



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

FIFTH SECTION

CASE OF HASMIK KHACHATRYAN v. ARMENIA

(Application no. 11829/16)

JUDGMENT

Art 3 (substantive and procedural) • Positive obligations • Respondent State's failure to adequately respond to serious acts of domestic violence • Domestic legal framework in force at the time fell short of the respondent State's duty to establish and effectively apply a system punishing all forms of domestic violence and providing sufficient safeguards for victims • Domestic authorities' failure to conduct autonomous, proactive and comprehensive risk assessment of further violence and take adequate and sufficient measures to protect the applicant • Law-enforcement authorities' lack of awareness of the specific character and dynamics of domestic violence when dealing with the applicant's complaints • Adoption of a purely formalistic approach by the domestic courts • Reclassification of charged offence and imposition of a more lenient sentence on the perpetrator without careful scrutiny of all relevant considerations • Defective implementation of the criminal-law mechanisms, specifically the application of an amnesty resulting in the perpetrator not serving his sentence • Existence of a positive obligation under Art 3 to enable domestic violence victims to claim compensation in respect of non-pecuniary damage from perpetrators directly, or indirectly through the State • Unconditional legislative restriction preventing the applicant from obtaining enforceable award against the perpetrator for the non-pecuniary damage suffered as a result of his ill-treatment

Prepared by the Registry. Does not bind the Court.

STRASBOURG

12 December 2024

FINAL

12/03/2025

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

In the case of Hasmik Khachatryan v. Armenia,

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

Mattias Guyomar, *President*,

María Elósegui,

Armen Harutyunyan,

Gilberto Felici,

Andreas Zünd,

Diana Sârcu,

Kateřina Šimáčková, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 11829/16) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Armenian national, Ms Hasmik Khachatryan (“the applicant”), on 22 February 2016;

the decision to give notice to the Armenian Government (“the Government”) of the applicant’s complaints concerning the domestic authorities’ alleged failure to protect her from further acts of domestic violence during the criminal proceedings against the perpetrator, to impose on him a proportionate punishment for the serious acts of violence committed against her and the lack of legal means for her to claim compensation from him for non-pecuniary damage and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 19 November 2024,

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

INTRODUCTION

1. The case mainly concerns the applicant’s complaints under Article 3 of the Convention that the respondent State failed to protect her from further acts of domestic violence while criminal proceedings against her former common-law spouse were ongoing; failed to impose on him a proportionate punishment for the acts of violence committed against her; and failed to ensure that the imposed punishment was executed; and that she had no legal means of claiming compensation from her former common-law spouse for the non-pecuniary damage which she had sustained as a result of the domestic violence inflicted by him.

THE FACTS

2. The applicant was born in 1986 and lives in Yerevan. She was represented by Mr T. Muradyan, a lawyer practising in Yerevan.

3. The Government were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

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

I. BACKGROUND TO THE CASE

5. In 2004 the applicant married S.H. (there was no State registration of the marriage, the case file contains a certificate issued by the Armenian Apostolic Church attesting to their marriage in church (hereinafter “marriage”). The couple lived with S.H.’s parents in the village of Gandzak in Gegharkunik Region. They had two children – a daughter, V.H., born in 2006, and a son, H.H., born in 2007.

6. It appears that the applicant did not work, either before or during the marriage.

7. According to the applicant, her relationship with S.H. gradually deteriorated because he started abusing alcohol after it was discovered that their daughter, V.H., had a disability. Under the influence of alcohol, he started arguments, harassed and threatened her, and resorted to physical violence against her.

II. INCIDENTS OF VIOLENCE IN MAY AND JUNE 2013

8. On 5 May 2013 S.H. came to the family home in the village of Gandzak and started blaming the applicant for the scratches on the face of their daughter. He then punched the applicant and hit her in the head. As a result, she fell to the floor while S.H. continued to hit and kick her. Thereafter S.H. hit the applicant in the back with a chair and the chair broke. He then continued hitting the applicant’s head and different parts of her body with a broken part of the chair. The applicant lost consciousness from the shock of the pain. She regained consciousness as a result of the blows which she continued to receive. The applicant sustained a number of injuries during the assault, including various wounds and a concussion.

9. On an unspecified date at the end of May 2013, in the kitchen of their home, S.H. pressed a burning cigarette onto the applicant’s left forearm, threatening to “gouge her eyes out” if he suspected that she was cheating on him.

10. On 16 June 2013 S.H. hit the applicant in the right ear, knocked her down and severely beat and kicked her face and body. The applicant ran away from their home and stayed outside for hours, in the village. She was found by her parents, who took her to their house for the night.

III. THE APPLICANT'S MEDICAL ASSISTANCE AND INITIAL POLICE INQUIRY

11. On 17 June 2013 the applicant went to Yerevan and was admitted to the Armenia Medical Centre ("the hospital"), where she was provided with medical assistance and her injuries were recorded. She refused to undergo the inpatient treatment recommended by the medical staff there.

12. The applicant left the hospital after being provided with medical assistance, and sought support from a non-governmental organisation which specialised in protecting victims of domestic violence. It provided her with assistance, psychological counselling and advice on how to deal with S.H. It also gave her shelter for a period of one month.

13. On 18 June 2013 the hospital informed the police about the admission of the applicant and her injuries. In particular, it reported that the applicant had sought medical assistance in relation to a broken nose and had said that her "husband" S.H. had beaten her in their home.

14. On the same date the applicant was invited to come to the Mashtots station of the Yerevan Police Department ("the Yerevan police") to lodge a criminal complaint and make a statement.

15. An inspector from the Yerevan police drafted that day a record of a "refusal [by the applicant] to lodge a criminal complaint", which was signed by the applicant and two attesting witnesses. It stated, in particular, that the applicant had been invited to come to the police station to lodge a criminal complaint and make a statement but she had refused, stating that "her husband had beaten [her] at home".

16. The Yerevan police notified the Gavar Police Department ("the Gavar police") about the hospital's report (see paragraph 13 above) and the fact that the applicant had refused to lodge a criminal complaint and make a statement.

17. On 20 June 2013 the Yerevan police referred the case to the Gavar police.

18. On the same date S.H. gave a statement to the Gavar police saying that on 16 June 2013 he had hit the applicant in the face once.

19. The applicant, who was in Yerevan, also made a statement on the same day and said that on 16 June 2013 S.H. had punched her in the head, face and arms and had kicked her in the back. In response to a question from the investigator as to whether she had hit S.H. or not, the applicant denied that she had hit him.

20. A relative of the applicant who was living in Yerevan made a statement the same day, as did the applicant's parents.

21. Inspector N.K. of the Gavar police ordered a forensic medical examination that same day to determine whether the applicant had injuries and, among other things, when and how they had been inflicted and how serious they were. According to the ensuing expert report received on 2 July 2013, the applicant had sustained a concussion, a nasal bone fracture, closed

craniocerebral trauma, a rupture of the eardrum, and haematomas on the left arm, left ilium bone and left forearm which had been caused by a hard, blunt object. It was noted that the injuries could have been inflicted on 5 May and 16 June 2013 as a result of violence. The report concluded that the applicant's injuries amounted to minor bodily harm.

22. On 21 June 2013 Inspector N.K. examined the scene of the incident – the relevant rooms in S.H.'s parents' house (see paragraph 5 above) – and took statements from S.H. and his parents. S.H. reiterated that he had hit the applicant in the face once on 16 June 2013, and his parents gave an identical account of the events on that day.

IV. CRIMINAL COMPLAINT CONCERNING INCIDENTS OF 5 MAY AND 16 JUNE 2013

23. On 2 July 2013 the applicant lodged a criminal complaint with the Gavar police in relation to the violent incidents of 5 May and 16 June 2013 (see paragraphs 8 and 10 above).

24. On the same date the applicant made an additional statement (see paragraph 19 above). She stated, *inter alia*, that on 5 May 2013 S.H. had hit her in the head and back with a chair, breaking the chair; he had then punched and kicked various parts of her body. Her mother-in-law had tried to intervene, but S.H. had not allowed her into the room and had continued beating her. S.H. had also beaten her on 16 June 2013.

25. On 3 July 2013 Inspector N.K. reported to his superior that it had been discovered that on 5 May 2013 S.H. had beaten the applicant, and he asked for instructions in that regard. An entry was made in the register of the Gegharkunik Regional Police Department ("the Gegharkunik police") concerning a report of bodily injury sustained on 5 May 2013.

26. Inspector N.K. referred that day the material gathered during the preliminary inquiry to the investigation unit of the Gegharkunik police. The relevant decision stated, in particular, that it had been discovered that S.H. had beaten the applicant on 5 May and 16 June 2013, inflicting bodily injuries on her, that is to say, his acts had contained the elements of the crime provided for in Article 117 of the former Criminal Code (in force until 1 July 2022, see paragraph 51 below).

27. On 16 July 2013 the applicant submitted a written application to the head of the investigation unit of the Gegharkunik police. She stated, in particular, that a criminal case had been initiated in relation to the injuries which her husband had inflicted on her, that she had health problems for which she was receiving medical treatment in Yerevan and that she could not go to Gavar to be questioned. She also stated that her husband was threatening her with "revenge" should she return to her place of residence. As a result, and to ensure her own safety, the applicant requested that the investigator be

instructed to question her and her relatives in Yerevan. She received no response.

V. INSTITUTION OF CRIMINAL PROCEEDINGS AND SUBSEQUENT EVENTS

28. On 24 July 2013 the investigation unit of the Gegharkunik police instituted criminal proceedings against S.H. under Article 117 of the former Criminal Code (see paragraph 51 below) in relation to the incidents of 5 May and 16 June 2013 (see paragraphs 8 and 10 above). The applicant was recognised as a victim in the proceedings.

29. On 25 July 2013 the applicant was acquainted with the forensic medical expert's report (see paragraph 21 above). As noted in the relevant record, she disagreed with the assessment of the seriousness of the bodily harm which she had suffered, and requested that an additional forensic medical examination be carried out.

30. On the same date H.M., an investigator from the investigation unit of the Gegharkunik police, ordered an additional forensic medical examination. The relevant decision mentioned that the applicant had also stated that at the end of May 2013 S.H. had burnt her left forearm with a cigarette. According to the ensuing expert report issued on 22 August 2013, the following bodily injuries were detected on the applicant: scars from various wounds on the scalp (in the right frontal, crown and crown-occipital areas), left wrist and left shin; a haemorrhage in the left forearm; a rupture of the right eardrum; concussion; and haematomas on the outer part of the left arm and forearm and on the left part of the ilium bone which had been inflicted as a result of multiple blows from blunt and hard objects or tools which, together or separately, had caused minor bodily harm entailing a short-term deterioration in the applicant's health. The injuries on the scalp could possibly date from 5 May 2013, considering the state of the scarring. The wounds in the occipital and crown-occipital areas and on the left shin could be the same age as the other wounds, considering the state of the scarring, but it could not be ruled out that there might be a certain difference in time (days or weeks) which could not be determined with certainty, owing to a lack of sufficient medical evidence and the lapse of time between the infliction of the injuries and the forensic examination. The remaining injuries, as well as the concussion and the rupture of the right eardrum, could date from 16 June 2013. A roundish area of irregular hyperpigmentation had been detected on the left forearm. It could not be ruled out that this could have been caused by a cigarette burn.

31. By a letter of 13 August 2013 the Gavar police informed the investigator H.M. that operational and intelligence measures had revealed that S.H. was described negatively. He often consumed alcohol and, under its influence, created problems at home as well as in his social environment, and he did not obey his parents. S.H. often argued with his wife and evidence in

this regard had been gathered by the Gavar police which showed that he had beaten up the applicant on 5 May 2013.

32. On 1 October 2013 a formal confrontation was held between the applicant and S.H. at the Gavar police station. According to the applicant, throughout the entire confrontation S.H. behaved arrogantly, insulting her and threatening her with revenge if she continued to complain about him. The investigator H.M. did not attempt to rebuke S.H. Furthermore, a police officer who worked in the same police department and was S.H.'s cousin disrupted the normal conduct of the confrontation by freely entering the room and behaving improperly towards the applicant. In those circumstances, the applicant was obliged to interrupt the confrontation and leave the police station. The record of that confrontation contains a request by the applicant for measures "to ensure [that she had a] safe confrontation".

The Government submitted that the applicant had signed the record of that confrontation and had indicated that S.H. had pressurised and threatened her, while S.H.'s lawyer had indicated in the record that no pressure had been exerted on the applicant and that she had been speaking on her mobile phone the whole time.

33. On 10 October 2013 the applicant submitted a complaint to the Prosecutor General, the Chief of Police and the head of the police criminal investigation unit, requesting that the criminal investigation be transferred to another investigative body. The applicant said that during the confrontation on 1 October 2013 (see paragraph 32 above) S.H. had been screaming at her freely, threatening her and insulting her and saying that he would take revenge on her if she continued complaining about him, and at no point had the investigator done anything about this. Seeing that the applicant had wished to leave, the investigator had tried to calm S.H. down, but he had spoken to the investigator in a very arrogant manner. She had had the impression that at that moment the investigator had been in an even more helpless situation than her, since he had not dared to do anything to rebuke S.H. Moreover, S.H.'s cousin, who worked in the same police department, had interrupted the course of the confrontation at various points and brought coffee for his relative. The applicant argued that the investigators of the Gegharkunik police were "terrified" of S.H. and his relatives (owing to their influence in the region), which impeded their ability to carry out an impartial investigation into the case. The outcome of that transfer request is unknown.

34. On 5 November 2013 S.H. met the applicant outside the school where their daughter was studying. According to the applicant, S.H. hit her in the face, shouting swear words and insulting her. The applicant reported the incident to the Yerevan police (see paragraph 14 above).

35. On 6 November 2013 the applicant submitted an application to the investigation unit of the Gegharkunik police, describing the assault of 5 November 2013 (see paragraph 34 above) and stating that there was a real risk to her life and safety in the light of S.H.'s unlawful actions and the fact

that he was following her around. She therefore did not wish to participate in a face-to-face interview with him and requested that her prior statements be taken into account.

36. On 14 November 2013 the investigator H.M. brought charges against S.H. under Article 119 § 2 (3) of the former Criminal Code (aggravated torture of a person who is “otherwise dependent” on the perpetrator, see paragraph 54 below). The relevant parts of the relevant decision read as follows:

“... [S.H.] is accused of having ... tortured [the applicant] – a person who was otherwise dependent [on him] ... that is, [a person with whom he was] in a marital relationship – by having repeatedly beaten [her], causing [her] bodily and psychological suffering ...

On 5 May 2013 ... [S.H.] hit [the applicant] on her left cheek and [the applicant] consequently felt severe pain and screamed ... having heard that, [S.H.’s mother] entered the bedroom wishing to get [the applicant] out ..., but [S.H.] grabbed [the applicant] by the hair and pulled [her] back into the room ... thereafter, he took a glass full of water ... and hit [the applicant] in the head ... and consequently [the applicant] fell to the floor and [remained there] for about 20 minutes. [S.H.] walked around the room, very agitated, and punched and kicked [the applicant] in the head, face and back ... [The applicant] cried and asked [him] not to hit her, but [S.H.] paid no attention to this and, as if he was excited and took pleasure in hitting her ..., he took a wooden chair ... and hit [the applicant] in the back ..., as a result of which the chair broke and he dealt multiple blows to [the applicant’s] head and different parts of her body with a [part of the broken chair]. [The applicant] consequently passed out and regained consciousness [afterwards] because of the blows which she continued to receive ...

In addition to that, at the end of May 2013 ... [S.H.] had an argument with [the applicant] ... [and] brought his cigarette near to her face ... [the applicant] covered her face with her hands, after which [S.H.] burnt her left forearm with the lit cigarette.

Thereafter, on 16 June 2013 at around [11 p.m., S.H.] had an argument with [the applicant] during which [he] hit [her] in the right ear, which caused her severe pain ... [S.H.] then kicked [the applicant] in the face and on different parts of [her] body ... [S.H.] then left ... and came back about an hour later ... and hit [the applicant] on the left cheek, after which [the applicant] left the house ... [S.H.] chased her, but [the applicant] hid because she was afraid of [him] and stayed outside until around 4 a.m. on 17 June [2013], when she went to her parents’ house.

...”

37. On 15 November 2013 the Yerevan police refused to open a criminal case in relation to the incident of 5 November 2013 (see paragraph 34 above) for lack of *corpus delicti* in S.H.’s actions. The relevant decision stated that although it had been substantiated that S.H. had started an argument with the applicant after meeting her in the courtyard of a school for children with hearing impairments and had hit her in the face and caused her physical pain, a single blow which did not result in bodily harm could not be legally classified as battery (Article 118 of the former Criminal Code – see paragraph 52 below). Nor could S.H.’s behaviour be classified as hooliganism, considering that the incident had been brief, people had not

gathered and the argument had concerned a family matter; S.H. had not aimed to oppose society and be disrespectful towards his social environment. The applicant did not appeal against that decision.

38. On 27 November 2013 the bill of indictment – based on the charges and the description of events contained in the decision of 14 November 2013 (see paragraph 36 above) – was finalised and the case was sent to the Gegharkunik Regional Court (“the Regional Court”) for trial. In particular, the prosecution sought S.H.’s conviction under Article 119 § 2 (3) of the former Criminal Code (see paragraph 54 below), since he was considered to have subjected the applicant to the ill-treatment at issue in a situation where she had been “otherwise dependent” on him, given that she had been his wife.

VI. TRIAL

39. On 19 December 2013 the applicant, represented by Mr T. Muradyan (see paragraph 2 above), submitted an application to the Regional Court, requesting that S.H. be placed in detention. Referring, *inter alia*, to the evidence in the case file which indicated that S.H. had been described negatively (see paragraph 31 above) and the incident of 5 November 2013 (see paragraph 34 above), the applicant submitted that S.H. had behaved improperly during the proceedings – he had continued to beat and trouble her, had threatened her a number of times both in person and through his relatives, had tried to convince her to withdraw her complaint, and had consumed alcohol and created tension. The applicant made a similar application at a hearing of 29 January 2014.

40. At a hearing of 24 February 2014 the applicant made the same request. She added that S.H. had insulted and threatened her over the telephone, stating that “everything was arranged, he was not going to be held responsible”, but that he would take his revenge on her after the completion of the proceedings. At the same hearing the Regional Court decided that it would deal with the applicant’s applications after it had finished examining the evidence.

41. In a statement which she made at the same hearing, the applicant said that their religious wedding had taken place on 30 October 2004. S.H. had not allowed her to maintain contact with her family and relatives. Their daughter V.H., who had a hearing problem, needed special care and speech therapy; for that reason, they had moved to Yerevan, where S.H. had been working at the relevant time. After some time it had become clear that S.H. was having a relationship with another woman in Yerevan. On the pretext of lacking the financial means to pay for V.H.’s classes in Yerevan, S.H. had sent the applicant and their children back to live with his parents. For around three years S.H. had lived with another woman in a rented apartment in Yerevan; every time he had come home (to his parents’ house) he had returned late at night, drunk, and had sworn and created problems and then

left, taking money with him to pay his rent and meet his needs. He had come back only when he had needed more money. Every time he had come back, he had beaten the applicant. The applicant then recounted the incident of 5 May 2013 (see paragraph 8 above) when S.H. had severely beaten her because he had blamed her for not having been sufficiently attentive to V.H., who had injured her face when playing outside. Between 5 May and 16 June 2013 S.H. had been in the village more often and had even stayed for a couple of days. The applicant had not dared to contradict him about anything because she had known that that would result in another argument. She then recounted the incident of 16 June 2013 (see paragraph 10 above) during which S.H.'s father had tried to step in to protect her and in response S.H. had said "... she's my wife, I can do as I please ..." After she had fled from the house, she had not gone to her parents because she had known that S.H. would be looking for her there. She had called her father to warn him that S.H. was going to pay them a visit and had switched off her phone, hiding from S.H. near the river, where she had stayed almost until dawn. There had been nobody around and she could only hear S.H.'s car. She had been extremely frightened that he would ill-treat her again. She had refused to stay in the hospital (see paragraph 11 above) because she had been afraid that S.H. would be able to locate her, because his family had acquaintances everywhere and if somebody had found out who she was then they would have persuaded her to go back. S.H.'s mother and sisters had then spoken with her. During that conversation the applicant had agreed not to pursue a complaint against S.H. if she were allowed to keep the children and live alone, and they had agreed on that arrangement. However, afterwards they had not allowed her to keep H.H. (her son), nor had they allowed her to talk to him. The applicant stated that S.H. had also regularly beaten her while they had been living in Yerevan; she had told only S.H.'s parents and sisters about that. She stated that she could not divorce him because she had been afraid of him; he had stated that he would hang her and nobody would know and she did not doubt that he had been capable of doing it. In response to a question from the presiding judge as to why she had not left and had instead borne such torture, the applicant replied that she had had no way out and had had no right to leave their house. In response to a question from S.H.'s lawyer as to why she had not turned to the police, the applicant stated that she had been afraid of S.H.'s threats. She had been living apart from him for a year, but he continued to threaten her.

42. At a hearing of 7 May 2014 S.H. gave evidence, referring to the applicant as his wife. He stated, among other things, that he had a normal relationship with her and considered that the argument of 5 May 2013 had been a "minor family argument". According to S.H., the applicant had left his house on 16 June 2013 because she had misbehaved in relation to their children.

43. During her final submissions on 30 October 2014 the applicant said, *inter alia*, that from the very beginning of the proceedings S.H. had behaved

improperly, putting pressure on her and her relatives. Every time he had been under the influence of alcohol he had threatened, insulted and frightened her and her relatives, demanding that they withdraw their statements. She and her relatives had been obliged to change their place of residence to stay away from S.H. because he had been following her, but nothing had changed. The applicant expressed her hope that such negative behaviour on the part of S.H. would be properly assessed by the Regional Court. She also submitted that she was at risk of further ill-treatment should S.H. remain at large, and asked for the maximum sentence to be imposed on him.

44. On an unspecified date during the trial the applicant lodged a civil claim against S.H., seeking compensation in the amount of 1,000,000 Armenian drams (AMD) in respect of pecuniary damage (medical expenses relating to her health problems resulting from the ill-treatment). She also requested AMD 3,000,000 in respect of non-pecuniary damage resulting from her emotional and psychological suffering due to the treatment to which she had been subjected by S.H. while she had been in a situation where she had been dependent on him. She also argued that S.H.'s offensive words and actions had humiliated her, damaging her honour and dignity. The applicant stated that Article 17 § 2 of the Civil Code (see paragraph 56 below) had lost its legal force on 1 October 2014 pursuant to the Constitutional Court's ruling in its decision of 5 November 2013 (see paragraph 71 below). However, the legislature had failed to fully regulate the question of compensation for non-pecuniary damage. In her civil claim, the applicant stated that she had therefore been obliged to make reference to Article 1087.1 of the Civil Code (see paragraph 58 below), which, according to her, was the only legal provision in force that provided for the possibility of seeking compensation for non-pecuniary damage.

45. On 22 December 2014 the Regional Court delivered its judgment. The prosecution had originally brought charges against S.H. under Article 119 § 2 (3) of the former Criminal Code (aggravated torture – see paragraphs 36 and 38 above, and paragraph 54 below), but the court reclassified them under Article 119 § 1 of the former Criminal Code (torture in the absence of aggravating circumstances – see paragraph 53 below). It convicted him of torture under the latter provision and sentenced him to one year and six months' imprisonment. The Regional Court then decided to exempt S.H. from serving his sentence by applying the Amnesty Act of 3 October 2013 (see paragraph 69 below) and rejected the applicant's civil claim. The relevant parts of that judgment read as follows:

“... [S.H.'s lawyer] contested [the applicant's] civil claim ..., considering that the claim as a whole [in respect of pecuniary damage] was unfounded ... However, his client had stated that his parents were ready to pay [AMD] 300,000 because [the applicant] was, after all, the mother of his children.

...

In the course of the trial [the applicant] received [AMD] 300,000 from [S.H.] ...

Having examined the evidence ..., [the court] finds that the charges brought against [S.H.] under Article 119 § 2 (3) [of the former Criminal Code] have not been substantiated and the offence committed by him should be reclassified ...

The court considers that the arguments put forward by the defence have not been substantiated, considering that [S.H.] realised that he was inflicting severe pain, physical or mental suffering on [the applicant] through his actions, because [S.H.] regularly subjected [the applicant] to physical or mental suffering as a result of his violent actions ...

...

As for the argument advanced by the defence to the effect that [the applicant] was not 'otherwise dependent' on [S.H.] (through marriage), the court finds that it is well-founded for the following reasons ...

Article 119 § 2 [of the former Criminal Code] sets out the aggravating circumstances in relation to torture. In particular, such [circumstances] exist when acts constituting torture have been committed in respect of ... a person who is financially or otherwise dependent [on the perpetrator] ...

Financial dependency on the perpetrator may be connected to any situation where the improvement or worsening of the victim's financial state depends on the perpetrator.

Other dependency [on the perpetrator] may result from marriage, for example ...

The court finds it established that for around two years [S.H.] and [the applicant] did not keep a common household [and] did not live a married life; [S.H.] did not work anywhere and did not provide financially for [the applicant], [and S.H.'s] mother provided for the family, [and] also took care of [S.H.'s] financial expenses ...

It was also established in the course of the trial that for around two years [S.H.] lived with another woman in Yerevan with whom he kept a common household, and that [he] lived in his parents' house in the village of Gandzak from July 2013 onwards ...

In order to determine [S.H.'s] punishment, the court [will] consider the nature and social dangerousness of the offence ..., as well as the mitigating factors – [the fact] that he is described positively, has a [minor] child in his care ...

...

The court considers that the reoffending constitutes an aggravating factor.

...

It should be noted that during the trial [the applicant] received [AMD] 300,000 from [S.H.], however she still insisted on her civil claim ...

The court finds that [the applicant's] civil claim must be rejected, since she has not submitted proper documentary evidence to substantiate the sum claimed. In addition, [S.H.] has compensated her in the amount of [AMD] 300,000, which, in the court's opinion, is a reasonable amount to compensate for the damage caused by the offence ..."

The Regional Court then made reference to the case-law of the Court of Cassation concerning compensation in respect of non-pecuniary damage sustained as a result of insult and defamation, before going on to say:

"It follows that ... [the applicant's claim in respect of non-pecuniary damage] ... must also be rejected for being ill-founded.

In addition, the court considers that by lodging an ill-founded civil claim, the victim [was] pursuing one goal, that is, to prevent the application of the [Amnesty Act] in respect of [S.H.].

In accordance with section 1(3) of [the Amnesty Act] ..., adopted by the National Assembly ... on 3 October 2013 ..., persons who have been sentenced to a maximum of three years' imprisonment are exempt from serving their sentence ...

Considering that, in the light of the foregoing, [S.H.] should be sentenced to imprisonment for a period of one and a half years for the commission of the offence provided for by Article 119 § 1 [of the former Criminal Code], and that the circumstances mentioned in [the Amnesty Act of 3 October 2013] which prevent the application [of that Act] do not exist in the present case, the court finds that [S.H.] is exempt from serving his sentence, applying [the Amnesty Act of 3 October 2013] ...

... [as regards the circumstances preventing the application of the Amnesty Act of 3 October 2013 mentioned in section 9(6) of that Act] ..., it should be noted that [S.H.] compensated [the applicant] for the damage caused to [her]. As regards the fact that [the applicant] requested [AMD] 4,000,000 whereas [S.H.] compensated [her in the amount of AMD] 300,000, the court finds that, in the present case, there is no dispute about the damage caused by the crime or the amount thereof because, in view of the foregoing, the court determined the amount of damage to be compensated for ...

As for [the applicant's] application for [S.H.'s] detention as a preventive measure, considering that [S.H.] will be exempt from serving his sentence ..., the court does not find it necessary to deal with the application seeking [his detention] ...”

46. The applicant lodged an appeal. She disputed the Regional Court's finding that she was not considered to be a person who had been “otherwise dependent” on S.H., which had resulted in him receiving a much more lenient punishment compared with the gravity of the offence that he had committed. In particular, the Regional Court had not taken due account of all the circumstances surrounding the ill-treatment in question – the applicant's vulnerable condition, and S.H.'s influence and opportunities. They had been married in a religious ceremony in 2004. She had accepted S.H. as her husband and the father of her children, had not disobeyed him, had not led a separate life, had been afraid of him and had lived with his parents in their house. She further argued that exempting S.H. from serving his sentence by applying an amnesty had been unjustified, since he had failed to compensate her for the damage inflicted on her prior to the adoption of the judgment. In addition, the Regional Court had unlawfully rejected her civil claim for compensation in respect of non-pecuniary damage. The amount claimed had been incomparable with the suffering which she had endured, but it had corresponded to the maximum amount of compensation allowed for non-pecuniary damage in the case of insult and defamation set out in Article 1087.1 of the Civil Code (see paragraph 58 below).

47. The prosecutor also lodged an appeal, arguing that the Regional Court had erred in its assessment of the charges brought against S.H. under Article 119 § 2 (3) of the former Criminal Code (see paragraph 54 below). The relevant parts of the prosecutor's appeal read as follows:

“ ...

The [Regional Court] found it established that [S.H.] and [the applicant] had not kept a common household for around two years [and] had not led a married life, [that S.H.] had not worked anywhere and had not provided for the victim, [and that S.H.’s] mother ... had provided for the family ...

A question arises – if the victim and [S.H.] were not in a marital relationship, what was [the applicant] doing in [S.H.’s] house, where they had always lived since their marriage, [where she] kept a common household, did not live apart from [S.H.] and his parents, took care of the two children born during their marriage, [and] did chores in the house?

... on the one hand, [the Regional Court] found that [S.H.] had come home and had tortured the victim ..., and on the other hand, [it found] that they had not been in a marital relationship ...

...

It should also be noted that when deciding on [S.H.’s] punishment, [the Regional Court] considered it a mitigating circumstance that [S.H.] had a [minor] in his care [H.H., born in 2007] ..., [whereas it also found that] ... [S.H.] had not worked anywhere and that it was his mother who had provided for the family ... In fact, it had been established that before the incident of torture, [the applicant] had been caring for both children. When [the applicant] left [S.H.’s] house, she was not allowed to take [H.H.] with her ... The child lived with [S.H.’s] parents, who took care of him ...”

48. On 17 April 2015 the Criminal Court of Appeal upheld the Regional Court’s judgment in full. The relevant parts of that decision read as follows:

“... a victim’s financial or other dependency on the perpetrator restricts the former’s ability and capacity to resist the assault ...

Financial dependency presupposes that the victim is fully or partially in the care of the perpetrator.

Other dependency presupposes functional [dependency] or such dependency which is connected with family or marital relationships ... In any event, the victim’s dependency on the perpetrator should be significant [and] ‘be capable’ of breaking the victim’s will to show resistance ...

The Court of Appeal also finds it established that for around two years [S.H.] and [the applicant] did not keep a common household [and] did not live a married life. [S.H.] did not work anywhere, did not have earnings of his own and did not provide for the victim; [S.H.’s] mother provided for the family ...

Hence, the Court of Appeal ... concludes that there are no objective grounds to reclassify the offence committed by [S.H.] under Article 119 § 2 (3) [of the former Criminal Code].

...

The Court of Appeal finds that [by paying AMD 300,000] to [the applicant], [S.H.] has compensated for the damage caused as a result of the offence, in which case there are no grounds to annul the application of the Amnesty Act ... In the present case, there is no dispute as to the damage caused by the offence or the amount [of damage] which is to be compensated for.

As regards the claim in respect of non-pecuniary damage suffered as a result of the victim's honour and dignity being insulted and defamed, in the Court of Appeal's assessment, it is not well founded and should be rejected for the following reasons.

...

The Court of Cassation has stated that there should be a direct causal link between an offence and the damage to be compensated for ... within the framework of criminal proceedings ... In addition, the grounds ... of a civil claim should be properly substantiated ...

The examination of the material in the case file shows that [S.H.] has already compensated [the applicant] for the necessary medical expenses relating to [her] subsequent medical treatment, and the remainder of the civil claim is ill-founded ..."

49. On 20 August 2015 the Court of Cassation declared appeals on points of law lodged by the applicant and S.H. inadmissible for lack of merit. A copy of that decision was served on the applicant on 26 August 2015.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Criminal Code

50. The relevant provisions of the former Criminal Code (in force until 1 July 2022) were as follows.

51. Article 117 stated that the intentional infliction of bodily injury or some other harm on another person which had caused a short-term deterioration in his or her health or an insignificant loss of his or her ability to work was punishable by a fine of between 50 and 150 times the minimum wage or detention for up to two months.

52. Article 118 stated that beating or other violent actions which had not caused the consequences envisaged in Article 117 (see paragraph 51 above) were punishable by a fine of up to 100 times the minimum wage or detention for up to two months.

53. Article 119 § 1 stated that torture – the intentional infliction of severe pain, physical or mental suffering on a person – was punishable by up to three years' imprisonment.

54. Article 119 § 2 listed the aggravating circumstances in respect of the offence provided for in Article 119 § 1. Article 119 § 2 (3) stated that the same offence was punishable by three to seven years' imprisonment if it had been committed in respect of a minor or a person who had been financially or otherwise dependent on the perpetrator, or in respect of a kidnapped person or a hostage.

B. Civil Code (right to compensation)

55. The relevant provisions of the Civil Code, as in force at the material time, provide as follows.

56. Under Article 17 § 1, a person whose rights have been violated may claim full compensation for the damage suffered, unless the law or contract provides for a lower amount of compensation.

Damage is the expenses borne or to be borne by the person whose rights have been violated, in connection with restoring the violated rights, loss of property or damage to it (material damage), including loss of income, as well as non-pecuniary damage (Article 17 § 2).

Under Article 17 § 4, non-pecuniary damage may only be compensated in the cases provided for by the Civil Code (see paragraph 57 below).

57. Article 162.1 § 2 provides that a person has the right to claim compensation for non-pecuniary damage from the State if it has been established by the prosecuting authority or a court that, as a result of a decision, action or omission of a State or local governance body or one of its officials, a person's right, *inter alia*, not to be subjected to torture or to inhuman or degrading treatment or punishment, to respect for private life and to have an effective remedy have been violated.

Article 162.1 § 4 states that damage caused to a person's honour, dignity or business reputation is compensated pursuant to Article 1087.1 (see paragraph 58 below) while damage caused as a result of a violation of fundamental rights and wrongful conviction is compensated in accordance with the procedure and the conditions set out in Article 1087.2 of the same Code (see paragraph 59 below).

58. Article 1087.1 provides that a person whose honour, dignity or business reputation has been tarnished through insult or defamation may institute court proceedings against the person who made the insulting or defamatory statement (Article 1087.1 § 1). Article 1087.1 § 7 sets out the measures that a person may claim in judicial proceedings in the case of insult, including compensation of up to one thousand times the minimum fixed wage. Article 1087.1 § 8 sets out the measures that a person may claim in judicial proceedings in the case of defamation, including compensation of up to two thousand times the minimum fixed wage.

59. Article 1087.2 §§ 3 and 4 provide that non-pecuniary damage suffered as a result of a violation of fundamental rights is to be compensated, irrespective of whether there is any fault on the part of a State official. Non-pecuniary damage is compensated from the State budget. If the fundamental right included in Article 162.1 (see paragraph 57 above) has been violated by a local governance body or one of its officials, non-pecuniary damage is compensated from the relevant local budget.

60. Since 1 November 2014 (following the Constitutional Court's decision – see paragraph 71 below), Article 17 § 2 (see paragraph 56 above)

has included non-pecuniary damage in the list of types of damage for which compensation can be claimed in civil proceedings.

As a result, the Civil Code was supplemented by new Articles, Articles 162.1 and 1087.2 (see paragraphs 57 and 59 above), which regulate the procedure for claiming compensation for non-pecuniary damage from the State for a violation of certain rights guaranteed by the Armenian Constitution and the Convention.

61. Until the introduction of further amendments on 30 December 2015 (in force from 1 January 2016), compensation in respect of non-pecuniary damage could be claimed from the State where it had been established by a judicial ruling that a person's rights guaranteed by Articles 2, 3 and 5 of the Convention had been violated, as well as in cases of wrongful conviction. As a result of the amendments that entered into force on 1 January 2016, compensation for non-pecuniary damage could be claimed from the State for the finding of breach of a number of other rights, including those guaranteed under Articles 8 and 13 of the Convention.

C. Code of Criminal Procedure

62. The relevant provisions of the former Code of Criminal Procedure (in force until 1 July 2022) were as follows.

63. Article 98, entitled "Protection of the participants in criminal proceedings", set out the procedure for applying protective measures in respect of a person participating in criminal proceedings. Such a person was defined as any person who could provide information that was important for uncovering a crime or a perpetrator which might endanger his or her life and limb, property, rights or lawful interests, as well as those of his or her family members, close relatives or close associates (Article 98 § 1).

64. The investigating authority, upon discovering that the relevant person (that is to say, the person participating in criminal proceedings, his or her family members, close relatives or close associates – "the protected person") needed protection, would take a decision to apply a protective measure on the basis of a request by that person or on its own initiative (Article 98 § 3).

65. If the request for a protective measure was rejected, the protected person could submit a new request for such a measure if he or she was threatened or was the subject of an assault, or if other circumstances not mentioned in the previous request emerged (Article 98 § 6).

66. Article 98.1 listed the following types of protective measures:

1. issuing an official warning to the person who might use violence against the protected person or commit a crime;
2. protecting the identity of the protected person;
3. ensuring the personal security of the protected person and the security of his or her home and property;

4. providing the protected person with means of personal protection and informing him or her about the danger;
 5. using technical means – surveillance and wiretapping;
 6. ensuring the security of the protected person when he or she appeared before the investigating authority;
 7. applying a measure of restraint in respect of the suspect or the accused such as to prevent them from using violence or committing another crime in respect of the protected person;
 8. changing the protected person's place of residence;
 9. replacing the protected person's identity documents or changing his or her appearance;
 10. changing the protected person's place of work or study;
 11. removing certain persons from the courtroom, or conducting a hearing in camera;
 12. questioning the protected person in court without publishing details of his or her identity.
67. In accordance with Article 98.4, the investigating authority had to ensure the personal security of the protected person and the security of his or her home and other property in cooperation with other competent bodies.

D. The Law on the prevention of violence within the family, protection of victims of violence within the family and restoration of peace in the family

68. On 13 December 2017 the National Assembly adopted the Law on the prevention of violence within the family, protection of victims of violence within the family and restoration of peace in the family, which sets out the concept of violence within the family, the powers of the relevant authorised bodies operating in the sphere of protection of victims of violence within the family, the types of protective measures and the grounds for their application, as well as the specificities of reconciliation of victims of violence within the family and persons having inflicted violence within the family and of the protection of data concerning victims of violence within the family (Section 1).

E. The Amnesty Act adopted by the National Assembly on 3 October 2013 on the occasion of the 22nd anniversary of the independence of the Republic of Armenia

69. Section 1(3) stated that persons sentenced to a maximum of three years' imprisonment should be exempt from serving their sentence, with the exception of the cases provided for, *inter alia*, in section 9 of the same Act.

70. Section 9(6) stated that an amnesty should not be applied to persons who had not compensated for or otherwise made good the damage caused by

the alleged crime prior to the relevant judicial act becoming final, or to persons who had not paid compensation for the material damage determined by a final judicial act, and should also not be applied in situations where there was a dispute about the damage caused by the crime or the amount of damage caused.

II. DOMESTIC PRACTICE

Decision of the Constitutional Court of 5 November 2013 on the conformity of Article 17 § 2 of the Civil Code with the Constitution

71. In its decision of 5 November 2013 the Constitutional Court found that Article 17 § 2 of the Civil Code, as worded until 1 November 2014 (see paragraph 56 above), was incompatible with the Constitution in so far as it did not specify that non-pecuniary damage was a type of civil damage and did not provide for the possibility of obtaining compensation for non-pecuniary damage, thereby impeding the effective exercise of the right of access to a court and the right to a fair trial, and simultaneously hindering the Republic of Armenia's due compliance with its international obligations.

The Constitutional Court stated that Article 17 § 2 of the Civil Code would lose its legal force on 1 October 2014 at the latest.

III. INTERNATIONAL LAW AND MATERIALS

A. The United Nations

72. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the United Nations General Assembly, came into force in respect of Armenia on 13 September 1993, and the Optional Protocol to the Convention came into force in respect of the country on 14 September 2006. On 29 January 1992 the Committee on the Elimination of Discrimination against Women ("the CEDAW Committee") adopted General Recommendation No. 19 on violence against women (updated by General Recommendation No. 35 in 2017).

73. On 25 November 2016 the CEDAW Committee published its "Concluding observations on the combined fifth and sixth periodic reports of Armenia" (CEDAW/C/ARM/CO/5-6). In the section entitled "Gender-based violence against women", it noted and recommended the following:

"16. The Committee notes the elaboration of a draft law in 2012 on domestic violence, as well as the establishment of an interministerial working group in 2016 to develop a new draft on various forms of gender-based violence against women in the domestic sphere. The Committee also notes the recruitment of female police officers, the provision of training on gender-based violence for civil servants, social workers and police recruits and the creation of a specialized police department to prevent and

investigate cases of gender-based violence. Nevertheless, the Committee remains concerned about:

...

(b) Underreporting of acts of gender-based violence against women by victims and the resulting lack of data;

(c) Persistent attitudes among police officers of accepting and justifying gender-based violence against women and perceptions that this type of violence, particularly in the domestic sphere, is a private matter;

...

17. ... the Committee recommends that the State party:

(a) Expedite the adoption of a comprehensive law specifically criminalising gender-based violence against women ... which employs a victim-centred approach, provides for civil and criminal remedies, defines the body responsible for the implementation of the law and guarantees access to immediate means of redress and protection, including protection orders;

(b) Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence;

...

(d) Provide capacity-building for the judiciary, the police and law enforcement personnel and health-service providers on a zero-tolerance and gender-sensitive approach to dealing with cases of gender-based violence and providing assistance to victims;

...”

74. On 1 November 2022 the CEDAW Committee published its “Concluding observations on the seventh periodic report of Armenia” (CEDAW/C/ARM/CO/7). In relation to “Gender-based violence against women”, the following was noted and recommended:

“25. The Committee notes the State party’s efforts to combat gender-based violence against women, in particular the adoption, in 2017, of a law on the prevention of violence within the family, protection of victims of violence within the family and restoration of peace in the family, the amendments to the Criminal Code, and the establishment, in 2018, of the Council on the Prevention of Violence in the Family. However, it is concerned about the high incidence of gender-based violence against women in the State party, including a stark increase in cases of domestic violence during the COVID-19-related lockdown. It also notes with concern the absence of criminal law provisions specifically criminalising all forms of gender-based violence ...

26. Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party:

...

(c) Encourage the reporting of all forms of gender-based violence against women and girls, including domestic and sexual violence, ensure that all such cases are effectively investigated and that perpetrators are prosecuted ex officio and adequately punished,

and ensure that police officers who fail to take action or who dissuade victims from filing complaints are held accountable;

...

(g) Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.”

B. The Council of Europe

1. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in force since 1 August 2014

75. The relevant provisions of the Convention on Preventing and Combating Violence against Women and Domestic Violence (“the Istanbul Convention”), which was signed by Armenia on 18 January 2018, read as follows:

Article 29 – Civil lawsuits and remedies

“1. Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.

...”

Article 30 – Compensation

“1. Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.

2. Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim’s safety.

3. Measures taken pursuant to paragraph 2 shall ensure the granting of compensation within a reasonable time.”

Article 45 – Sanctions and measures

“1. Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.

...”

Article 46 – Aggravating circumstances

“Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent

elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

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

(b) the offence, or related offences, were committed repeatedly;

...”

Article 56 – Measures of protection

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

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

...”

2. The Explanatory Report to the Istanbul Convention

76. The relevant parts of the Explanatory Report to the Istanbul Convention read as follows:

Article 29 – Civil lawsuits and remedies

“157. Paragraph 1 of this provision aims at ensuring that victims of any of the forms of violence covered by the scope of this Convention can turn to the national legal system for an adequate civil law remedy against the perpetrator.

...”

Article 30 – Compensation

“165. This article sets out the right to compensation for damages suffered as a result of any of the offences established by this Convention. Paragraph 1 establishes the principle that it is primarily the perpetrator who is liable for damages and restitution.

...”

Article 45 – Sanctions and measures

“232. This article is closely linked to Articles 33 to 41 which define the various offences that should be made punishable under criminal law. However, it applies to all types of sanctions, regardless of whether they are of a criminal nature or not. In accordance with these obligations imposed by those articles, Article 45 requires Parties to match their action with the seriousness of the offences and lay down sanctions which are ‘effective, proportionate and dissuasive’. ...”

Article 46 – Aggravating circumstances

“236. The first of the aggravating circumstances, lit.a, is where the offence was committed against a former or current spouse or partner as recognised by internal law,

by a member of the family, a person cohabiting with the victim or a person having abused her or his authority. This would cover various situations where the offence was committed by the former or current marital partner or non-marital partner as recognised by internal law ... A person having authority refers to anyone who is in a position of superiority over the victim ... The common element of these cases is the position of trust which is normally connected with such a relationship and the specific emotional harm which may emerge from the misuse of this trust when committing an offence within such a relationship. In this paragraph the reference to ‘partners as recognised by internal law’ means that, as a minimum, former or current partners shall be covered in accordance with the conditions set out in internal law, bearing in mind that it is the intimacy and trust connected with the relationship that makes it an aggravating circumstance.

237. The second aggravating circumstance, lit.b, concerns offences that are committed repeatedly. This refers to any of the offences established by this Convention as well as any related offence which are committed by the same perpetrator more than once during a certain period of time. The drafters thereby decided to emphasise the particularly devastating effect on a victim who is repeatedly subjected to the same type of criminal act. This is often the case in situations of domestic violence, which inspired the drafters to require the possibility of increased court sentences. ...”

Article 56 – Measures of protection

“283. Paragraph 1 contains a non-exhaustive list of procedures designed to protect victims of all forms of violence covered by the scope of this Convention during proceedings. These measures of protection apply at all stages of the proceedings, both during the investigations, whether they are carried out by law enforcement agencies or judicial authorities, and during trial proceedings. ...

284. First of all, lit.a contains the obligation for Parties to take the necessary legislative or other measures in order to provide for the protection of victims, as well as that of their families and witnesses. Parties must ensure that victims are safe from intimidation, retaliation and repeat victimisation.

...”

3. *Recommendation Rec (2002)5 of the Committee of Ministers of the Council of Europe to member States on the Protection of Women against Violence*

77. In Recommendation Rec (2002)5 on the protection of women adopted on 30 April 2002, the Committee of Ministers of the Council of Europe 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, whether occurring in public or private life”, which includes, but is not limited to, *inter alia*, “violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants ...”

78. With regard to criminal law, the Committee of Ministers stated 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 were victims of violence.

79. As regards civil law, the Committee of Ministers recommended that member States ensure that, in cases where the facts of violence had been established, victims received appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred, and that they (the member States) envisage the establishment of financing systems in order to compensate victims.

80. In relation to judicial proceedings, member States should, *inter alia*, ensure that, where necessary, measures were taken to effectively protect victims against threats and possible acts of revenge.

81. With regard to domestic violence in particular, the Committee of Ministers recommended that member States should classify all forms of violence within the family as criminal offences and provide for the possibility of taking measures in order to, *inter alia*, enable the judiciary to adopt interim measures aimed at protecting victims and ban the perpetrator from contacting, communicating with or approaching the victim, or residing in or entering defined areas.

4. *Report of the Commissioner for Human Rights of the Council of Europe of 29 January 2019 following her visit to Armenia from 16 to 20 September 2018*

82. The relevant part of the report reads as follows (footnotes omitted):

“27. The issue of violence against women and domestic violence has already been the topic of a report on Armenia of the Commissioner’s predecessor, published in 2015. Since 2015, Armenia has made significant advances in creating and improving the legislative framework to combat domestic violence. Major legislative action was accompanied by awareness-raising campaigns, bringing about public debate and a perceptible shift of attitudes on the issue of domestic violence. Despite these welcome developments and very laudable efforts, domestic violence remains a serious, widespread, and to some extent still underestimated phenomenon in Armenia.

28. A comprehensive survey carried out in 2015-16 by Armenia’s National Statistical Service and Ministry of Health found that 10% of women and 23% of men in Armenia agreed that wife beating was justified in certain situations; acceptance of wife beating reached levels as high as 40-41% in some rural regions. According to the survey, 6% of women aged 15-49 have experienced physical violence at least once since the age of 15, and this figure stood even higher – at 8.2% in 2017 – according to data from the UNDP 2017 Human Development Index. The majority of reported perpetrators of violence were current (60%) or former husbands (39%). Meanwhile, another national survey carried out by the UNFPA in 2016 showed that 45.9% of female respondents reported being subjected to psychological violence, 21.3% suffered from economic abuse, and 12.5% reported physical violence ... In 2017, the police registered 624 cases

of domestic violence (excluding sexual violence) of which 456 were committed by the victim's husband or partner. The respective figures for the first 8 months of 2018 amounted to 448 and 218. Police statistics generally show an average per year of 621 reported cases, while women's rights NGOs collectively have an average of 5,000 calls to hotlines a year.

29. ... For many Armenians, violence occurring within the home is still a private matter and raising it outside of the family sphere is often considered as shameful or embarrassing. The Commissioner was informed during her visit that, in the past, some members of the judiciary reportedly criticised NGOs assisting victims of domestic violence for 'threatening the stability of the family'.

...

43. The Commissioner wishes to reiterate that it is domestic violence itself and not the fact of providing assistance to its victims that endangers family unity, and she urges the authorities to ensure that this basic premise is shared by all the relevant officials.

..."

IV. COMPARATIVE LAW

83. The Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) has so far published baseline evaluation reports on thirty-six States Parties to the Istanbul Convention: Albania, Denmark, Monaco, Austria, Sweden, Portugal, Montenegro, Türkiye¹, France, Italy, the Netherlands, Serbia, Finland, Belgium, Andorra, Spain, San Marino, Bosnia and Herzegovina, Germany, Iceland, Switzerland, Georgia, Cyprus, Norway, Estonia, Ireland, Greece, Liechtenstein, the Republic of Moldova, Luxembourg, North Macedonia, Croatia, Malta, Poland, Slovenia and Romania. As regards the issue of compensation (Article 30 of the Istanbul Convention – see paragraph 75 above; see also paragraph 76 above for the Explanatory Report to the Convention), the information contained in those reports is set out below in the respective paragraphs relating to each of those States (footnotes and references to specific domestic law provisions have been omitted).

84. The baseline evaluation report on Albania noted that victims of violence were entitled to apply for compensation within criminal proceedings in connection with damage suffered as a result of the criminal act in question. Compensation claims settled in criminal proceedings were limited to economic damage, and the payment of those claims depended on the outcome of the criminal trial. Alternatively, victims could lodge a compensation claim which extended to all forms of damage, including non-pecuniary damage (GREVIO/Inf(2017)13, § 115).

85. The baseline evaluation report on Denmark noted that compensation for criminal acts could be claimed from the perpetrator either during criminal

¹ With effect from 1 July 2021, Türkiye withdrew from the Istanbul Convention and is no longer a State Party to it.

proceedings or by bringing a separate civil claim. Victims could receive compensation for loss of earnings, medical expenses incurred, permanent personal injury and a consequent loss of earning capacity. It is unclear to what extent long-term psychological counselling and treatment would be included, for example, for trauma resulting from a rape (GREVIO/Inf(2017)14, §§ 141-42).

86. The baseline evaluation report on Monaco noted that the compensation of victims, covered by Article 30 of the Convention, was governed by general legal provisions and the principle of full compensation, which reflected as fairly and appropriately as possible the damage suffered. Compensation was awarded under criminal law, that is, in connection with a criminal penalty, or, contrary to usual practice, under civil law in the event of an acquittal (GREVIO/Inf(2017)3, § 102).

87. The baseline evaluation report on Austria noted that compensation could be sought from the perpetrator as part of the relevant criminal proceedings, or separately through civil-law remedies. The type of compensation that could be obtained included any loss of income and financial support for any long-term care, medical aid, psychotherapy, or psycho-social crisis intervention, up to a maximum of ten counselling sessions. Separately, or in addition to the above, compensation in the form of a lump sum for any pain or suffering could be granted. Such sums ranged from 2,000 to 4,000 euros (EUR) for grievous bodily harm, and EUR 8,000 to 12,000 for injuries causing long-term health issues (GREVIO/Inf(2017)4, §§ 128-29).

88. The baseline evaluation report on Sweden noted that claims against the perpetrator for compensation for criminal acts could be made either during the relevant criminal proceedings or by bringing a separate civil claim. Where the perpetrator had been identified, a conviction or summary imposition of a fine (*strafföreläggande*) was required in principle. Compensation for victims of crime was then paid to the extent that the damage in question was not covered by any other form of compensation, such as compensation under an insurance policy or from the perpetrator. There was no threshold regarding the level of severity of the crime, and compensation was granted for physical and psychological suffering (GREVIO/Inf(2018)15, §§ 157-58).

89. The baseline evaluation report on Portugal noted that as a general rule, compensation had to be claimed within criminal proceedings. Compensation covered both pecuniary and non-pecuniary damage. Even if a claim was not lodged, the relevant judge could, on his or her own initiative, and having regard to the victim's situation, order the offender to pay a certain amount in compensation for damage, unless the victim objected (GREVIO/Inf(2018)16, § 154).

90. The baseline evaluation report on Montenegro noted that compensation could be obtained from the perpetrator as part of the relevant

criminal proceedings, provided that such an action did not “substantially delay the proceedings”. Where it was believed that there would be a delay, or where evidence was insufficient for a conviction, compensation could be sought separately through civil proceedings. Where compensation could not be obtained from the perpetrator, the domestic law provided for it to be paid by the State for physical and psychological damage, as well as for loss of earnings (GREVIO/Inf(2018)5, §§ 160-61).

91. The baseline evaluation report on Türkiye noted that compensation for criminal acts could, in principle, be claimed from the perpetrator by bringing a separate civil claim. Victims could thereby receive compensation for loss of earnings, medical expenses incurred, permanent personal injury and a consequent loss of earning capacity (GREVIO/Inf(2018)6, § 204).

92. The baseline evaluation report on France noted that compensation could be obtained from the perpetrator in the context of criminal proceedings. GREVIO noted the absence of data on the amounts awarded and the damage compensated for (GREVIO/Inf(2019)16, § 177).

93. The baseline evaluation report on Italy noted that victims of criminal acts could lodge a request for compensation from the perpetrator either during criminal proceedings or by bringing a separate civil claim. Where criminal courts ruled on a victim’s right to compensation without fixing the precise amount to be paid, or where they fixed the amount of an advance payment, victims’ access to full compensation was dealt with by civil courts. There were no uniform criteria for assessing and quantifying damage, particularly non-pecuniary damage (GREVIO/Inf(2019)18, §§ 173 and 176).

94. The baseline evaluation report on the Netherlands noted that compensation for criminal acts could be claimed either by the victim lodging a civil claim within the relevant criminal proceedings or through a claim for damages in civil proceedings. A court could also impose a compensation order on any person convicted of a criminal act, if and in so far as that person was liable under civil law for damage inflicted as a result of the criminal offence (GREVIO/Inf(2019)19, §§ 190 and 192).

95. The baseline evaluation report on Serbia noted that victims of violent offences could bring a claim against the perpetrator for the costs of their treatment, other related costs, and loss of earnings due to their inability to work during treatment. If the offence resulted in the death of a person, that person’s heirs also had the right to receive compensation for the pecuniary and non-pecuniary damage suffered. In addition, a person induced to engage in unlawful intercourse or a lewd act by deceit, force or abuse of a relationship of subordination or dependence was entitled to equitable damages for the mental anguish suffered, as was a person who was a victim of some other criminal offence violating his or her personal dignity and morale (GREVIO/Inf(2019)20, § 160).

96. The baseline evaluation report on Finland noted that the primary obligation to provide compensation lay with the perpetrator. Claims could be

made either during the relevant criminal proceedings or by bringing a separate civil claim, which the prosecutor could initiate on behalf of the victim (GREVIO/Inf(2019)9, § 140).

97. The baseline evaluation report on Belgium noted that compensation could be obtained from the perpetrator of violence in either a civil or criminal court if the victim sued for damages. In the alternative, where the identity of the perpetrator was not known, for example, compensation could be granted by the State. The claim for compensation had to be made to the Commission for Financial Assistance for Victims of Deliberate Acts of Violence and for Ad Hoc Rescuers, which considered the following factors: non-pecuniary damage; medical and hospital expenses, including the cost of prostheses; temporary or permanent disability; loss of earnings due to permanent or temporary inability to work; disfigurement; the costs of proceedings up to EUR 6,000; costs (related to clothing, travel expenses, and so on) up to EUR 1,250; and damage resulting from the loss of one or more years of schooling (GREVIO/Inf(2020)14, § 142-43).

98. The baseline evaluation report on Andorra noted that the right of victims to claim compensation from all perpetrators of violence was governed by the ordinary legal provisions on civil liability. This right could be exercised before the criminal courts or the civil courts, regardless of whether a criminal complaint had been made (GREVIO/Inf(2020)18, § 143).

99. The baseline evaluation report on Spain noted that compensation for criminal acts suffered could be claimed from perpetrators, either during criminal proceedings or by instituting civil proceedings after the criminal proceedings had been concluded. Criminal convictions usually included compensation for victims, and financial redress for victims was an essential part of the State's response to violence against women. Perpetrators were thus regularly ordered to pay compensation for criminal acts inflicted upon victims (GREVIO/Inf(2020)19, § 37).

100. The baseline evaluation report on San Marino noted that victims could bring a civil action for damage suffered as a result of an offence in criminal proceedings, in which case the criminal court could also recognise and assess the damage suffered, or they could bring an independent civil action. There were, however, no available data to evaluate how many compensation orders had been granted or the amount of compensation awarded by means of such orders (GREVIO/Inf(2021)6, § 134).

101. The baseline evaluation report on Bosnia and Herzegovina noted that victims could claim compensation from the perpetrator for bodily injury or impairment of health and for economic loss, as well as compensation for non-pecuniary damage, in the context of criminal proceedings and/or by lodging a compensation claim in civil proceedings (GREVIO/Inf(2022)19, § 183).

102. The baseline evaluation report on Germany noted that victims of crime could join criminal proceedings in order to claim compensation for

damage arising from the crime(s) in question, which spared them from having to institute civil proceedings against the perpetrator. In addition, German civil law provided for compensation claims for damage arising from wrongful acts or omissions by individuals. Damages could be claimed from private individuals who wilfully or negligently violated the right to life, limb, health and freedom, the right of property or any other right of an individual. Compensation could be claimed for pecuniary damage and for pain and suffering (GREVIO/Inf(2022)21, § 209).

103. The baseline evaluation report on Iceland noted that victims could claim compensation from a perpetrator for damage arising from any criminal conduct, either by filing a civil claim in civil proceedings or by bringing a civil claim during criminal proceedings. The Icelandic National Treasury paid compensation for damage resulting from a violation of the General Penal Code if the perpetrator was not in a position to do so. The maximum amount of compensation paid for bodily injury was 5,000,000 Icelandic krónur (ISK – approximately EUR 36,500), and ISK 3,000,000 (around EUR 22,000) for non-pecuniary damage (GREVIO/Inf(2022)26, §§ 172-73).

104. The baseline evaluation report on Switzerland noted that access to compensation from a perpetrator of violence for damage suffered and from the State for non-pecuniary damage was provided for in Swiss law under the Code of Obligations and the Civil Code. GREVIO was informed, however, that in the absence of concomitant criminal proceedings, victims of violence found it hard to pursue claims in respect of non-pecuniary damage (GREVIO/Inf(2022)27, § 164).

105. The baseline evaluation report on Georgia noted that the Civil Procedure Code provided that persons could claim compensation for non-pecuniary and pecuniary damage in relation to any harm suffered. Cases in which compensation for non-pecuniary damage could be claimed were, however, limited. It was further noted that no information had been provided by the authorities on the claiming of such compensation by victims of the different forms of violence against women covered by the Istanbul Convention (GREVIO/Inf(2022)28, § 222).

106. The baseline evaluation report on Cyprus noted that the victim of an offence involving violence against women had the right to claim damages against the offender in question under civil law before a civil court, and no limitation period was applicable. To determine the amount of compensation, the court took into consideration, *inter alia*, the extent of the violence and its consequences for the victim, the degree of guilt of the perpetrator, the perpetrator's relationship to the victim, and his or her power or influence over the victim. No reference was made, however, to non-pecuniary damage suffered by the victim (GREVIO/Inf(2022)29, § 168).

107. The baseline evaluation report on Norway noted that a person who had suffered bodily injury or impairment of health as a result of a violent crime that interfered with life, health or freedom might be entitled to criminal

injuries compensation. The scheme in question encompassed compensation for expenses, loss of income and loss of future income, damages for pain and suffering for permanent medical disability, reparation for non-pecuniary damage and compensation for surviving relatives. As a main rule, the perpetrator was financially responsible for his or her actions against victims and the victim could make a claim for such compensation within the course of criminal proceedings or initiate civil proceedings for that purpose (GREVIO/Inf(2022)30, § 156).

108. The baseline evaluation report on Estonia noted that the victims of any form of violence against women covered by the Estonian Criminal Code could seek compensation from the perpetrator in question in the course of criminal proceedings or by launching civil proceedings. The types of damage for which compensation could be sought were not clarified (GREVIO/Inf(2022)32, § 149).

109. The baseline evaluation report on Ireland noted that a judge could include a compensation order as part of sentencing, instead of or in addition to any penalty imposed, in order to compensate a victim in respect of any personal injury or loss resulting from an offence. The amount to be paid was at the discretion of the judge, who could take into account the means of the perpetrator in question, but non-pecuniary damage was not taken into account (GREVIO/Inf(2023)22, § 181).

110. The baseline evaluation report on Greece noted that victims of criminal acts could lodge a request for compensation from the perpetrator in question during criminal proceedings, but compensation for non-pecuniary damage could only be obtained by bringing a separate civil lawsuit. The Civil Code granted victims the right to claim compensation from the perpetrator for any pecuniary and non-pecuniary damage suffered. The Law on Domestic Violence also set a minimum amount (EUR 1,000) for compensation for non-pecuniary damage in cases of domestic violence (GREVIO/Inf(2023)23, § 180).

111. The baseline evaluation report on Liechtenstein noted that primary compensation (that is, compensation from perpetrators) could be sought by the victims of all acts of violence covered by the Istanbul Convention, as part of the relevant criminal proceedings and through civil-law proceedings. A person responsible for bodily harm had to reimburse the injured person for medical expenses, loss of earnings and harm caused by physical and/or emotional pain and suffering (GREVIO/Inf(2023)24, § 167).

112. The baseline evaluation report on the Republic of Moldova noted that women who were victims of violence could obtain primary compensation from the offender in question, through criminal proceedings or by bringing a separate civil lawsuit. Accordingly, victims of crime could participate in criminal proceedings as civil parties and claim compensation for pecuniary and/or non-pecuniary damage from the perpetrator (GREVIO/Inf(2023)26, § 163).

113. The baseline evaluation report on Luxembourg noted that victims of violence were entitled to compensation from the perpetrator and from the State which was obtained through civil proceedings or a civil claim in the context of criminal proceedings. Victims had to have suffered serious bodily injury, rape, sexual assault or acts connected with human trafficking. The upper limit on compensation claims was EUR 63,000 (GREVIO/Inf(2023)4, § 133).

114. The baseline evaluation report on North Macedonia noted that primary compensation could be sought from a perpetrator as part of criminal proceedings or separately through civil-law remedies. No information was provided as to the types of damage for which compensation could be claimed from the perpetrator (GREVIO/Inf(2023)5, § 225).

115. The baseline evaluation report on Croatia noted that victims of violence could lodge a claim for compensation in respect of pecuniary and non-pecuniary damage as part of criminal proceedings or in a separate civil action against the defendant in question (GREVIO/Inf(2023)6, § 173).

116. The baseline evaluation report on Malta noted that the payment of compensation for non-pecuniary damage had recently been introduced into Malta's legal framework following the signing of the Istanbul Convention, and could be requested in criminal and civil proceedings. However, the award of compensation for non-pecuniary damage in criminal proceedings appeared to be limited to certain categories of offences – those which carried a sentence of at least three years' imprisonment – and compensation was capped at EUR 10,000. As a result, it appeared that the payment of compensation for non-pecuniary damage could not be ordered in respect of all offences provided for under the Istanbul Convention, notably in certain cases of physical violence (slight bodily harm), stalking, forced abortion and sexual harassment, which were all punishable by a term of imprisonment of less than three years (GREVIO/Inf(2020)17, § 147).

117. The baseline evaluation report on Poland noted that victims of violent offences, in particular those relating to domestic violence, could claim compensation from the relevant perpetrator during criminal proceedings or in a separate civil lawsuit. Under civil law, compensation could cover pecuniary and non-pecuniary damage (GREVIO/Inf(2021)5, § 177).

118. The baseline evaluation report on Slovenia noted that compensation could be obtained from a perpetrator as part of criminal proceedings, provided that such an action did not unduly delay the proceedings, or separately through civil proceedings under the general rules on compensation for damage. No information was provided as to the types of damage for which compensation could be claimed from the perpetrator (GREVIO/Inf(2021)7, § 226).

119. The baseline evaluation report on Romania noted that women who were victims of violence could obtain primary compensation from an offender, through criminal proceedings or by bringing a separate civil lawsuit.

Victims of crime could participate in criminal proceedings as civil parties and claim compensation for pecuniary and/or non-pecuniary damage from the perpetrator in question. Compensation could be claimed for physical and psychological damage, including where such damage was long-term or permanent, in which case compensation might be paid as a lump sum and/or a monthly payment (GREVIO/Inf(2022)6, § 239).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

120. The applicant complained, under Articles 3 and 8 taken separately and in conjunction with Article 13 of the Convention, that the authorities had failed to take any action to protect her from further acts of domestic violence in the course of the criminal proceedings against S.H. and had then failed to impose on him a proportionate punishment for the serious acts of violence committed against her, and that she had no legal means of claiming compensation from S.H. for the non-pecuniary damage which she had suffered as a result of the violence inflicted by him. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018). Having regard to the circumstances complained of by the applicant and the manner in which her complaints were formulated, the Court considers it more appropriate to examine her complaints under Article 3 of the Convention alone. That provision reads as follows:

Article 3

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

A. Admissibility

1. *Non-exhaustion of domestic remedies*

(a) The parties’ submissions

121. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of her complaint concerning the domestic authorities’ alleged failure to protect her from her husband in the course of the investigation.

122. Firstly, the applicant had failed to ask the investigating authority to apply protective measures under Articles 98 and 98.4 of the Code of Criminal Procedure valid at the time (see the respective provisions cited in paragraphs 63 and 67 above). The domestic legislation provided for a variety

of protective measures (see paragraph 66 above) to be used in situations involving vulnerable people, such as the applicant in the present case, but the applicant had failed to apply to the investigating authority for such measures. Instead, she had asked the Regional Court to place S.H. in detention, which would have been an effective remedy only if the trial court had found relevant and sufficient reasons to place him in detention. However, as established by the investigating authority in its decision of 15 November 2013 (see paragraph 37 above), S.H.'s actions on 5 November 2013 (see paragraph 34 above) had lacked *corpus delicti*; there had therefore been no grounds to detain him. The Government provided statistics concerning the application of the protective measures listed in Article 98.1 of the former Code of Criminal Procedure (see paragraph 66 above) in respect of persons involved in criminal proceedings relating to various offences in 2019, 2020 and 2021.

123. Secondly, the applicant had not appealed against the decision of 15 November 2013 (see paragraph 37 above), which concerned her main allegation before the Court. Regardless of the outcome of such an appeal, she should have pursued the remedies available to her at domestic level first.

124. The applicant submitted that she had exhausted all the domestic remedies that had been available to her. She had appealed against the Regional Court's judgment of 22 December 2014 (see paragraphs 45, 46 and 49 above).

125. As regards the possibility of applying to the investigating authority for protective measures under Articles 98 and 98.4 of the former Code of Criminal Procedure, the applicant stated that such measures could be applied only during the pre-trial stage of proceedings, not during a trial. Besides, under Article 98 § 3 of the former Code of Criminal Procedure, the investigating authority could also take a decision to apply a protective measure on its own initiative (see paragraph 64 above). Thus, having discovered that she needed protection, the investigator could have applied protective measures on his own initiative. The applicant had informed the head of the investigation unit of the Gegharkunik police that S.H. was threatening her and her relatives with revenge should she return to the village, and for that reason she had asked if they could be questioned in Yerevan (see paragraph 27 above). She had received no response to that request. She had also submitted a number of requests to competent State bodies (see, for instance, paragraph 33 above) and had even requested S.H.'s detention. However, the investigating authority had tolerated S.H.'s unlawful behaviour during the investigation, including his bad behaviour towards her during the confrontations (see paragraph 32 above), his failure to attend interviews, his absences from his place of residence, and so on. The material pertaining to the criminal case also contained evidence indicating that S.H. had threatened the applicant and hit her in the face (see paragraphs 34 and 35 above). However, the authorities had done nothing about this.

126. As regards the Government’s argument that the applicant had failed to contest the decision of 15 November 2013 (see paragraphs 37 and 123 above), the applicant stated that the investigating authority had failed to implement any restraining measures against S.H. after she had reported the incident of 5 November 2013 (see paragraphs 34 and 35 above), which had taken place while S.H. had been under investigation in relation to her complaints that he had tortured her. Under such circumstances, she had not considered that contesting the decision of 15 November 2013 (see paragraph 37 above) would be effective.

(b) The Court’s assessment

127. The general principles concerning exhaustion of domestic remedies under Article 35 of the Convention have been summarised in *Communauté genevoise d’action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-46, 27 November 2023).

128. The Court considers that the Government’s objection, in so far as they argued that the applicant had failed to ask the investigating authority to apply the protective measures available to participants in criminal proceedings (see paragraph 122 above), raises issues concerning the domestic authorities’ compliance with their positive obligation under Article 3 of the Convention to protect the applicant. The Court thus considers that this issue is closely linked to the substance of the applicant’s complaint that the domestic authorities failed to protect her from further acts of domestic violence during the criminal proceedings against S.H. (see paragraph 120 above). It therefore decides to join this part of the objection to the merits of the applicant’s complaint under Article 3 of the Convention.

129. The Government also argued (see paragraph 123 above) that the applicant had not contested the investigating authority’s decision of 15 November 2013 whereby it had essentially refused to initiate criminal proceedings against S.H. in relation to the events of 5 November 2013 (see paragraphs 34 and 37 above).

130. The Court reiterates that the obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances (*ibid.*, § 139). It observes in this connection that the applicant did not specifically complain before the Court about the law-enforcement authorities’ decision not to prosecute S.H. in relation to the incident of 5 November 2013 (see paragraph 120 above). In these circumstances, the Court cannot accept the Government’s argument that the decision of 15 November 2013 (see paragraph 37 above) concerned the applicant’s main allegation before the Court (see paragraph 123 above). In any event, the Government failed to explain what redress, if any, a successful outcome of the proceedings in question – which concerned a single incident of S.H.’s further violent behaviour during the investigation of the main case against him (see

paragraphs 34 and 37 above) – could have afforded to the applicant in respect of her Convention complaints (see paragraph 120 above).

131. The Court has no reason to consider that the main criminal proceedings against S.H. regarding the treatment inflicted on the applicant on 5 May and 16 June 2013 (see paragraphs 28, 36 and 38 above), in which she also sought monetary compensation from S.H. (see paragraph 44 above), were an ineffective remedy in respect of her complaints under Article 3 of the Convention. It observes in this connection that the applicant lodged an appeal against the Regional Court's judgment of 22 December 2014 (see paragraph 45 above) with the Criminal Court of Appeal, and that she lodged a further appeal against the latter court's decision with the Court of Cassation, which took a final decision on the matter on 20 August 2015 (see paragraphs 46 and 49 above). Accordingly, the Court dismisses the Government's non-exhaustion objection in this regard.

2. Compliance with the six-month rule

(a) The parties' submissions

132. The Government submitted that the applicant's complaint that she had no legal means of claiming compensation for non-pecuniary damage from S.H. had been lodged outside the six-month time-limit. In particular, had the applicant considered that she did not have at her disposal an effective avenue to seek compensation for non-pecuniary damage from S.H., she should have applied to the Court within six months from the moment when she had sustained the alleged damage, that is, before 5 April 2013.

133. The applicant did not specifically address that objection.

(b) The Court's assessment

134. As a rule, the six-month period (as applicable at the relevant time) runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant, and, where the situation is a continuing one, once that situation ends (see, among other authorities, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 259, ECHR 2014 (extracts)).

135. The Court notes that the Government failed to explain what events, if any, had taken place before or on 5 April 2013 and had made them consider that the applicant should have applied to the Court before that date. That date does not feature in either the Court's description of the facts underlying the present case or the Government's own description of certain additional facts in their observations.

136. The Court observes that the applicant lodged a civil claim against S.H. in the framework of the criminal proceedings against him (see paragraph 44 above) and that her civil claim was directly linked to S.H.'s conviction for her ill-treatment. The Court therefore finds that it was not unreasonable for the applicant to raise before the Court her Convention complaint about the lack of a legal mechanism by which to seek compensation from S.H. for the non-pecuniary damage which she had suffered as a result of her ill-treatment at his hands within six months from his final conviction for that ill-treatment.

137. As stated in paragraph 131 above, the final decision in the criminal proceedings against S.H. which resulted in his conviction for the applicant's ill-treatment was taken by the Court of Cassation on 20 August 2015. That decision was served on the applicant on 26 August 2015 (see paragraph 49 above), and the applicant lodged her application on 22 February 2016, that is, in compliance with the six-month rule. The Court therefore dismisses the Government's objection as to her failure to comply with the six-month rule.

3. Conclusion

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

B. Merits

1. The parties' submissions

(a) The applicant

139. The applicant submitted that the authorities had failed to take any measures to protect her, notwithstanding the fact that they had known that she had had to hide from S.H. in a shelter to avoid further violence and that she had requested that she and her relatives be questioned in Yerevan (see the applicant's arguments in this regard in paragraph 125 above). The authorities had not objectively assessed her difficult situation resulting from the violence that she had suffered and her consequent psychological condition. Furthermore, they had failed to do so even after she had reported the violent incident of 5 November 2013 (see paragraphs 34 and 35 above), which proved the genuine nature of her fears.

140. Although S.H. had been formally prosecuted and found guilty of torturing her, he had eventually enjoyed absolute impunity for his acts. In particular, no restraining measures had been applied in respect of him during either the investigation or the trial, and his conviction had been meaningless.

141. S.H. had not received an adequate and proportionate punishment for her severe ill-treatment because "as a result of the lack of legal mechanisms the domestic courts did not consider the applicant to be a member of the

family and dependent from [S.H.]”. The Law on the prevention of violence within the family, the protection of victims of violence within the family, and the restoration of peace within the family that had been adopted in 2017 (see paragraph 68 above) included a common-law spouse in the definition of a “family member” in the context of domestic violence. However, at the material time no such definition had existed, which had resulted in the domestic courts finding that she was not a family member and was thus not dependent on S.H., for the purposes of the legal classification of the offence of which he had been accused. As a result, the charges against S.H. had been reclassified under Article 119 § 1 of the former Criminal Code (see paragraph 53 above), making it possible for a more lenient punishment to be imposed on him and thus for him to benefit from the Amnesty Act of 3 October 2013 (see paragraph 69 above) and be released from serving his punishment.

142. The applicant further argued that the lack of relevant legal mechanisms, as had been confirmed in her case, had also meant that she had been unable to seek compensation from S.H. for non-pecuniary damage. Under the domestic legislation, compensation for non-pecuniary damage could be claimed from private individuals in cases of defamation and insult (see paragraph 58 above), but not for severe violence and torture. Contrary to what the Government claimed (see paragraph 147 below), Article 1087.1 of the Civil Code was clearly not applicable to her civil claim against S.H. whereby she had sought compensation for the non-pecuniary damage which she had suffered as a result of the treatment inflicted by him.

(b) The Government

143. The Government did not dispute that S.H.’s treatment of the applicant had reached the minimum threshold of severity to fall under Article 3 of the Convention.

144. They asserted that the criminal-law provisions existing at the material time had been capable of adequately covering the offence of domestic violence, and stated that it was not the Court’s task to verify whether the prosecutors and the domestic courts had correctly applied the domestic criminal law. Thus, S.H. had been indicted with aggravated torture, as provided for by Article 119 § 2 (3) of the former Criminal Code (see paragraph 54 above), which provided that a victim’s dependency on a perpetrator was an aggravating circumstance of the offence. In the Government’s view, the existence of that aggravating circumstance in the domestic law was sufficient for the relevant domestic framework to be considered to offer adequate protection against domestic violence, regardless of the fact that S.H.’s charge had subsequently been reclassified by the Regional Court (see paragraph 45 above). The Government stressed that the prosecutor had lodged an appeal against the Regional Court’s judgment, contesting the reclassification of the offence with which S.H. had been

charged (see paragraph 47 above). They argued that the manner in which the criminal-law mechanisms had been implemented in the instant case had not been defective to the point of constituting a violation of the respondent State's obligations under Article 3 of the Convention. Considering the circumstances of the case as a whole, it could not be said that the authorities' response to S.H.'s conduct had been manifestly inadequate with respect to the gravity of the offences in question.

145. The Government further argued that the applicant's allegations about S.H.'s threatening behaviour had been manifestly ill-founded. Her applications to the Regional Court seeking to have S.H. detained had been based solely on the incident of 5 November 2013 (see paragraph 34 above), which had not constituted a crime, and had been submitted more than two months after that incident. The applicant had not informed the investigative body of such threats. In the Government's view, this led to the conclusion that there had been no real and imminent threat which had necessitated an immediate and appropriate response by the authorities.

146. As regards the possibility of obtaining compensation, the State's positive obligations under Article 3 of the Convention did not entail an obligation to ensure that compensation for non-pecuniary damage could be sought from a private individual. Nor did the Istanbul Convention (see paragraph 75 above) require that victims of domestic violence be provided with such an opportunity.

147. Under the Civil Code, compensation for non-pecuniary damage could be claimed from the State for the violation of a fundamental right guaranteed by the Armenian Constitution and the Convention (see paragraph 57 above). Compensation could also be claimed from private individuals for damage caused to one's honour, dignity or business reputation through defamation or insult (see paragraph 58 above), and the applicant had availed herself of that remedy but had failed to substantiate her claim. The Government provided examples of domestic judicial practice in relation to cases concerning defamation and insult, all of which concerned allegedly defamatory and/or insulting public statements (in the media, during court proceedings, and in statements published on social media or disseminated in some other way). The Government considered that the lack of any other procedure in this regard could not engage the State's responsibility under Article 3.

2. The Court's assessment

(a) General principles

148. The Court reiterates that Article 1 of the Convention, taken in conjunction with Article 3, imposes on the States positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such treatment is

administered by private individuals (see *Opuz v. Turkey*, no. 33401/02, § 159, ECHR 2009).

149. 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 *Volodina v. Russia*, no. 41261/17, § 71, 9 July 2019).

150. 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, under different provisions of the Convention (see, among other authorities, *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).

151. The authorities’ positive obligations under Article 3 of the Convention comprise, firstly, an obligation to put in place a legislative and regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to respond promptly to reports of domestic violence and take operational measures to protect specific individuals against a risk of ill-treatment; and thirdly, an obligation to carry out an effective investigation into arguable claims concerning each instance of such ill-treatment. Generally speaking, the first two aspects of these positive obligations are classified as “substantive”, while the third aspect corresponds to the State’s positive “procedural” obligation (see *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, § 78, 14 December 2021, with further references).

152. 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. The Court summarised its case-law on the procedural obligation under the converging principles of Articles 2, 3 and 4 of the Convention in *S.M. v. Croatia* ([GC], no. 60561/14, §§ 311-20, 25 June 2020). It noted, in particular, that whereas the general scope of the State’s positive obligations might differ between cases where the treatment contrary to the Convention had been inflicted through the involvement of State agents and cases where violence had been inflicted by private individuals, the procedural requirements were similar: they primarily concerned the authorities’ duty to institute and conduct an investigation capable of leading to the establishment of the facts and to the identification and – if appropriate – punishment of those responsible (see *Vučković v. Croatia*, no. 15798/20, § 51, 12 December 2023).

153. The effectiveness principle means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in acts of violence. 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 (see *Gaidukevich v. Georgia*, no. 38650/18, § 58, 15 June 2023, and *Tunikova and Others*, cited above, § 114).

154. Additionally, the Court has previously held that in cases involving a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for non-pecuniary damage resulting from the breach should, in principle, be available as part of the range of redress (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V, and *Sarishvili-Bolkvadze v. Georgia*, no. 58240/08, § 96, 19 July 2018, with further references).

155. Lastly, it is not the Court's role to replace the national authorities and to choose in their stead from among the wide range of possible measures that could be taken to secure compliance with their positive obligations under Article 3 of the Convention (see *Opuz*, cited above, § 165). However, under Article 19 of the Convention and under the principle that the Convention is intended to guarantee not theoretical or illusory, but practical and effective rights, the Court has to ensure that a State's positive obligations are adequately discharged (see, *mutatis mutandis*, *Sandra Janković v. Croatia*, no. 38478/05, § 46, 5 March 2009, and *Hajduová*, cited above, § 47). The question of the appropriateness of the authorities' response may raise a problem under the Convention (see, *mutatis mutandis*, *Bevacqua and S.*, cited above, § 79).

(b) Application of these principles to the present case

(i) Whether the requisite threshold of severity was reached

156. In respect of the threshold of severity required for a complaint to fall within the scope of Article 3, the Court has held that it is relative and depends on the particular circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see, as a recent authority, *A.E. v. Bulgaria*, no. 53891/20, § 84, 23 May 2023).

157. The Government did not dispute that the treatment suffered by the applicant fell within the scope of Article 3 of the Convention (see paragraph 143 above).

158. The Court notes that S.H. was convicted of "torture", as defined in domestic criminal law at the material time (see paragraphs 45, 53 and 54

above), in relation to the treatment that he had inflicted on the applicant, which, as attested by both forensic medical examinations carried out in the course of the ensuing criminal proceedings, had caused her a number of injuries, including concussion, a broken nose, trauma to the head, rupture of the eardrum, and haematomas on the left arm and on the hip (see paragraphs 21 and 30 above).

159. That being the case, the Court does not find it necessary to determine whether the treatment to which the applicant was subjected may be characterised as torture within the meaning of Article 3 of the Convention (see *Ćwik v. Poland*, no. 31454/10, §§ 82-84, 5 November 2020) since there is no doubt that the treatment inflicted on the applicant attained the necessary threshold of severity to fall within the scope of that provision (see *Tunikova and Others*, cited above, §§ 74 and 77, and *A.E. v. Bulgaria*, cited above, § 91).

160. At the same time, although this was not specifically raised by the Government, the Court finds it appropriate to address *proprio motu* whether the applicant's treatment in the course of the criminal proceedings against S.H., that is to say after the events of May-June 2013 (see paragraphs 8-10 above), also fell within the scope of Article 3 of the Convention.

161. The Court has 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, and *Volodina*, cited above, §§ 74-75). Article 3 does not refer exclusively to the infliction of physical pain but also of mental suffering, which is caused by creating a state of anguish and stress by means other than bodily assault (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 202, ECHR 2012). Fear of further assaults can be sufficiently serious to cause victims of domestic violence to experience suffering and anxiety capable of attaining the minimum threshold of application of Article 3 (see *Eremia v. the Republic of Moldova*, no. 3564/11, § 54, 28 May 2013; *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 41, 28 January 2014; and *Volodina*, cited above, § 75).

162. The Court notes in this connection that on a number of occasions throughout the criminal proceedings, both during the investigation and the trial, the applicant sought protection, first from the investigating authority and then from the Regional Court, stating that S.H. was threatening her to stop her from giving evidence against him (see, for example, paragraphs 27, 33, 35, 39-40 and 41 *in fine* above). The Court has already acknowledged that threats are a form of psychological violence, and that a vulnerable victim may experience fear regardless of the objective nature of such intimidating conduct (see, as a recent authority, *J.I. v. Croatia*, no. 35898/16, § 88, 8 September 2022).

163. In view of the treatment to which the applicant had previously been subjected by S.H. (see, in particular, paragraphs 36 and 41 *in fine* above),

which the Regional Court held to have had “inflict[ed] severe pain, physical or mental suffering on [the applicant] ...” (see paragraph 45 above), the Court does not doubt that his threatening behaviour during the criminal proceedings caused her to genuinely fear a repetition of the violence for an extended period of time. Evidence of such fear can additionally be found in the fact that the applicant refused to stay in the hospital out of fear that she could be identified and persuaded to return (see paragraphs 11 and 41 above); that she moved away to Yerevan and stayed in a women’s shelter (see paragraph 12 above); that she asked that she and her relatives be questioned in Yerevan; and that she asked not to have a face-to-face interview with S.H. (see paragraphs 27 and 35 above). At some point during the criminal proceedings those threats in fact materialised, when S.H. insulted and hit her (see, in particular, paragraph 34 above). The indifferent attitude of the authorities, which offered the applicant no protection (see, for example, paragraphs 27 and 33 above), must have exacerbated the feelings of anxiety and powerlessness that the applicant was experiencing because of S.H.’s threatening behaviour. The unpredictable escalation of violence and uncertainty about what might happen to her must have increased the applicant’s vulnerability and put her in a state of fear and emotional and psychological distress (see, *mutatis mutandis*, *Tunikova and Others*, cited above, § 76). The foregoing, in the Court’s view, was sufficiently serious to reach the level of severity under of Article 3 of the Convention and thus trigger the authorities’ positive obligation under this provision (compare *Valiulienė*, cited above, §§ 69 and 70, and *Eremia*, cited above, § 54).

(ii) *Whether the domestic authorities discharged their positive obligations*

(α) *Scope of the positive obligations subject to assessment*

164. At the outset the Court reiterates that, for the purpose of Article 32 of the Convention, the scope of the case “referred to” the Court in the exercise of the right of individual application is determined by the applicant’s complaint. A complaint consists of two elements: factual allegations and legal arguments (see *Radomilja and Others*, cited above, § 126).

165. As noted in paragraph 130 above, the applicant, although making references to the violent incident of 5 November 2013 (see paragraph 34 above), did not raise a specific complaint about the authorities’ refusal to prosecute S.H. in relation to that incident, including the legal framework on which their relevant decision was based (see paragraph 37 above). Instead, in so far as she complained that the authorities had failed to offer her protection during the criminal proceedings, the applicant stressed that the authorities had failed to adequately follow up on her reports of S.H.’s threatening behaviour, even after she had reported the further incident of violence on 5 November 2013 (see paragraph 139 above).

166. The applicant complained that the authorities had failed to take measures to protect her during the criminal proceedings against S.H., that S.H. had had *de facto* impunity for the treatment he had inflicted on her, and that she had been unable to claim compensation from him in respect of the non-pecuniary damage which she had suffered as a result of that treatment (see paragraph 120 above). The Court will address these issues in turn below. At the same time, in accordance with its case-law cited in paragraph 151 above, it will first examine the relevant legal framework applicable at the material time.

(β) The obligation to establish legal framework

167. The Court starts by noting that the events at issue in the present case, including the criminal proceedings in question, took place before the adoption in 2017 of the Law on the prevention of violence within the family, the protection of victims of violence within the family, and the restoration of peace within the family (see paragraph 68 above) and while the former Criminal Code (in force until 1 July 2022, see paragraphs 51-54 above) was still in force. The subsequent analysis is thus not concerned with any developments in the domestic law which might have occurred following the entry into force of the above-mentioned Law and the new Criminal Code.

168. The Court will first examine whether the substantive domestic law was capable of ensuring that the acts of domestic violence complained of by the applicant were prosecuted and punished. Secondly, it will consider whether the domestic legal framework provided sufficient measures of protection for the applicant.

– *Substantive law and its interpretation by the domestic courts*

169. 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 through the provision of 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. Different legislative solutions in the sphere of criminal law may be able to satisfy this obligation, provided that the protection against domestic violence remains effective. Thus, domestic violence may be categorised in the domestic legal system as a separate offence or as an aggravating element of other offences (see *Tunikova and Others*, cited above, § 86).

170. The Court notes that at the material time no particular legislation had been enacted to specifically address violence occurring in a family context (see paragraph 167 above; see also Recommendation Rec(2002)5 of the

Committee of Ministers to member States on the Protection of Women against Violence cited in paragraph 81 above, and point 25 *in fine* of the CEDAW Committee’s concluding observations on the seventh periodic report of Armenia cited in paragraph 74 above). Neither the concept of “domestic violence” nor any equivalent thereof was defined or mentioned in any form in the domestic legislation. Domestic violence was not a separate offence under the former Criminal Code, nor was it specifically criminalised as an aggravating element of any other offence. Hence, the former Criminal Code made 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 (see, for example, the criminal-law provisions cited in paragraphs 51-54 above).

171. The Court has already ruled in previous cases that a legal framework which, *inter alia*, did not define domestic violence whether as a separate offence or an aggravating element of other offences, fell 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, *mutatis mutandis*, *Volodina*, cited above, § 85). It therefore cannot accept the Government’s argument (see paragraph 144 above) that the criminal-law provisions existing at the material time were capable of adequately covering the many forms which domestic violence takes (*ibid.*, § 81).

172. Turning to the specific provisions of criminal law relevant for the purposes of the present case, the Court notes that Article 119 § 1 of the former Criminal Code, as in force at the material time, criminalised the offence of “torture” which was defined as “intentional infliction of severe pain, physical or mental suffering on a person” (see paragraph 53 above). The Court further notes that Article 119 § 2 (3) of the former Criminal Code proscribed the aggravated form of that offence if committed in respect of a person who was, *inter alia*, “otherwise dependent” on the perpetrator (see the description of that provision in paragraph 54 above). The Government argued that the existence of the particular aggravating circumstance in Article 119 § 2 (3) of the former Criminal Code (see paragraph 54 above) was sufficient for the relevant domestic framework to be considered to offer adequate protection to the applicant against domestic violence.

173. In the Court’s opinion, however, the term “otherwise dependent” lacked the requisite precision to prevent such an interpretation by the competent authorities, including especially the domestic courts, which would run counter to the obligation to provide effective protection against acts of domestic violence (see paragraph 169 above). Indeed, as can be seen from the manner in which the domestic courts interpreted and applied the criminal-law provisions in question particularly the term “otherwise dependent” in the context of the applicant’s relationship with S.H. (see paragraphs 45 and 48 above), that term was too vague and left unfettered discretion, resulting in an

interpretation which completely ignored the domestic violence element in the present case.

174. The applicant took issue with the fact that at the material time there had been no legal definition of a “family member”, that is to say, no definition of who was entitled to protection in the context of domestic violence. She argued that in her case, this had resulted in the domestic courts interpreting the concept of somebody being “otherwise dependent” as including a registered marriage but not a common-law marriage (see paragraph 141 above). While it is true that the Regional Court and the Court of Appeal briefly referred to “marriage” and “family and marital relationships” in their respective decisions (see paragraphs 45 and 48 above), the Court observes that the courts’ finding that the applicant could not be considered “otherwise dependent” on S.H. was rather based on the particular facts of the case, including the fact that for two years the applicant had lived in the house of S.H.’s parents while S.H. had been living in Yerevan with another woman, the fact that he had not supported her financially, and so on (*ibid.*). This is discussed in detail in paragraphs 197-199 below, in relation to the criminal sanction imposed on S.H. in the impugned criminal proceedings.

– *Protective measures*

175. 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 *Kurt v. Austria* [GC], no. 62903/15, § 162, 15 June 2021). Accordingly, the Court needs to be satisfied that, from a general point of view, the domestic legal framework is adequate to afford protection against acts of violence by private individuals in each particular case. In other words, the toolbox of legal and operational measures available must give the authorities involved a range of sufficient measures to choose from, which are adequate and proportionate to the level of risk that has been assessed in the circumstances of the case (see *Tunikova and Others*, cited above, § 95).

176. The Government referred to the general protective measures available to persons participating in criminal proceedings under Articles 98, 98.1 and 98.4 of the former Code of Criminal Procedure (see paragraphs 63, 66 and 67 above) in claiming that the domestic legislation in force at the material time had provided a variety of protective measures (see paragraph 122 above). The Court observes in this connection that, in accordance with Article 98 of the former Code of Criminal Procedure, the protective measures in question could be applied in respect of “any person who [could] provide information that [was] important for uncovering a crime or a perpetrator which [might] endanger his or her life and limb, property, rights or lawful interests, as well as those of his or her family members, close relatives or close associates” (see paragraph 63 above). Having regard to the above definition of the so-called “protected persons” to whom the relevant

provisions applied, as well as the types of measures in question, it appears that the protection scheme in question was rather aimed at witness protection (compare *Volodina*, cited above, § 89). The statistics provided by the Government (see paragraph 122 *in fine* above) concerned the application of those protective measures years after the events at issue in the present case (that is, in the period between 2019 and 2021), and most importantly, those statistics did not specify whether the “persons” who had benefited from such protection during that period had included victims of crimes, in particular victims of domestic violence, and, if so, to what extent. In any event, the protective measures in question were clearly neither equivalent nor comparable to the requisite protective measures in the context of domestic violence, including “restraining orders”, “protection orders” or “safety orders”, in line with the relevant requirements of international law (see, in that connection, Recommendation Rec(2002)5 of the Committee of Ministers to member States on the Protection of Women against Violence, cited in paragraphs 80 and 81 above; Articles 53 and 56 of the Istanbul Convention, cited in paragraph 75 above; and the comments on Article 56, in particular in the Explanatory Report, cited in paragraph 76 above) and the corresponding practice of the majority of Council of Europe member States (see *Volodina*, cited above, § 88, with further references).

– *Conclusion as regards the legal framework*

177. In view of the foregoing, the Court – which takes note of the adoption in 2017 of the Law on the prevention of violence within the family, protection of victims of violence within the family and restoration of peace in the family (see paragraph 68 above) – finds that the legislative framework then in force, which did not define domestic violence whether as a separate offence or an aggravating element of other offences (see paragraph 170 above) and lacked any form of protection from acts of domestic violence, fell short of the requirements inherent in the State’s positive obligation to establish and effectively apply a system punishing all forms of domestic violence and providing sufficient safeguards for victims (see, *mutatis mutandis*, *Tunikova and Others*, cited above, § 100, and *Opuz*, cited above, § 145).

(γ) *Obligation to adequately respond to the report of domestic violence*

178. State authorities have a responsibility to take measures to protect an individual whose physical or psychological integrity is at risk from the criminal acts of another individual, including a spouse (see *Kontrová v. Slovakia*, no. 7510/04, § 49, 31 May 2007, and *Opuz*, cited above, § 176).

179. The Court notes at the outset that the law-enforcement authorities in this case reacted immediately to the information received from the hospital on 18 June 2013 indicating that the applicant had been treated for injuries apparently inflicted by her husband during a beating (see paragraph 13

above). There is nothing in the material before the Court to suggest that prior to that date the authorities knew or ought to have known that there was a risk of the applicant's ill-treatment by S.H., nor has that been suggested by the applicant.

180. The Court observes that on the same day, 18 June 2013, the Yerevan police invited the applicant to appear in order to lodge a criminal complaint and make a statement, but she refused (see paragraphs 14 and 15 above). Regardless, the Yerevan police promptly notified the Gavar police (the local police) about the hospital's report and referred the case to them (see paragraphs 16 and 17 above).

181. However, in previous cases, the Court found that even when authorities had not remained totally passive, they had still failed to discharge their obligations under Article 3 of the Convention because the measures they had taken had not stopped the abusers from perpetrating further violence against the victims (see *Bevacqua and S.*, cited above, § 83; *Opuz*, cited above, §§ 166-67; and *Eremia*, cited above, §§ 62-66).

182. In *Tunikova and Others* (cited above, § 104), the Court clarified the scope of the State's positive obligation to prevent the risk of recurrent violence in the context of domestic abuse as follows.

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

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

Thirdly, once a risk to a victim of domestic violence has been identified, the authorities must, as quickly as possible, take preventive and protective measures that are adequate and proportionate to the risk.

183. The Court observes that as early as 16 July 2013, that is, within a month from the beginning of the investigation, the applicant told the

Gegharkunik police about S.H.'s threatening behaviour and her consequent fears for her safety (see paragraph 27 above). Thereafter, in her complaint dated 10 October 2013 (see paragraph 33 above), she complained to the Prosecutor General and relevant police officials about S.H.'s overtly threatening and abusive behaviour even in the presence of H.M., the investigator, during the confrontation held on 1 October 2013 (see paragraph 32 above). Furthermore, on 6 November 2013, that is, in the aftermath of the incident of 5 November 2013 (see paragraph 34 above), the applicant submitted yet another application to the Gegharkunik police, expressing her fears for her safety, given S.H.'s violent behaviour and the fact that he had been following her (see paragraph 35 above).

184. The Court further observes that on at least three occasions during the trial the applicant asked the Regional Court to place S.H. in detention, referring to his improper behaviour throughout the criminal proceedings, including the fact that he was continuing to beat and harass her, threatening her both in person and through relatives, and so on (see paragraphs 39-40 above). Moreover, when giving evidence before the Regional Court, the applicant stated yet again that S.H. was continuing to threaten her (see paragraph 41 *in fine* above).

185. In view of the foregoing (see, in particular, paragraphs 183 and 184 above), the Court considers, contrary to the Government's arguments (see paragraph 145 above), that the domestic authorities were aware, or ought to have been aware, of the risk to the applicant of further violence (see, *mutatis mutandis*, *Eremia*, cited above, § 58) in the course of the criminal proceedings against S.H., including his trial. However, they failed to comply with their obligation to assess the risk of the recurrence of such violence and take adequate and sufficient measures to protect the applicant (see paragraph 182 above), either "immediately", as required in domestic violence cases (*ibid.*), or at any other time.

186. In particular, the authorities failed to conduct an autonomous, proactive and comprehensive risk assessment. It is therefore not clear on what basis the Government claimed that there had been no real and imminent threat to the applicant (see paragraph 145 above). The law-enforcement authorities showed no awareness of the specific character and dynamics of domestic violence when dealing with the applicant's complaints (see, *mutatis mutandis*, *Tunikova and Others*, cited above, § 108; see also the CEDAW Committee's concerns about the handling of complaints of domestic violence by the Armenian police expressed in its concluding observations on the combined fifth and sixth periodic reports of Armenia, cited in paragraph 73 above, and in point 26 of its concluding observations on the seventh periodic report of Armenia, cited in paragraph 74 above). Moreover, they were just as passive even after the applicant reported the incident of 5 November 2013, which demonstrated the recurrence of such violence (see paragraphs 34 and 35 above).

187. In turn, the Regional Court failed to respond promptly to the applicant's applications of 19 December 2013 and 29 January 2014 (see paragraph 39 above), and when it did react to a further similar application submitted by her on 24 February 2014, it decided that it would deal with those applications once the evidence had been examined. Essentially, it postponed its examination of the applications notwithstanding the requirement of immediacy mentioned above (see paragraphs 40 and 182 above).

188. Thus, as shown in the preceding paragraphs, the authorities dealing with the applicant's case at different stages of the criminal proceedings against S.H. remained totally passive and did not take any protective measures to prevent further incidents of violence against her (see, in this regard, the relevant part of Recommendation Rec(2002)5 of the Committee of Ministers to member States on the Protection of Women against Violence, cited in paragraph 80 above). In line with the Court's findings above (see paragraph 176 above), this was primarily owing to the deficient legal framework, which did not offer any mechanisms for protecting victims of domestic violence. Moreover, the authorities failed to discharge their obligation to take measures to protect the applicant from further violence in the course of the criminal proceedings, even within the scope of the existing legal framework, which the Government claimed could have offered the applicant adequate protection had she sought the application of the protective measures available to participants in criminal proceedings (see paragraph 122 above).

189. The Court observes in that connection that, as rightly pointed out by the applicant (see paragraph 125 above), the investigating authority could have taken a decision to apply any of the measures listed in Article 98.1 of the former Code of Criminal Procedure (see paragraph 66 above) on its own initiative (see Article 98 § 3 of the former Code of Criminal Procedure in paragraph 64 above), but failed to do so. In any event, as the Court found above, the general protective measures available to persons participating in criminal proceedings could not be considered adequate protective measures in the context of domestic violence (see paragraph 176 above).

190. In sum, the Court finds that throughout the criminal proceedings against S.H. the applicant made credible assertions that he had displayed threatening behaviour and also reported a further incident of assault. However, the authorities failed to properly assess the risk of recurrent violence, thereby failing to undertake any preventive and protective measures that could have been considered adequate and proportionate to any such risk assessment (see paragraph 182 *in fine* above). As a result, the authorities denied the applicant the effective protection against violence to which she was entitled under the Convention. The Government's objection as to the non-exhaustion of domestic remedies, which was joined to the merits (see paragraph 128 above), must therefore be dismissed.

(δ) Procedural obligation as regards the imposed criminal sanction

191. As stated in paragraphs 179 and 180 above, once the hospital had alerted them about the applicant's injuries which had apparently been inflicted by S.H., the Yerevan police reacted immediately by inviting the applicant to make a statement, and even referred the matter to the local police for further inquiry after she initially refused to make such a statement. The ensuing criminal proceedings resulted in S.H. being charged with aggravated torture under Article 119 § 2 (3) of the former Criminal Code (see paragraphs 36 and 38 above). At no point in the domestic proceedings or before the Court did the applicant argue that the investigation had not been prompt or that it had failed to elucidate any facts surrounding the events at issue in the present case. The applicant's complaint with regard to the procedural obligation under Article 3 of the Convention was instead directed against the criminal sanction imposed on S.H. by the domestic courts and the consequent application of amnesty (see paragraphs 140 and 141 above).

192. The Court reiterates that when an official investigation has led to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of Article 3 of the Convention. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow grave attacks on physical and mental integrity to go unpunished, or allow serious offences to be punished by excessively lenient sanctions. The important point for the Court to review, therefore, is whether and to what extent the courts, in reaching their conclusion, might be deemed to have submitted the case to careful scrutiny, so that the deterrent effect of the judicial system in place and the significance of the role it was required to play in preventing violations of the prohibition of ill-treatment are not undermined (see *Sabalić v. Croatia*, no. 50231/13, § 97, 14 January 2021, with further references).

193. Furthermore, the Court has found violations of the States' procedural obligation in a number of cases of manifest disproportion between the gravity of an act and the results obtained at domestic level, fostering the sense that acts of ill-treatment went ignored by the relevant authorities and that there was a lack of effective protection against acts of ill-treatment (see *Vučković*, cited above, § 53 and the relevant case-law examples cited therein).

194. In the light of the foregoing case-law principles (see also the case-law principles cited in paragraph 153 above), the Court will now examine whether the manner in which the criminal-law mechanisms were implemented in the instant case was defective to the point of constituting a violation of the respondent State's obligations under Article 3 of the Convention (see, *mutatis mutandis*, *Valiulienė*, cited above, § 79, and *Pulfer v. Albania*, no. 31959/13, § 85, 20 November 2018).

195. Prior to proceeding with its assessment, the Court emphasises that domestic violence is a serious violation of the human rights of women which

has been recognised as such in both the relevant international instruments (see, in particular, Recommendation Rec(2002)5 of the Committee of Ministers to member States on the Protection of Women against Violence, cited in paragraph 81 above) and the Court’s case-law, which has often been guided by the relevant international-law standards (see, for instance, *Kurt*, cited above, § 175). It is with this in mind that the Court will carry out its assessment of the application of the relevant criminal-law mechanisms in the present case to determine whether there has been a breach of the domestic authorities’ procedural obligation under the Convention.

196. The Court notes that the domestic criminal courts established that the applicant had been the victim of “torture” – an offence proscribed under Article 119 of the former Criminal Code as in force at the material time (see paragraph 53 above) which criminalised the “intentional infliction of severe pain, physical or mental suffering on a person”. The trial court found, in particular, that S.H. had “realised that he was inflicting severe pain, physical or mental suffering” on the applicant and that he had “regularly subjected [the applicant] to physical or mental suffering as a result of his violent actions” (see paragraph 45 above).

197. The Court observes that S.H. was initially charged and then indicted under Article 119 § 2 (3) of the former Criminal Code – the aggravated form of that offence, punishable by three to seven years’ imprisonment (see paragraph 54 above) – on the grounds that he had ill-treated the applicant in a situation where she had been “otherwise dependent” on him, given their “marital relationship” (see paragraphs 36 and 38 above). Nevertheless, the domestic courts found that no such situation of dependency had existed, given that (i) for the previous two years they had not kept a common household; (ii) they had not lived a married life; and (iii) S.H. had not supported the applicant financially, and it was his mother who had provided for the family (see paragraphs 45 and 48 above). That finding led to the offence being reclassified as an offence under Article 119 § 1, which was punishable by up to three years’ imprisonment (see paragraph 53 above). A one-and-a-half-year prison sentence was eventually imposed on S.H., rendering him *a priori* eligible for an exemption from serving his punishment under the Amnesty Act of 3 October 2013, in circumstances where his case was not one of the exceptions set out in section 9 of the same Act (see paragraph 69 above). Both the Regional Court and the Court of Appeal found that no such circumstances existed which could hinder the application of the Amnesty Act in respect of S.H., and exempted him from serving his sentence (see paragraphs 45 and 48 above).

It is not for the Court to say whether the national courts properly assessed the relevant facts; it cannot act as a domestic criminal court or hear appeals against the decisions of national courts, and it is not for it to pronounce on any points of criminal liability (see *Vučković*, cited above, § 59, with further references, as well as the case-law principles cited in paragraph 155 above).

198. That being said, and in line with its function to review whether and to what extent the courts submitted the applicant's case to careful scrutiny (see the case-law principles cited in paragraph 192 above), the Court cannot but note the domestic courts' purely formalistic approach to the circumstances in which the applicant had suffered the ill-treatment in question, considering that they refused to take into account a number of factors which were relevant for the overall assessment of the case and the sentencing process. In particular, the applicant and S.H. had married in a religious ceremony in 2004 (see paragraph 5 above) and had never separated; the applicant had continued to live with S.H.'s parents and take care of their children in the same house where they lived (see paragraph 8 above); and the applicant, who had never worked anywhere (see paragraph 6 above), and their children, had been fully financially supported by S.H.'s mother (see paragraphs 45 and 48 above). Moreover, throughout the proceedings and also before the trial court, S.H. consistently referred to the applicant as his "wife" (see, for instance, paragraph 42 above), and the incidents of violence of which he was accused were linked to matters which were purely familial, including the dispute relating to his dissatisfaction with the applicant's explanation for their daughter's injury, and his threats against the applicant in case he would suspect that she was being unfaithful (see paragraphs 8 and 9 above). It is therefore striking that, when deciding to reclassify the charges under Article 119 § 1 of the former Criminal Code, the Regional Court and then the Court of Appeal found that there had been no situation where the applicant had been dependent on S.H., solely because of the fact that for around two years S.H. and the applicant had not kept a common household given that he had had a mistress in Yerevan (with whom he had lived) and had not supported the applicant financially (see paragraphs 45 and 48 above; see also the arguments raised by the applicant and the prosecution in their appeals, cited in paragraphs 46 and 47 above respectively).

199. In these circumstances, it cannot be said that the reclassification of the offence with which S.H. had been charged and the consequent imposition of a more lenient sentence took place following careful scrutiny of all the relevant considerations related to the case (see, *mutatis mutandis*, *Smiljanić v. Croatia*, no. 35983/14, § 99, 25 March 2021, and *Vučković*, cited above, § 62).

200. In addition, and in so far as the application of a general amnesty in respect of S.H. is concerned, the Court notes that both the Regional Court and the Court of Appeal concluded that the exception set out in section 9(6) of the Amnesty Act of 3 October 2013 (see paragraph 70 above), which constituted a legal obstacle to its application, was not applicable, despite the obvious dispute that existed about the damage caused by the crime (see paragraphs 44-46 above). Without going any further into the interpretation provided by the domestic courts, the fact remains that as a result of the amnesty being applied, S.H. did not serve his sentence.

201. It is the Court's settled case-law that an amnesty or pardon is not compatible with the duty incumbent on the States to investigate acts of ill-treatment and to combat impunity. This principle has been considered to apply to acts between private individuals in so far as the treatment reaches the threshold under Article 3 of the Convention (see *Pulfer*, cited above, § 83, with further references, and *E.G. v. the Republic of Moldova*, no. 37882/13, § 43, 13 April 2021).

202. The present case concerned several incidents of serious ill-treatment resulting in physical damage to the applicant (see paragraphs 21 and 30 for the description of the applicant's physical injuries sustained as a result of the impugned ill-treatment) and undoubtedly long-term psychological damage as well. The Court finds it concerning that in such a case the domestic criminal courts, having completely ignored the context of domestic violence, first reclassified the offence with which S.H. had been charged as the non-aggravated form of the given offence which carried a significantly lower penalty, imposed on him a sentence at the lower end of the range of applicable penalties for the reclassified offence (see paragraphs 197 and 198 above), and then considered that S.H. should be exempted from serving even that sentence (see paragraph 200 above), thereby completely removing the deterrent effect of the criminal-law framework.

203. In the Court's view, such an approach by the domestic courts may be indicative of a certain leniency as regards the punishment of violence against women, instead of communicating a strong message to the community that violence against women will not be tolerated (see, *mutatis mutandis*, *Vučković*, cited above, § 65; see also the case-law principles cited in paragraph 153 above). Such leniency may, in turn, further discourage victims of domestic violence from reporting such acts, where this is already an issue of significant concern in so far as Armenia is concerned (see the serious concerns relating to the underreporting of domestic violence expressed by the Human Rights Commissioner, cited in paragraph 82 above; see also the CEDAW Committee's similar concerns voiced in 2016 in its concluding observations on the combined fifth and sixth periodic reports of Armenia, cited in paragraph 73 above).

204. In the light of the foregoing, the Court considers that the manner in which the criminal-law mechanisms that existed at the material time were implemented in the instant case, specifically the application of the amnesty, which resulted in S.H. fully avoiding the consequences of his criminal conduct, was defective to the point of constituting a breach of the respondent State's positive obligations under Article 3 of the Convention (see, *mutatis mutandis*, *Pulfer*, cited above, § 90, and *E.G. v. the Republic of Moldova*, cited above, § 43). The Court therefore finds that the respondent State failed to discharge its procedural obligation to respond adequately to the serious acts of domestic violence suffered by the applicant.

(e) Compensation in respect of non-pecuniary damage

- *Whether there is a positive obligation under Article 3 of the Convention to enable a victim of domestic violence to claim compensation in respect of non-pecuniary damage from the perpetrator*

205. The Court’s case-law indicates that the obligations under Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, have traditionally been held to be governed by similar converging principles (see, for instance, *X and Others v. Bulgaria* [GC], no. 22457/16, §§ 181, 2 February 2021, and *S.M. v. Croatia*, cited above, §§ 309-11).

206. In the present case, the Court must for the first time determine whether there is a positive obligation under Article 3 of the Convention to enable a victim of domestic violence to claim compensation in respect of non-pecuniary damage from the perpetrator of such violence.

207. It is the Court’s settled case-law that in the event of a breach of Article 2 or 3 of the Convention, where a right with as fundamental an importance as the right to life or the prohibition against torture, inhuman and degrading treatment is at stake, compensation for non-pecuniary damage should be included in the range of available remedies (see the case-law principles cited in paragraph 154 above). This principle has been consistently applied in a number of cases involving the liability of State officials or bodies for acts or omissions involving loss of life or the infliction of treatment contrary to Article 3, where the Court held that compensation for non-pecuniary damage flowing from a breach of Article 2 or 3 of the Convention should in principle be available to the victim or the victim’s family (see, in relation to Article 2 of the Convention, *Keenan v. the United Kingdom*, no. 27229/95, § 130, ECHR 2001-III; *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 97, ECHR 2002-II; and *Mirzoyan v. Armenia*, no. 57129/10, § 78, 23 May 2019; and, in relation to Article 3 of the Convention, *Z and Others v. the United Kingdom*, cited above, § 109, and *Poghosyan and Baghdasaryan v. Armenia*, no. 22999/06, § 46, ECHR 2012).

208. In a previous case where domestic criminal courts had refused an applicant’s request to join, as a civil party, criminal proceedings concerning his brother’s murder by a private individual and to obtain compensation, the Court held that the State’s obligation to set up a judicial system capable of providing “appropriate redress” for the purposes of Article 2 required a remedy that would have enabled that applicant to claim compensation for the non-pecuniary damage that he might have sustained as his deceased brother’s only family member (see *Vanyo Todorov v. Bulgaria*, no. 31434/15, § 66, 21 July 2020; see also *Stanevi v. Bulgaria*, no. 56352/14, § 66, 30 May 2023, concerning the lack of any compensation for the non-pecuniary damage suffered by the applicants on account of their relative’s death resulting from a road traffic accident caused by a mentally ill driver).

209. Furthermore, the Court has already had occasion to hold that the fact that the relevant domestic rules did not enable persons to lodge claims for compensation in respect of non-pecuniary damage in cases of death resulting from medical negligence was in breach of Article 2 of the Convention (see, in particular, *Movsesyan v. Armenia*, no. 27524/09, §§ 72-74, 16 November 2017, and *Sarishvili-Bolkvadze*, cited above, §§ 94-97).

210. It is not decisive that the text of Article 3 is silent on the question of whether it lays down a positive obligation to enable victims of domestic violence to sue their partners and/or family members in respect of non-pecuniary damage sustained as a result of their ill-treatment (compare *Krachunova v. Bulgaria*, no. 18269/18, §§ 166 and 177, 28 November 2023, where the Court recently interpreted Article 4 of the Convention as laying down a positive obligation on the part of the Contracting States to enable the victims of human trafficking to claim compensation from their traffickers in respect of lost earnings). Although Article 2 does not expressly contain such an obligation either, a specific obligation to enable persons to seek compensation for non-pecuniary damage has been read into it (see, in particular, *Vanyo Todorov*, cited above, §§ 56-67).

211. In the Court's view, and for the reasons set out below, as with the approach whereby compensation for non-pecuniary damage must be available where State officials or bodies are involved (see the case-law principles cited in paragraph 207 above), Article 3 should be construed in much the same manner as Article 2 of the Convention, also in so far as the possibility of seeking compensation for non-pecuniary damage from the perpetrator of domestic violence is concerned.

212. First, as stated in paragraph 205 above, in its interpretation of the obligations arising under Articles 2 and 3 of the Convention, which enshrine the fundamental values of democratic society, the Court has traditionally been guided by similar (if not identical) principles. Indeed, in the present case, the Court sees no objective reasons to consider that an obligation to enable persons to seek compensation for non-pecuniary damage where death has been caused by a private individual – an obligation which has already been read into Article 2 of the Convention (see the case-law examples cited in paragraphs 208 and 209 above) – should not also be laid down in Article 3 of the Convention, enabling a victim of domestic violence to seek compensation for non-pecuniary damage from the perpetrator of such violence.

213. Secondly, it has long been accepted that psychological impact forms an important aspect of domestic violence (see *Valiulienė*, cited above, § 69; *Volodina*, cited above, §§ 74-75; and *Tunikova and Others*, cited above, § 75). Therefore, the Court cannot turn a blind eye to the psychological aspect of ill-treatment suffered by victims of domestic violence (see, *mutatis mutandis*, *Valiulienė*, cited above, § 69) and must interpret the provisions of the Convention in a way that renders the rights that they guarantee practical and effective (see, among other authorities, *Soering v. the United Kingdom*,

7 July 1989, § 87, Series A no. 161; *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 234, 29 January 2019; and *S.M. v. Croatia*, cited above, § 295).

214. Thirdly, the Court's case-law relating to domestic violence has so far focused on the legislative and regulatory framework of protection, the operational duty to protect in certain well-defined circumstances, and the obligation to carry out an effective investigation, including punishment (see the case-law principles cited in paragraphs 151-153 above). However, although essential for ensuring protection and deterrence, those measures cannot by themselves wipe away the psychological harm suffered by the victims of domestic violence which has already taken place or practically assist their recovery from their experiences (see, *mutatis mutandis*, *Krachunova*, cited above, § 169). Indeed, enabling the victims of domestic violence to seek compensation for non-pecuniary damage from the perpetrator would constitute one means of ensuring that the States' response to the issue of domestic violence takes into account the full extent of the harm suffered by them.

215. In the light of the above, it can be concluded that Article 3 of the Convention, interpreted in the light of its object and purpose and in a way that renders its safeguards practical and effective, lays down a positive obligation on the part of the Contracting States to enable the victims of domestic violence to claim compensation in respect of non-pecuniary damage from the perpetrators of such violence directly, or indirectly through the State concerned.

216. This conclusion is further reinforced by the relevant international instruments (see, in particular, Recommendation Rec(2002)5 of the Committee of Ministers to member States on the Protection of Women against Violence, cited in paragraph 79 above; Article 30 § 1 of the Istanbul Convention, cited in paragraph 75 above; and the comments on Article 30 in the Explanatory Report, cited in paragraph 76 above).

217. In addition, the information available to the Court (see paragraphs 84-119 above) indicates a developing consensus between the Contracting States on providing victims of domestic violence with legal means of claiming compensation for non-pecuniary damage from the perpetrators of violence (see, in this connection, GREVIO's baseline evaluation reports on Albania, Austria, Sweden, Portugal, Italy, Serbia, Bosnia and Herzegovina, Germany, Switzerland, Georgia, Norway, Greece, Liechtenstein, the Republic of Moldova, Croatia, Malta, Poland and Romania – see paragraphs 84, 87-89, 93, 95, 101-102, 104-105, 107, 110-112, 115-117 and 119 above). Certain Contracting States which did not clarify whether their law enabled victims of domestic violence to claim compensation for non-pecuniary damage from the perpetrators of violence indicated that State compensation was available for, *inter alia*, non-pecuniary damage where damages could not be recovered from the perpetrator (Montenegro, Belgium

and Iceland – see paragraphs 90, 97 and 103 above). While certain other Contracting States did not provide specific information about what compensation could be sought from offenders, there is no indication that the law in any of those States generally bars claims in respect of non-pecuniary damage. All this also speaks in favour of the conclusion stated in paragraph 215 above.

– *Compliance*

218. The Court must next determine whether in the instant case the respondent State complied with the positive obligation identified in paragraph 215 above.

219. It notes that compensation for non-pecuniary damage is not included in the general right to compensation under domestic law. In particular, although Article 17 of the Civil Code has been amended by the legislative amendments which entered into force on 1 November 2014, to include non-pecuniary damage as a type of civil damage (see paragraphs 56 and 60 above), it is clear from Article 17 § 4, Article 162.1 and Article 1087.2 of the same Code (see paragraphs 56 *in fine*, 57 and 59 above) that the possibility of claiming compensation for non-pecuniary damage is strictly limited to claims against the State for an established violation by State or local governance bodies or their officials of a fundamental right guaranteed under the Convention (see *Botoyan v. Armenia*, no. 5766/17, §§ 119-21, 8 February 2022). To date, under domestic law, the only legal means of seeking compensation from a private party for non-pecuniary damage is that set out in Article 1087.1 of the Civil Code, in so far as claims relating to defamation and insult are concerned (see paragraph 58 above).

220. The Government argued that under the law, the applicant had been able to claim compensation from S.H. for the damage caused to her honour and/or dignity (see the relevant domestic-law regulations cited in paragraph 58 above), and she had availed herself of that opportunity but had failed to substantiate her claim (see paragraph 147 above). The Court notes, however, that as rightly pointed out by the applicant (see paragraph 142 above), the regulations provided for in Article 1087.1 of the Civil Code (see paragraph 58 above) were clearly not applicable to her civil claim against S.H. The examples of domestic judicial practice in relation to the adjudication of civil claims for compensation for non-pecuniary damage in cases of defamation and insult which were provided by the Government (see paragraph 147 above) further demonstrate this.

221. Indeed, the applicant clearly stated in her civil claim lodged against S.H. in the course of the trial that, in the absence of relevant domestic-law regulations, she had been obliged to make reference to Article 1087.1 of the Civil Code, as it was the only civil-law provision enabling a person to lodge a claim for compensation for non-pecuniary damage from a private party (see paragraph 44 above). That being said, she made it clear that her claim related

to her emotional and psychological suffering caused by the ill-treatment inflicted on her by S.H. (ibid.). Furthermore, in her appeal against the Regional Court's judgment, the applicant further clarified that she had made reference to Article 1087.1 of the Civil Code solely for indicative purposes as regards the amount claimed (see paragraph 46 above). Nevertheless, in relation to the matter of compensation for non-pecuniary damage, both the Regional Court and subsequently the Court of Appeal (see paragraphs 45 and 48 above) examined the applicant's civil claim in the light of the general case-law on defamation and insult, which, as stated in paragraph 220 above, was clearly inapplicable in the circumstances.

222. The domestic courts formally dismissed the part of the applicant's civil claim concerning compensation for non-pecuniary damage for lack of substantiation. However, in reality, as noted in paragraph 219 above, under the law, they could not even examine it, let alone grant it, considering that the domestic law does not enable persons to claim compensation for non-pecuniary damage from private individuals (with the exception of specific cases involving defamatory or insulting statements made in public, see paragraphs 58 and 147 above) (see also *Mirzoyan*, cited above, §§ 36 and 80, where, in proceedings which took place before 1 November 2014, the trial court rejected the applicant's civil claim against the Ministry of Defence for compensation for non-pecuniary damage sustained as a result of the murder of his only son during compulsory military service on the grounds that the law did not provide for compensation for non-pecuniary damage).

223. In view of the foregoing, the Court finds that the unconditional legislative restriction preventing the applicant from obtaining an enforceable award of compensation against S.H. for the non-pecuniary damage which she had suffered as a result of the ill-treatment inflicted by him was in breach of the respondent State's positive obligation as defined in paragraph 215 above (see, *mutatis mutandis*, *Sarishvili-Bolkvadze*, cited above, §§ 96 and 97).

(iii) *Conclusion*

224. In view of the foregoing considerations (see, in particular, paragraphs 177, 190, 204 and 223 above) the Court finds that there has been a violation of Article 3 of the Convention in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

225. 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."

A. Damage

226. The applicant claimed 4,220 euros (EUR) in respect of pecuniary damage, which included the medical expenses that she had had to bear in relation to the injuries she had sustained as a result of her ill-treatment by S.H. (relating to medical consultations, scar removal, plastic surgery, hair restoration, and so on). In support of her claim under this head, the applicant submitted medical invoices. The applicant also claimed EUR 84,000 in respect of non-pecuniary damage.

227. The Government submitted that the applicant had already received compensation for pecuniary damage in the domestic proceedings (see paragraph 45 above). They also argued that the medical documents which she had submitted in support of her claim in relation to medical expenses contained invoices issued quite recently, for instance in 2022, and it was not clear whether there was any causal link between those recent medical expenses and the ill-treatment that she had suffered in 2013. The Government also argued that the medical documents dating from 2014 had already been submitted to the trial court, and the applicant had been compensated for those expenses. Lastly, the Government considered that the finding of a violation in the present case should be considered sufficient just satisfaction, and submitted that the applicant's claims in respect of non-pecuniary damage were, in any event, excessive.

228. As regards the applicant's claim in respect of pecuniary damage, namely in relation to compensation for medical expenses, the Court notes that it found a violation of Article 3 of the Convention in relation to, *inter alia*, the authorities' failure to adequately respond to the risk of her further ill-treatment in the course of the criminal proceedings against S.H. (see, in particular, paragraph 190 above). At no point in the proceedings before the Court did the applicant complain that the authorities had failed to protect her from the ill-treatment which had resulted in her injuries (see paragraph 179 above). The Court is thus not satisfied that there is a sufficiently direct causal link between the violation found in the case and the pecuniary damage allegedly suffered by the applicant in relation to medical expenses. It therefore rejects this claim.

229. At the same time, the Court accepts that the applicant experienced mental suffering which cannot be compensated for solely by the finding of a violation, as argued by the Government (see paragraph 227 above). Making its assessment on an equitable basis, and in view of the specific circumstances of the case, it awards the applicant EUR 24,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

230. The applicant claimed EUR 3,160 for legal costs relating to her representation in the proceedings before the Court. In support of this claim, the applicant submitted a contingency fee agreement concluded with Mr T. Muradyan, her representative before the Court (see paragraph 2 above), whereby she was bound to pay him EUR 3,160 for her representation before the Court in the event of the Court finding in her favour (see paragraph 228 above).

231. The Government argued that the applicant's claim under this head was excessive.

232. The Court has previously recognised the validity of contingency fee agreements for the purposes of making an award for legal costs (see, for example, *Mnatsakanyan v. Armenia*, no. 2463/12, §§ 101 and 102, 6 December 2022, with further references).

233. The Court therefore finds that the legal costs before the Court have been necessarily incurred in order to obtain redress for the violation found. The Court reiterates, however, that according to its case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these are reasonable as to quantum (see, among many other authorities, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 223, ECHR 2012, and *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 158, ECHR 2014). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Joins to the merits* the Government's objection that the applicant did not exhaust domestic remedies in respect of her complaint under Article 3 of the Convention concerning the domestic authorities' failure to protect her from further acts of domestic violence during the criminal proceedings against S.H. and *rejects* it;
3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 24,000 (twenty-four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Mattias Guyomar
President