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La Corte EDU sulla violazione degli obblighi positivi dello Stato in un caso di violenza domestica

(CEDU, sez. II, sent. del 17 ottobre 2023 ric. n. 55351/17)

Il presente caso riguarda la presunta incapacità delle autorità moldave di garantire una protezione effettiva alla ricorrente vittima di violenza domestica da parte del coniuge, il quale oltre ad averle inflitto maltrattamenti, psicologici e fisici, ha impedito alla stessa di avere un normale rapporto con i propri figli. La ricorrente ha lamentato, *in primis*, la violazione dell'art. 3 della Convenzione e, a tal riguardo, la Corte ha ribadito che oltre alle lesioni fisiche, l'impatto psicologico costituisce un aspetto importante della violenza domestica, fenomeno che non è limitato al solo maltrattamento fisico in sé ma comprende tra gli altri aspetti, la violenza psicologica e lo stalking. Sicché, nel valutare il caso di specie, essa ha ritenuto che il maltrattamento subito dalla ricorrente fosse sufficientemente serio da raggiungere il livello di gravità richiesto dalla suddetta disposizione e tale da investire la responsabilità dello Stato convenuto.

Più in particolare, come ha specificato la Corte, le autorità moldave sono venute meno al loro dovere di effettuare una valutazione immediata e proattiva del rischio di violenza che la ricorrente aveva più volte denunciato come dell'obbligo di svolgere indagini efficaci sugli atti di violenza perpetrati. Sulla base di simili circostanze, i Giudici di Strasburgo hanno ritenuto violato l'art. 3 della Convenzione sia nel suo aspetto sostanziale sia procedurale. Parimenti violato, per la Corte, è l'art. 8 per l'assenza di misure tempestive finalizzate ad agevolare la continuazione del rapporto genitoriale della ricorrente con i propri figli. Ulteriormente violato è l'art. 14 della Convenzione, poiché le autorità moldave non solo hanno minimizzato la gravità delle denunce esposte dalla ricorrente, minando la credibilità delle sue dichiarazioni, ma hanno dimostrato chiaramente di condonare le suddette violenze riflettendo un atteggiamento discriminatorio nei confronti della stessa in quanto donna. Infine, e conclusivamente, la Corte ha accolto la richiesta della ricorrente di risarcimento per danno morale.

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

SECOND SECTION

CASE OF XXX v. THE REPUBLIC OF MOLDOVA

(Application no. 55351/17)

JUDGMENT

STRASBOURG

17 October 2023

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 XXX v. the Republic of Moldova,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Egidijus Kūris,

Saadet Yüksel,

Lorraine Schembri Orland,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 55351/17) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Ms XXX ("the applicant"), on 24 July 2017;

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

the parties' observations;

Having deliberated in private on 26 September 2023,

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

INTRODUCTION

1. The present case concerns the alleged failure of the Moldovan authorities to protect the applicant from domestic violence and to support her in maintaining contact with her children. The applicant relied on Articles 3, 8 and 14 of the Convention.

THE FACTS

2. The applicant was born in XXX and lives in XXX. She was represented by Mr A. Postică and Ms L. Potîng, lawyers practising in Chișinău.

3. The Government were represented by their Agent at the time, Mr O. Rotari.

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

5. The applicant and A.I. lived as an unmarried couple in Italy, where in 2006 their two children were born and they got married. In 2012 A.I. returned with the children to the Republic of Moldova. The applicant stayed in Italy to work to support the family, sending money back to the Republic of Moldova before joining them there in 2015.

I. FACTS AND PROCEEDINGS CONCERNING DOMESTIC VIOLENCE

6. According to the applicant, A.I. started abusing her psychologically and physically in October 2015. She subsequently reported two incidents of physical violence which occurred on 13 July and 4 November 2016, as well as verbal abuse, harassment and emotional abuse by A.I., who encouraged the children to have a negative opinion of her and disconnected utilities in their home, making it impossible for her to stay there.

7. The domestic authorities examined these allegations in parallel proceedings, as described below.

A. Proceedings under Law no. 45 on domestic violence

8. On 1 August 2016 the applicant sought a protection order for herself and her two children. In her request she noted that there had been a history of physical and psychological violence, including in the presence of the children, since October 2015 and a recent occurrence of physical violence on 13 July 2016.

9. On 2 August 2016 the Ialoveni District Court granted her request, issuing a protection order for ninety days, for the duration of which A.I. was to leave their common residence, to refrain from any contact with the applicant or the children and to stay at least 50 m away from them. On 27 October 2016 the Chișinău Court of Appeal upheld the protection order.

10. The applicant complained to the police and to the child protection services on 24 August and on 2 and 5 September 2016 about A.I.'s failure to comply with the protection order. In particular, she argued that A.I. had not observed the requirement to remain at a distance of 50 m since he had moved in with his sister, who lived in another part of the same house as the applicant although it had a separate entrance. She noted that the children had been exposed to psychological pressure from A.I. and had moved in with him on 22 August 2016, while A.I. had continued expressing negative views about her in front of the children. She also complained that A.I. had taken personal things belonging to her from her home in her absence and thrown them into the garage, blocking her access to them. She argued that neither the police nor the social assistance and child protection services had monitored whether the protection order had been complied with. On 10 October 2016 the applicant sought the intervention of the police, noting, among other things, that A.I. was manipulating the children into having a negative opinion of her, that he took things from her home while she was absent and that on 12 September 2016 he had cut off the water supply to the part of the house where she lived and that she was still unable to have it reconnected. On 15 November 2016 the applicant explicitly complained to the police about A.I. hindering her access to the children.

11. On 24 October 2016 the police replied that her description of facts had not been confirmed and that on 7 October 2016 the prosecutor had refused to initiate any investigation (see further details in paragraph 22 below). In respect of the emotional abuse inflicted on the applicant by A.I. severing contact with the children, the police referred, among other things, to the child protection authority's refusal of 15 September 2016 to provide a contact schedule (see paragraph 30 below).

12. On 31 October 2016 the applicant sought an extension of the protection order, referring to A.I.'s failure to comply with the order of 2 August 2016 and to his ongoing emotional abuse and harassment of her by manipulating the children against her and disrupting the water supply in her home.

13. On 2 November 2016 the Ialoveni District Court rejected the applicant's request. The court concluded that the applicant had failed to produce evidence of non-compliance with the protection order. The court noted:

"The family misunderstandings between the spouses cannot serve as a pretext to extend the protection order in respect of [the applicant] and the children, who currently live with their father, [A.I.]. The refusals to initiate criminal proceedings on 7 October 2016 ... confirm that the conflicts between the spouses are a family dispute without elements of violence."

Her appeal against that decision was dismissed on 24 January 2017 by the Chișinău Court of Appeal, noting that she had failed to produce evidence that A.I.'s behaviour had not changed and that she was still at risk of domestic violence at his hands.

14. On 4 November 2016 the applicant was physically assaulted by A.I. in her home. A medical report drawn up on the same day mentioned two bruises on her forehead measuring 2.8 cm by 2.5 cm and 2.9 cm by 2.5 cm, as well as bruises on her arms (the biggest of which measured 1.9 cm by 1.7 cm) and buttocks (measuring 2.0 cm by 1.5 cm). The injuries were classified as minor. The applicant was hospitalised for eight days with a diagnosis of concussion.

15. The applicant repeatedly sought a protection order against A.I., referring to the physical assault of 4 November 2016 in addition to the reasons advanced previously. In addition to the restrictions ordered earlier, she also sought orders for A.I. to cover her medical costs and to attend a mandatory treatment and medication programme and for the children to be unconditionally returned to her pending the conclusion of the proceedings.

16. On 10 November 2016 the Ialoveni District Court rejected her request for lack of evidence and held as follows:

"...[T]he court considers it necessary to reject the request for the extension of the [protection order], because the facts described and the documents attached are insufficient to confirm [A.I.]'s failure to comply with the restrictions imposed by the protection order of 2 August 2016, aggressive behaviour by him after its expiry. Moreover, the conclusions of the [child protection] authority and the children's recent statements as to their wish to live with their father and not with their mother indicate precisely that [the applicant] seeks to use the circumstances established by the court protection orders, of which she has no need in fact, in the financial disputes and in the proceedings concerning divorce and the custody of the children, all pending before the Ialoveni District Court. Also, the initiation of criminal proceedings against [A.I.] for residing in his mother's house together with the minor children, located at an unspecified distance from his previous home, in the absence of a bailiff's conclusion that this had violated the previous protection order, is an overdramatic element (*element de concertare*) in the [applicant's] behaviour, which also undermines her credibility as to the circumstances in which she suffered minor injuries on 4 November 2016.

Moreover, the measures requested by [the applicant] are extremely aggressive and strict, going beyond the consequences of a conviction in similar cases, and are applicable only in respect of persons who have ill-treated a relative for a long time, where the violence has been ascertained by the authorities, but not in the course of disputes relating to divorce or children's residence.

It should also be noted that the applicant did not submit any evidence to suggest that [A.I.] had been violent towards her and the children before the decision to divorce."

The applicant appealed against that decision but was unsuccessful.

17. On 9 February 2017 the applicant made a new request for a protection order, including a request for A.I. to be ordered to reconnect the water supply, the electricity and the gas and to refrain from insulting her by words or gestures. She referred to criminal proceedings initiated against A.I for breach of the protection order and psychological violence in respect of the children (see paragraphs 23 and 44 below) and to the absence of other protection measures. She noted the previous physical abuse and ongoing harassment in the form of turning the children against her and disrupting her water and electricity supply.

18. On 13 February 2017 the Hâncești District Court rejected her request and cited the absence of domestic violence and of any imminent danger of physical violence. The decision read as follows:

"The applicant and [A.I.] are in divorce proceedings and live separately. [The applicant] has acknowledged that [A.I.] avoids her and does not wish to talk to her. The last time he had been physically violent was on 4 November 2016. The court notes that a final court decision has already been taken on allegations of violent actions committed by [A.I.] on 4 November 2016 and the court rejected [the applicant's] request.

...Although the applicant seeks protection measures in respect of the children, she has not submitted any evidence to confirm that the alleged aggressor is psychologically, physically or otherwise violent towards them ... Moreover, advisory opinion no. 1299 of 10 November 2016 of the Ialoveni Social Assistance and Family Protection Service has recommended that the court confirm the children's residence with their father, [A.I.].

In addition, the protection measures requested by the applicant fall outside the legal framework, as neither the Code of Civil Procedure nor Law no. 45 on preventing and combating domestic violence provide for measures such as ordering the aggressor to secure adequate living conditions by connecting a water supply or electricity and gas, to refrain from psychological violence against family members, or to refrain from insulting the victim with words and gestures.

From the content of the explanations given, the court concludes that the applicant is manifesting her dissatisfaction with the situation in which she cannot have contact with the children.

However, in this connection a contact schedule had been set up, [and in the event of non-compliance] the applicant may use other legal means to protect her rights and interests rather than seeking protection orders."

19. The applicant appealed against that decision, asserting that A.I. had been violent since the expiry of the previous protection order, namely during the incident of 4 November 2016, and that his engineering of the children's negative attitude towards her was a form of psychological violence against her. She submitted that the contact schedule set on 26 January 2017 had not been respected as A.I. had continued to prevent the children from meeting her under the pretext that they refused to see her.

20. On 13 April 2017 the Chișinău Court of Appeal dismissed the applicant's appeal, concluding that the applicant had not been subjected to physical or psychological violence. The court found that the initiation of criminal proceedings in itself was not sufficient evidence of violence because, in the absence of a final judgment, A.I. was to be presumed innocent. The court also dismissed the applicant's arguments of psychological violence, noting that the law provided for a different procedure for the enforcement of contact rights and her complaints to the police about the interference with her home were irrelevant in the absence of a decision taken by the appropriate

authorities. While finding that the applicant was no longer living with A.I. and that they were in divorce proceedings, the court emphasised that the parties should not use proceedings for protection from domestic violence as a "means of revenge".

B. Criminal proceedings

21. On 13 July 2016 the applicant lodged a complaint with the police about being physically abused by A.I. The police refused to institute criminal proceedings but ordered A.I. to pay an administrative fine of 500 Moldovan lei (MDL – equivalent to approximately 25 euros (EUR)) on charges of minor bodily injuries (Article 78 § 3 of the Code of Administrative Offences). On 28 July 2017 the Hâncești District Court upheld an appeal by A.I. and quashed the decision, concluding that the imposition of the fine had been procedurally improper and that the police had failed to show that the alleged offence had been committed. The applicant appealed but her appeal was dismissed.

22. In response to the applicant's complaints (see paragraph 10 above), on 7 October 2016 the prosecutor refused to institute criminal proceedings. The prosecutor noted, among other things, A.I.'s opinion that the family conflicts were frequent and essentially the consequence of the applicant's alleged infidelity, and that the children had stayed with their mother for only one day after he had left and had then refused to stay with her any longer, although A.I. had never stopped them from contacting their mother. The prosecutor concluded that the parties were in the process of getting divorced and that the conflict between them was of a civil nature, to be resolved either amicably or by court proceedings. The applicant appealed against that decision, emphasising the aspects of psychological violence and emotional abuse by preventing her from having contact with the children. The hierarchically superior prosecutor dismissed her appeal. On 7 December 2016 the Ialoveni investigating judge rejected a further appeal by the applicant because her application was not signed.

23. On 2 November 2016 the Ialoveni police initiated criminal proceedings against A.I. on charges of breach of the protection order of 2 August 2016 (Article 320/1 of the Criminal Code), in particular for his failure to keep at a distance of at least 50 m from the applicant and to refrain from contacting her.

24. On 24 November 2016 the Ialoveni police initiated criminal proceedings against A.I. on charges of domestic violence (Article 201/1 (1) (a) of the Criminal Code), in particular for having inflicted minor injuries to the applicant.

25. The two sets of criminal proceedings (for domestic violence offences and breach of a protection order) were joined.

26. The prosecutor sought protection measures within those proceedings, but on 24 February 2017 the Hâncești District Court dismissed the application as unsubstantiated. The court concluded:

"... the acts of psychological violence of which [A.I.] has been accused have not been substantiated before the court, and from the material and explanations provided by the parties, the court has not found any evidence of domestic violence or an imminent danger of physical violence against [the applicant]. ...

In the light of [Article 8 of the Convention] and the factual situation in the criminal proceedings at hand, the court considers it unacceptable and [un]necessary that State authorities should interfere in the private and family life of the spouses ... because no pertinent and conclusive evidence has

been produced to show that [A.I.] is the aggressor within the family through the behaviour described by [the applicant] or why the court should impose any [protection measures]."

27. On 14 November 2019 the Hâncești District Court convicted A.I. on both counts and sentenced him to two years and three months' imprisonment, suspended for two years. The court treated the physical abuse of 4 November 2016 as domestic violence and found that A.I. had breached the protection order of 2 August 2016 by not complying with the order to keep a 50 m distance from the applicant and by contacting her. The court ordered A.I. to pay the applicant MDL 3,000 (equivalent to EUR 154) in respect of pecuniary damage, MDL 15,000 (equivalent to EUR 770) in respect of non-pecuniary damage and MDL 7,000 (equivalent to EUR 360) in costs and expenses. The applicant did not appeal against that judgment. A.I.'s subsequent appeals were rejected with final effect on 15 September 2021 by the Supreme Court of Justice.

II. FACTS AND PROCEEDINGS RELATING TO CONTACT RIGHTS

28. On 22 August 2016, while the protection order of 2 August 2016 was still in force, the applicant's children moved in with A.I. and stopped answering the applicant's telephone calls.

29. On 5 September 2016 the applicant asked the Social Assistance and Child Protection Service ("the child protection authority") to set up a contact schedule which would allow her to spend as much time with her children as A.I. did. In her request she referred to the protection order of 2 August 2016 and to the domestic violence context, in which the children had witnessed A.I.'s verbal abuse of her and his negative attitude towards her.

30. On 15 September 2016 the child protection authority issued an advisory opinion in which it declined to provide a contact schedule, as follows:

"On 13 September 2016 ... [A.I.] expressed his full support for the [applicant's] request, saying that he considered that [the children], if they wished, were entitled to contact with both parents irrespective of who they lived with, but that the decision was up to them. ...

On 13 September 2016, in the presence of the [child protection specialist], [one of the children] stated that he refused to live with their mother because while they were there she had locked them inside the house and that they wished to live with their father. [The second child] stated that he wished to live with his father because it was their father who took care of them, that when they were sick the father did not sleep and that he taught them to write, whereas their mother came home late, never asked about their homework, was not interested in the children's lives, did not want to give them house keys, took their keys and telephones by force, and had locked them in to prevent them from going to their father.

On the basis of the above, and in the light of Article 54 and Article 64 §§ 1 and 2 of the Family Code and sections 8(2) and 17 of Law no. 388 on children's rights and of the statements made by the children, [the child protection authority], acting in the children's best interests, declines to set out a contact schedule...

The parents must ... continue honouring their duty to support and raise the children."

31. The applicant appealed against that decision, arguing that the children's views were precisely the result of A.I.'s negative influence on them and that she was being punished for not having been with her children from 2013 to 2015 when she had been working in Italy for the benefit of the entire family. She noted that the child protection authority had not explained how the children's

contact with their mother was against their best interests or how she could exercise her parental rights without contact with the children.

32. On 11 November 2016 the Ialoveni District Court granted the applicant's request and ordered the Ialoveni child protection authority to set up a contact schedule.

33. On 21 November 2016 the applicant sought information from the children's school as to whether the children had been provided with any support from the school psychologist with a view to re-establishing contact with their mother or to deal with the effects of having witnessed domestic violence, and she asked to be provided with a copy of their psychological assessment.

34. In what appears to be a reply, on 24 November 2016 the school principal confirmed that the applicant was regularly attending various events at school, including parents' meetings, and that on 16 November 2016 A.I. had asked the school administration to make sure that the children's mother did not "upset the children emotionally by her presence during classes or extracurricular activities".

35. At the applicant's request and with reference to the court judgment of 11 November 2016, on 26 January 2017 the child protection authority provided a contact schedule according to which the children were to spend every second week with the applicant.

36. However, on 9 February 2017 the applicant complained to the police that on 30 January 2017 A.I. had refused to comply with the contact schedule. In reply the police said that A.I was not at fault, since it was the children who had voluntarily expressed a wish to spend time only with their father. The applicant's subsequent requests for assistance yielded similar replies, namely that it was up to the children to decide when and with which parent they were to live.

37. On 8 May 2017, the children's birthday, the applicant complained to the police that A.I. had left with the children and was not answering the phone, depriving her of any opportunity to wish the children happy birthday and give them their presents. In reply, the police confirmed the applicant's description of facts but redirected her to the child protection authority.

38. On 23 May 2017 the applicant sought the presence of a child protection specialist to facilitate contact with her children during a visit to their school. The report of the child protection authority after the visit read as follows:

"The visit was organised together with the [school administration], and a separate room was provided for the visit. The children had a negative reaction to seeing their mother and did not wish to talk to her. [I.E.] was silent, [I.A.] expressed his dissatisfaction in the form of revolt, stating that he would not stay in the room as long as his mother was there. At that point, [the applicant] left the room and the children stayed to talk to the senior child protection specialist. When he was asked why they did not wish to communicate with their mother, [I.A.] said that their mother was bad, that she did not need them, and that they had been raised by their father as their mother came home late. The children said that they would not go with their mother and would not even talk to her, saying that it was their right to refuse to do so and that they could not be forced by anyone. During the visit [the applicant] offered the children gifts but they refused to accept them."

39. According to the Government, on 18 September 2017 a working group was set up to identify solutions so that contact could be re-established between the applicant and her children. The group included representatives of the child protection authority, a psychologist of the social protection service and representatives from the National Centre for the Prevention of Child Abuse (a non-

governmental organisation) and the psycho-pedagogical assistance service. The working group recommended the involvement of a professional psychologist who should have separate sessions with the children and then, on a gradual basis, with the parents. At the same time, it recommended that the parents pursue family therapy sessions. The Court has not been provided with any documentary information about the work of this specialist group.

III. DIVORCE PROCEEDINGS

40. On 19 July 2016 A.I. initiated proceedings for divorce, seeking custody of the children and maintenance from the applicant.

41. On 19 June 2018 the Hâncești District Court granted the divorce and decided that the children should live with their father, rejecting the applicant's application for custody. The judgment became final on 7 March 2022 after the Chișinău Court Appeal had rejected the applicant's appeal for failure to comply with formal requirements.

IV. OTHER FACTS

42. On 14 December 2016 the National Centre for the Prevention of Child Abuse confirmed to the applicant that its specialists had had a meeting with her and the children on 16 August 2016, during which a primary assessment indicated that the children had a positive attachment to their mother. Five subsequent sessions took place with the applicant alone, because the children were unable to attend. The specialists had assessed the applicant as presenting specific signs of domestic violence, and as being profoundly affected by the lack of contact with her children.

43. On 16 December 2016 the applicant lodged a criminal complaint against A.I., claiming that he was abusing their children psychologically. She noted that she and the children had seen a psychologist on 16 August 2016 because she had already been worried about the impact A.I. was having on them. While the psychologist had confirmed at that point that the children had a positive relationship with the applicant, no further sessions took place because A.I. prevented the children from attending them. In time, the children started being aggressive towards the applicant and her family.

44. On 19 January 2017 a criminal investigation was initiated in respect of A.I. on charges of domestic violence in the form of isolating and intimidating the children (Article 201/1 (2) (a) of the Criminal Code). In June 2017, in the course of those proceedings, the investigator concluded that the child protection authority should act as the legal representative of the children and not the applicant, towards whom the children had exhibited a negative attitude. The applicant appealed unsuccessfully against that decision.

45. According to the Government, the proceedings were discontinued on 30 March 2018 after two judicial expert reports had concluded that the children did not manifest any symptoms of mental trauma or its consequences.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

46. The relevant parts of Law no. 45 of 1 March 2007 on preventing and combating domestic violence read as follows at the time of the events:

Section 2 – Definitions

"...

domestic violence – acts of physical, sexual, psychological, spiritual or economic violence, except acts in self-defence or in defence of another person, as well as threats of committing such acts [of violence], perpetrated by a family member in respect of another family member, which has resulted in pecuniary or non-pecuniary damage;
psychological violence – imposing one's will or personal control; provoking psychological tension or suffering through ridiculing, swearing, insulting, name-calling, blackmail, deliberate property damage, verbal threats ..."
Section 15. Protection measures
"(1) Within twenty-four hours after receiving a request the court shall make a protection order to assist the victim and her children, imposing the following measures against the aggressor:
(a) ordering him to leave the common residence temporarily or to stay away from the victim's residence, without deciding ownership rights;
(b) ordering him to stay away from the victim, preventing him from seeing the victim or the children or other dependants;
(c) prohibiting any contact, including via telephone, correspondence or in any other way, with the victim, the children or other dependants;
(d) prohibiting him from approaching certain locations: the victim's workplace, the children's school, other designated locations visited frequently by the victim;
(e) ordering him to contribute to the maintenance of the children until the proceedings are over;
(g) limiting the unilateral use of joint assets;
(f) ordering him to pay compensation for costs and damage caused by violent actions, including medical costs and the costs of replacing or repairing items that were destroyed or damaged; [provision removed by an amendment which came into force on 16 September 2016]
(h) ordering attendance on a treatment or counselling programme, if the court considers this necessary in order to reduce or stop violence;
(i) setting a temporary contact schedule with any minor children;
(j) prohibiting the keeping or carrying of weapons.
(2) The protection order shall be communicated immediately to the police with territorial responsibility in the aggressor's place of residence, who shall inform the aggressor without delay of the measures adopted. If the protection order is issued in respect of a child, the local child protection authority shall also be informed.
(3) The protection measures in subsection (1) shall be applicable for up to three months, may be revoked under the terms of this Law and may be extended on request or if the previous protection order has not been complied with.
(4) The application of protection measures shall not preclude the initiation of proceedings for divorce, division of marital property, removal of parental authority, taking children into care without removing parental authority and other actions provided under law.
(4/1) While the protection order is in force, the exercise of parental rights shall be reserved to the parent who is the victim. The parent who is the aggressor may request contact rights, which will be granted on the basis of a schedule issued by the local child protection authority. [provision introduced by an amendment in force as of 16 September 2016]"

47. At the material time, the relevant parts of the Code of Civil Procedure of the Republic of Moldova, brought into force by Law no. 255 of 30 May 2003, read as follows:

Article 318/3. Examination of the request

"(1) After receiving the request, the court shall contact the police immediately and ask for the aggressor to be informed about the commencement of proceedings.

(2) An independent statement by the victim is sufficient for issuing a protection order where there is an imminent risk of physical violence. The court may request, if necessary, an assessment of the family concerned and of the aggressor by the social services or the police. The court may request other documents necessary for the examination of the request. ..."

Article 318/5. Extension and revocation of the protection order

"(1) The duration of protection measures may be extended by the court following a further request if there are further acts of domestic violence or a failure to comply with the previous protection order or if, on the expiry of the protection measures, there is still a risk of violence or of other illegal action by the aggressor against the victim."

48. At the time of the events the relevant parts of the Criminal Code of the Republic of Moldova, brought into force by Law no. 895 of 18 April 2002, read as follows:

Article 201/1. Domestic violence

"(1) A deliberate act or omission committed by a family member in respect of another family member, manifesting as:

(a) ill-treatment, other violent acts, resulting in minor bodily harm;

(b) isolation or intimidation with the purpose of coercion or personal control over the victim;

... shall be punishable by 150 to 180 hours of community service or by imprisonment up to three years.

(2) The acts or omission described under paragraph (1):

(a) committed in respect of two or more family members;

... shall be punishable by 180 to 240 hours of community service or by imprisonment for one to six years."

Article 320/1. Failure to comply with measures in
a domestic violence protection order

"The deliberate breach, or absconding from the enforcement, of measures imposed by a court in a domestic violence protection order shall be punishable by 160 to 200 hours of community service or by imprisonment for up to three years."

49. The relevant parts of the Family Code of the Republic of Moldova, brought into force by Law no. 1316 of 26 October 2000, read as follows:

Article 52. The rights of the child to contact with his or her parents and other relatives

"(1) The child shall be entitled to contact with both parents ... The dissolution of the parents' marriage ... or their separation shall not affect the child's rights. If the parents live separately, the child shall be entitled to contact with each parent."

Article 54. The right of the child to express an opinion

"The child shall be entitled to express an opinion on decisions about family issues which concern his or her interests and are to be heard in the course of administrative or judicial hearings. The

opinion of a child who is ten years or older shall be taken into consideration if this does not run counter to his or her best interests."

Article 64. Exercise of parental rights when parents live separately

"(1) The parent who lives with the child shall not be entitled to prevent the child's contact with the other parent who lives separately, except when the other parent's behaviour is detrimental to the child's best interests or poses a danger to the child's physical or psychological integrity."

II. INTERNATIONAL LAW

A. United Nations

50. The General Recommendation No. 19: Violence against women, adopted in 1992 by the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW), describes family violence as one of the most insidious forms of violence against women. It includes violence of all kinds, including battering, rape, other forms of sexual assault and mental and other forms of violence which are perpetuated by traditional attitudes. The Republic of Moldova acceded to the UN Convention on the Elimination of All Forms of Discrimination against Women on 1 July 1994.

51. In its General Recommendation No. 35, adopted in 2017 (UN Doc. CEDAW/C/GC/35), which complements and updates General Recommendation No. 19, CEDAW stated, *inter alia*:

"26. ... all judicial bodies are required to refrain from engaging in any act or practice of discrimination or gender-based violence against women and to strictly apply all criminal law provisions punishing such violence, ensuring that all legal procedures in cases involving allegations of gender-based violence against women are impartial, fair and unaffected by gender stereotypes or the discriminatory interpretation of legal provisions, including international law. The application of preconceived and stereotypical notions of what constitutes gender-based violence against women, what women's responses to such violence should be and the standard of proof required to substantiate its occurrence can affect women's rights to equality before the law, a fair trial and effective remedy."

52. In its General Recommendation No. 33 on women's access to justice, adopted in 2015 (UN Doc. CEDAW/C/GC/33), CEDAW noted how gender prejudices in the judicial system impeded access to justice and contribute to a culture of impunity. Against this context, CEDAW recommended that State parties:

"18. (e) Implement mechanisms to ensure that evidentiary rules, investigations and other legal and quasi-judicial procedures are impartial and not influenced by gender stereotypes or prejudice; ..."

B. Council of Europe

53. The Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS 210) was adopted in Istanbul on 11 May 2011 and came into force in respect of the Republic of Moldova on 1 May 2022. The Convention requires that incidents of violence covered by it be taken into account in the determination of custody and visitation rights of children (Article 31). It also lists psychological violence as a form of gender-based violence (Article 33) and requires Parties to take the necessary measures to ensure that investigations in relation to all forms of violence covered by its scope are carried out without undue delay and

having regard to the gendered understanding of violence (Article 49). Its Explanatory Report clarifies:

"175. [Article 31] aims at ensuring that judicial authorities do not issue contact orders without taking into account incidents of violence covered by the scope of this Convention. It concerns judicial orders governing the contact between children and their parents and other persons having family ties with children. In addition to other factors, incidents of violence against the non-abusive carer as much as against the child itself must be taken into account when decisions on custody and the extent of visitation rights or contact are taken.

176. Paragraph 2 addresses the complex issue of guaranteeing the rights and safety of victims and witnesses while taking into account the parental rights of the perpetrator. In particular in cases of domestic violence, issues regarding common children are often the only ties that remain between victim and perpetrator. For many victims and their children, complying with contact orders can present a serious safety risk because it often means meeting the perpetrator face-to-face. Hence, this paragraph lays out the obligation to ensure that victims and their children remain safe from any further harm. ...

179. [Psychological violence is] any intentional conduct that seriously impairs another person's psychological integrity through coercion or threats ... which seriously impairs and damages a person's psychological integrity which can be done by various means and methods. The Convention does not define what is meant by serious impairment. Use must be made of coercion or threats for behaviour to come under this provision... This provision refers to a course of conduct rather than a single event. It is intended to capture the criminal nature of an abusive pattern of behaviour occurring over time – within or outside the family. Psychological violence often precedes or accompanies physical and sexual violence in intimate relationships (domestic violence)."

54. In its Third General Report on Activities (June 2022), the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) described at length and gave illustrations of the strengths and weaknesses of States parties in the implementation of Articles 26, 31 and 45 with regard to victims of domestic violence and decisions made on child custody and contact. In respect of measures that were insufficient to ensure the safety of victims of domestic violence and their children, GREVIO referred to inadequate risk assessment, where judges did not screen cases relating to the determination of custody and contact for domestic violence; a lack of co-ordination between civil and criminal processes whereby courts could make an order for a perpetrator of violence to have contact with his children in spite of a restraining order made against him by another court in other proceedings; a failure to treat child witnesses of domestic violence as victims, resulting in the harmful effect on children of witnessing such violence not being systematically considered in decisions on child contact; and a failure to take incidents of domestic violence into account in court decisions on custody and contact, with evidence suggesting that one parent's abuse of the other was only rarely, if at all, taken into account when taking such decisions. GREVIO also noted that the wording of legislation sometimes failed to acknowledge the power imbalance between perpetrators and victims in cases of domestic violence against women and treated them equally by specifying that the suspension of parental rights could be ordered with respect to both the aggressor and the parent who tolerated the

violence. Such a provision could lead to protection mechanisms turning against women victims of intimate partner violence and exposing them to secondary victimisation by restricting the exercise of their parental rights.

To address these issues, GREVIO identified the following among the cross-cutting actions to be taken in order to achieve continuing progress on improving the situation for victims of domestic violence in relation to custody and contact rights:

"1. ensure that adequate screening of family court applications, including a mandatory question regarding violence, is undertaken, and disclose risk assessments originating from other authorities;

2. strengthen inter-institutional co-operation and information exchange between civil courts and criminal courts, as well as between these courts and services that assist and support victims of violence and their children or other bodies (such as women's specialist services, social protection and health services, or educational institutions), in order to prevent, *inter alia*, ordering contact between a perpetrator and a child/children in spite of a restraining order issued by another court;

...

6. step up efforts to ensure wider levels of awareness among the professionals concerned, such as educators, teachers, social workers, legal and health professionals, and psychologists, of the harmful effects of witnessing domestic violence on children, and to provide access for child witnesses to appropriate, age-specific support services based on a gendered understanding of violence against women and pay due regard to the best interests of the child;

7. ensure the recognition of witnessing violence against a close person as jeopardising the best interest of the child and take their wishes and feelings into account where possible with regard to custody and visitation, including in judicial proceedings;

8. explicitly recognise the need to take into account incidents of violence covered by the scope of the Istanbul Convention in the determination of custody and visitation rights of children, including by consulting with all relevant professionals and/or conducting independent investigations, as well as amending the law to remedy existing gaps; ..."

55. In its Mid-term Horizontal Review of baseline evaluation reports (February 2022), GREVIO noted:

"Victim support provided in other legal proceedings

487. In its baseline evaluation report on Portugal, GREVIO noted that support tends to concentrate on accompanying the victim throughout the criminal proceedings, leaving them on their own when it comes to other types of legal proceedings, such as proceedings related to child custody. It has expressed the concern that this leaves them vulnerable and often unable to defend their rights and interests, such as for the purposes of negotiating an agreement on parental responsibilities with the violent father. It therefore strongly encouraged the authorities to provide such support not only in criminal proceedings but also in related civil proceedings, such as those instituted to settle a compensation claim, a divorce or custody in domestic violence cases."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

56. The applicant complained that the domestic authorities had failed to afford her effective protection from domestic violence. She relied on Article 3 of the Convention, which reads as follows:

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

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

A. Submissions by the parties

58. The applicant submitted that the domestic authorities had failed to afford her effective protection from domestic violence at the hands of A.I. In particular, she noted that despite A.I.'s proven past acts of physical violence and imminent risk of reoffending, the authorities had refused to make protection orders other than on one occasion, on 2 August 2016, when the order had, however, not been complied with. The reasons put forward by the courts for dismissing her subsequent applications for protection were discriminatory and inadequate to the context of domestic violence. The criminal proceedings had not been initiated promptly and had resulted at first instance in a suspended sentence three years later, which had become final five years after the events, and which had limited, if any, deterrent effect. The authorities had failed to give any consideration to the applicant's complaints of psychological violence and had failed to prevent the recurrence of physical abuse on 4 November 2016, after her application for the extension of the protection order had been dismissed.

59. The Government submitted that the domestic authorities had reacted promptly to the applicant's complaints of domestic violence by issuing a protection order on 2 August 2016 and by subsequently criminally convicting A.I. for failing to comply with that order. The Government argued that the dismissal of subsequent applications for protection orders had been justified by the absence of further occurrences of domestic violence. The violent assault of 4 November 2016 could not have been foreseen by the authorities, which had responded effectively by prosecuting and subsequently convicting A.I. In the absence of other violent incidents and of any appeal by the applicant arguing that the sentence was unduly lenient, the Government concluded that the domestic authorities had discharged their positive obligations to protect the applicant from domestic violence.

B. The Court's assessment

1. *Whether the applicant has been subjected to treatment falling under Article 3 of the Convention*

60. The parties did not dispute that the applicant had been subjected to treatment contravening Article 3 of the Convention. In addition to the documented physical violence suffered by the applicant at the hands of A.I. on at least on two occasions, the Court also acknowledges that, in addition to physical injuries, psychological impact forms an important aspect of domestic violence (see *Valiulienė v. Lithuania*, no. 33234/07, § 69, 26 March 2013, *Volodina v. Russia*, no. 41261/17, §§ 74-75 and 81, 9 July 2019, *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, § 76, 14 December 2021 and *De Giorgi v. Italy*, no. 23735/19, § 65, 16 June 2022). The Court notes that the phenomenon of domestic violence is not regarded as being limited to the sole fact of physical violence but is considered to include, among other aspects, psychological violence and stalking (see *Buturugă v. Romania*, no. 56867/15, § 74, 11 February 2020), threats (see *Tunikova and Others*, cited above, § 119) and fear of further assaults (see *Eremia v. the Republic of Moldova*, no. 3564/11, § 54, 28 May

2013; *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 41, 28 January 2014; and *Volodina*, cited above, § 75).

61. In the light of the foregoing, the Court considers that the ill-treatment of the applicant was sufficiently serious to reach the level of severity required to fall within the scope of Article 3 of the Convention and thus to raise the issue of the Government's positive obligation under that provision.

62. It emerges from the Court's case-law that children and other vulnerable individuals – including victims of domestic violence – are entitled to State protection, in the form of effective deterrence against such serious breaches of personal integrity (see *Opuz v. Turkey*, no. 33401/02, § 159, ECHR 2009, and *Buturugă*, cited above, § 60). The authorities' positive obligations under Article 3 of the Convention comprise, firstly, an obligation to put in place a legislative and regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of ill-treatment contrary to that provision; and thirdly, an obligation to carry out an effective investigation into arguable claims of infliction of such treatment (see *Volodina*, cited above, § 77; *X and Others v. Bulgaria* [GC], no. 22457/16, § 178, 2 February 2021; and *Kurt v. Austria* [GC], no. 62903/15, § 165, 15 June 2021, with further references).

2. *Whether the State authorities discharged their positive obligation*

(a) The obligation to establish a legal framework

63. The parties did not dispute the adequacy of the legal framework established under Law no. 45, which was intended to afford protection from domestic violence, and of the provisions of the Criminal Code on the prosecution of acts of domestic violence. The circumstances of the case do not warrant the Court concluding otherwise.

(b) The obligation to prevent the realisation of a known risk of ill-treatment

64. The risk of a real and immediate threat which has been brought to the knowledge of domestic authorities must be assessed taking due account of the particular context of domestic violence. In such a situation, there is an obligation not only to afford general protection to society, but above all to take account of the recurrence of successive episodes of violence within a family. In many cases, even where the authorities do not remain totally passive, they still fail to discharge their obligations under Article 3 of the Convention because the measures they take do not stop the abuser from perpetrating further violence against the victim (see *Tunikova and Others*, cited above, § 103, and further case-law references in *Volodina*, cited above, § 86).

65. The Court clarified the scope of the State's positive obligation to prevent the risk of recurrent violence in the context of domestic abuse in its judgment in the case of *Kurt*, (cited above, §§ 161 et seq.) and *Tunikova and others* (cited above, § 104).

First, the domestic authorities are obliged to respond "immediately" to complaints of domestic violence and to process them with special diligence, since any inaction or delay deprives the complaint of any utility by creating a situation of impunity conducive to the recurrence of acts of violence. In assessing the "immediacy" of the risk, the authorities should take into account the specific features of domestic violence cases, such as consecutive cycles of violence, often with an increase in frequency, intensity and danger over time (ibid., §§ 165-66 and 175-76).

Second, the authorities have a duty to undertake an "autonomous", "proactive" and "comprehensive" risk assessment of the treatment contrary to Article 3. The authorities should not rely solely on the victim's perception of risk but complement it with their own assessment, preferably using standardised risk assessment tools and checklists and collecting and assessing information on all relevant risk factors and elements of the case, including from other State agencies. The conduct of the risk assessment should be documented in some form and communicated to other stakeholders who come into regular contact with the persons at risk; the authorities should keep the victim informed of the outcome of the risk assessment and, where necessary, provide advice and recommendations on the available legal and operational protective measures (ibid., §§ 167-74).

Third, once a risk to a victim of domestic violence has been identified, the authorities must, as quickly as possible, take preventive and protective operational measures that are adequate and proportionate to the risk. A proper preventive response often requires coordination between multiple authorities, including the rapid exchange of information (ibid., §§ 177-83).

66. The Court has had regard in particular to the following factors in establishing that State authorities ought to have been aware of the risk of recurrent violence: the perpetrator's history of violent behaviour and failure to comply with the terms of a protection order; an escalation of violence representing a continuing threat to the health and safety of the victims; the perpetrator's access to weapons; and any repeated pleas of the victim for assistance through emergency calls, formal complaints and petitions to the head of police (see case-law references in *Tunikova and Others*, cited above, § 105).

67. In the light of the applicant's complaints to the police and requests for protection measures in the present case, the Court finds that the domestic authorities were aware, or ought to have been aware, of the violence to which she had been subjected and had an obligation to assess the risk of its recurrence and to take adequate and sufficient measures for her protection.

68. At the outset, the Court notes the prompt response to the applicant's initial complaint and the protection order issued on 2 August 2016. However, after the expiry of that order on 2 November 2016, no other protection measures were ever ordered despite the applicant's numerous requests and the prosecutor's application for such measures. The domestic courts concluded that the applicant had failed to substantiate the existence of any risk of ill-treatment after the expiry of the protection order on 2 November 2016, either casting doubt as to the truthfulness of her allegations or requiring proof "beyond reasonable doubt" of such risk (see paragraphs 13, 16, 18, 20 and 26 above).

69. Although the domestic law provided explicitly for the extension of protection orders where previous orders had not been complied with and for the purpose of some form of risk assessment (see paragraphs 46 and 47 above), the authorities failed to conduct an autonomous, proactive and comprehensive risk assessment in the present case. The Government have not informed the Court of any provisions of domestic law or any policy or regulatory framework that give any guidance, protocols or instruction on gender-specific risk assessments and risk management in domestic violence cases, or of any risk assessment methodology used to assess the risk of further violence. At no point did the authorities conduct a documented risk assessment of the applicant's situation. They did not take into account the applicant's allegations of A.I.'s history of violence since October

2015 and aspects relating to psychological violence, although such aspects had been raised by the applicant in her complaints. The domestic courts showed no awareness of the specific nature and dynamics of domestic violence when dealing with the applicant's complaints. It is immaterial that there was no recurrence of violence after 4 November 2016, since in order to determine whether the obligation to prevent a known risk of ill-treatment has been fulfilled, the authorities must be able to show that they have undertaken a proactive and autonomous risk assessment, which they failed to do (see also *Tunikova and Others*, cited above, § 108).

70. The Court notes the discrepancy between the domestic courts' findings in the two sets of proceedings. On the one hand, in proceedings under Law no. 45, the courts were not convinced by the applicant's arguments. On the other hand, in criminal proceedings, for which the standard of proof is higher, the courts convicted A.I. on charges based on exactly the same facts, for failing to comply with the protection order and for repeatedly assaulting the applicant. The findings of the first-instance criminal court three years after the events do not eliminate or attenuate the responsibility of the domestic authorities for their earlier failure to provide her with adequate protection measures (see *Tunikova and Others*, cited above, § 110). The refusal to extend the protection order amounted to a failure to forestall the recurrence of physical violence in November 2016.

71. The Court further observes that the domestic courts dismissed the applicant's requests for protection partly because at that stage A.I. had not been convicted in a final judgment (see paragraphs 16 and 20 above). The Court emphasises that protection orders should be based on the victim's evidence establishing the facts to a standard of proof which is not the criminal standard of proof, because such a standard is excessively high (see *Volodina*, cited above, §§ 56 and 58, with further references to CEDAW and the UN Special Rapporteur on violence against women). Awaiting a criminal conviction before taking relevant protective steps would run counter the underlying positive obligation to protect in the domestic violence context and, in particular, to act promptly after receiving a complaint of domestic violence In the present case, this failure to act before a criminal conviction, deprived the applicant's complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of acts of violence (see *Kurt*, cited above, § 165 with further references; see also CEDAW General Recommendation in paragraph 51 above).

72. The Court further notes that the domestic courts seem to have dismissed the applicant's allegations of psychological violence altogether as going beyond the scope of domestic violence proceedings (see paragraphs 16, 18 and 20 above). To be treated as such, gender-based violence does not need to involve a "direct and immediate threat to the life or health of the victim" (see *Volodina*, cited above, § 56). Both CEDAW and GREVIO have noted that mental or psychological violence is a form of gender-based violence, including domestic violence, and often precedes or accompanies physical and sexual violence in intimate relationships (see paragraphs 50 and 53-54 above). A proper risk assessment in the given circumstances should have included an analysis of the entire course of A.I.'s conduct, including the alleged psychological violence, rather than single events or incidents in isolation from each other (see the GREVIO standards in paragraph 54 above).

73. In addition, the domestic court expressed doubts as to the truthfulness of the applicant's allegations of domestic violence, insinuating that she had ulterior motives for her requests for

protection. That is a common stereotype in gender-based violence cases, according to which women are inherently untruthful and therefore more likely to fabricate allegations (see the CEDAW Committee's General Recommendation No. 19 referred to in *Opuz*, cited above, § 75).

74. The Court therefore finds that the Moldovan authorities failed in their duty to carry out an immediate and proactive assessment of the risk of recurrent violence against the applicant and to take operational and preventive measures to mitigate that risk, to protect the applicant and to condemn the perpetrator's conduct. Despite their initial prompt reaction, they subsequently failed to mount a proper preventive response in a coordinated manner amongst multiple authorities, remained passive in the face of the serious risk of ill-treatment to the applicant and, through their inaction and failure to take measures of deterrence, allowed the perpetrator to continue assaulting and harassing the applicant without hindrance.

(c) The obligation to carry out an effective investigation

75. The Court reiterates that the obligation to conduct an effective investigation into all acts of domestic violence is an essential element of the State's obligations under Article 3 of the Convention (see, as a recent authority, *Tunikova and Others*, cited above, § 114). To be effective, such an investigation must be prompt and thorough; these requirements apply to the proceedings as a whole, including the trial stage (see *M.A. v. Slovenia*, no. 3400/07, § 48, 15 January 2015, and *Kosteckas v. Lithuania*, no. 960/13, § 41, 13 June 2017). The authorities must take all reasonable steps to secure evidence concerning the incident, including forensic evidence. Special diligence is required in dealing with domestic violence cases, and the specific nature of the domestic violence must be taken into account in the course of the domestic proceedings. The State's obligation to investigate will not be satisfied if the protection afforded by domestic law exists only in theory; above all, it must also operate effectively in practice, and that requires a prompt examination of the case without unnecessary delays (see *Opuz*, cited above, §§ 145-51 and 168; *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 46, 28 January 2014; and *Talpis v. Italy*, no. 41237/14, §§ 106 and 129, 2 March 2017). The effectiveness principle means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering that has been inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in acts of violence (see *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts)).

76. In the present case, confronted with the applicant's first report of assault in July 2016, the police took no meaningful steps to secure evidence, which resulted in the discontinuation of the case against A.I. (see paragraph 22 above). Responding to the applicant's subsequent allegations of breach of the protection order and of psychological violence, the police limited their intervention to short "pre-investigation inquiries" which invariably concluded with a refusal to institute criminal proceedings on the grounds that no offence subject to public prosecution had been committed (see paragraph 22 above). It was only in November 2016 that an investigation in respect of A.I. was initiated for his breach of the protection order and subsequently for the physical assault of 4 November 2016.

77. While it is true that A.I. was eventually convicted of those offences, he was not convicted until five years after the events (three years, in the case of the conviction at first instance), when he was given a suspended sentence.

78. Furthermore, the Court finds that the authorities never made a serious attempt to take a comprehensive view of the applicant's case as a whole, which is required in this type of case (see *J.I. v. Croatia*, no. 35898/16, § 99, 8 September 2022). The investigations did not include any analysis of the various manifestations of violence before the physical assault on 13 July 2016 or of the psychological violence alleged by the applicant. In this context, the Court reiterates that the prohibition of ill-treatment under Article 3 covers all forms of domestic violence, including various forms of psychological violence, and every such act triggers the obligation to investigate (see paragraph 60 above concerning the various forms of psychological violence considered to reach the threshold of Article 3 of the Convention). CEDAW has indicated that, to be treated as such, gender-based violence does not need to involve a "direct and immediate threat to the life or health of the victim" (see *Volodina*, cited above, § 56). Acts of domestic violence should never be considered in isolation but rather as a single course of conduct or a series of related incidents (see *Tunikova and Others*, cited above, §153, and the GREVIO standards quoted in paragraph 54 above).

79. In view of the manner in which the authorities handled the applicant's reports of domestic violence – notably their failure to conduct an effective investigation of credible claims of psychological violence and of physical violence on 13 July 2016 and to ensure the prosecution and punishment of the perpetrator without undue delay – the Court finds that the State has failed to discharge its duty to conduct an effective investigation into the circumstances surrounding the ill-treatment suffered by the applicant.

(d) Conclusion

80. There has therefore been a violation of Article 3 of the Convention under its substantive and procedural limbs (see paragraphs 74 and 79 above).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

81. The applicant complained that the prolonged period during which it was impossible for her to have contact with her children had breached her right to family life, as provided in Article 8 of the Convention, which reads as follows:

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

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

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

A. Submissions by the parties

83. The applicant submitted that following the violence against her and the authorities' failure to react promptly, the children had been taken away by their father on 22 August 2016, while the protection order was still in force. The children had had a normal relationship with their mother, which was confirmed by a psychologist who had seen them together on 16 August 2016, until they had subsequently been manipulated by their father, resulting in their refusal to have any contact

with her. The applicant argued that the child protection authority had failed to provide any support in time to prevent the children's further estrangement and had failed to assess the reasons for their hostility despite the domestic violence context, taking the children's views at face value simply because they were over ten years of age. She argued that the divorce and the subsequent awarding of custody to A.I. should not have resulted in the *de facto* withdrawal of her contact rights.

84. The Government submitted that the domestic authorities had taken all reasonable measures to assist the applicant in the exercise of her contact rights, which had been hampered by the children's refusal to have contact with her. The Government argued that the applicant's complaints were incoherent and that her allegations of A.I.'s violence towards the children had never been proved. In the absence of any evidence as to the alleged change in the children's attitude towards the applicant, the Government contended that the present case should be distinguished from *Pisică v. the Republic of Moldova* (no. 23641/17, 29 October 2019), where such evidence had been provided. The Government noted that the applicant's separation from the children between 2012 and 2015 had resulted in the deterioration of their relationship and that in such circumstances the authorities had been unable to secure permanent contact between them at that time but had taken all reasonable measures to do so subsequently. The Government noted that the applicant had never appealed against the court decision granting A.I. custody of the children, and in conclusion they submitted that the domestic authorities had discharged their positive obligations in respect of the applicant's right to maintain contact with her children.

B. The Court's assessment

85. The relevant principles regarding the State's positive obligation under Article 8 of the Convention in cases concerning the enforcement of contact rights are summarised in the cases of *K.B. and Others v. Croatia* (no. 36216/13, §§ 142-44, 14 March 2017) and *Pisică* (cited above, §§ 63-66). To sum up, Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Sommerfeld v. Germany* [GC], no. 31871/96, § 64, ECHR 2003-VIII (extracts), and *Širvinskas v. Lithuania*, no. 21243/17, § 95, 23 July 2019). The obligation of the national authorities to take measures to facilitate contact by a non-custodial parent with children after divorce is not absolute. The key consideration is whether those authorities have taken all the steps necessary to facilitate contact as can reasonably be required of them in the particular circumstances of each case (see also *Krasicki v. Poland*, no. 17254/11, §§ 86-87, 15 April 2014).

86. Without substituting its own examination for that of the domestic authorities, which have had the benefit of direct contact with all the persons concerned, the Court will review, in the light of the Convention, the decisions taken by those authorities in the light of their margin of appreciation. This requires the Court to focus on whether, taking into consideration the case as a whole and having regard to the crucial importance of the child's best interests, the reasons given to justify the measures taken were relevant and sufficient (see *Sommerfeld*, cited above, § 62; and *Krasicki*, cited above, § 84).

87. At the outset, the Court notes that it is undisputed that the applicant was unable to have contact with her children after 22 August 2016, when they started living with their father and refusing to see the applicant.

88. The Court notes that on 15 September 2016 the authorities took note of A.I.'s expression of good faith and his assurances that he was not opposed to the children's having contact with their mother, and that they relied exclusively on the children's negative attitude towards their mother and their being aged over ten years in refusing to support the re-establishing of contact between them. The children explained their negative views by the applicant's alleged abandonment and lack of interest in them, in contrast to the father's caring and involved stance.

89. The Court finds it important to reiterate that while its case-law requires children's views to be taken into account, those views are not necessarily immutable and any objections expressed by children, while they must be given due weight, are not necessarily sufficient to override the parents' interests, especially in having regular contact with their child. The right of a child to express his or her own views should not be interpreted as effectively giving children an unconditional power of veto without any other factors being considered or an examination being carried out to determine their best interests; such interests normally dictate that children's ties with their family must be maintained, except in cases where this would harm their health and development (see *K.B. and Others v. Croatia*, cited above, § 143, and *Suur v. Estonia*, no. 41736/18, § 79, 20 October 2020). The margin of appreciation to be accorded to the national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. The Court thus recognises that the authorities enjoy a wide margin of appreciation when deciding on custody. However, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by those authorities on parental rights of contact, and of any legal safeguards designed to secure effective protection of the rights of parents and children to respect for their family life (see *Suur*, cited above, § 80).

90. As in *Pisică* (cited above, § 78), the Court accepts that the children's refusal to see their mother caused a difficult situation necessitating a variety of complex measures in preparation for their reintroduction to the applicant. The identification and implementation of such measures would have certainly needed time, but mainly a proper assessment of the situation. However, in the present case, it is notable that when they refused to give any support to the applicant on 15 September 2016, the authorities gave no consideration to the applicant's accounts of having had normal relations with her children before they had moved in with their father or to the context of domestic violence and the protection order that was still in force, although those elements had been brought to their attention (see paragraph 29 above). The Government did not inform the Court about any official investigation or assessment of the causes of the children's resistance to seeing their mother. In any event, the Government did not inform the Court that the authorities had come to any conclusion as to why it might be in the children's best interests to restrict their contact with the applicant partially or completely, other than their own resistance.

91. Moreover, the Government did not inform the Court about any investigation or assessment of whether the children's behaviour was connected with their having witnessed domestic violence or of the impact on them of living with the perpetrator of domestic violence.

92. According to the Government, a working group was set up in September 2017 to seek ways of re-establishing contact between the applicant and her children. However, in the absence of any documents concerning this working group, there is no evidence to show that the domestic violence context had been taken into account on that occasion either. In the circumstances of the case, the authorities should have taken these elements into consideration in all their decisions concerning contact rights (see the GREVIO standards in paragraph 54 above).

93. The Court further notes that the applicant obtained a court judgment obliging the child protection authority to set up a contact schedule on 11 November 2016 but that a schedule was produced only on 24 January 2017, after the applicant had made a request to that effect. In spite of numerous complaints about the contact schedule not being implemented, it was only on 23 May 2017 that, again on the applicant's request, a child protection specialist accompanied her to the children's school for a visit. More comprehensive support appears to have been provided only in September 2017, a year after the children had refused any contact.

94. The Court accepts that on a practical basis, there may indeed come a stage where it becomes futile, if not counterproductive and harmful, to attempt to force a child to conform to a situation which, for whatever reasons, he or she resists. Moreover, coercive measures against children are not desirable and must be limited in this sensitive area (see *Suur*, cited above, § 96, and *Hokkanen v. Finland*, 23 September 1994, § 58, Series A no. 299-A). However, as the positive obligation of the State to restore and facilitate contact between the applicant and her children was not one as to results to be achieved, but one as to means to be employed, the Court observes that the facts above describe a situation in which there was no attempt by the authorities to support the applicant of their own motion. The applicant was left to defend her right to maintain contact with her children by her own efforts, including by initiating court proceedings against the authorities that were meant to provide her with support. There is nothing in the case file to indicate that the authorities had any awareness of or sensitivity to the applicant's vulnerability as a victim of domestic violence (see the GREVIO standards in paragraphs 54-55 above).

95. Taking into account the conduct of the domestic decision-making process as a whole, and in particular the failure of the domestic authorities to take into account the incidents of domestic violence in the determination of child contact rights and, consequently, their failure to take prompt measures to support the applicant in maintaining contact with her children, the Court finds that there has been a violation of Article 8 of the Convention.

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

96. Lastly, the applicant complained under Article 14 of the Convention read in conjunction with Article 3 that the failure of the authorities to take effective measures with a view to averting domestic violence had been due to her being a woman and to the authorities' general complacency as regards violence against women.

97. Article 14 of the Convention provides:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

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

A. Submissions by the parties

99. The applicant submitted that the domestic authorities had exhibited a discriminatory attitude towards her when reacting to her complaints of domestic violence. She referred in particular to the discriminatory language used by the judges when rejecting her requests for protection, but also the authorities' overall passivity in dealing with her case.

100. The Government submitted that the domestic authorities had not been passive or acquiescent of A.I.'s conduct, as could be seen from their submissions under Article 3 of the Convention. The Government argued that the facts of the case differed from those of *Eremia* (cited above) and *Munteanu v. the Republic of Moldova* (no. 34168/11, 26 May 2020), where the authorities had been informed of acts of domestic violence but had tried to convince the applicants either to withdraw their complaints or to keep the family together by "being nice" to the aggressor. The Government concluded that the present case did not present any elements of discrimination.

B. The Court's assessment

101. The applicant's complaint under this heading and the one under Article 3 of the Convention taken alone are distinct from one another. It is true that the core element of each is the alleged failure of the authorities to take sufficient measures to protect the applicant from domestic violence. But the present complaint is based on a broader allegation: that this failure was not an isolated occurrence but was due to the general complacency of the Moldovan authorities in such cases. It cannot therefore be absorbed into the complaint under Article 3 taken alone, and has to be examined separately (see, for a similar approach, *Opuz*, cited above, §§ 183-202; *Talpis*, cited above, §§ 140-49; *Munteanu v. the Republic of Moldova*, cited above, §§ 76 and 80-83; and *Y and Others v. Bulgaria*, no. 9077/18, § 120, 22 March 2022).

102. The relevant principles, first articulated in *Opuz* (cited above, §§ 184-91), have been comprehensively set out in *Volodina* (cited above, §§ 109-14) and recently summarised in *Y and Others v. Bulgaria* (cited above, § 122).

103. It is hardly in doubt that domestic violence in the Republic of Moldova predominantly affects women; this is so in all member States of the Council of Europe (see *Opuz*, § 132; *Volodina*, § 71; and *Y and Others v. Bulgaria*, § 124, all cited above). However, the applicant did not argue a prima facie case of general and discriminatory passivity on the part of the Moldovan authorities with respect to domestic violence directed against women.

104. It must therefore be ascertained whether there is any proof of bias against women by the State officials who dealt specifically with the applicant's case.

105. In this connection, the Court notes the language employed in refusing to grant the applicant protection orders or to investigate her allegations. In particular, in arguing that the applicant had no actual need for the protection orders sought, the authorities downplayed the seriousness of her complaints by saying that the case was about "family misunderstandings" and that the applicant displayed "overdramatic" elements in her allegations of violence, which undermined the credibility of her statements as to how she was injured on 4 November 2016 (see in paragraphs 13 and 16). The courts insinuated on several occasions that the applicant had ulterior motives and had sought protection measures as a "means of revenge" because she was "manifesting dissatisfaction"

about having no contact with her children or because she intended to use the protection orders against A.I. in other proceedings (see paragraphs 16, 18 and 20 above). The courts also described her requests for protection as "aggressive" and inappropriate in domestic violence proceedings, although they merely followed the language of domestic law (see paragraphs 15 and 16 and compare in paragraphs 46 and 47 above). This type of language seems to convey stereotypes, preconceived beliefs and myths about women abusing the system put in place to protect them from domestic violence. It is precisely this kind of considerations that led CEDAW to call on State parties and their judicial bodies to ensure that all legal procedures in cases involving allegations of gender-based violence against women are impartial, fair and unaffected by gender stereotypes or the discriminatory implementation of law, evidentiary rules, investigations and other legal and quasi-judicial procedures (see paragraphs 51 and 52 above).

106. In the Court's opinion, the combination of the above factors clearly demonstrates that the authorities' actions were not simply an isolated failure or delay in dealing with violence against the applicant, but in fact condoned the violence, reflecting a discriminatory attitude towards the applicant as a woman. Given that a criminal conviction based on the same facts followed five years later, it appears that at the time of the events, protection measures were rejected by using discriminatory statements and reasons.

107. The above considerations, taken as a whole, lead to the conclusion that in the circumstances of the present case there has been a breach of Article 14 of the Convention read in conjunction with Article 3.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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."

109. The applicant claimed 14,250 euros (EUR) in respect of non-pecuniary damage, taking into consideration the compensation for non-pecuniary damage awarded by domestic courts in the criminal proceedings against A.I. She also claimed EUR 3,840 in respect of costs and expenses incurred before the Court. She submitted the contract with her legal representative and a detailed timesheet of his legal services.

110. The Government submitted that the claims were excessive and unsubstantiated and urged the Court to dismiss them.

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

112. Having regard to the documents in its possession, the Court considers it reasonable to award in full the applicant's claims in respect of costs and expenses, plus any tax that may be chargeable to her.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 3;
5. *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 14,250 (fourteen thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

   (ii) EUR 3,840 (three thousand eight hundred and forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

   (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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

   Done in English, and notified in writing on 17 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

   Hasan Bakırcı Registrar
   Arnfinn Bårdsen President