



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

THIRD SECTION

CASE OF VOLODINA v. RUSSIA

(Application no. 41261/17)

JUDGMENT

STRASBOURG

9 July 2019

FINAL

04/11/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Volodina v. Russia,

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

Vincent A. De Gaetano, *President*,

Georgios A. Serghides,

Paulo Pinto de Albuquerque,

Dmitry Dedov,

Alena Poláčková,

María Elósegui,

Erik Wennerström, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 11 June 2019,

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

PROCEDURE

1. The case originated in an application (no. 41261/17) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Valeriya Igorevna Volodina (“the applicant”), on 1 June 2017. In 2018, the applicant changed her name (see paragraph 39 below).

2. The applicant was represented by Ms Vanessa Kogan, Director of the Stichting Justice Initiative, a human-rights organisation based in Utrecht, the Netherlands. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged that the Russian authorities had failed in their duty to prevent, investigate and prosecute acts of domestic violence which she had suffered at the hands of her former partner and that they had also failed to put in place a legal framework to combat gender-based discrimination against women.

4. On 8 January 2018 the application was communicated to the Government. It was also decided to give priority to the application, in accordance with Rule 41 of the Rules of Court.

5. The applicant and the Government each lodged written observations. In addition, third-party comments were received from the Equal Rights Trust, a non-governmental organisation based in London, United Kingdom, which had been given leave by the President of the Section to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3). The Government replied to those comments (Rule 44 § 5).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1985 and lives in Ulyanovsk.

A. The applicant's relationship with Mr S.

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

1. First meeting and life together

8. The applicant began a relationship with Mr S. in November 2014, when they started living together in Ulyanovsk.

9. In May 2015 they separated for the first time. The applicant moved out. Mr S. became abusive and threatened to kill the applicant and her son if she refused to come back to live with him.

2. January 2016: Abduction and assault

10. On 1 January 2016 the applicant lodged a report with the Ulyanovsk district no. 2 police, complaining that S. had damaged the windscreen of her car and taken her identity papers. On the following day the applicant withdrew her report, claiming that she had found her papers.

11. On 5 January 2016 the police declined to institute criminal proceedings, stating that as the documents had been found and as S. had replaced the broken windscreen, no crime had been committed. On 6 June 2016 a supervising deputy prosecutor ordered an additional inquiry, which ended in the issuance of another decision refusing to prosecute S. on the grounds that his actions had not constituted any offence.

12. The applicant decided to move away from S., and relocated to Moscow. She did not leave her new address, but she did publish her CV on job-hunting websites. A certain D. called her and, claiming to be a human-resources manager, invited her to an interview at a location outside Moscow.

13. On 21 January 2016 D. picked her up in his car and they drove off. On the way, S. emerged from the back of the car, and D. handed the car keys over to him. S. took away the applicant's mobile phone and personal effects and told her they were going back to Ulyanovsk.

14. After their return to Ulyanovsk, on 25 January 2016 S. punched the applicant in the face and stomach. She was taken to Ulyanovsk Central Hospital, where doctors recorded bruises on the soft tissue of her head. They also established that she was nine weeks pregnant but faced the risk of a

miscarriage. She agreed to undergo a medically-induced abortion. The applicant called the police to report the beatings.

15. On 29 January 2016 the police declined to institute proceedings, as they had not received any written complaint against S. from the applicant. On 2 February 2016 the supervising deputy prosecutor ordered an additional inquiry.

16. On 31 March 2016 the police obtained a written statement from the applicant in which she withdrew her complaints and refused to undergo a medical assessment. On 1 April 2016 the police declined to institute proceedings in the absence of any complaint from the injured party. The supervising prosecutor set that decision aside, but on 29 June 2016 the police issued a final decision not to investigate, holding that no crime had been committed.

3. May 2016: Assault

17. On 18 May 2016 S. punched the applicant in the face, threw her to the ground and began to strangle her. She complained to the Ulyanovsk police and had her injuries recorded, which included bruises on the left side of her face and abrasions on her shoulders, elbows, shins and thighs.

18. The Ulyanovsk police determined that the events had occurred in the Samara Region and forwarded the complaint to colleagues in that region. On 9 August 2016 the Samara police received the file and asked the applicant to undergo a medical assessment, which she refused to do.

19. On 12 August 2016 the Samara police declined to institute criminal proceedings. Having heard from the applicant and S., it held that no prosecutable offence had been committed: his verbal threats had not been sufficiently specific as to constitute an offence under Article 119 of the Criminal Code (Threat of death or bodily harm), and a single punch was not prosecutable under Article 116 (Battery), which required that two or more blows be inflicted. The supervising prosecutor set that decision aside, but on 28 September 2016 the police again issued a decision declining to prosecute that was worded in identical terms.

4. July 2016: Assault and an attempt on the applicant's life

20. In May 2016 the applicant returned to Moscow, where she hoped to hide from S.

21. On 30 July 2016, as she was about to drive off from her home in her car, S. opened the car door and attacked her. Neighbours who witnessed the fight called the police. On the same day the applicant lodged a criminal complaint against S., stating that he was violent and had threatened her with death.

22. On 1 August 2016 the applicant received a text message from S., who told her that he had damaged the hydraulic braking system of her car.

She called the police. An officer arrived and took stock of the extent of the damage, noting a cut to a plastic conduit containing a bundle of wires and a pool of transparent liquid next to the rear right-hand wheel.

23. On 8 August 2016 the Mozhayskiy district police in Moscow declined to institute criminal proceedings. They found that the applicant and S. “knew each other, had lived together before and had maintained a common household”, that the applicant had not submitted an independent assessment of the damage caused to her car, that a single blow did not constitute an offence under Article 116 of the Criminal Code, and that the verbal threats had been “neither real nor specific” to be prosecutable under Article 119.

24. On 16 September 2016 the applicant lodged an application with the Kuntsevskiy District Court in Moscow seeking a review of the 8 August 2016 decision. She submitted in particular that the police had not considered the text messaging history, which showed that S. had the intention of causing her death by damaging the brakes of her car.

25. On 20 September 2016 the supervising prosecutor set aside the 8 August 2016 decision, which he described as being premature and incomplete. He directed the police to consider the text messages from S.

26. By a judgment of 14 October 2016, which was upheld on appeal on 1 December 2016, the Kuntsevskiy District Court dismissed the applicant’s complaint, finding that the matter had become moot on account of the prosecutor’s decision to order an additional inquiry.

27. On 28 October and 24 December 2016 the police issued further decisions declining to prosecute S. on the grounds that his actions had not constituted a criminal offence.

5. September 2016: Tracking device

28. In September 2016 the applicant found an electronic device in the lining of her bag which she believed was a GPS tracker that S. had put there.

29. On 5 October 2016 she reported her suspicions to the Kuntsevskiy Investigative Committee in Moscow. On 9 March 2017 the report was forwarded to the Special Technical Measures Bureau of the federal police (*Бюро специальных технических мероприятий ГУ МВД РФ*). According to the Government, the Bureau joined the report to the file, without initiating any inquiry. An internal investigation was launched.

6. March 2018: Publication of photographs

30. In early 2018, S. shared the applicant’s private photographs on a social network without her consent. On 6 March 2018 the police initiated a criminal investigation under Article 137 of the Criminal Code (invasion of

personal privacy). As at the date of the applicant's latest submissions in July 2018, the investigation had not yielded any results.

7. March 2018: Threats and an assault

31. On 12 March 2018 the applicant complained to the police about the threatening calls she had received from S. the previous night and about his uninvited presence in front of her house earlier that day. On 21 March 2018 the police declined to open a criminal investigation, finding that there was no danger that S. would carry out his threat to kill her because "[the applicant] remained in her flat, while [S.] stayed in his car and did not go up to the flat".

32. At 1.30 a.m. on 21 March 2018 the applicant called a taxi in order to visit a female friend. Shortly after she got in the taxi, she saw S.'s car following the taxi. He managed to cut off the taxi, pulled the applicant out of the car and began dragging her towards his car. The taxi driver did not intervene. Fearing for her life, the applicant sprayed tear gas in S.'s face. S. pushed her several times, grabbed her purse and drove away with it. The applicant went to the police station and lodged a complaint about the attack and the theft of her personal belongings, which included two mobile phones and identity documents. The taxi driver gave a statement to the police.

33. Shortly thereafter, S. came to the police station with his lawyer and returned the bag to the applicant, but not the phones or documents. He stated that he had paid for the phones and had let the applicant use them at his discretion. He had asked the applicant to return them but she had refused, and that was why he had been following her.

34. The next day the applicant found her documents in the mailbox. S. later brought the phones to the police, and they returned them to the applicant against receipt.

35. On 20 April 2018 the police declined to open an investigation into the alleged theft of the phones on the grounds that they had been returned to the applicant. The matter of the threats and assault was referred to the local police for additional investigation.

36. On 26 April 2018 the local police decided not to institute proceedings in respect of the threats, finding no indications of a criminal offence. In their view, neither the threatening statements nor actions on the part of S. were sufficiently credible to conclude that the death threats had been "real".

8. Application for State protection

37. On 22 March 2018 the applicant asked the police to grant her State protection, relying on her status as the injured party in the criminal investigation into the publication of her photographs (see paragraph 30 above). The application was forwarded to the regional police headquarters,

which issued an opinion addressed to the investigator in charge of the case to the effect that her request was unfounded:

“[N]o real threats to her person or property from [S.] or his family members in connection with [the applicant’s] participation in the criminal proceedings have been established. The threats that [the applicant] previously complained about are the product of personal hostility [*личных неприязненных отношений*] between them and of [S.]’s jealousy. [S.] is currently in Moscow, outside the Ulyanovsk Region, and, according to him, has no plans to come back ...”

38. However, as no formal decision on her application had been taken, the applicant lodged a complaint with a court. On 16 April 2018 the Zavolzhskiy District Court in Ulyanovsk held that the failure to issue a formal decision had been unlawful. It declined to rule on the issue of whether or not the applicant should be granted State protection, leaving this matter for the police to decide.

9. Change of name

39. On 30 August 2018 the applicant secured a legal change of her name. She had asked for it, fearing for her safety, so that S. would not be able to find her and track her movements.

B. Information on gender-based violence in Russia

40. The applicant submitted the following statistical information and research on gender-based violence in Russia.

41. Certified extracts from the statistics of the Ministry of the Interior on “crimes committed within the family or household” (*преступления в сфере семейно-бытовых отношений*) show that, in 2015, the police registered a total of 54,285 such crimes, in which 32,602 women and 9,118 minors had been harmed. More specifically, in 2015, 16,039 cases of battery (Article 116 of the Criminal Code) were recorded, which had involved 9,947 female and 6,680 underage victims. A further 22,717 instances of death threats or threats to inflict serious injury (Article 119 of the Criminal Code) were recorded, in respect of which 15,916 victims were female and 967 underage.

In 2016, the total number of such crimes increased to 65,535, with 42,164 female victims and 8,989 underage victims. Battery was recorded in 25,948 cases, of which 19,068 involved women and 6,876 minors. The number of threats of death or injury amounted to 21,730, including 15,820 against women and 890 against minors.

In 2017, the total number of family-related offences went down to 38,311. Of those, 24,058 crimes were committed against women and 2,432 against minors. Aggravated battery (Article 116) was committed in 1,780 cases, including 1,450 attacks on women and 250 on minors. “Repeat battery” (Article 116.1) was established in 486 cases, in which 344 victims

were female and 119 underage. A total of 20,848 threats of death or injury were recorded, involving 15,353 women and 900 minors.

42. *Reproductive Health of the Russian Population in 2011*, a joint study by the Russian Federal Statistics Service and the Ministry of Health, found that 38% of Russian women had been subject to verbal abuse and a further 20% had experienced physical violence. In the latter group, 26% had not told anyone about what had happened. Of those who had, a majority of 73% had confided in friends or family, 10% had reported the incident to the police, 6% had visited a doctor and 2% had seen a lawyer.

43. *Violence in Russian Families in the North-Western Federal Circuit*, a joint study by the Institute for Social and Economic Studies of Population of the Russian Academy of Sciences and the Karelian Science Centre's Economics Institute, polled 1,439 participants aged 18 to 64 in the Republic of Karelia in 2014-15. A majority of participants (51.4%) had either experienced domestic violence or knew someone who had. In more than half of those cases women were victims of such violence, followed by children (31.5%), seniors (15%) and men (2%).

44. A "shadow report" to the CEDAW Committee by ANNA Centre for the Prevention of Violence, a Russian non-governmental organisation, provided a general assessment of the domestic-violence situation on the basis of a monitoring exercise conducted in Russia in 2010-15. It stated that monitors had recorded violence in one form or another in every fourth family, that two-thirds of homicides were attributable to family/household-related motives, that about 14,000 women died each year at the hands of their husbands or relatives, and that up to 40% of all serious violent crimes were committed within families.

45. A 2017 report by Russia's High Commissioner for Human Rights noted a lack of progress in addressing the problem of domestic violence (pp. 167-69, translated from Russian):

"Complaints to the High Commissioner indicate that the problem [of domestic violence] is a topical issue ... Thousands of women and children suffer from family conflicts. Unfortunately, no official statistical data is available.

Despite the topicality of the problem, no specific legislation ensuring the prevention and prosecution of crimes within the family and households has been adopted. Since the early 1990s, more than forty draft laws have been developed but none has been enacted ...

Actual instances of violence against women are highly latent. Many women prefer to put up with it or to look for ways to solve the issue without involving official authorities, because they do not expect to find support from them. Unfortunately, the practice has demonstrated that women's complaints of threats of violence have received little attention.

Thus, in December 2017, the public was shocked by an incident in the Moscow Region, when Mr G., seeking to assert his dominant position and acting out of jealousy, chopped off his wife's hands. Prior to that, he had threatened her with death and had told her that he would maim her. Eighteen days before the incident, the

woman had reported the threats to a district police inspector, who had intervened only to the extent of issuing an admonition ...

The High Commissioner supports a public discussion of whether Russia should join the Council of Europe's Istanbul Convention ..."

II. RELEVANT DOMESTIC LAW

46. Chapter 16 of the Russian Criminal Code covers offences against the person, including murder and manslaughter (Articles 105 to 109) and three levels of assault occasioning actual bodily harm (Articles 111 to 115). "Grievous bodily harm" (Article 111) may involve the loss of a body part or the termination of pregnancy; "medium bodily harm" (Article 112) leads to a long-term health disorder or loss of ability to work, and "minor bodily harm" (Article 115) covers injuries that take up to twenty-one days to heal. Causing grievous or medium bodily harm is subject to public prosecution; the offence of "minor bodily harm" is liable to private prosecution, meaning that the institution and pursuance of criminal proceedings is left to the victim, who has to collect evidence, identify the perpetrator, secure witness testimony and bring charges before a court. Private prosecution proceedings can be terminated at any stage up until the delivery of judgment in the event that the victim has agreed to withdraw the charges.

47. Other forms of assault which may cause physical pain without resulting in actual bodily harm are treated as "battery" (*нободу*) under Article 116. This provision has recently been amended a number of times.

48. Up until 3 July 2016 any form of "battery" constituted a criminal offence punishable by a fine, community work, or up to three months' detention. Aggravated battery could be punished with a longer period of deprivation of liberty. Prosecution of the offence was left to the private initiative of the victim. The law did not differentiate between various contexts in which the offence could be committed, whether within the family or between strangers.

49. On 3 July 2016 the provision was substantially amended.

First, common (non-aggravated) form of battery was decriminalised and reclassified as an administrative offence.

Second, a new form of aggravated battery was created which included battery committed in respect of "close persons", that is to say spouses, parents, siblings and domestic partners, and was punishable by a deprivation of liberty. That form of battery became subject to a mixed "public-private" prosecution regime which applies to some other offences, such as rape. Proceedings had to be instituted at the victim's initiative, but the subsequent investigation and prosecution were to be led by the authorities and could not be discontinued, even with the victim's consent.

Third, a new Article 116.1 was inserted into the Criminal Code. It created a new offence of "repeat battery" defined as battery committed by a

person who had been convicted of the same actions in administrative proceedings within the previous twelve months and whose actions did not constitute aggravated battery under Article 116. The offence can only be prosecuted privately and is punishable by a fine or up to three months' detention.

50. On 7 February 2017 the reference to "close persons" was removed from the definition of aggravated battery in the text of Article 116 for the purpose of decriminalising acts of battery inflicted by spouses, parents or partners. The only remaining forms of aggravated battery now include battery committed for racial, ethnic, social or disorderly (*хулиганские*) motives.

III. RELEVANT INTERNATIONAL MATERIAL

A. Universally applicable standards on violence against women

1. CEDAW Convention and its interpretation

51. The Convention on the Elimination of All Forms of Discrimination against Women ("the CEDAW Convention"), which Russia ratified on 23 January 1981, provides a comprehensive international framework in which gender-based violence against women is seen as a manifestation of the historically unequal power relationship between women and men. The relevant provisions read:

Article 1

"For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Article 2

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

...

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

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

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

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

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

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

Article 3

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

Article 5

“States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women ...”

52. The United Nations Committee on the Elimination of Discrimination against Women (“the CEDAW Committee”) – the UN expert body that monitors compliance with the CEDAW Convention – established in its General recommendation No. 19 (1992) that “gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men” (§ 1) and that “the full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women” (§ 4). It further explained that such violence “impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions” (§ 7) and made specific recommendations to the State parties, including recommending the encouragement of “the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence” (§ 24).

53. In its General Recommendation No. 28 (2010) on the core obligations of States Parties under Article 2 of the CEDAW Convention, the CEDAW Committee noted that “States parties have a due diligence obligation to prevent, investigate, prosecute and punish ... acts of gender based violence” (§ 9).

54. The CEDAW Committee’s General recommendation No. 33 (2015) on women’s access to justice called on States to “take steps to guarantee that women are not subjected to undue delays in applications for protection orders and that all cases of gender-based discrimination under criminal law, including violence, are heard in a timely and impartial manner” (§ 51(j)).

55. In 2017, the CEDAW Committee adopted General recommendation No. 35 on gender-based violence against women, updating General recommendation No. 19. It noted that the interpretation of discrimination given in the former recommendation had been affirmed by all States and that the *opinio juris* and State practice suggested that the prohibition of gender-based violence against women had evolved into a principle of customary international law (§§ 1-2). It pointed out that “gender-based violence against women [was] rooted in gender-related factors such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour. These factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered as a private matter, and to the widespread impunity for it” (§ 19). The Committee reaffirmed that “gender-based violence against women constitute[d] discrimination against women under article 1 and therefore engage[d] all of the obligations in the [CEDAW]” (§ 21). It listed the due diligence obligations that State parties have in respect of acts and omissions on the part of non-State actors (§ 24(b)):

“Article 2 (e) of the [CEDAW] explicitly provides that States parties are required to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. This obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole and accordingly States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women ... Under the obligation of due diligence, States parties have to adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors. They are required to have laws, institutions and a system in place to address such violence. Also, States parties are obliged to ensure that these function effectively in practice, and are supported and diligently enforced by all State agents and bodies. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women when its authorities know or should know of the danger of violence, or a failure to investigate, prosecute and punish, and to provide reparation to victims/survivors of such acts, provides tacit permission or encouragement to acts of gender-based violence against women. These failures or omissions constitute human rights violations.” (footnotes omitted)

56. In *V.K. v. Bulgaria* (Communication No. 20/2008, 15 October 2008), the CEDAW Committee took the view that “gender-based violence constituting discrimination within the meaning of article 2, read in conjunction with article 1, of the [CEDAW] Convention and general recommendation No. 19, does not require a direct and immediate threat to the life or health of the victim” (§ 9.8). When assessing whether a protection order should be granted, courts should take account of all forms of violence against women, without neglecting their emotional and psychological suffering or the past history of domestic violence. Furthermore, the standard

of proof that the victim must meet in order to be awarded a protection order should not amount to the standard of proof required in criminal cases – that is to say that of “beyond reasonable doubt” – because such a standard of proof is excessively high and not in line with the CEDAW Convention (§ 9.9).

2. UN Special rapporteurs

57. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment assessed the applicability of the prohibition of torture under international law to the unique experiences of women in the report adopted at the thirty-first session of the Human Rights Council, held between 29 February and 24 March 2016 (A/HRC/31/57). He reiterated that “full integration of a gender perspective into any analysis of torture and ill-treatment is critical to ensuring that violations rooted in discriminatory social norms around gender and sexuality are fully recognized, addressed and remedied” (§ 6) and that “when a State knows or should have known that a woman is in danger, it must take positive steps to ensure her safety, even when she hesitates in pursuing legal action” (§ 12). He stated:

“55. ... Domestic violence amounts to ill-treatment or torture whenever States acquiesce in the prohibited conduct by failing to protect victims and prohibited acts, of which they knew or should have known, in the private sphere ... States are internationally responsible for torture when they fail — by indifference, inaction or prosecutorial or judicial passivity — to exercise due diligence to protect against such violence or when they legitimize domestic violence by, for instance, allowing husbands to ‘chastize’ their wives or failing to criminalize marital rape, acts that could constitute torture.

56. Societal indifference to or even support for the subordinate status of women, together with the existence of discriminatory laws and patterns of State failure to punish perpetrators and protect victims, create conditions under which women may be subjected to systematic physical and mental suffering, despite their apparent freedom to resist. In this context, State acquiescence in domestic violence can take many forms, some of which may be subtly disguised (A/HRC/7/3). States’ condoning of and tolerant attitude towards domestic violence, as evidenced by discriminatory judicial ineffectiveness, notably a failure to investigate, prosecute and punish perpetrators, can create a climate that is conducive to domestic violence and constitutes an ongoing denial of justice to victims amounting to a continuous human rights violation by the State.”

58. In her report on violence against women, its causes and consequences adopted at the thirty-fifth session of the Human Rights Council on 6-23 June 2017, the UN Special Rapporteur on violence against women identified key elements of a human-rights based approach to protection measures:

“112. States shall make the necessary amendments to domestic legislation to ensure that protection orders are duly enforced by public officials and easily obtainable.

a) States shall ensure that competent authorities are granted the power to issue protection orders for all forms of violence against women. They must be easily available and enforced in order to protect the well-being and safety of those under its protection, including children.

b) Protection orders for immediate protection in case of immediate danger of violence (emergency orders) should be available also *ex parte* and remain in effect until the longer-term protection orders comes into effect after a court-hearing. They should be available on the statement or live evidence of the victim, as seeking further evidence may lead to delays which put the victim at more risk. They typically should order a perpetrator to vacate the residence of the victim for a sufficient period of time and prohibit the perpetrator from entering the residence or contacting the victim.

c) The availability of protection orders must be: i) irrespective of, or in addition to, other legal proceedings such as criminal or divorce proceeding against the perpetrator; ii) not be dependent on the initiation of a criminal case iii) allowed to be introduced in subsequent legal proceedings. Many forms of violence, particularly domestic violence, being courses of conduct which take place over time, strict time-limit restrictions on access to protection orders should not be imposed. The standard of proof that an applicant must discharge in order to be awarded with an order should not be the standard of criminal proof.

d) In terms of content, protection orders may order the perpetrator to vacate the family home, stay a specified distance away from the victim and her children (and other people if appropriate) and some specific places and prohibit the perpetrator from contacting the victim. Since protection orders should be issued without undue financial or administrative burdens placed on the victim, protection orders can also order the perpetrator to provide financial assistance to the victim.”

3. Council of Europe

59. The Committee of Ministers’ Recommendation Rec (2002)5 of 30 April 2002 on the protection of women against violence defined the term “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty” (Appendix, § 1). In the sphere of criminal law, it established that member States should “provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence” (§ 35). As regards judicial proceedings, member States should in particular “make provisions to ensure that criminal proceedings can be initiated by the public prosecutor” (§ 39) and “ensure that measures are taken to protect victims effectively against threats and possible acts of revenge” (§ 44). Among additional measures with regard to violence within the family, member States should “classify all forms of violence within the family as criminal offences” (§ 55) and “enable the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas” (§ 58 (b)).

60. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“the Istanbul Convention”) was released for signing on 11 May 2011 and entered into force on 1 August 2014. Russia is one of the two member States that have not signed the Istanbul Convention. The definition of “violence against women” in Article 3 is identical to that in paragraph 1 of Recommendation Rec (2002)5. “Domestic violence” is defined to include “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.

B. Material relating to violence against women in Russia

61. *Integration of the human rights of women and a gender perspective: violence against women*, a report of the Special Rapporteur on violence against women, its causes and consequences, following her visit to the Russian Federation from 17 to 24 December 2004 (E/CN.4/2006/61/Add.2), took stock of the magnitude of the problem of domestic violence:

“26. Although statistics on domestic violence in particular and violence against women in general are inconsistent, existing data reveals a worrisome increase in domestic violence since the collapse of the Soviet Union. Reportedly, 80 per cent of violent crimes against women are cases of domestic violence. Between 1994 and 2000, the number of reported cases increased by 217 per cent to 169,000. Over a 10-month period in 2004, the Ministry of Interior reported 101,000 crimes related to the family - a 16 per cent increase over the previous year. The State party’s report to the Committee on the Elimination of Discrimination against Women (CEDAW) in 1999 acknowledged that 14,000 women were killed annually by their husbands or other family members. The report went on to state that the ‘situation is exacerbated by the lack of statistics and indeed by the attitude of the agencies of law and order to this problem, for they view such violence not as a crime but as ‘a private matter’ between the spouses’ (CEDAW/C/USR/5, para. 6 [on page 38]).

27. ... the main cause is rooted in patriarchal norms and values. In many meetings held by the Special Rapporteur, authorities referred to an ancient Russian proverb, ‘a beating man is a loving man!’ Due to strong patriarchal values, husbands in Russia are generally considered superior to their wives with the right to assert control over them, legitimizing the general opinion that domestic violence is a private issue. Women are often blamed for having provoked the violence ...

28. ... women’s groups claim that domestic violence remains seriously under-reported, under-recorded and largely ignored by the authorities. Furthermore, social stigma is connected to sexual and domestic violence, pressuring victims to keep silent and ‘solve it’ within the family. This stigma results in weak public pressure for State action, which may explain why the problem is low on the State agenda.

...

36. The lack of a specific law on domestic violence in Russia is a major obstacle to combating this violence. While the State Duma has considered as many as 50 draft versions of a law on domestic violence, none has been adopted. The Ministry for Foreign Affairs attributes this to the financial implications of the draft bills, members

of the Committee on Women, Children and Family of the State Duma, however, indicated that violence against women is not a priority for the State and that most opponents of the bill claim it would duplicate existing legal provisions. They argue that perpetrators of domestic violence can be prosecuted under articles 111 to 115 of the Russian Criminal Code, which criminalize inflicting intentional harm on another person ... However, according to women's groups, these provisions are often interpreted too narrowly to apply to domestic violence cases, making it difficult to punish perpetrators.

38. The lack of specific legislation contributes to impunity for crimes committed in the private sphere. It deters women from seeking recourse and reinforces police unwillingness, or even refusal, to deal seriously with the problem, as they do not consider it a crime. Reportedly, police officers, when called on may refuse to come to the scene, even in critical situations. When they do come, they may not register the complaint or arrest the perpetrator, but instead pressure the couple to reconcile their differences. In the process, the case goes unrecorded and the victim may not receive necessary medical treatment for her injuries.

39. Where women are assertive in trying to file a complaint, the officers allegedly delay the filing process or make it difficult. Police also reportedly blame victims and treat them in a discriminatory and degrading manner. Some women also report further abuse at police stations when filing a complaint. Under such circumstances, investigation into complaints seems unlikely ...

40. ... If the police do arrest the perpetrator, they normally keep him in detention for less than a day or slightly longer in 'serious cases', then release him without charge. When he returns home, he may commit even worse acts of violence in revenge. With no system of restraining or civil protection orders, local officials lack a legal mechanism to protect the victim from further violence once the perpetrator has been released.

41. Owing to police inaction, many victims of domestic violence do not file complaints – 40 per cent of women victims of domestic violence never seek help from law enforcement agencies. In cases that are filed, victims reportedly often withdraw their complaint due to lack of confidence in the justice system, economic dependency on or threats from the perpetrator, fear of losing custody of their children or the social stigma connected with domestic violence. Thus, very few complaints ever reach the courts or result in prosecution ...”

62. The concluding observations on the fifth periodic report of the Russian Federation on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/RUS/CO/5), adopted by the UN Committee on Economic, Social and Cultural Rights on 20 May 2011, noted with concern “the continued prevalence of domestic violence” and recommended “adopting a specific legislative act criminalizing domestic violence” (§ 22).

63. The concluding observations on the fifth periodic report of the Russian Federation (CAT/C/RUS/CO/5), adopted by the UN Committee against Torture on 22 November 2012, included violence against women among the principal subjects of concern:

“14. Despite consistent reports of numerous allegations of many forms of violence against women throughout the State party, the Committee is concerned that there are only a small number of complaints, investigations and prosecutions of acts of

domestic violence and violence against women, including marital rape. It is also concerned about reports that law enforcement officers are unwilling to register claims of domestic violence, and that women who seek criminal investigations of allegations of domestic violence are compelled to participate in reconciliation processes. The Committee is also concerned about the absence in the State party's law of a definition of domestic violence (arts. 1, 2, 11, 13 and 16)."

64. The concluding observations on the eighth periodic report of the Russian Federation (CEDAW/C/RUS/CO/8), which the CEDAW Committee adopted on 27 October 2015, noted that violence against women remained one of the principal areas of concern:

"21. The Committee remains concerned at the high prevalence of violence against women, in particular domestic and sexual violence, in the State party and the lack of statistics disaggregated by age, nationality and relationship between the victim and the perpetrator and of studies on its causes and consequences. While noting the information provided by the delegation during the dialogue that the bill on domestic violence is currently undergoing a second reading in the parliament, the Committee is concerned that cases of violence against women are underreported, given that they are considered a private matter, and that victim protection services, such as crisis centres and shelters, are insufficient.

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

(a) To adopt comprehensive legislation to prevent and address violence against women, including domestic violence, introduce ex officio prosecution of domestic and sexual violence and ensure that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and adequately punished ...

(d) To collect statistical data on domestic and sexual violence disaggregated by sex, age, nationality and relationship between the victim and the perpetrator."

65. In *O.G. v. the Russian Federation* (Communication No. 91/2015, 6 November 2017), the CEDAW Committee took the view that by failing to investigate a complaint lodged by Ms O.G. of death threats and threats of violence emanating from her former partner "promptly, adequately and effectively and by failing to address her case in a gender-sensitive manner, the [Russian] authorities [had] allowed their reasoning to be influenced by stereotypes" (§ 7.6).

The Committee considered that "the fact that a victim of domestic violence has to resort to private prosecution, where the burden of proof is placed entirely on her, denies the victim access to justice, as observed in general recommendation No. 33 paragraph 15 (g)". It also noted that recent amendments to Article 116 of the Criminal code decriminalising battery "owing to the absence of a definition of 'domestic violence' in Russian law, go in the wrong direction and lead to impunity for perpetrators of these acts of domestic violence" (§ 7.7).

The Committee considered that "the failure by the State party to amend its legislation relating to domestic violence directly affected the possibility

of [Ms O.G.] being able to claim justice and to have access to efficient remedies and protection” (§ 7.8) and that Ms O.G. “was subjected to fear and anguish when she was left without State protection while she was periodically persecuted by her aggressor and was exposed to renewed trauma when the State organs that ought to have been her protector, in particular the police, instead refused to offer her protection and denied her status as a victim” (§ 7.9).

The Committee concluded that Russia had violated Ms O.G.’s rights under Articles 1, 2 (b)-(g), 3 and 5 (a) of the CEDAW (§ 8); it made a number of recommendations to the Russian authorities, including the reinstatement of the provision that domestic violence be subject to criminal prosecution (§ 9 (b)(ii)).

66. *“I Could Kill You and No One Would Stop Me”*. *Weak State Response to Domestic Violence in Russia*, a report released by Human Rights Watch in October 2018, stated:

“According to a 2008 assessment by the Interior Ministry, the most recent such assessment available, up to 40 percent of all grave violent crimes in Russia are committed within the family, and every fourth family in Russia experiences violence. Among women respondents to a 2016 opinion poll, 12 percent said they experienced battery by their present or former husband or partner (2 percent, often; 4 percent, several times; 6 percent, once or twice) ...

Though some Russian state bodies do keep some data on violence within the family, the government does not systematically collect information on domestic abuse, and official statistics are scarce, fragmented, and unclear. The lack of a law on domestic violence or legal definition of domestic violence prevents categorization of the abuses as such, thus contributing to the absence of specific statistics.

...

The true numbers of victims are likely much higher than the above data indicates, due to several factors. First, the above-cited numbers cover only those instances in which criminal proceedings were initiated: they do not reflect the actual numbers of complaints to the police or instances where police refused to initiate criminal investigation or instructed women to file a complaint with a magistrate judge for a private prosecution.

Second, domestic violence is underreported worldwide, including in Russia. Official studies suggest that only around 10 percent of survivors of domestic violence in Russia report incidents of violence to the police. According to experts’ estimates, between 60 and 70 percent of women who suffer family violence do not report it or seek help. Moreover, experts, rights groups, and service providers interviewed for this report told Human Rights Watch that Russian police rarely open criminal cases on domestic violence complaints and, even when they do, most criminal cases are dropped before they can lead to a conviction.

...

According to statistics provided by the Justice Department of the Supreme Court, punishment for battery offenses became more frequent following decriminalization. In 2015 and 2016, 16,198 and 17,807 persons respectively were convicted for criminal (non-aggravated) battery. Throughout 2017, 113,437 people were sentenced for

battery as an administrative offense. This data does not differentiate between battery within the family and in other circumstances.

Also according to official data, in 2017, the majority of perpetrators of battery, 90,020 out of 113,437, were fined. However, several women noted to Human Rights Watch that when a court issued their abusers a fine the abuser paid the fine from the family's shared bank account."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

67. The applicant complained that the domestic authorities had failed to protect her from treatment – consisting of repeated acts of domestic violence – proscribed by Article 3 of the Convention and to hold the perpetrator accountable. She also alleged a breach of Article 13 of the Convention, taken together with Article 3, on account of deficiencies in the domestic legal framework and of the absence of legal provisions addressing domestic violence, such as restraining orders. The relevant parts of the Convention provisions read as follows:

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ..."

A. Submissions by the parties

68. The Government emphasised that an assault on an individual of either sex was a criminal offence in Russia, irrespective of whether it was carried out by family members, partners or third parties. In their submission, domestic violence did not constitute a distinct offence but involved violent acts leading to bodily harm or physical or mental suffering. The Government listed the provisions of the Criminal Code that provided for sanctions for bodily harm, battery and threats of death, and submitted that the number of such provisions was sufficient to allow injured parties to seek the protection of law. They pointed out that the offences of minor bodily harm and battery (Articles 115(1) and 116 of the Criminal Code) were private prosecution offences, which meant that the police could not institute proceedings *ex officio* in the absence of a complaint from the victim, even if confronted with clear indications of an offence. Proceedings were also

subject to mandatory termination in the event that the victim agreed to settle the matter. The requirement that a formal complaint be lodged by the victim complicated the prosecution of offences relating to assaults upon, and the battery of, women. Such offences were frequently committed within the family, in the absence of witnesses, and women suffering from violent partners infrequently applied to courts. The Government asserted that the Russian authorities had taken all legal measures to establish the truth of the applicant's allegations, including by carrying out "pre-investigation inquiries". The authorities had declined to institute criminal proceedings because the alleged violent conduct on the part of S. and his causing bodily harm to the applicant had not been proved. The applicant had not substantiated her claim that the investigation had been ineffective. She had failed to lodge complaints in order to set in motion private prosecution proceedings, had withdrawn her other complaints and had not brought any matters before a court. She had also refused to submit to a medical assessment and had asked that proceedings against S be discontinued. The applicant could have brought a civil claim against S., seeking compensation for mental suffering, but she had not availed herself of that remedy. In sum, the Government considered that there had been no violation of Article 3 or 13 of the Convention.

69. The applicant submitted that she was a victim of serious and recurrent domestic violence amounting to inhuman and degrading treatment. An independent psychiatric assessment found that she was suffering from serious psychological trauma arising from both the violence inflicted upon her and her feelings of helplessness in the face of it. The Russian authorities had failed to establish a legislative framework to address domestic violence and to investigate and prosecute the ill-treatment of the applicant under the existing criminal-law provisions. For more than two years they had never once opened a criminal investigation, despite the seriousness of her allegations, the repeated nature of the violence, and the genuine threat to her life. The applicant provided specific examples of the shortcomings contained in the authorities' response to her complaints, including their failure to notify her of procedural decisions taken in response to her complaint, scheduling medical assessments many months after the events, and limiting their enquiries to obtaining explanations from S. Even when the crime of assault against "close persons" had briefly fallen under the public prosecution regime (between July 2016 and January 2017), the three complaints that the applicant had lodged in that period had not prompted the authorities to open a criminal investigation. The current legal regime, under which assault had been a non-criminal offence since January 2017 and was now privately prosecutable only in the event that the offender had been found guilty of the same offence in administrative proceedings in the previous twelve months, was inadequate for dealing with domestic violence. Private prosecution cases were prohibitively onerous for a victim, who had

to act as her own investigator, prosecutor and advocate. Reconciliation was considered a primary goal in such cases, leaving the victim exposed to pressure from her abuser. About 90% of private prosecution cases were discontinued, either owing to reconciliation or failure to fulfil the legal requirements. In 2015, there had been 2.37 million reports of assault, but only 26,212 cases had resulted in a criminal conviction. In 2017, out of a total of 164,000 instances of assault, only 7,000 had been subject to a criminal investigation. The applicant pointed out that once the offence of assault had been decriminalised, the authorities had failed to hold S. accountable – even under administrative law. She also emphasised that nothing remotely resembling a protection order existed in Russian law and that the Russian authorities had been unable to offer her any meaningful protection over more than two years of violence.

B. Admissibility

70. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. General considerations

71. 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 and affects different family members, although women make up an overwhelming majority of victims (see *Opuz v. Turkey*, no. 33401/02, § 132, ECHR 2009).

72. The particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection have been emphasised in a number of international instruments and the Court's case-law (see *Opuz*, cited above, §§ 72-86; *Bevacqua and S. v. Bulgaria*, no. 71127/01, §§ 64-65, 12 June 2008; and *Hajduová v. Slovakia*, no. 2660/03, § 46, 30 November 2010).

2. Analysis of the present case

(a) Whether the applicant was subjected to treatment contravening Article 3

73. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. An assessment of whether this minimum has

been attained depends on many factors, including the nature and context of the treatment, its duration, and its physical and mental effects, but also the sex of the victim and the relationship between the victim and the author of the treatment. Even in the absence of actual bodily harm or intense physical or mental suffering, treatment which humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or which arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, may be characterised as degrading and also fall within the prohibition set forth in Article 3. It should also be pointed out that it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 86-87, ECHR 2015).

74. Turning to the circumstances of the instant case, the Court notes that the physical violence suffered by the applicant at the hands of S. was recorded in medical documents, as well as in police reports. On at least three occasions S. assaulted her, kicking and punching her in the face and stomach – including when she was pregnant (see paragraphs 14, 17 and 21 above). A particularly heavy kick to her stomach led to the premature termination of her pregnancy. Those incidents, taken on their own, reached the required level of severity under Article 3 of the Convention. However, the Court has also acknowledged 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).

75. The applicant reported to the police multiple instances of threatening conduct on the part of S. which caused her to live in fear for her safety. Evidence of such fear can be found in the applicant's repeated attempts to move away from him and to seek refuge in Moscow, far from her home town of Ulyanovsk (see paragraphs 12 and 20 above). S. followed and harassed her, taking her back to Ulyanovsk against her will, placing a GPS tracker in her purse and stalking her in front of her house (see paragraphs 13, 28 and 31 above). He sought to punish her for what he considered to be her unacceptable behaviour by making death threats and damaging or taking away her property and identity papers (see paragraphs 10, 22 and 32 above). His publication of her private photographs further undermined her dignity, conveying a message of humiliation and disrespect (see paragraph 30 above). The feelings of fear, anxiety and powerlessness that the applicant must have experienced in connection with his controlling and coercive behaviour were sufficiently serious as to amount to inhuman treatment within the meaning of Article 3 of the Convention (see *Eremia v. the Republic of Moldova*, no. 3564/11, § 54, 28 May 2013).

(b) Whether the authorities discharged their obligations under Article 3

76. Once it has been shown that treatment reached the threshold of severity triggering the protection of Article 3 of the Convention, the Court

has to examine whether the State authorities have discharged their positive obligations under Article 1 of the Convention, read in conjunction with Article 3, to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment, including where such treatment is administered by private individuals.

77. These positive obligations, which are interlinked, include:

(a) the obligation to establish and apply in practice an adequate legal framework affording protection against ill-treatment by private individuals;

(b) the obligation to take the reasonable measures that might have been expected in order to avert a real and immediate risk of ill-treatment of which the authorities knew or ought to have known, and

(c) the obligation to conduct an effective investigation when an arguable claim of ill-treatment has been raised (see *Bevacqua and S.*, cited above, § 65; *Opuz*, cited above, §§ 144-45 and 162-65; *Eremia*, cited above, §§ 49-52 and 56; *Valiulienė*, cited above, §§ 74-75; *Rumor v. Italy*, no. 72964/10, § 63, 27 May 2014; *Talpis v. Italy*, no. 41237/14, §§ 100-06, 2 March 2017; and *Bălșan v. Romania*, no. 49645/09, § 57, 23 May 2017).

(i) *The obligation to establish a legal framework*

78. The Court will first examine whether the Russian legal order contains adequate legal mechanisms for the protection from domestic violence and how they are applied in practice. There is a common understanding in the relevant international material that comprehensive legal and other measures are necessary to provide victims of domestic violence with effective protection and safeguards (see the authorities referred to in *Opuz*, cited above, §§ 72-86 and 145, as well as paragraphs 57 and 58 above). The obligation on the State in cases involving acts of domestic violence would usually require the domestic authorities to adopt positive measures in the sphere of criminal-law protection. Such measures would include, in particular, the criminalisation of acts of violence within the family by providing effective, proportionate and dissuasive sanctions. Bringing the perpetrators of violent acts to justice serves to ensure that such acts do not remain ignored by the competent authorities and to provide effective protection against them (see *A. v. Croatia*, no. 55164/08, § 67, 14 October 2010; *Valiulienė*, cited above, § 71; *Eremia*, cited above, § 57; and *Ž.B. v. Croatia*, no. 47666/13, § 50, 11 July 2017).

79. The Court has accepted that different legislative solutions in the sphere of criminal law could fulfil the requirement of an adequate legal mechanism for the protection against domestic violence, provided that such protection remains effective. Thus, it has been satisfied that the Moldovan law provides specific criminal sanctions for the commission of acts of violence against members of one's own family and provides for protective measures for the victims of violence, as well as sanctions against those persons who refuse to abide by court decisions (see *Eremia*, cited above,

§ 57, and *Mudric v. the Republic of Moldova*, no. 74839/10, § 48, 16 July 2013). With respect to Croatia, Lithuania and Romania, it has found that by criminalising domestic violence as an aggravating form of other offences and adopting specific regulations for the protection of victims of domestic violence, the authorities have complied with their obligation to put in place a legal framework allowing victims of domestic violence to complain of such violence and to seek protection (see *E.M. v. Romania*, no. 43994/05, § 62, 30 October 2012; *Ž.B. v. Croatia*, cited above, §§ 54-55, and *Valiulienė*, cited above, § 78).

80. Russia has not enacted specific legislation to address violence occurring within the family context. Neither a law on domestic violence – to which the CEDAW Committee referred in its 2015 report (see paragraph 64 above) – nor any other similar laws have ever been adopted. The concept of “domestic violence” or any equivalent thereof is not defined or mentioned in any form in the Russian legislation. Domestic violence is not a separate offence under either the Criminal Code or the Code of Administrative Offences. Nor has it been criminalised as an aggravating form of any other offence, except for a brief period between July 2016 and January 2017, when inflicting beatings on “close persons” was treated as an aggravating element of battery under Article 116 of the Criminal Code (see paragraph 49 above). Otherwise, the Russian Criminal Code makes no distinction between domestic violence and other forms of violence against the person, dealing with it through provisions on causing harm to a person’s health or other related provisions, such as murder, death threats or rape.

81. The Court cannot agree with the Government’s claim that the existing criminal-law provisions are capable of adequately capturing the offence of domestic violence. Following a series of legislative amendments, assault on family members is now considered a criminal offence only if committed for a second time within twelve months or if it has resulted in at least “minor bodily harm” (see paragraphs 46 and 50 above). The Court has previously found that requiring injuries to be of a certain degree of severity as a condition precedent for initiating a criminal investigation undermines the efficiency of the protective measures in question, because domestic violence may take many forms, some of which do not result in physical injury – such as psychological or economic abuse or controlling or coercive behaviour (see *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 47, 28 January 2014). Moreover, the provisions on “repeat battery” would not have afforded the applicant any protection in the situation where the attacks in 2016 were followed by a new wave of threats and assaults more than twelve months later, in 2018. The Court also reiterates that domestic violence can occur even as a result of one single incident.

82. Furthermore, the Russian law leaves the prosecution of charges of “minor harm to health” and “repeat battery” to the private initiative of the victim. The Court has acknowledged that the effective protection of the

Convention right to physical integrity does not require public prosecution in all cases of attacks by private individuals (see *Sandra Janković v. Croatia*, no. 38478/05, § 50, 5 March 2009). Within the context of domestic violence, however, it has considered that the possibility to bring private prosecution proceedings is not sufficient, as such proceedings obviously require time and cannot serve to prevent the recurrence of similar incidents (see *Bevacqua and S.*, cited above, § 83; see also the Council of Europe's Recommendation Rec (2002) 5, cited in paragraph 59 above). A private prosecution puts an excessive burden on the victim of domestic violence, shifting onto her the responsibility for collecting evidence capable of establishing the abuser's guilt to the criminal standard of proof. As the Government acknowledged, the collection of evidence presents inherent challenges in cases where abuse occurs in a private setting without any witnesses present, and sometimes leaves no tangible marks. The Court agrees that this is not an easy task even for trained law-enforcement officials, but the challenge becomes unsurmountable for a victim who is expected to collect evidence on her own while continuing to live under the same roof as the perpetrator, being financially dependent on him, and fearing reprisals on his part. Moreover, even if a trial results in a guilty verdict, a victim cannot be provided with the necessary protection, such as protective or restraining orders, owing to the absence of such measures under Russian legislation.

83. In *Opuz* (cited above, §§ 138-39), the Court listed certain factors that could be taken into account in deciding whether domestic violence should be publicly prosecutable and posited the principle that "... the more serious the offence or the greater the risk of further offences, the more likely that the prosecution should continue in the public interest, even if victims withdraw their complaints". In other cases, the Court was satisfied that, to the extent that a public prosecutor had the right to open a criminal investigation into acts causing minor bodily harm if the crime was of public importance or the victim was not able to protect his or her interests, the domestic law provided an adequate framework for prosecuting domestic-violence charges (see *Valiulienė*, § 78, and *Bălşan*, § 63 – both cited above).

84. By contrast, the Russian law makes no exception to the rule that the initiation and pursuance of proceedings in respect of such offences are entirely dependent on the victim's initiative and determination. The Court reiterates that the prosecuting authorities should have been able to pursue the proceedings as a matter of public interest, regardless of the victim's withdrawal of complaints (see *Opuz*, cited above, § 145). The Russian authorities have not given heed to the Council of Europe's Recommendation Rec(2002)5, which required member States to make provision to ensure that criminal proceedings could be instituted by a public prosecutor and that the victims should be given effective protection during

such proceedings against threats and possible acts of revenge (§§ 39 and 44, cited in paragraph 59 above). The authorities' failure to provide for the public prosecution of domestic-violence charges has been consistently criticised by the CEDAW Committee. In 2015, in its concluding observations on the eighth periodic report by the Russian Federation, the Committee expressed concern regarding the high prevalence of violence against women – which was considered “a private matter” – and recommended that the Russian State amend the relevant law to provide for the *ex officio* prosecution of domestic violence (see paragraph 64 above). In the views that it recently expressed regarding a domestic-violence complaint against Russia that was similar to the one addressed in the present case, the Committee established that placing the burden of proof on the victim of domestic violence in private prosecution cases had the effect of denying access to justice, in breach of Russia's obligations under the CEDAW Convention (see paragraph 65 above).

85. In sum, the Court finds that the Russian legal framework – which does not define domestic violence whether as a separate offence or an aggravating element of other offences and establishes a minimum threshold of gravity of injuries required for launching public prosecution – falls short of the requirements inherent in the State's positive obligation to establish and apply effectively a system punishing all forms of domestic violence and providing sufficient safeguards for victims (see *Opuz*, cited above, § 145).

(ii) *The obligation to prevent the known risk of ill-treatment*

86. The Court reiterates that the State authorities have a responsibility to take protective measures in the form of effective deterrence against serious breaches of an individual's personal integrity by a member of her family or by a partner (see *M. and Others v. Italy and Bulgaria*, no. 40020/03, § 105, 31 July 2012, and *Opuz*, cited above, § 176). Interference by the authorities with private and family life may become necessary in order to protect the health and rights of a victim or to prevent criminal acts in certain circumstances (see *Opuz*, § 144, and *Eremia*, § 52, both cited above). The risk of a real and immediate threat must be assessed, taking due account of the particular context of domestic violence. In such a situation, it is not only a question of an obligation to afford general protection to society, but above all to take account of the recurrence of successive episodes of violence within a family (see *Talpis*, cited above, § 122, with further references). The Court has found in many cases that, even when the authorities did not remain totally passive, they still failed to discharge their obligations under Article 3 of the Convention because the measures they had taken had not stopped the abuser from perpetrating further violence against the victim (see *Bevacqua and S.*, cited above, § 83; *Opuz*, cited above, §§ 166-67; *Eremia*; cited above, §§ 62-66; and *B. v. the Republic of Moldova*, no. 61382/09, § 53, 16 July 2013).

87. The applicant first informed the authorities of her partner's violence on 1 January 2016. She reported further episodes of violence or threats of violence by way of making emergency calls to the police or lodging formal criminal complaints on 25 January, 18 May, 30 July and 1 August 2016 and 12 and 21 March 2018. In her complaints, she informed the authorities of the threats of violence made, and actual violence perpetrated, by S. and supplied medical evidence corroborating her allegations. Therefore, the officials were aware, or ought to have been aware, of the violence to which the applicant had been subjected and of the real and immediate risk that violence might recur. Given those circumstances, the authorities had an obligation to take all reasonable measures for her protection (see *Eremia*, § 58, and *Bălșan*, § 62, both cited above).

88. In a large majority of Council of Europe member States, victims of domestic violence may apply for immediate measures of protection. Such measures are variously known as “restraining orders”, “protection orders” or “safety orders”, and they aim to forestall the recurrence of domestic violence and to safeguard the victim of such violence by typically requiring the offender to leave the shared residence and to abstain from approaching or contacting the victim (see, for examples of such measures, Turkey's Family Protection Act, quoted in *Opuz*, cited above, § 70; Moldova's Domestic Violence Act, quoted in *Eremia*, cited above, § 30; section 7 of Croatia's Protection against Domestic Violence Act, quoted in *A. v. Croatia*, cited above, § 42; and Article 282 of Italy's Code of Criminal Procedure, quoted in *Talpis*, cited above, § 51). The CEDAW Committee and the UN Special Rapporteur on violence against women have identified the key features that such orders must possess in order to ensure the effective protection of the victim (see paragraphs 56 and 58 above).

89. Russia remains among only a few member States whose national legislation does not provide victims of domestic violence with any comparable measures of protection. The respondent Government in their observations did not identify any measures that the authorities could use to ensure the protection of the applicant. As regards an application for State protection – to which the applicant ultimately resorted (see paragraph 37 above) – the Court observes that the State protection scheme is geared towards protecting witnesses before and during criminal trials against any attempts to suppress or modify their testimony. In domestic-violence cases, the identity of the perpetrator is known and a restraining order keeps him away from the victim so that she can carry on as normal a life as possible under the circumstances. By contrast, witness-protection measures seek to foil attacks from as yet unidentified criminal associates. They frequently involve highly disruptive and costly arrangements, such as a full-time security detail, relocation, a change of identity, or even plastic surgery. Such heavy-handed measures are usually unnecessary within the domestic-violence context, where the availability of a protection order and the

rigorous monitoring of the abusive partner's compliance with its terms will ensure the victim's safety and discharge the State's obligation to protect against the risk of ill-treatment (see *A. v. Croatia*, §§ 62-80, and *Eremia*, §§ 59-65, both cited above).

90. In the instant case, it cannot be said that the Russian authorities made any genuine attempts to prevent the recurrence of violent attacks against the applicant. Her repeated reports of physical attacks, kidnapping and assault in the first half of 2016 did not lead to any measures being taken against S. Despite the gravity of the acts, the authorities merely obtained explanations from him and concluded that it was a private matter between him and the applicant. A criminal case was opened for the first time only in 2018 – that is to say more than two years after the first reported assault. It did not relate to any violent act on the part of S., but to the much lesser offence of interference with her private life. Even though the institution of criminal proceedings allowed the applicant to lodge an application for State protection measures, she did not receive any formal decision on her application, to which she was entitled under the law. An opinion issued by the regional police pronounced the application unfounded, describing the series of domestic-violence incidents as mere ill feeling between her and S. which was not worthy of State intervention (see paragraph 37 above). Lastly, a later series of stalking incidents and threats of death against the applicant in March 2018 did not lead to the taking of any protective measures.

91. The Court considers that the response of the Russian authorities – who were made aware of the risk of recurrent violence on the part of the applicant's former partner – was manifestly inadequate, given the gravity of the offences in question. They did not take any measure to protect the applicant or to censure S.'s conduct. They remained passive in the face of serious risk of ill-treatment to the applicant and, through their inaction and failure to take measures of deterrence, allowed S. to continue threatening, harassing and assaulting the applicant without hindrance and with impunity (see *Opuz*, §§ 169-70, and *Eremia*, §§ 65-66, both cited above).

(iii) The obligation to carry out an effective investigation into allegations of ill-treatment

92. 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. To be effective, such an investigation must be prompt and thorough. 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*, § 46; and *Talpis*, §§ 106 and 129, all cited above).

93. Since 1 January 2016 the applicant has reported to the police at least seven episodes of recurrent serious violence or threats of violence by S. and submitted evidence – including medical reports and statements by witnesses – corroborating her allegations (see paragraph 87 above). Her reports amounted to an arguable claim of ill-treatment, triggering the obligation to carry out an investigation satisfying the requirements of Article 3.

94. Responding to the applicant's complaints, the police carried out a series of short "pre-investigation inquiries", which invariably concluded with a refusal to institute criminal proceedings on the grounds that no prosecutable offence had been committed. Supervising prosecutors set aside some of the decisions concluding the pre-investigation inquiries. They apparently found that the applicant's allegations were sufficiently serious as to warrant additional examination of her grievances. However, the police officers did not take any additional investigative steps and issued further decisions declining to initiate criminal proceedings; the wording of those decisions reproduced in essence the text of previous decisions (see paragraphs 11, 16, 19, 23, 27, 35 and 36 above). Over more than two years of recurring harassment by S., the authorities never once opened a criminal investigation into the use or threat of violence against the applicant. The only criminal case that has been instituted since 1 January 2016 did not relate to any violent acts but to the relatively minor offence of publishing photographs of the applicant (see paragraph 30 above).

95. The Court has found in many previous Russian cases that the authorities, when confronted with credible allegations of ill-treatment, have a duty to open a criminal case; a "pre-investigation inquiry" alone not being capable of meeting the requirements for an effective investigation under Article 3. That preliminary stage has too restricted a scope and cannot lead to the trial and punishment of the perpetrator, since the opening of a criminal case and a criminal investigation are prerequisites for bringing charges that may then be examined by a court. The Court has held that a refusal to open a criminal investigation into credible allegations of serious ill-treatment is indicative of the State's failure to comply with its procedural obligation under Article 3 (see *Lyapin v. Russia*, no. 46956/09, §§ 134-40, 24 July 2014; *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 81-82, 2 May 2017; and *Samesov v. Russia*, no. 57269/14, §§ 51-54, 20 November 2018).

96. As in those and many other cases, the police officers' reluctance to initiate and carry through a criminal investigation in a prompt and diligent fashion led to a loss of time and undermined their ability to secure evidence

concerning the domestic violence. Even when the applicant presented visible injuries, such as after the assaults on 25 January and 18 May 2016, a medical assessment was not scheduled immediately after the incident. In respect of the first incident, the supervising prosecutor had to intervene before the police would schedule a medical examination, which only took place in March 2016 – almost two months after the events. In respect of the second incident, the Ulyanovsk police referred the matter to colleagues in another region, causing an almost three-month delay. Given the amount of time that had passed since the incident described in the applicant's complaint, a medical examination had become pointless; it therefore cannot be held against her that she refused to submit to such an examination.

97. The Court is not convinced that the Russian authorities made any serious attempt to establish the circumstances of the assaults or took an overall view of the series of violent acts, which is necessary in domestic-violence cases. The scope of their inquiries was confined in most instances to hearing the perpetrator's version of the assaults. The police officers employed a variety of tactics that enabled them to dispose of each inquiry in the shortest possible time. The first such tactic consisted of talking the perpetrator into making amends and repairing the damage caused. Once he had replaced the broken window of her car and returned the identity papers and personal effects to the applicant, the police declared that no offence had been committed, as if nothing had ever happened (see paragraphs 11 and 35 above). Alternatively, the police officers sought to trivialise the events that the applicant reported to them. Thus, an attempt on the applicant's life by means of cutting the brake hose in her car was treated as a minor property-damage case and the police closed the matter, citing the applicant's failure to submit a valuation of the damage (see paragraphs 23 to 27 above).

98. Confronted with indications of prosecutable offences, such as recorded injuries or text messages containing death threats, the police raised the bar for evidence required to launch criminal proceedings. They claimed that proof of more than one blow was needed to establish the offence of battery and that threats of death had to be "real and specific" in order to be prosecutable (see paragraphs 19 and 23 above). They did not cite any domestic authority or judicial practice supporting such an interpretation of the criminal-law provisions. The Court reiterates that the prohibition of ill-treatment under Article 3 covers all forms of domestic violence without exception, and every such act triggers the obligation to investigate. Even a single blow may arouse feelings of fear and anguish in the victim and seek to break her moral and physical resistance (see the case-law cited in paragraph 73 above). Threats are a form of psychological violence and a vulnerable victim may experience fear regardless of the objective nature of such intimidating conduct. The CEDAW Committee 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 paragraph 56 above). This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation.

99. The Government blamed the applicant for a lack of initiative in pursuing criminal-law remedies. In their view, her failure to lodge, or the subsequent withdrawal of, criminal complaints had prevented the authorities from continuing criminal proceedings against S. The Court cannot accept this view. It reiterates that the provisions of Russian law that make a criminal investigation strictly dependent on the pursuance of complaints by the victim are incompatible with the State’s obligation to punish all forms of domestic violence. Having regard to the particularly vulnerable situation of victims of domestic violence, the legislative framework must enable the authorities to investigate domestic-violence cases of their own motion as a matter of public interest and to punish those responsible for such acts (see *Opuz*, §§ 145 and 168; *T.M. and C.M. v. the Republic of Moldova*, § 46, and *B. v. the Republic of Moldova*, § 54, all cited above). In the present case, despite the seriousness of the assault on the pregnant applicant, which had led to the termination of her pregnancy, the authorities did not consider what the motives behind the withdrawal of the complaint had been and whether the seriousness of the attacks had required them to pursue the criminal investigation. They did not institute of their own motion any investigation into that matter, even though the kidnapping and serious bodily harm – such as the termination of pregnancy – could have been investigated as public-prosecution offences (see paragraph 46 above).

100. Lastly, the Government contended that other legal remedies had been open to the applicant which, had she used them, could have fulfilled their procedural obligations under the Convention, such as bringing a civil action for damages against S. The Court reiterates that such an action could have led to the payment of compensation but not to the prosecution of those responsible. Accordingly, it would not be conducive to the State discharging its procedural obligation under Article 3 in respect of the investigation of violent acts (see *Beganović v. Croatia*, no. 46423/06, § 56, 25 June 2009, and *Abdu v. Bulgaria*, no. 26827/08, § 51, 11 March 2014).

101. In view of the manner in which the authorities handled the case – notably the authorities’ reluctance to open a criminal investigation into the applicant’s credible claims of ill-treatment by S. and their failure to take effective measures against him, ensuring his punishment under the applicable legal provisions – the Court finds that the State has failed to discharge its duty to investigate the ill-treatment that the applicant had endured.

(iv) Conclusion

102. There has therefore been a violation of Article 3 of the Convention. In the light of this finding, the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 13 (compare *Opuz*, cited above, §§ 203-05).

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

103. The applicant complained that the Russian authorities' failure to put in place specific measures to combat gender-based discrimination against women amounted to a breach of Article 14 of the Convention, taken in conjunction with Article 3. The relevant part of Article 14 reads:

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

A. Submissions by the parties

104. The Government submitted that the main provisions of the CEDAW Convention, including the equality clause, were written into the Russian Constitution. The Russian authorities had dutifully acted upon the applicant's complaints and had made enquiries in respect of her allegations. She had not alleged that any State officials had attempted to discourage her from prosecuting S. or from giving evidence against him or that they had otherwise impeded her attempts to seek protection against her violent partner. The applicant had not submitted any statistical data showing that women in Russia who complained of domestic violence were subject to discriminatory treatment.

105. The applicant – referring to official statistics, as well as independent studies and research undertaken by gender-violence advocates – submitted that domestic violence was widespread in Russia and disproportionately impacted women. Her own case illustrated the lack of remedies for domestic-violence victims in Russia, where law enforcement agencies displayed a patriarchal and discriminatory attitude towards the problem of domestic violence, viewing it as a "lesser form" of violence and a "private matter". Despite the applicant lodging more than seven reports to the authorities, they had not opened an investigation or prevented further attacks, showing a striking level of complacency towards, and complicity in, the ill-treatment that she had experienced. For over a decade, various UN bodies had expressed alarm over the high level of violence against women in Russia and had called upon Russia to bring its legislation into line with international standards. Instead, the Russian lawmakers had rolled back the existing protections for domestic-violence victims and decriminalised the

offence of assault within the family in 2017. Support for decriminalisation at the highest political levels demonstrated that discrimination against women was part of official State policy, which championed “traditional values” and rigid gender roles and failed to condemn the use of physical violence against family members.

106. The third party, Equal Rights Trust, submitted that it was essential for cases of domestic violence to be examined under Article 14 in conjunction with Article 3, given that discrimination is a fundamental aspect of such violence which gives rise to the State’s positive obligations of prevention, protection, investigation, prosecution and reparation. Gender-based violence is a form of discrimination against women and domestic violence impacts disproportionately and differently upon women, requiring a gender-sensitive approach to understanding the level of pain and suffering experienced by women. Referring to an extensive selection of international human-rights-law instruments, the third party outlined the scope and nature of the State’s positive obligations in the sphere of domestic violence.

107. Commenting on the third-party submissions, the Government submitted that they contained unreliable information. Russian law already adequately protected victims of domestic violence, and the adoption of any specific legislation was unnecessary.

B. Admissibility

108. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. The principles applicable to the assessment of discrimination claims in domestic-violence cases

109. According to the Court’s settled case-law, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations. Such a difference in treatment is discriminatory if it has no objective and reasonable justification. The Court has also accepted that a general policy that has disproportionately prejudicial effects on a particular group may be considered to constitute discrimination, even where it is not specifically aimed at that group and there is no discriminatory intent. Discrimination that is contrary to the Convention may also result from a de facto situation (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV, and *S.A.S. v. France* [GC], no. 43835/11, § 161, ECHR 2014 (extracts)).

110. Having regard to the terms of specialised legal instruments – primarily the CEDAW Convention, and the work of the CEDAW Committee – the Court has recognised that violence against women, including domestic violence, is a form of discrimination against women. The State’s failure to protect women against domestic violence breaches their right to equal protection of the law, irrespective of whether such failure is intentional or not (see *Opuz*, cited above, §§ 185-91). In its general recommendation No. 19 (1992) on violence against women, the CEDAW Committee clarified that the definition of discrimination against women in Article 1 of the CEDAW Convention includes gender-based violence, which is understood as violence that “is directed against a woman because she is a woman or that affects women disproportionately” (see paragraph 52 above). Twenty-five years later, the Committee’s general recommendation No. 35 (2017) affirmed that the prohibition of gender-based violence against women as a form of discrimination against women has evolved into a principle of customary international law (see paragraph 55 above).

111. As regards the distribution of the burden of proof in discrimination cases, the Court has held that once an applicant has shown that there has been a difference in treatment it is then for the respondent Government to show that that difference in treatment could be justified (see *D.H. and Others*, cited above, § 188). Within the context of violence against women, if it has been established that it affects women disproportionately, the burden shifts onto the Government to demonstrate what kind of remedial measures the domestic authorities have deployed to redress the disadvantage associated with gender and to ensure that women can exercise and fully enjoy all human rights and freedoms on an equal footing with men. The Court has repeatedly held that the advancement of gender equality is today a major goal in the member States of the Council of Europe and that a difference in treatment that is aimed at ensuring substantive gender equality may be justified, and even required, under Article 14 of the Convention (see *Konstantin Markin v. Russia* [GC], no. 30078/06, § 47, ECHR 2012 (extracts), and *Ēcis v. Latvia*, no. 12879/09, §§ 84-86, 10 January 2019). Substantive gender equality can only be achieved with a gender-sensitive interpretation and application of the Convention provisions that takes into account the factual inequalities between women and men and the way they impact women’s lives. Article 14 does not prohibit a member State from treating groups differently in order to correct “factual inequalities” between them; indeed, in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of this Article (see *D.H. and Others*, cited above, § 175).

112. As regards the question of what constitutes *prima facie* evidence capable of shifting the burden of proof on to the respondent State, the Court reiterates that in proceedings before it there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. In

cases in which the applicants allege a difference in the effect of a general measure or a de facto situation, the Court has relied extensively on statistics produced by the parties to establish a difference in treatment between two groups – men and women – in similar situations (see *Zarb Adami v. Malta*, no. 17209/02, §§ 77-78, ECHR 2006-VIII, and *Di Trizio v. Switzerland*, no. 7186/09, § 66, 2 February 2016).

113. In domestic-violence cases, the Court has referred to reports by international and local human-rights organisations, periodic reports by the CEDAW Committee, and statistical data from the authorities and academic institutions to establish the existence of a *prima facie* indication that domestic violence affects mainly women and that the general attitude of the local authorities – such as the manner in which the women are treated at police stations when they report domestic violence and judicial passivity in providing effective protection to victims – creates a climate that is conducive to domestic violence (see *Opuz*, cited above, §§ 192-98, and *Halime Kılıç v. Turkey*, no. 63034/11, §§ 117-18, 28 June 2016). The Court has reached a similar conclusion in other cases in which the domestic authorities failed to appreciate the seriousness and extent of the problem of domestic violence. It found that their actions had gone beyond a simple failure or delay in dealing with violence against women and amounted to a repetition of acts condoning such violence and reflecting a discriminatory attitude towards victims on account of their sex (see *Eremia*, § 89; *Mudric*, § 63; *T.M. and C.M. v. the Republic of Moldova*, § 62; *Talpis*, § 145; and *Bâlşan*, § 85, all cited above).

114. Once a large-scale structural bias has been shown to exist, such as that in the above-mentioned cases, the applicant does not need to prove that she was also a victim of individual prejudice. If, however, there is insufficient evidence corroborating the discriminatory nature of legislation and practices or of their effects, proven bias on the part of any officials dealing with the victim's case will be required to establish a discrimination claim. In the absence of such proof, the fact that not all of the sanctions and measures ordered or recommended have been complied with does not in itself disclose an appearance of discriminatory intent on the basis of sex (see *A. v. Croatia*, §§ 97-104, and *Rumor*, §§ 76-77, both cited above).

2. Analysis of the present case

(a) Applicability of Article 14 in conjunction with Article 3

115. The Court reiterates that, for Article 14 to become applicable, a violation of one of the substantive rights guaranteed by the Convention is not required. It suffices that the facts of the case fall “within the ambit” of another substantive provision of the Convention or its Protocols (see *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 53, 24 January 2017). It has found above that the applicant was subjected to

inhuman treatment which the State failed to prevent (see paragraphs 75 and 102 above); accordingly, the facts of the case fall “within the ambit” of that provision.

116. As to the requirement that an alleged difference in treatment relate to any of the grounds in Article 14, the Court notes that “sex” is explicitly mentioned in Article 14 as a prohibited ground of discrimination. Article 14 of the Convention taken in conjunction with Article 3 is therefore applicable in the present case.

(b) Whether women are disproportionately affected by domestic violence in Russia

117. The Court notes at the outset that the need to collect statistical information on the extent, causes and effects of gender-based violence has been part of the CEDAW Committee’s specific recommendations for more than twenty-five years (see General recommendation No. 19 (1992) in paragraph 52 above). In 2004, the Special Rapporteur on violence against women, its causes and consequences observed that statistics on domestic violence were inconsistent or lacking in Russia (§ 26 of the report, cited in paragraph 61 above). In its 2015 periodic review of Russia’s compliance with its obligations under the CEDAW Convention, the CEDAW Committee expressed concerns at “the high prevalence of violence against women, in particular domestic and sexual violence ... and the lack of statistics disaggregated by age, nationality, and relationship between the victim and the perpetrator, and of studies on its causes and consequences” (see paragraph 64 above).

118. The absence of comprehensive nationwide statistics in Russia has been linked to the lack of any definition of domestic-violence offences in Russian legislation, which prevents domestic authorities from classifying offences as such and from gathering any consistent data about the extent of the phenomenon (see the Human Rights Watch report cited in paragraph 66 above). The failure to collect adequate information being attributable to domestic authorities, the Court rejects the Government’s argument that the applicant had somehow been at fault for not submitting official data showing that female victims of domestic violence in Russia were discriminated against.

119. Unlike the Government, who did not produce any statistical information, the applicant submitted the official data compiled by the Russian police regarding “crimes committed within the family and household”, which can be seen as constituting the closest approximation to statistics regarding domestic violence because of the nature of offences involved (see paragraph 41 above). The total number of registered offences, their respective legal categorisation and the number of female and underage victims have been tabulated. Even making allowance for the fact that a single criminal incident could have harmed multiple parties, it is apparent

that, as recently as in the period 2015-17, women made up between 67% to 74% of all adult victims of registered crimes “committed within the family or household”. The offence of battery, which is the most common form for prosecution of minor violence, appears to have targeted exclusively women and children, as the total number of those two categories of victims was equal to, or larger than, the total number of registered incidents. As regards the offence of threatening death or serious injury, which is also a frequent manifestation of violence within the family, the number of female victims increased year over year, from 73.2% in 2015 to 75.9% in 2016 to 77% in 2017.

120. The year 2017 saw a sharp drop in the overall number of crimes “committed within the family or household”, which the applicant attributed to the decriminalisation of battery against “close persons” (see paragraph 50 above). The total number of registered offences fell by more than 40%, from 65,535 to 38,311. With the number of reported threats of death or injury remaining virtually unchanged, prosecutions on a charge of aggravated battery and “repeat battery” plummeted by a factor of eleven, from 25,948 in 2016 to just 2,266 in 2017. Women accounted for up to 95% of adult victims in those cases. The extraordinary decline in the number of registered offences could not have been caused by the implementation of any effective measures addressing domestic violence because no measures seeking to address that problem had been implemented. The Court agrees with the applicant’s explanation that the decriminalisation of battery led to an even greater incidence of under-reporting of domestic violence, many more incidents of which have not found their way into the police statistics.

121. Even discounting the effect of decriminalisation, the number of offences registered nationwide has remained exceptionally low in relation to the Russian adult female population of 65 million and does not tally with the actual frequency of domestic violence, as established in many studies. A comprehensive study undertaken by the World Health Organisation found that domestic violence is under-reported world-wide, and that every fourth woman in the European region had experienced physical or sexual violence (See the WHO’s 2013 report entitled *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*).

122. The situation in Russia appears to be even more severe. The 2004 report by the Special Rapporteur on violence against women noted the claim made by Russian women’s groups that “domestic violence remained seriously under-reported, under-recorded and largely ignored by the authorities” (see § 28 of the report, cited in paragraph 61 above). The low number of complaints, investigations and prosecutions of acts of domestic violence and violence against women was a matter for concern for the UN Committee against Torture in its 2012 periodic report on Russia (see paragraph 63 above). A nationwide study by the Statistics Service and the

Ministry of Health and a regional study by the Academy of Sciences established that more than half of Russian women had experienced verbal abuse or physical violence but that only 10% of them reported it to the police (see paragraphs 42 and 43 above). A Russian NGO estimated that some form of domestic violence affected every fourth family (see paragraph 44 above). The Russian Ombudsman, without giving specific figures, accepted that many female victims did not turn for assistance to the police or authorities as they had no hope of finding help there (see paragraph 45 above). To the same effect, a recent comprehensive report on domestic violence in Russia by Human Rights Watch noted that an overwhelming majority of female survivors of domestic violence did not report it to the police or sought help from authorities (see paragraph 66 above).

123. Finally, on the question whether women who are victims of domestic violence have an equal access to justice, the Court has noted above that victims have had no access to public prosecution of such offences save for a short period between July 2016 and January 2017 (see paragraph 49 above). The majority of domestic-violence cases have been classified as private prosecution offences in the Russian legal system which placed the onus of prosecution on the victim (see paragraph 82 above). The official statistics of the Judicial Department of the Supreme Court of the Russian Federation indicate that that classification has the effect of disproportionately and adversely affecting the prospects of success for victims seeking access to justice. The global number of acquittals in the Russian criminal justice system in 2013-14 amounted to less than 1% of all criminal cases considered by courts of general jurisdiction. Approximately 70% of those acquittals were pronounced in private prosecution cases (3,894 out of 5,624 cases in 2013, and 3,778 out of 5,167 cases in 2014), even though such cases made up less than 5% of all criminal cases (49,315 out of 946,747 cases in 2013, 45,427 out of 936,771 cases in 2014). Moreover, private prosecution cases were four times more likely to be discontinued on various procedural grounds in comparison to public prosecution cases (78% compared to 19% in 2013 and 76% compared to 19% in 2014). It follows that victims of domestic violence have been placed in a de facto situation of disadvantage.

124. On the strength of evidence submitted by the applicant and information from domestic and international sources, the Court finds that there exist prima facie indications that domestic violence disproportionately affects women in Russia (see *Opuz*, cited above, § 198). Women make up a large majority of victims of “crimes committed within the family and household” in the official police statistics, violence against women is largely under-reported and under-recorded, and women have a much lesser chance to secure prosecution and conviction of their abusers owing to domestic classification of such offences.

(c) Whether the Russian authorities have put in place policy measures geared towards achieving substantive gender equality

125. Consistently with the State's obligation under the CEDAW Convention to condemn discrimination against women in all its forms, Article 19 of the Russian Constitution establishes the principle of equality of rights and freedoms for men and women and also proclaims that they should have equal possibilities to exercise them. In the present case, the alleged discrimination does not stem from any legislation which is discriminatory on the face of it, but rather results from a *de facto* situation in which violence disproportionately affects women (compare *Opuz*, cited above, § 192). The Court will accordingly examine whether the Russian authorities have put in place policy measures to counter discriminatory treatment of women and to protect them from domestic abuse and violence.

126. The Russian authorities have acknowledged the magnitude of the problem of violence against women in their reports to the CEDAW Committee. As early as 2004, they stated that "14,000 women were killed annually by their husbands or other family members" and that the "situation [was] exacerbated by the lack of statistics and indeed by the attitude of the agencies of law and order to this problem, for they view such violence not as a crime but as 'a private matter' between the spouses" (see § 26 of the Special Rapporteur's report cited in paragraph 61 above). The Special Rapporteur on violence against women pinpointed the lack of legislation on domestic violence in Russia as a major obstacle to combating such violence (*ibid.*, § 36). In her view, the lack of specific legislation contributed to impunity for crimes committed in the private sphere, but also deterred women from seeking recourse and reinforced police reluctance to deal seriously with the problem which they did not consider a crime (*ibid.*, § 38).

127. The United Nations treaty bodies considered the Russian authorities' persistent failure to define domestic violence in its legislation to be incompatible with their international commitments. The concluding observations of the CEDAW Committee on the sixth, seventh and eighth periodic reports of the Russian Federation in 2010-15 urged Russia to adopt comprehensive legislation to prevent and address domestic violence and to prosecute such offences (see paragraph 64 above). The Committee on Economic, Social and Cultural Rights and the Committee against Torture noted the absence of a definition of domestic violence in Russian law as problematic from the standpoint of observance of their respective treaties (see paragraphs 62 and 63 above). Considering an individual communication from a Russian woman who had been a victim of domestic violence, the CEDAW Committee established that the Russian authorities' failure to amend its legislation relating to domestic violence had denied her the possibility of being able to claim justice and breached anti-discrimination provisions of the CEDAW Convention (see paragraph 65 above).

128. Despite the high prevalence of domestic violence to which the above-mentioned statistical information attests, the Russian authorities have not to date adopted any legislation capable of addressing the problem and offering the protection to women who have been disproportionately affected by it. As Russia's Ombudsman observed, more than forty draft laws had been developed in the last twenty years but none enacted (see paragraph 45 above). The Court has found above that the existing criminal-law provisions are insufficient to offer protection against many forms of violence and discrimination against women, such as harassment, stalking, coercive behaviour, psychological or economic abuse, or a recurrence of similar incidents protracted over a period of time (see paragraph 81 above). The absence of any form of legislation defining the phenomenon of domestic violence and dealing with it on a systemic level distinguishes the present case from the cases against other Member States in which such legislation had already been adopted but had malfunctioned for various reasons (see *Opuz*, § 200; *Eremia*, §§ 89-90; and *Talpis*, § 147, all cited above).

129. In 2016, the Criminal Code was amended to decriminalise lesser offences, including non-aggravated battery. For the first time in Russia's modern history, the legislation introduced a distinction between beatings inflicted by strangers and assaults on "close persons" committed in the domestic context. The former was reclassified as an administrative offence, the latter became an element of aggravated criminal battery (see paragraph 49 above). The Court considers that the positive development of Russian law offered a prospect of greater protection to victims of domestic violence. By introducing a new aggravating element, assault on "close persons" was reclassified as a more serious crime, which was subject to mixed public-private prosecution. Not only did the amendments send the message that such conduct would not be tolerated but they also had the practical effect of alleviating the burden of victims, who were no longer left entirely to their own devices. As the applicant's case demonstrated, the change did not have an immediate effect. She informed the police about serious incidents in July, August and September 2016, including an assault, an attempt on her life and the planting of a tracking device. The police, however, remained as passive as they had been before, seeking to trivialise the nature of the incidents and to close the matter as soon as possible.

130. The Court cannot speculate what the impact of the 2016 amendments could have been, had they been followed up with training of judges and law enforcement officers. As it happened, that legal regime which offered some form of protection against domestic violence was short-lived. Less than six months later, in early 2017, the Russian Parliament again amended the assault provisions of the Criminal Code, removing a reference to "close persons" as an aggravating element (see paragraph 50 above). As a consequence, domestic violence was, once again, not officially mentioned or defined in any legislation, whether administrative or criminal.

A first-time assault, whether by strangers or abusive partners, has disappeared from the sphere of criminal law. Repeat instances of assault are criminally prosecutable only when an administrative sanction against the offender has been imposed within a period of twelve months prior to the repeat attack. The 2017 amendments also made it harder to punish incidents of domestic violence because the victims need to launch two sets of proceedings within a short timeframe, first by securing the offender's conviction in the administrative-offences court and then mounting a private prosecution case on a charge of "repeat battery".

131. The CEDAW Committee has recently had an opportunity to consider the Russian legislative framework as it obtained after the 2017 amendments. Noting the absence of a definition of "domestic violence" in Russian law, it expressed the view that the amendments decriminalising assault on close persons "go in the wrong direction" and "lead to impunity for perpetrators" of domestic violence (see paragraph 65 above). The Court concurs in this assessment. It has found above that the current Russian legislation is inadequate to deal with the phenomenon of domestic violence and to provide sufficient protection for its victims (see paragraph 85 above). It also fails to protect women from widespread violence and discrimination.

132. In the Court's opinion, the continued failure to adopt legislation to combat domestic violence and the absence of any form of restraining or protection orders clearly demonstrate that the authorities' actions in the present case were not a simple failure or delay in dealing with violence against the applicant, but flowed from their reluctance to acknowledge the seriousness and extent of the problem of domestic violence in Russia and its discriminatory effect on women. By tolerating for many years a climate which was conducive to domestic violence, the Russian authorities failed to create conditions for substantive gender equality that would enable women to live free from fear of ill-treatment or attacks on their physical integrity and to benefit from the equal protection of the law.

133. There has been a violation of Article 14 of the Convention, taken in conjunction with Article 3.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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."

135. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,875.69 for legal costs and expenses. The latter amount included the work of lawyers from the Stichting Justice Initiative who interviewed the applicant and experts, collected documents

and evidence, and drafted submissions to the Court. Local research was billed at EUR 50 per hour, and legal work at EUR 150 per hour.

136. The Government submitted that Article 41 should be applied in accordance with the established case-law.

137. The Court awards the applicant EUR 20,000 in respect of non-pecuniary damage and the amount claimed for legal costs and expenses, plus any tax that may be chargeable to the applicant. The latter amount shall be paid into the bank account of the applicant's representatives, Stichting Justice Initiative, in the Netherlands.

138. 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

1. *Declares*, unanimously, the application admissible;
2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention;
3. *Holds*, unanimously, that there is no need to examine the complaint under Article 13 of the Convention;
4. *Holds*, unanimously, there has been a violation of Article 14 of the Convention, taken in conjunction with Article 3;
5. *Holds*, by five votes to two,
 - (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:
 - (i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (ii) EUR 5,875.69 (five thousand eight hundred and seventy-five euros 69 cents) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, payable into the bank account of the applicant's representatives;
 - (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*, by five votes to two, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Vincent A. De Gaetano
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) separate opinion of Judge Pinto de Albuquerque, joined by Judge Dedov;
- (b) concurring opinion of Judge Dedov;
- (c) separate opinion of Judge Serghides.

V.D.G.
F.A.

SEPARATE OPINION OF JUDGE PINTO DE ALBUQUERQUE, JOINED BY JUDGE DEDOV

1. In *Volodina*, the opportunity arose to address the disturbing issue of domestic violence in an unprecedented way. Not only did the applicant face moments of severe physical abuse, she also reportedly endured – and continues to endure – excruciating mental suffering. Statistics indicate that this case represents but one single, stark example of a much more systemic problem.¹ The majority offered four particular contributions in recognising the need to address the violations suffered by the applicant, and they are to be commended for this. In my opinion, however, the majority missed an opportunity to advance even further the Court’s stance on addressing domestic violence as a human-rights violation. For this reason I concur with the judgment, but I feel compelled to disagree partly with regard to the reasoning.

A. The positive aspects of the majority judgment

1. A gender-sensitive interpretation of the Convention

2. My first point of congratulation is with regards to the incorporation of a “gender-sensitive interpretation and application of the Convention provisions”² which significantly shifts the burden of proof from the victim to the respondent State.³ A gender-sensitive approach recognises the “factual inequalities between women and men”⁴ and strives towards effective and substantive gender equality by responding to the particular vulnerabilities of domestic-violence victims.⁵ Having acknowledged this, a

¹ See paragraphs 40–45 of the present judgment.

² See paragraph 111 of the present judgment. This echoes my concurring opinion in *Valiulienė v. Lithuania*, no. 33234/07, 26 June 2013, in which I argued that a gender-sensitive interpretation and application, acknowledging gender ascriptions which define perceptions, relationships and interactions between men and women within societies, are necessary in order to pinpoint the actual disadvantages suffered by women. A gender-sensitive interpretation and application may consequently recognise and highlight the context within which women live in a certain society, acknowledge the disproportionate effect of violence on women and identify potentially debilitating circumstances that foster domestic violence incidents.

³ The burden is shifted since the general understanding of domestic violence and relevant statistics have indicated that the persistent vulnerable position of women when experiencing gender-based violence in a domestic setting is exacerbated by inactivity on the part of a State. A State’s silent acquiescence and inability or unwillingness to act perpetuates the suffering of women and upholds their unequal societal standing. Consequently, a State faces an obligation not only to respect, but also to protect, through effective legislative and operative measures which include swift action by State agents in intervening in domestic-violence incidents.

⁴ See paragraph 111 of the present judgment.

State's positive obligation to protect women against domestic violence must firstly be recognised in the specific context within which domestic violence occurs. Several reports have indicated the prevalence of domestic abuse in Russia.⁶ Instead of counteracting these contextual realities – which place women and other vulnerable categories of persons at greater risk of facing domestic violence –, the Russian State's [in]action fosters and perpetuates the plight of women and girls.

2. Obligation to fight gender-based violence under customary international law

3. The second point worth highlighting is the majority's underscoring of the CEDAW Committee's recognition of the evolutive morphing of gender-based violence as a form of discrimination against women into a principle of customary international law.⁷ The particularly humiliating nature of domestic violence, which is aimed at debasing women's dignity through "physical, sexual, psychological or economic violence"⁸, is capable of triggering the prohibition against torture, inhuman or degrading treatment under Article 3.⁹ The acknowledgement that domestic violence and State inaction to cure and combat the occurrence of such events are subsumed to a prohibitive category of customary international law implies that domestic legislation and administrative practice should accordingly be shaped by such customary international law.

⁵ The majority have also noted that the Council of Europe has been focused on working towards the achievement of gender equality, which will benefit from a gender-sensitive perspective that takes into account the context within which members of society find themselves. This effort was further reflected in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention") which has pointed out the increased risk of women and girls to gender-based violence and under Article 6 proposed the implementation of gender-sensitive policies when implementing the Istanbul Convention. It is only natural that such gender-sensitive interpretation is equally utilised in the context of the European Convention on Human Rights ("the Convention") which, as in the present case, views domestic violence as a potential violation of Article 3. The notion of particularly vulnerable categories of persons in respect of domestic violence was previously brought up in *Hajduova v. Slovakia*, no. 2660/03, 30 November 2010, where the European Court of Human Rights ("the Court") found that the respondent State had insufficiently complied with its positive obligation to protect the applicant.

⁶ See paragraphs 62, 64, 84, 117 and 128 of the present judgment.

⁷ See paragraph 110 of the present judgment. This was equally highlighted in my dissenting opinion in *Valiulienė v. Lithuania*, cited above, in which I mention the broad and long-lasting consensus on the State's positive obligation, triggered by the occurrence of violence against women (See *Valiulienė v. Lithuania*, cited above, at page 28).

⁸ See the Istanbul Convention, Article 3(b).

⁹ See paragraph 74 of the present judgment.

3. Appropriate weight accorded to soft-law instruments

4. Thirdly, I wish to stress that proper weight was accorded by the majority to soft-law standards. Although the Court is not willing to rely solely on them in finding a violation of the Convention, it is prepared to take into account soft-law instruments which appear sufficiently indicative of a crystallising consensus among member States. A cardinal principle of interpretation prescribes that the Convention is interpreted in the light of present-day conditions, according to which a newly found consensus will influence the Court's findings. Growing consensus is often reflected through the development of soft law.¹⁰ It is commendable that, in addition to the Istanbul Convention, which is not binding on Russia as such¹¹, the majority in *Volodina* referred back to the influential work of the CEDAW Committee, the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment and the UN Special Rapporteur on violence against women, with a view to interpreting the Convention in the light of relevant international human-rights soft-law standards and, further, to grasping fully the extent to which women are threatened by acts of domestic violence in Russia.¹²

4. Statistics speak louder

5. Finally, the majority have paid close attention to the importance of context.¹³ The use of statistics has benefitted these considerations by helping to identify the underlying structural problem of domestic violence in Russia. Consequently a more stringent level of due diligence is expected from the State, for examination of the context inevitably predicts the likelihood of the occurrence of domestic violence in Russian society.¹⁴

¹⁰ In the leading case *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 146-154, 12 August 2008, the Court referred to several soft-law instruments which had highlighted the importance of the right to bargain collectively. Previously, in the seminal case *Marckx v. Belgium* (Plenary), no. 6833/74, §§ 41 and 58, 13 June 1979, the Court had already relied on the growing consensus ("clear measure of common ground in this area amongst modern societies") regarding the need to treat children born out of wedlock on an equal basis to those born within wedlock and the general need for social protection of unmarried mothers and their children, a finding which was based on international instruments that were not binding on the respondent State.

¹¹ Although not binding for Russia, the Court does not refrain from citing the Istanbul Convention (see paragraph 60 of the present judgment). A growing consensus can be noted from the number of Council of Europe Member States which have ratified this Convention - to date, 34 member States. The European Union has further expressed its commitment to combating gender-based violence by highlighting it as one of their priorities for the EU's Strategic Engagement for Gender Equality for 2016-2019.

¹² See paragraph 88 of the present judgment.

¹³ See paragraphs 112, 113 and 117-124 of the present judgment.

Despite the absence of nationwide statistics on domestic violence in Russia, the majority considered data collected on “crimes committed within the family and household”¹⁵, drawn up from official police records and the Special Rapporteur’s findings on violence against women, which highlighted the serious under-reporting and under-recording of incidents of domestic violence and ignorance in respect of this phenomenon.¹⁶ The absence of national statistics on the specific issue of domestic violence is in itself telling with regard to the lack of general awareness of this pressing issue. Furthermore, it underpins the UN Rapporteurs’ concerns regarding under-reporting and under-recording, for women are faced with a general atmosphere of blatant refusal to acknowledge their suffering. Consequently, statistics are useful in a two-fold way: firstly, the existing statistics provide useful context which aids in applying a gender-sensitive approach to the issue at stake; and secondly, the absence of specific statistics additionally highlights the lack of concern which the respondent State has paid to the issue of domestic violence.

B. Shortcomings in the majority judgment

1. Domestic violence is torture

6. Despite the positive aspects mentioned above, it is crucial to pinpoint three areas in which my opinion diverges from that of the majority. It is unquestionable that the psychological and physical pain endured by the applicant falls within the category of Article 3 treatment. Article 3, however, is distinguished by thresholds of severity and the intention and purpose behind the perpetrator’s and complicit State’s actions – or inaction, with regard to the latter. In *Ireland v. United Kingdom*, the Court distinguished torture from inhuman or degrading treatment by establishing that torture consists of “deliberate inhuman treatment causing very serious and cruel suffering.”¹⁷

7. In my view, the applicant’s ordeal as described in this judgment meets all the criteria for being identified as torture. The majority refer to feelings of fear, anxiety and powerlessness, as well as being subjected to controlling and coercive behaviour, which trigger the application of Article 3.¹⁸ This summary is a tame expression of what the applicant endured. She was

¹⁴ For a more elaborate discussion on the strictness of the due-diligence test, see my separate opinion in *Valiulienė v. Lithuania*, in which I draw reference from the *Hajduova* case, which requires a heightened degree of vigilance for particularly vulnerable victims of domestic violence. See *Valiulienė v. Lithuania*, cited above, page 30.

¹⁵ See paragraph 119 of the present judgment.

¹⁶ See paragraph 122 of the present judgment.

¹⁷ *Ireland v. the United Kingdom* (Plenary), no. 5310/71, § 167, 13 December 1977.

¹⁸ See paragraph 75 of the present judgment.

subjected to multiple and persistent instances of extreme domestic violence, including a punch to her stomach, which in fact led to medical advice that she should induce the abortion of her unborn baby. She was further psychologically taunted through the publication of private photographs, the finding of what was believed to be a GPS tracker inside her purse, threats to kill her – which S. attempted to substantiate by damaging her car – and abduction from her city of residence.

8. According to General Comment 2 of the UN Committee against Torture, the State's systematic omission, consent or acquiescence of privately inflicted harm raises concerns under the Convention against Torture, a Convention that enjoys *jus cogens* status and is deemed as upholding principles of customary international law.¹⁹ Not only did the majority cite the CEDAW Committee's concerns regarding violence against women, particularly within the domestic sphere, it also included the concluding observations of the UN CAT Committee for the Russian Federation in 2012, which explicitly expressed concern regarding violence against women, on account of the lack of reported complaints by the Russian authorities "despite numerous allegations of many forms of violence against women", as well as "reports that law-enforcement officers are unwilling to register claims of domestic violence ..." and the "absence in the State party's law of a definition of domestic violence...".²⁰ According to the CAT Committee, these concerns fell under Articles 1, 2, 11, 13 and 16 of the Convention Against Torture, the first two articles of which explicitly set out the definition of torture and the obligation of State Parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture. The message is clear. When severe forms of pain and suffering are deliberately inflicted on a person, this must be identified as torture. It is furthermore a matter of consistency that a 'gender-sensitive interpretation and application' of the Convention acknowledges the gravity and effect of persisting patterns of domestic violence on women and other categories of vulnerable persons. The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has similarly warned about the tendency to downplay gender-based crimes of violence against women.²¹ The Special Rapporteur further emphasised that the use of a "gender-sensitive lens"²² should counteract any attempt to downplay the suffering of women by ascribing the title of 'ill-treatment'

¹⁹ UN Committee against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2, at 1.

²⁰ See paragraph 63 of the present judgment, referencing CAT/C/RUS/CO/5, adopted by the UN Committee against Torture on 22 November 2012.

²¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Human Rights Council Thirty-first session A/HRC/31/57 (2016), at 9.

²² *Ibid*, at 8.

instead of ‘torture’. It is imperative that the Court does not fall in the trap of undermining its own gender-sensitive approach through the non-recognition of torture when it is faced with a situation that clearly amounts to it.

9. In the present case, the applicant faces revengeful action from S., who deliberately seeks to punish her for leaving him. In fear of his reprisal actions, she left her home town to resettle in the capital city. She currently lives under a new identity, which demonstrates the gravity of the threats she was facing. She cannot simply resume her old life. In the light of the accumulation of cruel and inhuman circumstances, there appears to be a disconnect between the reports on gender-based violence in Russia, the actual circumstances of this case – which give tangible form to the statistical evidence – and the fact that the Court is reluctant to take a strong stand in identifying the appropriate title for what the victim endured. The distinction between torture and inhuman treatment is crucial in the context of domestic violence. If the State faces condemnation for allowing its women to be submitted to torture, the positive obligation to protect is even more stringent. Furthermore, the State will be held to a higher standard when it comes to awarding damages and appropriate reparations to the victim. This is precisely the reason why I was also unable to subscribe to the amount of compensation awarded to the applicant in the present case.

10. Taking into account all of the circumstances of the case, which display an accumulation of aggravating factors of harmful masculinity leading to the grave infringement of the applicant’s dignity and physical and psychological integrity, as well as the purposive conduct of the perpetrator, I wonder what more is needed to reach a finding of torture under Article 3.²³ Once torture is identified, it need not be compared to even worse instances of torture, which undeniably exist. In the case at hand, the elements of torture were clearly fulfilled. Any understatement of suffering is contrary to the intention of the Court to condemn all forms of domestic violence and to demand a proactive State which complies with its positive obligation to act in a manner which counteracts persisting gender inequalities.

2. The *Osman* test does not work in domestic violence cases

11. The State has a positive duty to prevent and protect, the scope of which is difficult to pinpoint prior to the circumstances of an actual case. *Osman v. the United Kingdom*²⁴ has served as the yardstick by which the State’s positive obligation to protect has been measured. The test examines whether the authorities knew, or ought to have known at the time, of the existence of real and immediate risk to the life of an identified individual or

²³ For a thought-provoking discussion on domestic violence and its connection to torture, read Isabel Marcus, “Reframing Domestic Violence as Torture or Terrorism”, Collection of Papers No. 67, Faculty of Law, Niš, 2014.

²⁴ See *Osman v. the United Kingdom*, no. 23452/94, § 116, 28 October 1998.

individuals from the criminal acts of a third party and whether they failed to take measures within the scope of their powers which, judged reasonably, might have been expected of them. *Osman* concerned the failure to protect the rights to life of Ali and Ahmet Osman, but the test has since shifted and is applied to other areas of a State's positive obligation, including domestic violence cases.²⁵

12. Nevertheless, the *Osman* test fails to achieve its purpose if taken word for word. A 'real and immediate risk' in the context of domestic violence infers that the risk, namely the batterer, is already in the direct vicinity of the victim and about to strike the first blow. Were the test to be applied in such a manner, two concerns arise. Firstly, any protective action offered by the State would be too late and secondly, the State would have a legitimate excuse for not acting in a timely manner, since it is implausible to assume that the victim will be constantly accompanied by a State agent who may jump in to help. Hence, the 'immediacy' of the *Osman* test does not serve well in the context of domestic violence. I would rather propose, as I have done previously in *Valiulienė v. Lithuania*, that the standard by which the State is held accountable is whether a State knows or ought to know that a segment of its population, such as women, is subject to repeated violence and fails to prevent harm from befalling members of that group of people when they face a present (but not yet imminent) risk.²⁶ As a consequence, the due-diligence standard against which the State's action or inaction is assessed spans across a wider window of time, starting from the moment when a risk of domestic violence is present, but not yet imminent. It is baffling to witness that the majority have accepted CEDAW's approach that gender-based violence need not pose an 'immediate' threat in paragraph 77 of the present judgment, yet goes on to apply the original *Osman* test in paragraphs 56 and 98. This failure to adopt a coherent approach creates the risk that victims of domestic violence will fail to be protected since the positive obligation on the authorities to act would be triggered too late.

3. Need for clear Article 46 injunctions

13. My final point of critique with regard to the majority's approach concerns the missed opportunity to impose Article 46 injunctions in the judgment, as the Court has done on so many occasions²⁷. Several points must be expanded upon in this regard. Firstly, domestic violence should be explicitly noted as an autonomous criminal offence in domestic law.²⁸ In

²⁵ See for example, *Opuz v. Turkey*, no. 33401/02, § 130, 9 June 2009, and *Hajduova v. Slovakia*, no. 2660/03, § 50, 30 November 2010.

²⁶ See *Valiulienė v. Lithuania*, cited above, at page 30.

²⁷ See my separate opinion in *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, 11 July 2017.

²⁸ See paragraphs 80, 81 and 131 of the present judgment.

2017 Russia's High Commissioner for Human Rights reported the persistent absence of specific legislation on crimes within the family and households.²⁹ Similar concern for the absence of explicit legislation prohibiting domestic violence was reiterated by the Special Rapporteur on violence against women, its causes and consequences as far back as in 2004³⁰. In *O.G. v. the Russian Federation*³¹, the CEDAW Committee concluded that Russia should reinstate the provision that domestic violence be subject to criminal prosecution and found that the failure to do so created a situation in which the victim could not claim justice, nor have access to efficient remedies and protection.³² The absence of domestic violence as a criminal-law offence was noted as a distinctive feature which distinguished Russia from other Council of Europe member States, such as Turkey, Italy and Moldova, where legislation on domestic violence existed but was not always effective in protecting women.³³ If Russia introduces domestic violence as an autonomous offence, this will be of significant value in addressing the specific plight of women, which is currently disregarded in criminal-law provisions.³⁴ In other words, the definition of domestic violence as an autonomous criminal offence consisting in the commission of physical, sexual or psychological harm or harassment, or the threat or attempt thereof, in private or public life, by an intimate partner, an ex-partner, a member of the household, or an ex-member of the household does not duplicate other existing legal provisions and has a legal value of its own.

14. Secondly, the law must equate the punishment of domestic violence to that of the most serious forms of aggravated assault. There exists a plethora of information on the forms and effects of domestic violence, which results in a number of negative consequences for the victims.³⁵ It is of utmost importance to recognise the gravity of the commission of a domestic violence offence, by enacting strict laws which punish the perpetrators of the offence appropriately. The classification of domestic violence as a minor or administrative offence does not do justice to the serious harm suffered by women who experience domestic violence.

²⁹ See paragraph 45 of the present judgment.

³⁰ See paragraph 61 of the present judgment.

³¹ CEDAW, Communication No. 91/2015, 6 November 2017.

³² Ibidem, § 7.8, § 9 (b). See also CEDAW Committee, *Concluding observations on the eighth periodic report of the Russian Federation*, UN Doc. CEDAW/C/RUS/CO/8, § 22, and Committee against Torture, *Concluding observations on the fifth periodic report of the Russian Federation*, UN Doc. CAT/C/RUS/CO/5, § 14.

³³ See paragraph 128 of the present judgment, citing *Opuz v. Turkey*, § 200, cited above; *Eremia v. Republic of Moldova*, no. 3564/11, §§ 89-90, 28 May 2013; and *Talpis v. Italy*, no. 41237/14, § 147, 2 March 2017.

³⁴ See also the Istanbul Convention, Articles 4 and 62, which reiterate the importance of effective legislation for the prevention, combatting and prosecution of all forms of violence against women.

³⁵ UN World Health Organization (WHO), *Global Status Report on Violence Prevention 2014*, at page 8.

15. Thirdly, the law must reflect the “public interest” in prosecuting domestic violence, even in instances where women choose not to lodge a complaint or subsequently withdraw a complaint.³⁶ The dichotomy of the public/private divide of domestic violence must be addressed and resolved through specific criminal-law legislative drafting, to reflect the fact that domestic violence is not just ‘private business’ amongst members of a household. The persistent under-reporting of incidents of domestic violence in Russia is a symptom of the false perception that domestic violence is a private matter.³⁷ CEDAW has long stressed that States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and that they are also liable for providing compensation.³⁸ The criminal law must assert the public authorities’ role in preventing, investigating and punishing the commission of any incident of domestic violence.³⁹

16. Fourthly, the law must provide for an urgent response mechanism in relation to the investigation and prosecution of domestic-violence incidents.⁴⁰ In light of the acute danger many women may find themselves in, it does not suffice to have slow investigative and prosecution mechanisms. This was already stressed by the UN Economic and Social Council in its Resolution 1984/14 on violence in the family⁴¹ and the UN General Assembly’s Resolution 40/36, which urged Member States to prevent domestic violence through urgent action, which includes the appropriate assistance to victims.⁴² In *Opuz v. Turkey*, the requirement of promptness and reasonable expedition had already been identified as part of an effective investigation.⁴³ In *P.M. v. Bulgaria*, the Court criticized the fact that urgent investigative measures, such as the commissioning of an expert team in the case of rape and interviewing the victim, had taken far too long to be deemed effective investigative measures.⁴⁴ CEDAW has similarly condemned inexpedient response measures which place women at greater risk of experiencing domestic violence.⁴⁵ One way in which urgent measures should be realised is through the possibility of issuing emergency

³⁶ See paragraph 99 of the present judgment.

³⁷ See paragraphs 120-121 of the present judgment.

³⁸ CEDAW General Recommendation No. 19: Violence against women, 1992, paragraph 9.

³⁹ See also the Istanbul Convention, Article 55, and CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, paragraph 34.

⁴⁰ See paragraphs 91 and 96 of the present judgment.

⁴¹ UNESCO Resolution 1984/14, on violence in the family.

⁴² See UN General Assembly Resolution on Domestic violence, 29 November 1985.

⁴³ *Opuz v. Turkey*, cited above, §150.

⁴⁴ *P.M. v. Bulgaria*, no. 49669/07, §§ 65-6, 24 January 2012.

⁴⁵ CEDAW, *A.T. v. Hungary*, Communication No. 2/2003, recommendations II(c) and II (f) (2005).

barring orders. The Council of Europe has identified emergency barring orders as a suitable means to protect women “in situations of immediate danger”, even if no offence has yet been committed.⁴⁶ This brings us to the fifth requirement that should be incorporated into Russia’s criminal legislation, namely the possibility of preventive detention.

17. Fifthly, the law must provide for a penalty which will allow for preventive detention of the perpetrator, if necessary.⁴⁷ This is particularly crucial given the findings of the majority that the current legislative framework does not sufficiently protect against multiple forms of violence and discrimination against women, such as harassment, stalking, coercive behaviour and psychological or economic abuse.⁴⁸ Consequently, the legislation should set out instances in which the domestic courts may consider preventive detention, which should include, but not be limited to, instances in which there is a risk of escalation of physical violence or other forms of abuse, homicidal ideation, threats or attempts, stalking, obsessiveness, the victim’s attempt to terminate the relationship, etc.

18. Lastly, the law must set out an adequate framework for training judges, prosecutors and law-enforcement officers, so that they will implement the legislative measures on domestic violence adequately. A change in mentality is necessary to eradicate the problematic inaction on the part of judicial and prosecutorial authorities and police officers with regard to domestic violence incidents. This can be achieved through sensitisation training, which presents domestic violence as a human-rights violation triggering a responsibility to protect, investigate and prosecute perpetrators. This training of public authorities must go hand-in-hand with raising public awareness on the domestic legislative changes and the implications for potential perpetrators and victims. The training of social workers, teachers and health-care professionals in recognising and addressing domestic violence has also been reiterated as an important element of prevention.⁴⁹

19. Highlighting the binding force under which Russia is obligated to act to rectify its violation is a crucial final step to create momentum, which can be used by parliamentarians in the respondent State, as well as the Committee of Ministers in requiring compliance with the final judgment. A

⁴⁶ See Article 52 of the Istanbul Convention, as well as the Council of Europe’s *Emergency Barring Orders in Situations of Domestic Violence: Article 52 of the Istanbul Convention – A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence*, at 28 (2017).

⁴⁷ See paragraphs 82 and 132 of the present judgment. Where there exists clear and convincing evidence that the defendant poses a danger to the victim, pre-trial preventive detention should be available under the legislation on criminal procedure.

⁴⁸ See paragraph 128 of the present judgment.

⁴⁹ See the Council of Europe’s Gender Equality Commission, *Analytical study on the results of the 4th round of monitoring the implementation of Recommendation Rec(2002) 5 on the protection of women against violence in Council of Europe member states*, at 49 (2014).

case is not “finished” once it has been decided by the Strasbourg Court. Rather, the Court’s judgment should act as a catalyst, setting in motion a number of changes that will compensate the applicant’s experience of human-rights violations, and if they are of a systemic nature, as in the present case, a change in policies that will enable a shift in human-rights observance by the respondent Government. To effectuate this change, considerable effort is necessary. The contexts in which systemic gender inequalities operate are excruciatingly difficult to unravel and alter. Therefore, it is of particular importance to highlight all relevant aspects of the Convention which may be useful in initiating change, including Article 46 injunctions.

20. To sum up, the following concrete substantive-law and procedural-law reforms should flow from the execution of this judgment:

(1) The law must define domestic violence as an autonomous criminal offence.

(2) The law must equate the punishment of the criminal offence of domestic violence to that of the most serious forms of aggravated assault.

(3) The law must provide for a public-prosecution offence of domestic violence and reflect the “public interest” in prosecuting domestic violence, even in instances where the victim fails to lodge a complaint or subsequently withdraws a complaint.

(4) The law must establish the urgent nature of the criminal procedure for investigating domestic violence and provide for an urgent response mechanism in relation to the investigation and prosecution of domestic violence incidents.

(5) The law must provide for preventive detention of the perpetrator where this is deemed necessary.

(6) The law must indicate the need for adequate training of judicial and prosecutorial authorities and the police, so as to ensure effective implementation of the innovative legislative measures described above and the recognition of gender equality.

Conclusion

21. With the above-mentioned caveats, I concur with the majority opinion. I applaud the crucial steps that have been taken in acknowledging domestic violence as an autonomous human-rights violation, capable of triggering Article 3 of the Convention. I am particularly satisfied that the importance of a gender-sensitive interpretation and application has been accentuated. It is now time to implement in a consistent manner this gender-sensitive approach, which seeks to eradicate gender inequality and with it the wholly demeaning occurrence of domestic violence.

CONCURRING OPINION OF JUDGE DEDOV

I concur with the separate opinion of Judge Pinto de Albuquerque as regards his analysis of the State obligations flowing from Article 3 of the Convention. However, I voted with the majority on the issue of just satisfaction.

SEPARATE OPINION OF JUDGE SERGHIDES

1. I fully subscribe to the separate opinion of Judge Pinto de Albuquerque. However, I would like to emphasise the importance of the effectiveness principle, in the context of Article 3 of the Convention.

A. The distinction between “torture”, “inhuman treatment” and “degrading treatment” in Article 3 of the Convention

2. The right under Article 3 of the Convention not to be tortured or to be subjected to inhuman treatment or degrading treatment distinguishes between violations suffered by a victim according to their intensity. This is the only provision of the Convention which sets out a classification according to the intensity of a violation. It is clear from the text and the object and purpose of Article 3 that its drafting as it stands could only be deliberate.

B. The distinction of Article 3 in the light of the effectiveness principle

3. In my humble view, it would undermine the level of protection of the right under Article 3 and the victim, as well as his or her human dignity, if the Court were to wrongly classify a violation as “inhuman treatment” instead of “torture”. Such a wrong classification, not being in line with the real intensity of the violation, would be against the text, and the object and purpose of Article 3. The distinction in Article 3 between the three kinds of violations according to their intensity is based on the effectiveness principle, which requires, in this connection, that, to give full effective protection to the right under Article 3, the Court must rightly assess the intensity of the violation and the corresponding positive obligation of the respondent State regarding such violation, taking into account the meaning, the threshold, and the differences between the three separate kinds of violation.

4. Support for the proposed view, namely that it is a requirement of the effectiveness principle that violations coming under Article 3 must be assessed correctly, according to their intensity, can be deduced by what the Court said in *Selmouni v. France* [GC], 25803/94, § 101, ECHR 1999-V:

“The Court has previously examined cases in which it concluded that there had been treatment which could only be described as torture ... However, having regard to the fact that the Convention is a ‘living instrument which must be interpreted in the light of present-day conditions’ ... the Court considers that *certain acts which were classified in the past as ‘inhuman and degrading treatment’ as opposed to ‘torture’ could be classified differently in future*. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.” (emphasis added).

The above statement is relevant and important to the issue in question in two respects: not only does it connect the assessment of what is “torture” with the protection of human rights, thus, the effectiveness principle (albeit in an indirect formulation), but it also makes the latter, through the living instrument doctrine, capable of requiring, at the present time, a greater firmness in assessing “torture”. This is so required, as the statement mentions, because of the “increasingly high standard being required in the protection of human rights and fundamental liberties.” This wording, as well as the Court’s admission in that case “that certain acts which were classified in the past as ‘inhuman and degrading treatment’ as opposed to ‘torture’ could be classified differently in future”, and its conclusion in that case in finding a violation amounting to torture (see paragraph 105 of that judgment), show that the Court effected an advanced and progressive interpretation of Article 3, as required by the Preamble of the Convention, namely “the maintenance and further realisation of human rights and fundamental freedoms”.

C. The conclusion of the Court in the light of the effectiveness principle

5. Regrettably, the Court’s conclusion to the effect that the respondent State failed to discharge its duty to investigate the “ill-treatment” which the applicant had endured (see paragraph 101 of the judgment), instead of concluding that the State in fact failed to investigate a “torture”, is based on an erroneous assessment of the facts and a misclassification of the kind of violation suffered by the applicant (see Judge Pinto de Albuquerque’s separate opinion). Hence, the Court did not provide the applicant with the effective protection required by Article 3.

6. That erroneous assessment had the result of reducing the amount of compensation payable in respect of non-pecuniary damage. Like Judge Pinto de Albuquerque, I would propose making a higher award in the present case. According to the effectiveness principle and the established case-law of the Court, the interpretation and application of the Convention provisions must be practical and effective and not theoretical and illusory.