 March 2016 a group of people from the family welfare service conducted an assessment of the needs of the applicant's family, during which they visited her flat and interviewed the triplets. According to the interview records, one of the girls stated that she loved both her parents, yet she was very distressed when her father came home drunk and became involved in arguments with her mother. Another girl stated that she had no respect for her father and hated it when he came home drunk. The third girl stated that she loved her mother, and she

attempted to avoid speaking about her father. According to further records, the social workers were unable to interview O.L., as he was not at home during their visits. Their attempts to set up a separate appointment with him failed, as he either did not pick up the telephone or refused to meet the social workers, saying that he was very busy at work. As a result of the assessment, the welfare service drafted a report indicating that the children had generally been provided with the conditions necessary for their upbringing. However, their father neglected his parental responsibilities and engaged in violent arguments with the mother, which was intimidating and distressing for the children. The applicant was offered counselling support, which she declined at that time.

27. On 24 March 2016 the family welfare service asked the police to follow up on the applicant's family situation, in particular by having a pre-emptive conversation with O.L. and identifying whether there were any grounds for prosecuting him for domestic violence.

28. On 5 April 2016 a police inspector who had been assigned that task reported that he had not been able to reach O.L. to schedule a meeting.

29. In April 2016 staff members from the triplets' primary school – the principal, the school psychologist and the girls' class teacher – reported to the welfare service that the girls had generally integrated well into their school and social life. However, their home environment was distressing. The girls reported that their parents argued often. They enjoyed a good and trusting relationship with their mother and maternal relatives. As regards their father, they reported difficulties in trusting him, and felt that he often paid little attention to matters relating to them. They regularly saw him under the influence of alcohol, and were scared of his appearance and his unpredictable and sometimes violent conduct. The staff members were unaware of any incidents where the girls had been physically ill-treated by their father. However, they considered that the combination of his disengaged attitude and aggressive outbursts towards the mother had led to the girls being victims of "psychological ill-treatment".

30. On 13 April 2016 the applicant lodged a fresh complaint with the police, alleging that at about 10 p.m. on that date O.L. had had a new violent outburst: he had sworn at her, and had threatened and pushed her.

31. On 18 April 2016 the Rivne regional forensic bureau certified that the applicant had haemorrhages on her right wrist, arm and leg, and a sprain of the aponeurosis in her right foot.

32. On 5 July 2016, with respect to his conduct on 13 April 2016, the Rivne Town Court found O.L. guilty of an act of domestic violence within the meaning of Article 173-2 of the CAO. O.L., who took part in the hearing, acknowledged that he was guilty of the offence in question. The court also decided that O.L. could be relieved of formal liability for the offence and given only an oral reprimand, in view of the fact that the applicant had asked for this, as the parties had already resolved their differences.

33. In the meantime, on 22 June 2016 the applicant had instituted civil proceedings in the Rivne Town Court, seeking to evict O.L. from their flat. Referring to Article 116 of the Housing Code, she alleged that living with him was impossible, as he was systematically abusing alcohol, mistreating,

threatening and harassing her and the children, disrespecting their interests and having violent outbursts. Continuing to live with him would mean that she and her children, who were minors, would be at constant risk of being subjected to psychological harassment and physical violence. The applicant also argued that eviction would not place O.L. in a precarious situation, as he and his mother co-owned a flat in the same town.

34. During the hearings concerning the eviction claim, three witnesses (the applicant's sister and two friends) who were questioned by the court confirmed the applicant's version of events and testified that O.L. had been abusing alcohol and mistreating his former spouse and children. In contrast, three other witnesses (O.L.'s brother and two people who were either his friends or relatives) suggested that the arguments had been caused by the applicant, who wanted to get rid of O.L. in order to gain full control of the flat. These witnesses also alleged that O.L. cared about the children and was a thoughtful father.

35. In support of his case, O.L. also submitted two character references. The first one was from the management body of the building in which his and the applicant's flat was located. This reference indicated that no complaints against him had ever been lodged by any building residents. The second was from a limited liability company called R., which indicated that O.L., one of their independent contractors, was highly esteemed as a diligent construction worker and a good team member.

36. The applicant adduced documents concerning all her previous complaints of harassment and violence, and a new certificate from the State Bailiffs Service indicating that O.L. was at the material time eighteen months in arrears with regard to his child support payments.

37. On 4 April 2017 the Rivne Town Court allowed the applicant's claim and ordered O.L.'s eviction. In its judgment, the court noted, in particular, as follows:

"... The court, having heard the [parties and their representatives], [and] the witnesses ..., [and] having examined the written evidence, has come to the following [conclusions]:

...

... the respondent abuses alcohol, constantly makes scenes and causes arguments, [and] intimidates [the applicant] in the presence of the children. [The respondent] behaves aggressively, [and] threatens the claimant with physical violence. [The claimant], along with her children, who are minors, has sometimes been forced to sleep at her acquaintances' homes, as she has been afraid to stay at home with the respondent. The claimant has repeatedly appealed to the law-enforcement bodies for the protection of her rights and those of her minor children. ... The respondent was subjected to ... measures to correct his behaviour in the form of pre-emptive conversations and warnings concerning the unacceptability of domestic violence, and a decision of the Rivne Town Court of 5 July 2016 found [him] guilty of an administrative offence under Article 173-2 [of the CAO]. The respondent was also prosecuted under Article 125 [of the CC] for a criminal offence, for inflicting minor injuries on the claimant.

The above measures to correct [the respondent's] behaviour did not bring about the desired result ..."

38. O.L. appealed. He argued that the applicant had been causing arguments in order to separate him from the children and obtain pecuniary benefits from the flat. For the same reason, she had been exaggerating the situation and submitting vexatious complaints containing accusations which were not supported by evidence. Moreover, Article 116 of the Housing Code provided for the eviction of a resident whose misconduct was systematic, where less stringent measures in respect of that resident had proved to be ineffective. In his case, there was no evidence of systematic misconduct and several witnesses had testified in his favour. While some fights had taken place occasionally, all the evidence against him pertained to either 2011 or 2015-16. No fresh evidence of any arguments between him and his former spouse had been provided. As regards the flat which he co-owned, that flat was occupied by his mother and his brother's family, and there was therefore no room for him.

39. On 14 June 2017 the Rivne Regional Court of Appeal quashed the Town Court's judgment and dismissed the applicant's claim, finding that there were no grounds for applying such a radical measure as eviction, and that the conditions required by Article 116 of the Housing Code had not been fulfilled. The relevant part of the court's ruling reads as follows:

"It is apparent from the case-file material that on a number of occasions the applicant called the police to her home address and accused the defendant of having committed unlawful acts in respect of her and in respect of her family members; however, it has not been demonstrated that [O.L.] systematically breached the rules on living together and was found liable [on this account].

...

Of and by itself, addressing the competent authorities with complaints concerning a breach of the rules on living together, without those authorities applying measures to correct the behaviour of the [guilty] party concerned, is not grounds for eviction.

Having evaluated every piece of evidence separately and jointly, the judicial panel concludes that the evidence provided by the parties demonstrates the existence of hostile, conflictual relations between the former spouses.

In such circumstances, the judicial panel considers that the grounds for applying such an extreme measure as eviction in respect of the defendant are insufficient. At the same time, the judicial panel considers it necessary to warn [O.L.] that he needs to change his attitude towards the rules on living together with the members of his family [after the divorce]. ..."

40. The applicant appealed on points of law. In particular, she argued that O.L. had already been found guilty of domestic violence in administrative proceedings, and had been prosecuted under Article 125 of the CC for a criminal offence for having assaulted her. She argued that O.L. had not corrected his conduct or attitude, and that living with him exposed her and the children to a considerable risk of harassment and violence. She also reiterated that he had another dwelling available.

41. On 20 August 2018 the Supreme Court dismissed the applicant's appeal on points of law, endorsing the findings of the Court of Appeal.

42. On 11 October 2018 that decision was sent to the applicant by post.

43. On 28 May 2019 the applicant, O.L., their daughters and the applicant's son were granted ownership of the family flat under the national scheme allowing protected tenants to become the owners of their residences.

44. At present, all of them still share the flat.

45. In December 2019 the applicant filed a fresh criminal complaint against O.L. concerning a further violent outburst.

46. On 26 November 2019 the applicant also initiated proceedings to deprive O.L. of his parental rights over their triplets, alleging that he systematically neglected their needs and avoided paying child support. Those proceedings are currently ongoing.

RELEVANT LEGAL FRAMEWORK

RELEVANT DOMESTIC LAW

The Criminal Code (2002)

47. Article 125 of the Code, in so far as relevant, reads as follows:

Article 125. Intentional minor physical injury

"1. Intentional minor physical injury shall be punishable by a fine of up to fifty times the non-taxable minimum income for citizens, or up to two hundred hours of community service, or correctional labour for up to one year. ..."

The Code of Administrative Offences (1984)

48. The relevant provision of the Code, Article 173-2, as worded at the material time, read as follows:

Article 173-2. Act of domestic violence, failure to abide by a restraining order or evasion of a correctional programme

"The commission of an act of domestic violence, that is, the intentional commission of any acts of a physical, psychological or economic nature (the use of physical force which does not result in physical pain and does not cause physical injuries; threats; insults; stalking; depriving a victim of his or her dwelling, food, clothes, other effects or funds to which he or she is entitled by law; and so on) which results in or could result in harm being caused to the victim's physical or psychological health, as well as a person's failure to abide by a restraining order issued in respect of him or her, [and] a person's evasion of a correctional programme where that person has committed an act of domestic violence

shall be punishable by thirty to forty hours of community service, or administrative detention for up to seven days. ..."

The Housing Code (1983)

49. Article 116 of the Code, in so far as relevant, reads as follows:

Article 116. Eviction without the provision ... of another dwelling

"If the tenant, members of his or her family, or others living with him or her ... systematically ... break the rules on ... living together, making it impossible for the other [people in the dwelling] to live with them in the same flat or house, and if measures of pre-emption and measures involving public pressure have not produced any positive result, those responsible shall be evicted at the request of ... interested persons, without another dwelling being provided for them. ..."

Law of Ukraine "On the prevention and combatting domestic violence" (no. № 2229-VIII of 7 December 2017; "The Domestic Violence Act")

50. The Domestic Violence Act of 2017 entered into force on 7 January 2018, having replaced the preceding Law "*On the prevention of family violence*" (2001). According to Section 5 of the Act, the objectives of the State policy on prevention and combatting domestic violence were defined as follows:

"1. State policy in the sphere of prevention and combatting domestic violence shall aim to ensure a comprehensive integrated approach towards eradication of domestic violence, provision of comprehensive assistance to the victims and affirmation of non-violent character of private relations.

2. Main directions of the realisation of the State policy for prevention and combatting domestic violence shall be as follows:

1) prevention of domestic violence;

2) effective response to the incidents of domestic violence by way of development of the mechanism of interaction between the authorities exercising power in the sphere of prevention and combatting of the domestic violence;

3) provision of assistance and protection to the victims, ensuring compensation of damage suffered as a result of domestic violence;

4) proper investigation of the incidents of domestic violence, imposition of liability on offenders in accordance with the law and the modification of their conduct."

51. The Act provided, *inter alia*, for the creation of a Unified State Register of the incidents of domestic and gender-based violence (Section 16) and stipulated a series of "special measures on combatting domestic violence" for addressing victims' complaints. These measures included, in particular, urgent injunctive police order; restraining court order; placement of the offender on the preventive measures record; and placement of the offender into the special corrective programme (Sections 24 – 28).

Resolution no. 2 of 12 April 1985 of the Plenary Supreme Court of Ukraine on issues arising in the courts' implementation of the Housing Code of Ukraine

52. The Resolution, in so far as relevant, reads as follows:

"17. When resolving cases [brought] under Article 116 of the [Housing Code] concerning the eviction of persons who systematically breach the rules on living together and make it impossible for others to live with them in one flat or house, it should be taken into account that where the person in question is guilty of persistent antisocial conduct, the eviction may take place, for instance, after a repeated breach, if pre-emptive measures (*попередження*) or measures involving public pressure have not brought about a positive result. [The measures to take into consideration include]..., in particular, pre-emptive measures applied by the courts, prosecutors, law-enforcement bodies [or] administrative commissions of executive committees, as well as measures involving public pressure applied at the meetings of residents of the apartment block or members of the housing cooperative, ... and [those applied] by other public organisations [operating] at the respondent's place of employment or residence (regardless of whether an express warning has been given concerning a possible eviction). ..."

Relevant domestic case-law concerning restraining orders

Ruling of the Supreme Court of Ukraine of 4 December 2019 in case no. 607/10122/19

53. In its ruling in the aforementioned case, the Supreme Court noted, in particular, as follows:

"In April 2019 [the complainant] instituted proceedings seeking a restraining order on [her former husband]. ... [She] noted that [the respondent] had been subjecting her and their minor child to psychological [and] physical violence manifested through constant threats, intimidation, harassment, application of physical force, as well as interference with their use of [the room in the accommodation hall, in which the three of them resided].

... [the complainant] requested to issue a restraining order in respect of [the respondent] for the period of six months ... in particular, by enjoining him from interfering with the use of the room [by herself and her minor son] and prohibiting him from accessing [or residing in] ... the aforementioned room.

...

When resolving such applications, the courts should comprehensively evaluate all the circumstances and evidence in the case, giving due deference to the rights and interests of the children and the parents, as well as ensuring that no unjustified restriction of the rights of one parent concerning the children takes place in the event that the demands of the other parent are not grounded and not justified.

...

In the case at issue it has been established that [the complainant] and [the respondent] are in hostile relations; conflictual situations often arise concerning residence in and the use of the room in the accommodation hall ...

[The respondent] stated that he had no intention to let his former spouse ... and their minor son use the room ...

Having established these circumstances, the first-instance court, with whose conclusions the court of appeal agreed, had correctly concluded that there are lawful grounds for issuing a restraining order obliging [the respondent] to cease interfering with the complainant's and her minor son's use of the dwelling, as well as household items located therein. Likewise, the lower courts had correctly concluded that there were no grounds for ... prohibiting [the respondent] from accessing [or residing in] the room ..., as [the complainant] had not provided unequivocal proof that [the respondent] had committed domestic violence ..."

Ruling of the Supreme Court of Ukraine of 28 April 2020 in case no. 754/11171/19

54. In its ruling in the aforementioned case, the Supreme Court noted, in particular, as follows:

"In July 2019 [the complainant] instituted proceedings seeking a restraining order in respect of [her former husband] and alleging that the latter had systematically subjected her and their children to violence and intimidation. Those acts manifested through assaults including physical, psychological and sexual violence. ...

...

When deciding on the application of such a measure, the courts ... must assess proportionality of the interference with the rights and freedoms of the individual, taking into consideration that those measures are triggered by the unlawful conduct of [the offender].

Therefore, the conclusion of [the lower courts] that it is not possible to allow the victim's request concerning ... temporary restriction of the right [of the respondent] to [use] the flat of which he is a co-owner ... is erroneous, since it deprives the complainant of the guarantees ... provided by the [Domestic Violence Act].

In the case at issue the [lower] courts ... have concluded that there is high risk of [repeated violence] ...

In these circumstances, the judicial panel ... considers that demands of [the complainant] ... to enjoin [the respondent] from staying in the ... flat ... [and] approaching closer than two kilometres to [the flat] should be allowed. ..."

RELEVANT INTERNATIONAL MATERIAL

55. A summary of the relevant international material can be found in the case of *Volodina v. Russia*, no. 41261/17, §§ 51-60, 9 July 2019).

56. In its Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe stated, *inter alia*, that member States should introduce, develop and/or improve where necessary, national policies against violence based on: the maximum safety and protection of victims, support and assistance, adjustment of the

criminal and civil law, the raising of public awareness, training for professionals confronted with violence against women, and prevention.

57. With regard to violence within the family, the Committee of Ministers recommended that member States should classify all forms of violence within the family as criminal offences and provide for the possibility to take measures in order to, *inter alia*: enable the judiciary to adopt interim measures aimed at protecting victims; ban the perpetrator from contacting, communicating with or approaching the victim, or residing in or entering defined areas; penalise all breaches of the measures imposed on the perpetrator; and establish a compulsory operating protocol for the police and medical and social services.

MATERIAL RELATING TO VIOLENCE AGAINST WOMEN IN UKRAINE

58. The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) was signed by Ukraine on 7 November 2011 and has not yet been ratified. On 14 November 2017 Mr N. Muiznieks, the Council of Europe Commissioner for Human Rights, addressed a letter Mr A. Parubiy, the Speaker of the Ukrainian Parliament, inviting him to facilitate the process of the ratification of the Istanbul Convention. The letter read, in particular, as follows:

"During my country visits, I have encountered several objections and/or misconceptions about the Convention. Those arguments could be summarised - and countered - as follows:

- Objections to the use of the word "gender" for its purported "ideological" connotations. The notion of gender is clearly defined in the Convention, which holds that, while the term "sex" refers to the biological characteristics that define humans as female and male, gender "shall mean the socially constructed roles, behaviours, activities and attributes that a society considers appropriate for women and men." This definition is also used by the Committee on the Elimination of Discrimination against Women and other UN bodies. This meaning also enters into play in the term "gender stereotypes".

- Some critics acknowledge that violence against women is a problem, but wish to prevent governments from challenging traditional gender roles and stereotypes, due to a cultural affirmation that men and women should play very different roles in public life and within the family. This approach limits women to the stereotypical role of mothers, giving birth and staying at home to rear children.

- Others go as far as to argue that the Istanbul Convention should not be ratified because it would endanger societies based on traditional families. I would like to reassure everybody that there is no such danger, as all the measures provided for by the Istanbul Convention reinforce family foundations and links by preventing and combating the main cause of destruction of families, that is, violence.

- Another criticism of the Convention concerns its supposedly "unjustified" focus on women, whereas men can also be victims of violence. However, data collected in various CoE

member states - including Ukraine - do show that, in the vast majority of cases of domestic violence, it is women who are exposed to violence inflicted by men. More generally, numerous studies show that women and girls are exposed to a higher risk of gender-based violence than men, and that violence specifically targeted at women remains widespread. That being said, the Istanbul Convention recognises that men and children are victims of domestic violence too and that this should also be addressed.

The Istanbul Convention aims at eradicating violence against women and domestic violence by prescribing the establishment of a comprehensive system to combat those phenomena effectively. Individual victims, families and society as a whole will all benefit if everyone's fundamental rights to life, security, freedom, dignity, and physical and emotional integrity are respected.

I would be grateful if you bring my letter to the attention of all members of the Ukrainian Parliament and I look forward to receiving further information on the ratification process".

59. In March 2017, in its concluding observations on the eighth periodic report of Ukraine, the UN Committee on the Elimination of Discrimination against Women (CEDAW), noted, in particular, as follows:

"26. The Committee remains concerned at the persistence in political discourse, the media and in society of deep-rooted patriarchal attitudes and discriminatory stereotypes concerning the roles and responsibilities of women and men in the family, which perpetuate women's subordination within the family and society and which are reflected, inter alia, in women's educational and professional choices, their limited participation in political and public life, their unequal participation in the labour market and their unequal status in family relations. The Committee recalls that such discriminatory stereotypes are also root causes of violence against women and expresses concern that, to date, the State party has not taken sustained measures to modify or eliminate discriminatory stereotypes and negative traditional attitudes.

...

29. Recalling its general recommendation No. 19 (1992) on violence against women, the Committee recommends that the State party:

(a) ... accelerate the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence [the Istanbul Convention];

(b) Take comprehensive measures to prevent and address violence against women and girls and ensure that perpetrators are prosecuted and adequately punished; ..."

60. According to the *OSCE-led survey on violence against women in Ukraine (2018)*, most interviewed women were concerned about the issue, with 64% saying it was a common occurrence. Some of the key conclusions and recommendations of the Survey were as follows:

"...There is a high prevalence of VAW (violence against women), but women are reluctant to report it or to seek help.

More than a quarter of women (26%) in Ukraine have experienced physical and/or sexual violence at the hands of a current or previous partner. Two-thirds of women (65%) have experienced intimate partner psychological violence, which is much higher than the EU average of 43% and higher than in any EU country. However, only 7% of women survivors of current partner violence and 12% of survivors of previous partner violence reported their experiences to the police. Considering that 52% of women survivors of intimate partner violence suffered physical consequences as a result of their most serious incident of violence, it is likely that other serious violence is underreported.

Women in the qualitative research said that psychological violence is seen as normal, with 26% of women also believing that domestic violence is a private matter. The experts interviewed for this report said that there is a collective tolerance of violence, and women in the survey shared that feelings of shame represent barriers to reporting. In relation to current partner violence, more than four-fifths of women (81%) who identified a most serious incident did not contact the police or any other organization, and the same is true of 67% of women in respect of previous partner violence and of 52% concerning non-partner violence".

61. The U.K.'s Home Office's *Country Policy and Information Note on Ukraine concerning gender-based violence* (May, 2018) featured, in particular, the following information:

"4.2.3. ... Kateryna Levchenko, President of the NGO "La Strada – Ukraine," presented the statistical data collected from the survey of police and prosecutors, analysis of court decisions on cases of violence against women and domestic violence. 10% of prosecutors, 11% of judges, 12% of police officers justify some cases of family violence. 39% of officers in the criminal justice system consider domestic violence to be a private matter, 60% blame sexual violence on its victims.

During judicial proceedings of domestic violence cases 77% of prosecutors, 81% of police officers and 84% of judges consider reconciliation [between] partners and family preservation to be the ... top priority, with violence being underestimated and considered a minor dispute.

Courts often consider the cases of violence from a formal point of view. The monitoring of 77 hearings revealed that the average duration of meetings is 4 to 23 minutes. Offenders do not appear in courts. Only every 6th abuser appeared in court. This often results in cancelling the hearings. ..."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

62. The applicant complained that the domestic courts' refusal to order O.L.'s eviction had exposed her and her children to continuing risk of harassment and violence. She invoked Article 8 of the Convention, which, in so far as relevant, reads as follows:

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

Admissibility

63. The Government raised no objections concerning the admissibility of the present complaint.

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

Merits

Submissions by the parties

(a) The applicant

(i) Information concerning gender-based violence in Ukraine

65. The applicant submitted that the problem of domestic violence was rampant in Ukrainian society, which displayed a high tolerance for this phenomenon.

66. She noted that according to the 2014 survey conducted by GfK analytics at the request of the United Nations Population Fund (UNFPA), one in five Ukrainian women aged fifteen to forty-nine (19%) experienced physical violence since she turned fifteen years old. Around a half of physical violence victims – 9% - experienced physical violence at least once during the last twelve months preceding the survey.

67. According to the National police press centre, in 2018 the Ukrainian police received 89.5 thousand domestic violence complaints from women.

68. According to the Unified State Register of court judgments, between January and August 2019 court rulings were passed in fifty-eight criminal cases concerning domestic violence. In twenty-three out of these cases, the courts approved a reconciliation agreement between the victim and the accused. In the thirty-five remaining cases, the courts ruled on the merits, imposing the following punishments: imprisonment (two cases); release on probation (five cases); restriction of liberty or short-term detention (seven cases); and public works (twenty cases). In practice, in vast majority of the cases a perpetrator was let to "serve his sentence" at home, where he had a possibility of close contact with the victim, who remained at risk of further violence.

(ii) Submissions concerning the applicant's personal situation

69. The applicant submitted that she herself had endured drunken scenes and violent outbursts from O.L. for many years before deciding to seek his eviction, and only after warnings and other measures taken by the authorities in response to individual incidents had not brought about tangible results. She submitted that on some occasions she had withdrawn her complaints against O.L. under pressure; the authorities had not wanted to investigate them and had persuaded her that it was in her own best interests to reconcile with her former husband and close the case.

70. However, as the violent incidents had persisted, eventually the applicant had been forced to apply for O.L.'s eviction, as this had been the only effective way to protect the safety and rights of herself and her children. The applicant argued that, in her case, the national courts had failed to strike a fair balance between her and her children's interests on the one side and those of her ex-husband on the other. In particular, the courts had taken an excessively formalistic approach in

determining whether O.L.'s misconduct had been systematic and in discounting the importance of warnings and other measures issued by the authorities to address his violent outbursts. Likewise, they had not taken into account the fact that O.L. had co-owned another residence and that she was a disabled woman and a single mother having sole custody of four children. The applicant emphasised that the disputed flat had in fact been provided by the municipal authorities for the benefit of the children in the first place and the children's interest to grow in a safe and secure environment was paramount in her case.

71. The applicant next noted that she was thankful to the municipal authorities for giving her and the children an opportunity to become owners of the disputed flat in 2019. However, she had not willingly consented to sharing ownership with O.L. As her eviction claim had not been allowed and he had remained a lawful resident of the flat, under the law, there had been no way to obtain ownership of the flat without his participation.

72. The applicant also submitted that it had taken her some two years to argue her eviction claim before the national courts. The eventual dismissal of that claim after such a significant effort on her part had given O.L. a sense of total impunity, and had exposed her and the children to an even greater risk of repeated psychological harassment and the threat of physical assaults. In this regard, the applicant noted that she had eventually been forced to file a fresh criminal complaint against him and to initiate proceedings for depriving him of parental authority. These proceedings were ongoing at the time when she submitted her observations.

(b) The Government

73. The Government alleged that there had been no breach of the positive duty under Article 8 in respect of the applicant. They considered that the domestic authorities had taken all necessary measures to protect her and her children from domestic violence.

74. In particular, the police and social services had responded promptly to her complaints about O.L.'s violent outbursts by instituting proceedings, issuing warnings, and offering counseling support. The Government observed that the applicant herself had not complained to the Court about the response of those authorities to her domestic violence allegations, which fact, in their view, implied her acknowledgment that that response had indeed been effective. Moreover, the applicant herself had repeatedly requested to relieve O.L. of liability, withdrew her complaints, and rejected an offer of psychological counseling, thus preventing the competent authorities from exercising their restraining powers.

75. In any event, even assuming that, notwithstanding the above, there was also a positive obligation on the State to put in place a civil remedy, this obligation had been properly discharged. Article 116 of the Housing Code, under which the applicant had lodged her eviction claim against O.L., had, in principle, been an appropriate legal remedy in her case. The applicant had not prevailed in the domestic proceedings because she had not made out her case on the facts. In particular, she had not demonstrated that O.L. had been guilty of persistent and irremediable misconduct of such a severity, that sharing a flat with him had been impossible for her. She had therefore not fulfilled the conditions established by law for setting the eviction mechanism in

motion and the Court of Appeal had correctly balanced the applicant's interest in evicting O.L. against his interest in continuing to reside in his home.

76. The Government also noted that after the end of the eviction proceedings, the applicant, O.L. and their children had lodged a joint request with the municipality to be awarded ownership of the disputed flat. In their view, the applicant's and O.L.'s cooperation in that matter had demonstrated a further proof that their living together had not been objectively intolerable.

The Court's assessment

77. The Court notes at the outset that, as observed by the Government, the applicant in the present case does not complain about the quality of the general response of the national authorities to her domestic violence complaints. She complains only that the domestic courts refused to order the eviction of her former husband, alleging that this refusal exposed her and her minor children to the risk of further victimisation by him (compare and contrast *B. v. the Republic of Moldova*, no. 61382/09, §§ 31 and 62, 16 July 2013). The Court is therefore not called upon in the present case to examine the quality of the applicable legislative and administrative framework in general. It will essentially focus on the response of the civil courts to the applicant's eviction claim, albeit against a background of successive domestic violence complaints whose existence is not in dispute.

78. The Court reiterates that the issue of domestic violence, which can take various forms – ranging from physical assault to sexual, economic, emotional or verbal abuse – transcends the circumstances of an individual case. It is a general problem which affects, to a varying degree, all member States, and which does not always surface, since it often takes place within personal relationships or closed circuits (*Volodina*, cited above, § 71). While this phenomenon may most frequently affect women, the Court acknowledges that men may also be the victims of domestic violence and, indeed, that children, too, are often its casualties, whether directly or indirectly. Accordingly, the Court will bear in mind the gravity of the problem at issue when examining the present case (see *Opuz v. Turkey*, no. 33401/02, § 132, ECHR 2009).

79. In various cases, depending on the individual circumstances of those cases, the Court has previously taken up the issue of domestic violence under Articles 2, 3, 8 and 14 of the Convention (see, in particular, *Talpis v. Italy*, no. 41237/14, § 100, 2 March 2017). In all those cases, the Court has established that the authorities have a positive obligation under the Convention to put in place and apply an adequate legal framework affording effective protection against acts of domestic violence (see, among other authorities, *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008; *A. v. Croatia*, no. 55164/08, § 60, 14 October 2010; and *Hajduová v. Slovakia*, no. 2660/03, § 46, 30 November 2010).

80. In this connection, the Court has held, in particular, that where an individual makes a credible assertion of having been subjected to repeated acts of domestic violence, however trivial the isolated incidents might be, it falls on the domestic authorities to assess the situation in its entirety, including the risk that similar incidents would continue (see, *mutatis mutandis*, *Irina Smirnova v. Ukraine*, no. 1870/05, §§ 71 and 89, 13 October 2016). Among other things, this assessment should take due account of the particular vulnerability of victims – who are often dependent on their

assailants emotionally, economically, or otherwise – and the psychological effect that the risk of repeated harassment, intimidation and violence may have on their everyday life (see, *mutatis mutandis*, *Hajduová, cited above*, § 46 and *Irina Smirnova*, ibid.). Where it is established that a particular individual has been systematically targeted and future abuse is likely to follow, apart from responses to specific incidents, the authorities may be called upon to implement an appropriate action of a general nature to combat the underlying problem and prevent future ill-treatment (see *Đorđević v. Croatia*, no. 41526/10, §§ 92-93 and 147-49, ECHR 2012; and *Irina Smirnova*, cited above, ibid.).

81. The applicant in the present case made credible assertions that over a prolonged period of time she had been exposed to physical assaults, intimidation and threats from O.L., her former husband, with whom she still shares a flat. These events affected her physical and mental integrity, and they therefore pertain to the sphere of private life within the meaning of Article 8 of the Convention (compare to *Hajduová*, cited above, § 49; *Eremia v. the Republic of Moldova*, no. 3564/11, § 73, 28 May 2013; and *B. v. Moldova*, cited above, § 71). They likewise affected her right to the enjoyment of a home free from violent disturbance also protected under Article 8 (see, in particular, *Kalucza v. Hungary*, no. 57693/10, § 59, 24 April 2012).

82. The Court takes note of the fact that the authorities, which were well aware of the situation, intervened in individual incidents on a number of occasions. It further observes that the applicant, who considered that those measures had not resolved the situation, lodged a civil action under Article 116 of the Housing Code, which provides for the possibility to evict tenants in social housing for systematic misconduct. Regard being had to the particular facts of the present case, the wording of Article 116, and the Government's explanations, the Court considers that this civil remedy was capable, in principle, of redressing the essence of the applicant's complaint, although it is not apparent that, unlike a restraining order, it could be effective as a matter of urgency (compare and contrast *Irina Smirnova*, cited above, §§ 95-99).

83. The Court also notes that the Rivne Town Court, which examined the applicant's claim at first instance, did in fact rule in her favour. Subsequently, the above ruling was reversed in appeal proceedings, essentially on the basis that O.L.'s eviction would constitute a disproportionate interference with his right to respect for his home (see paragraph 37 above). The main issue for the Court in the present case is therefore determining whether this ruling achieved a fair balance between the competing interests at stake (see, *mutatis mutandis*, *Pfeifer v. Austria*, no. 12556/03, § 38, 15 November 2007, and *B. v. Moldova*, cited above, § 73). At this juncture, the Court reiterates that it is primarily for the national courts to resolve problems of interpretation of domestic legislation, and the Court is not in a position to take their place in this matter (see *Söderman*, *Söderman v. Sweden* [GC], no. 5786/08, § 102, ECHR 2013, and *Bălşan v. Romania*, no. 49645/09, § 67, 23 May 2017). However, while granting substantial deference to the national courts in the choice of appropriate measures, the Court is obliged to review their conclusions from the viewpoint of the Convention (see, *mutatis mutandis*, *Valiulienė v. Lithuania*, no. 33234/07, § 76, 26 March 2013).

84. The Court has earlier indicated in its case law that eviction is the most extreme measure of interference with one's right to respect for the home guaranteed by Article 8 of the Convention

(see, among other authorities, *Kryvitska and Kryvitskyy v. Ukraine*, no. 30856/03, § 41, 2 December 2010). However, it has also stated that interference by the national authorities with individual rights under Article 8 might be necessary in order to protect the health and rights of the others (see, among other authorities, *mutatis mutandis*, *Opuz*, cited above, § 144; *Eremia*, cited above, § 52; and *Volodina*, cited above, § 86). Moreover, in context of Article 2 the Court has noted that, in domestic violence cases, perpetrators' rights cannot supersede victims' human rights, in particular, to physical and mental integrity (see, *mutatis mutandis*, *Opuz*, cited above, § 147, and *Talpis*, cited above, § 123).

85. Regard being had to the Government's argument that Article 116 of the Housing Code constituted, in principle, an effective remedy for the applicant's complaint, in the present case, from the perspective of the Convention, the national courts, confronted with the applicant's assertions that O.L. had recurrently engaged in violent outbursts during household arguments, were bound, in the context of the eviction proceedings lodged under the aforementioned provision, to assess the credibility of her statements and the risk of future violence, in the event that the parties remained living under the same roof. It is not apparent from the material before the Court that a comprehensive assessment of those elements had been performed either by the Court of Appeal or the Supreme Court.

86. In particular, as appears from the Court of Appeal's ruling, it acknowledged that certain misconduct had indeed taken place and even found it appropriate to "warn [O.L.] that he needs to change his attitude ..." (see paragraph 39 above). However, although criminal and administrative proceedings had been instituted against O.L. on account of physical assaults against the applicant and although the police authorities had conducted "pre-emptive conversations" with him and issued him "warnings" on a number of occasions, the court seized of the eviction request found that "it had not been demonstrated that [O.L. had] systematically breached the rules on living together" (see paragraph 39 above; compare to *B. v. Moldova*, cited above, § 74). The Court reiterates at this point that where the domestic authorities are confronted with credible domestic violence assertions, it falls on them to assess the situation in its entirety including the risk of future violence. As transpires from the reports of the social workers and the police, O.L. repeatedly evaded their efforts to discuss the situation with him in an attempt to find an appropriate solution and prevent the risk of further violent outbursts (see paragraphs 26 and 28 above). It is not apparent that the Court of Appeal took this into account and attempted to analyse whether there had been risk of recurrent violence.

87. It essentially referred to the fact that O.L. had never been subjected to a formal penalty, without attempting to analyse the underlying reasons for this, including instances where the authorities had failed to follow up on the reported incidents (see paragraphs 10, 11, 18, and 24 above) or where the applicant had withdrawn her complaints concerning acts which could have constituted serious offences (see paragraphs 18 and 32 above). The Court would note at this point that due to specificity of domestic violence, withdrawal of complaints by victims is a recurrent phenomenon (see, in particular, *Opuz*, cited above, §§ 138-39; *Volodina*, cited above, § 99; and *B. v. Moldova*, cited above, § 54). It considers that such withdrawal should not relieve the national authorities of a duty to assess the gravity of the situation with a view to seeking an appropriate

solution. Moreover, automatic reliance on the fact that the alleged victims have withdrawn their complaint, without a comprehensive analysis of the risks they continue to live with, is incompatible with States' duty to take into consideration the vulnerability of the victims of domestic violence when discharging their positive obligations in that area under Articles 3 and 8 of the Convention.

88. The Court next observes that, as appears from the case file, O.L. and the applicant were provided with the disputed social flat in connection with the birth of their daughters. After the divorce, the applicant alone was granted custody of the children. O.L., for his part, repeatedly failed to pay child support and school and social workers indicated that he was emotionally disengaged from their upbringing. The children, who repeatedly witnessed his arguments with the applicant, were reported to be seriously distressed (see paragraphs 26 and 29 above). It is not apparent from the ruling of the Court of Appeal that it considered the impact of those circumstances on the validity of O.L.'s continuing interest in keeping the social tenancy or analysed how his violent conduct towards the applicant affected the best interests of the children.

89. The Supreme Court, in turn, dismissed the applicant's appeal against the ruling of the Court of Appeal, endorsing its analysis.

90. In the light of all the factors detailed above, the Court considers that in dismissing the applicant's eviction claim against O.L. brought under Article 116 of the Housing Code, which, as explained by the Government, was in principle a suitable legislative solution for her case, the domestic judicial authorities did not conduct a comprehensive analysis of the situation and the risk of future psychological and physical violence faced by the applicant and her children. It also notes that the proceedings lasted over two years at three levels of jurisdiction, during which the applicant and her children remained at risk of further violence (compare with *Bevacqua and S.*, cited above, § 76). The fair balance between all the competing private interests at stake has therefore not been struck. The response of the civil courts to the applicant's eviction claim against her former husband has accordingly not been in compliance with the State's positive obligation to ensure the applicant's effective protection from domestic violence.

91. There has therefore been a breach of Article 8 of the Convention in the present case.

ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

92. Relying on Articles 6 and 13 of the Convention, the applicant also complained that the judgments of the Court of Appeal and the Supreme Court in her case had not provided an adequate response to her essential argument concerning the likelihood of her and her children being exposed to the risk of domestic violence in the event that they had to remain living with O.L., and that in view of the manner in which the domestic courts had interpreted and applied domestic law in her case, she had had no effective remedy for her grievances under Article 8 of the Convention.

93. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 8 of the Convention, the Court considers that it has examined the main legal question raised in the present application, and that there is no need to give a separate ruling on the

admissibility and merits of the above-mentioned complaints (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. Article 41 of the Convention provides:

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

Damage

95. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. She alleged that this amount would enable her to buy a separate flat and finally separate from O.L.

96. The Government argued that this claim was exorbitant and unsubstantiated.

97. The Court considers that the applicant must have suffered anguish and distress on account of the facts giving rise to the finding of a violation of Article 8 in the present case. Ruling on an equitable basis, the Court awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

Costs and expenses

98. The applicant also claimed EUR 2,000 for legal fees and EUR 80 for administrative expenses incurred by her lawyer, Mrs N. Bukhta, in connection with her representation before the Court. She requested that these payments be transferred to her representative's account directly. In support of this claim, the applicant submitted a copy of the contract signed by her and Ms N. Bukhta for her representation in the proceedings before the Court, dated 1 February 2019. It stipulated that after the completion of the proceedings the applicant was to pay Mrs Bukhta EUR 50 for each hour of work, and an additional sum of 4% of the amount due for work done, for administrative and postage expenses; however, the total amount was not to exceed the Court's award for costs and expenses. The applicant also submitted a time sheet completed by Mrs Bukhta in respect of the work done, which stated that Mrs Bukhta had worked on the case for forty hours.

99. The Government invited the Court to reject the claim for legal fees, as the applicant had not actually incurred the above expenses. They further submitted that the claim for administrative and postal expenses was not supported by any postage receipts or other appropriate documentary evidence.

100. In the light of the Court's settled case-law (see, for example, *Belousov v. Ukraine*, no. 4494/07, §§ 115-17, 7 November 2013), the Court considers it reasonable to award the applicant, who was also granted EUR 850 in legal aid, EUR 1,150 in respect of legal fees, to be transferred directly to her representative's account, as indicated by the applicant.

Default interest

101. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Declares the complaint under Article 8 admissible;

Holds that there has been a violation of Article 8 of the Convention;

Holds that there is no need to examine the complaints under Articles 6 and 13 of the Convention;

Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,150 (one thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of legal fees, to be transferred directly to the account of the applicant's representative, Mrs N. Bukhta;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 September 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor SoloveytchikSíofra O'Leary
Deputy RegistrarPresident

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[1] The least severe category of disability, according to the domestic classification