



March 2024

This factsheet does not bind the Court and is not exhaustive

# Violence against women

## Domestic violence

See the factsheet on ["Domestic violence"](#).

## Ill-treatment in detention

### Juhnke v. Turkey

22 July 2003

The applicant was arrested on suspicion of membership of an illegal armed organisation, the PKK (Workers' Party of Kurdistan) and later convicted as charged and sentenced to 15 years' imprisonment. She complained in particular that, during her detention, she had been subjected to ill-treatment and a gynaecological examination against her will.

The European Court of Human Rights, finding that there was no evidence to substantiate the applicant's allegation that she had been subjected to ill-treatment, declared that part of her complaint **inadmissible** as being manifestly ill-founded. The Court further found the applicant's allegation that she had been forced to have a gynaecological examination to be unsubstantiated and therefore held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the [European Convention on Human Rights](#). However, the Court did find that the applicant had resisted a gynaecological examination until persuaded to agree to it and that, given the vulnerability of a detainee in such circumstances, the applicant could not have been expected to indefinitely resist having such an examination. It decided to examine that issue from the point of view of Article 8 (right to respect for private life) of the Convention. Observing that the gynaecological examination which had been imposed on the applicant without her free and informed consent had not been shown to have been "in accordance with the law" or "necessary in a democratic society", the Court held that there had been a **violation of Article 8** of the Convention. Thus, in particular, the examination appeared to have been a discretionary measure taken by the authorities to safeguard those members of the security forces who had arrested and detained the applicant against a false accusation of sexual assault. That safeguard did however not justify seeking to persuade a detainee to agree to such an intrusive and serious interference with her physical integrity, especially given that she had not complained of having been sexually assaulted.

## Police violence

### Aydın v. Turkey

25 September 1997

See below, under "Rape and sexual abuse".

### Y.F. v. Turkey (application no. 24209/94)

22 July 2003

In October 1993 the applicant and his wife were taken into police custody on suspicion of aiding and abetting the PKK (Workers' Party of Kurdistan), an illegal organisation. The applicant's wife was held in police custody for four days. She alleged that she had been kept blindfolded and that police officers had hit her with truncheons, verbally

insulted her and threatened to rape her. She was examined by a doctor and taken to a gynaecologist for a further examination. The police officers remained on the premises while she was examined behind a curtain. In March 1994 the applicant and his wife were acquitted. In 19 December 1995 three police officers were charged with violating the applicant's wife's private life by forcing her to undergo a gynaecological examination. They were acquitted in May 1996. The applicant alleged that the forced gynaecological examination of his wife had breached her right to respect for private life.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It considered that, given her vulnerability in the hands of the authorities who had exercised full control over her during her detention, the applicant's wife could not be expected to have put up resistance to the gynaecological examination. There had accordingly been an interference with her right to respect for her private life. The Turkish Government had failed to demonstrate the existence of a medical necessity or other circumstances defined by law. While the Court accepted their argument that the medical examination of detainees by a forensic medical doctor could be an important safeguard against false accusations of sexual harassment or ill-treatment, it considered that any interference with a person's physical integrity had to be prescribed by law and required that person's consent. As this had not been the case here, the interference had not been in accordance with the law.

#### **Maslova and Nalbandov v. Russia**<sup>1</sup>

24 January 2008

See below, under "Rape and sexual abuse".

#### **Yazgül Yılmaz v. Turkey**

1 February 2011

In this case the applicant complained that, at the age of 16, she was sexually harassed while in police detention. She was given a gynaecological examination – unaccompanied and without her or her guardian's consent – to verify whether her hymen had been broken. After being acquitted and released, she suffered from post-traumatic stress and depression. Her allegations of assault in custody were largely corroborated by subsequent medical examinations. No disciplinary proceedings were brought against the prison doctors concerned.

The Court noted that the law at that time did not provide the necessary safeguards concerning examinations of female detainees and that additional guarantees were required for gynaecological examinations, particularly for minors. The general practice of automatic gynaecological examinations for female detainees – supposed to prevent false sexual assault accusations against police officers – was not in the interests of detained women and had no medical justification. The applicant had complained of sexual harassment, not rape, which could not be disproved by an examination of her hymen. The Court noted that the new Turkish Code of Criminal Procedure regulated gynaecological examinations, but made no specific provision for minors. It held that there had been a **violation of Article 3** (prohibition of inhuman treatment) of the Convention concerning both the gynaecological examinations of the applicant while in police custody and the inadequate investigation concerning those responsible.

#### **B.S. v. Spain (no. 47159/08)**

24 July 2012

This case concerned a woman of Nigerian origin who was stopped by the police while working as a prostitute on the outskirts of Palma de Mallorca. The applicant complained in particular that the national police officers had verbally and physically abused her when stopping her for questioning. She further alleged that she had been discriminated against because of her profession as a prostitute, her skin colour and her gender.

The Court found that the Spanish State had not conducted an adequate and effective investigation into the applicant's allegations of ill-treatment on two occasions when she

<sup>1</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

was stopped and questioned in the street, in **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention under its procedural limb. It further considered that the domestic courts had not taken into account the applicant's special vulnerability inherent in her situation as an African woman working as a prostitute and had thus failed to satisfy their obligation to take all possible measures to ascertain whether or not a discriminatory attitude might have played a role in the events, in **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 3** of the Convention. The Court lastly held that there had been **no violation of Article 3** of the Convention as regards the applicant's allegations of ill-treatment.

### **İzci v. Turkey**

23 July 2013

This case concerned a Turkish woman who complained in particular that she had been attacked by the police following her participation in a peaceful demonstration to celebrate Women's Day in Istanbul and that such police brutality in Turkey was tolerated and often went unpunished.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention both in its substantive and procedural aspect, and a **violation of Article 11** (freedom of assembly) of the Convention. It considered in particular that, as in many previous cases against Turkey, the police officers had failed to show a certain degree of tolerance and restraint before attempting to disperse a crowd which had neither been violent nor presented a danger to public order, and that the use of disproportionate force against the demonstrators had resulted in the injuring of the applicant. Moreover, the failure of the Turkish authorities to find and punish the police officers responsible raised serious doubts as to the State's compliance with its obligation under the Convention to carry out effective investigations into allegations of ill-treatment. Finally, the use of excessive violence by the police officers had had a dissuasive effect on people's willingness to demonstrate.

In this case the Court reiterated that a great number of applications against Turkey concerning the right to freedom of assembly and/or excessive use of force by law enforcement officials during demonstrations were pending. Considering the systemic aspect of the problem, it therefore requested the Turkish authorities to **adopt general measures, in accordance with their obligations under Article 46** (binding force and execution of judgments) of the Convention, in order to prevent further similar violations in the future.

### **Afet Süreyya Eren v. Turkey**

20 October 2015

Arrested in June 1999 on suspicion of being a member of an illegal political organisation, the applicant alleged that while in custody she had been subjected to ill-treatment which had amounted to torture. Furthermore, she argued that the authorities had failed to carry out an effective investigation into her allegations of ill-treatment.

The Court held that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention both in its substantive and procedural aspect. Having regard in particular to the nature and degree of the ill-treatment and to the strong inferences that could be drawn from the evidence that it had been inflicted in order to obtain information from the applicant about her suspected connection with an illegal political organisation, the Court found that the ill-treatment involved very serious and cruel suffering that could only be characterised as torture. The Court also found that the investigation and the ensuing criminal proceedings had been inadequate and therefore in breach of the State's procedural obligations under Article 3.

### **Dilek Aslan v. Turkey**

20 October 2015

Arrested in October 2006 while distributing leaflets in support of families of persons deprived of their liberty, the applicant alleged that she had been subjected to

ill-treatment by the police and submitted that the authorities had failed to carry out an effective investigation into these allegations. She also argued that she had been prevented by force from distributing leaflets which had reflected her opinions.

The evidence before the Court did not enable it to find beyond all reasonable doubt that the applicant had been subjected to ill-treatment by the police. It therefore held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in its substantive aspect. On the other hand, the Court found that the authorities had failed to carry out an adequate and effective investigation into the applicant's allegations of ill-treatment and therefore held that there had been a **violation of Article 3** of the Convention in its procedural aspect. Lastly, the Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention.

### **Ebru Dincer v. Turkey**

29 January 2019

This case concerned an operation conducted by the security forces in Bayrampaşa Prison (Istanbul) in December 2000, during which the applicant suffered serious burns to various parts of her body, including her face, owing to a fire which broke out in the women's dormitory.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that only an investigation or an effective procedure could allow the cause of the fire to be determined. However, nearly 18 years after the facts, no light had been shed on that cause and the criminal proceedings were still pending in the Assize Court. In addition, the domestic proceedings had not shown that the violence which had led to the applicant's physical and mental suffering had been made inevitable by her own conduct.

### **Lopez Martinez v. Spain**

9 March 2021 (Committee judgment)

This case concerned the investigation carried out by the Spanish authorities following the forcible evacuation by the police of several individuals, including the applicant, who were in a cafeteria on the outskirts of the Congress headquarters in Madrid and who had taken part in a demonstration under the slogan "Surround the Congress".

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. In the light of the material in its possession, it found that, in the particular circumstances of the case, the investigation conducted by the domestic courts had not been sufficiently thorough and effective to meet the requirements of the procedural aspect of Article 3.

See also:

### **Sládková v. the Czech Republic**

10 November 2022

## Rape and sexual abuse

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### **X and Y v. the Netherlands (no. 8978/80)**

26 March 1985

A girl with a mental handicap (the second applicant) was raped, in the home for children with mental disabilities where she lived, the day after her sixteenth birthday (which was the age of consent for sexual intercourse in the Netherlands) by a relative of the person in charge. She was traumatised by the experience but deemed unfit to sign an official complaint given her low mental age. Her father (the first applicant) signed in her place, but proceedings were not brought against the perpetrator because the girl had to make the complaint herself. The domestic courts recognised that there was a gap in the law.

The Court recalled that although the object of Article 8 (right to respect for private and family life) of the Convention is essentially that of protecting the individual against

arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. In the present case, the Court found that the protection afforded by the civil law in the case of wrongdoing of the kind inflicted on the second applicant was insufficient. This was a case where fundamental values and essential aspects of private life were at stake. Effective deterrence was indispensable in this area and it could be achieved only by criminal-law provisions. Observing that the Dutch Criminal Code had not provided her with practical and effective protection, the Court therefore concluded, taking account of the nature of the wrongdoing in question, that the second applicant had been the victim of a **violation of Article 8** of the Convention.

### **Aydın v. Turkey**

25 September 1997

The applicant, a young Turkish woman of Kurdish origin (aged 17 at the relevant time) was arrested without explanation and taken, along with two other members of her family, into custody. She was blindfolded, beaten, stripped naked, placed in a tyre and hosed with pressurised water before being raped by a member of the security forces and then again beaten for about an hour by several people. A subsequent medical examination by a doctor, who had never before dealt with a rape case, found her hymen torn and widespread bruising on her thighs. The applicant further claimed that the family was intimidated and harassed by the authorities to coerce them into withdrawing their complaint before the European Court of Human Rights.

The Court stressed that rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. This experience must have left the applicant feeling debased and violated both physically and emotionally. The Court found that both the accumulation of acts of physical and mental violence inflicted on the applicant while in custody and the especially cruel act of rape to which she had been subjected had amounted to torture, in **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention. In addition, an allegation of rape by an official in custody required that the victim be examined with all appropriate sensitivity by independent doctors with the relevant expertise. That did not occur, rendering the investigation deficient and denying the applicant access to compensation, in **violation of Article 13** (right to an effective remedy) of the Convention.

### **M.C. v. Bulgaria (no. 39272/98)**

4 December 2003

The applicant, aged 14 (which was the age of consent for sexual intercourse in Bulgaria), was raped by two men; she cried during and after being raped and was later taken to hospital by her mother, where it was found that her hymen had been torn. Because it could not be established that she had resisted or called for help, the perpetrators were not prosecuted.

The Court found a **violation of Article 3** (prohibition of degrading treatment) **and Article 8** (right to respect for private life) of the Convention, noting in particular the universal trend towards recognising lack of consent as the essential element in determining rape and sexual abuse. Victims of sexual abuse, especially young girls, often failed to resist for psychological reasons (either submitting passively or dissociating themselves from the rape) or for fear of further violence. Stressing that States had an obligation to prosecute any non-consensual sexual act, even where the victim had not resisted physically, the Court found both the investigation in the case and Bulgaria law to be defective.

### **Maslova and Nalbandov v. Russia**<sup>2</sup>

24 January 2008

The applicant, who had been called in for questioning at her local police station, was coerced by police officers into confessing to involvement in a murder. One police officer put thumb cuffs on her, beat her, raped her and then forced her to perform oral sex. Subsequently he and another officer repeatedly hit her in the stomach, put a gas mask over her face, blocking the air to suffocate her, and ran electricity through wires attached to her earrings. When allowed to go to the lavatory, she tried to cut the veins of her wrists. Three prosecution officers, after interrogating her at the police station, drank alcohol and continued to rape her. The applicant filed a complaint alleging that she had been raped and tortured. A used condom found in the station was proven to have a 99.99% probability of having traces of her vaginal cells. Disposable wipes were found with traces of sperm and various items of clothing with traces of sperm and vaginal tissue of the same antigen group as the applicant. However, a court ruled that the evidence collected was inadmissible, as a special procedure for bringing proceedings against prosecution officers had not been followed. The case was finally discontinued for lack of evidence of a crime.

The Court noted that there had been an impressive and unambiguous body of evidence in support of the applicant's version of events. It further reiterated that the rape of a detainee by an official of the State had to be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender could exploit the vulnerability and weakened resistance of his victim. The physical violence, especially the cruel acts of repeated rape, to which the applicant had been subjected had amounted to torture, in **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention. There had further been a **violation of Article 3** of the Convention under its procedural limb, concerning the ineffective investigation.

### **P.M. v. Bulgaria (no. 49669/07)**

24 January 2012

This case concerned the applicant's complaint that, raped at the age of thirteen, the Bulgarian authorities took more than fifteen years to complete the ensuing investigation and she had no remedies against their reluctance to prosecute her aggressors.

The Court, finding that the investigation into the applicant's rape complaint had been ineffective, even though the facts of the case and the identity of the offenders had been established, held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention under its procedural limb.

### **I.G. v. the Republic of Moldova (no. 53519/07)**

15 May 2012

The applicant alleged that, at the age of fourteen, she had been raped by an acquaintance (a twenty-three-year-old man who lived in the same neighbourhood as the applicant's grandmother, whom she visited often). She complained in particular that the authorities had not investigated her allegations effectively.

The Court held that the investigation of the applicant's case had fallen short of the requirements inherent in the State's positive obligations to effectively investigate and punish all forms of rape and sexual abuse, in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

### **M. and Others v. Italy and Bulgaria (no. 40020/03)**

31 July 2012

The applicants, of Roma origin and Bulgarian nationality, complained that, having arrived in Italy to find work, their daughter was detained by private individuals at gunpoint, was forced to work and steal, and sexually abused at the hands of a Roma family in a village. They also claimed that the Italian authorities had failed to investigate the events adequately.

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<sup>2</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

The Court declared the applicants' **complaints under Article 4** (prohibition of slavery and forced labour) **inadmissible** as being manifestly ill-founded. It found that there had been no evidence supporting the complaint of human trafficking. However, it found that the Italian authorities had not effectively investigated the applicants' complaints that their daughter, a minor at the time, had been repeatedly beaten and raped in the villa where she was kept. The Court therefore held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention under its procedural limb. The Court lastly held that there had been **no violation of Article 3** in respect of the steps taken by the Italian authorities to release the first applicant.

### **P. and S. v. Poland (no. 57375/08)**

30 October 2012

The applicants were a daughter and her mother. In 2008, at the age of fourteen, the first applicant became pregnant after being raped. The applicants complained in particular about the absence of a comprehensive legal framework guaranteeing the first applicant's timely and unhindered access to abortion under the conditions set out by the applicable laws, and about the disclosure of information about the case to the public. They further complained that the first applicant's removal from the custody of her mother and placement in a juvenile shelter and later in a hospital had been unlawful, and submitted that the circumstances of the case had amounted to an inhuman or degrading treatment.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, as regards the determination of access to lawful abortion, in respect of both applicants, and as regards the disclosure of the applicants' personal data. It further held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding in particular that the essential purpose of the first applicant's placement in the juvenile shelter had been to separate her from her parents and to prevent the abortion. Lastly, the first applicant had been treated by the authorities in a deplorable manner and her suffering had reached the minimum threshold of severity under **Article 3** (prohibition of inhuman treatment) of the Convention, in **violation** of that provision.

### **O'Keeffe v. Ireland**

28 January 2014 (Grand Chamber)

This case concerned the question of the responsibility of the State for the sexual abuse of a schoolgirl, aged nine, by a lay teacher in an Irish National School in 1973. The applicant complained in particular that the Irish State had failed both to structure the primary education system so as to protect her from abuse as well as to investigate or provide an appropriate judicial response to her ill-treatment. She also claimed that she had not been able to obtain recognition of, and compensation for, the State's failure to protect her.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) and of **Article 13** (right to an effective remedy) of the Convention concerning the Irish State's failure to protect the applicant from sexual abuse and her inability to obtain recognition at national level of that failure. It further held that there had been **no violation of Article 3** of the Convention as regards the investigation into the complaints of sexual abuse at the applicant's school.

### **W. v. Slovenia (no. 24125/06)**

23 January 2014

This case concerned criminal proceedings against a group of men who had raped the applicant in April 1990, when she was 18 years old. The applicant complained in particular that the long delays in the criminal proceedings had been in breach of the State's obligation to effectively prosecute the criminal offences committed against her. While she was awarded compensation at national level for the distress she suffered as a result of the lengthy proceedings, she considered that the amount of 5,000 euros paid to her could not be regarded as sufficient redress.

The Court held that there had been a procedural **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, finding that the criminal proceedings regarding the applicant's rape did not comply with the procedural requirements imposed by Article 3.

**M.A. v. Slovenia (no. 3400/07) and N.D. v. Slovenia (no. 16605/09)**

15 January 2015

The applicants complained that Slovenia had failed to provide an effective system of prosecution and trial against the men whom they had accused of rape, the related criminal proceedings having lasted some 26 years in the first case and over nine years in the second case.

In both cases the Court held that there had been a procedural **violation** (prohibition of inhuman and degrading treatment) of the Convention, finding that the criminal proceedings regarding the applicants' rape did not comply with the procedural requirements imposed by Article 3.

**S.Z. v. Bulgaria (no. 29263/12)**

3 March 2015

The applicant complained in particular of the ineffectiveness of the criminal proceedings for the false imprisonment, assault, rape and trafficking in human beings perpetrated against her. She complained in particular of the lack of an investigation into the possible involvement of two police officers and the failure to prosecute two of her assailants, and of the excessive length of time taken to investigate and try the case. She also submitted that the excessive length of the criminal proceedings, in as far as they concerned her claim for damages, had infringed the requirements the right to a fair hearing within a reasonable time. She submitted, lastly, that her case was illustrative of a certain number of recurring problems regarding the ineffectiveness of criminal proceedings in Bulgaria.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the shortcomings in the investigation carried out into the illegal confinement and rape of the applicant, having regard in particular to the excessive delays in the criminal proceedings and the lack of investigation into certain aspects of the offences. The Court found it to be a cause of particular concern that the authorities had not deemed it necessary to examine the applicant's allegations of the possible involvement in this case of an organised criminal network of trafficking in women. The Court also observed in this case that it had already, in over 45 judgments against Bulgaria, found that the authorities had failed to comply with their obligation to carry out an effective investigation. Finding that these recurrent shortcomings disclosed the existence of a systemic problem, it considered, under **Article 46** (binding force and execution of judgments) of the Convention, that it was incumbent on Bulgaria, in cooperation with the Committee of Ministers of the Council of Europe, to decide which general measures were required in practical terms to prevent other similar violations of the Convention in the future.

**I.P. v. the Republic of Moldova (no. 33708/12)**

28 April 2015

The applicant alleged that she had been raped by a man whom she had been dating for over one year. She submitted in particular that the Moldovan authorities had failed to investigate her allegations of rape effectively and that she had had no effective criminal-law or civil remedies available for her allegation of rape or for the ensuing inadequacy of the investigation.

The Court held that there had been a procedural **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the investigation of the applicant's case had fallen short of the requirements inherent in the State's positive obligations to effectively investigate and punish all forms of rape and sexual abuse. It also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 3** in so far as the applicant's complaint about the lack of civil remedies was concerned.

### [Y. v. Slovenia \(no. 41107/10\)](#)

28 May 2015

This case concerned a young woman's complaint about the criminal proceedings brought against a family friend, whom she accused of repeatedly sexually assaulting her while she was a minor, alleging that the proceedings were excessively long and traumatic for her. The applicant submitted in particular that the investigation into her allegation of sexual assault on her and the ensuing judicial proceedings had been unreasonably delayed – having lasted seven years between the lodging of her complaint and the pronouncement of the first-instance judgment. She further complained of breaches of her personal integrity during the criminal proceedings and in particular that she had been traumatised by having been cross-examined by the defendant himself during two of the hearings in her case.

The Court held that there had been a **violation of** the State's procedural obligations under **Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding in particular that, while it was impossible to speculate whether the fact that it took more than seven years between the applicant's lodging her complaint and the rendering of the first-instance judgment had prejudiced the outcome of the proceedings, such a delay could not be reconciled with the requirements of promptness. The Court also held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Slovene authorities had failed to protect the applicant's personal integrity during the criminal investigation and trial. In particular, they should have prevented the alleged assailant from using offensive and humiliating remarks while cross-examining her during the trial. The authorities had admittedly taken a number of measures to prevent the applicant from being traumatised further. However, given the sensitivity of the matter and her young age at the time when the alleged sexual assaults had taken place, a particularly sensitive approach would have been required. As regards in particular the nature of the cross-examination by the defendant himself, the Court noted that, while the defence had to be allowed a certain leeway to challenge the applicant's credibility, cross-examination should not be used as a means of intimidating or humiliating witnesses.

### [B.V. v. Belgium \(no. 61030/08\)](#)

2 May 2017

The applicant complained in particular that a full and comprehensive investigation had not been carried out and that she had not had an effective remedy by which to raise complaints of rape and indecent assault by a work colleague.

The Court held that there had been a procedural **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that the applicant's allegations were arguable and could therefore be regarded as complaints of treatment breaching Article 3 of the Convention. Accordingly, in view of the State's obligation to carry out an effective investigation, the authorities should, as soon as she had lodged her complaint, have made prompt use of all the available opportunities to establish the facts and, as appropriate, the circumstances surrounding the alleged acts of rape and indecent assault. The investigation could therefore not, in such circumstances, be said to have been serious and thorough.

### [E.B. v. Romania \(no. 49089/10\)](#)

19 March 2019 (Committee judgment)

The applicant complained that the Romanian authorities had failed to investigate her allegation of rape properly and had breached their duty to provide effective legal protection against sexual abuse. She submitted that the authorities had also failed to protect her as a victim of crime as she had not had legal assistance or counselling and had been exposed to trauma which had violated her personal integrity during the criminal proceedings.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) **and of Article 8** (right to respect for private life) of

the Convention in the applicant's case. It found in particular that the Romanian authorities had failed to carry out a proper investigation and had overly emphasised the fact that the applicant had not resisted her alleged attacker. In addition, owing to her slight intellectual incapacity, her case had required a context-sensitive investigation, but there had not been one. The Court also considered that the authorities' approach had undermined the applicant's rights as a victim of violence, had deprived domestic law of its purpose of effectively punishing and prosecuting sexual offences, and had raised doubts about the system put in place by the Romanian State under its international obligations.

### **E.G. v. the Republic of Moldova (no. 37882/13)**

13 April 2021

This case concerned a sexual assault on the applicant, and in particular the failure to enforce the sentence imposed on one of her three attackers. The offender in question had been granted an amnesty while the authorities were still looking for him and he had never served his sentence. The benefit of this amnesty had subsequently been annulled. However, the period of about one year during which he had benefited from the amnesty had enabled him to leave the country, shortly before the last annulment. The applicant alleged that the State had not fulfilled its positive obligations to ensure the effective enforcement of the sentence imposed on her third attacker.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) and a **violation of Article 8** (right to respect for private life) of the Convention. It considered in particular that the sexual assault on the applicant had constituted a serious breach of her right to protection from bodily harm and mental distress. In the applicant's case, the Court found that the measures taken by the State for the enforcement of the third offender's sentence had not been sufficient in the light of its obligation to enforce criminal sentences handed down against the perpetrators of sexual assaults. The granting of an amnesty to the offender and the authorities' failure to enforce his sentence had been incompatible with the positive obligations of the Moldovan State under Articles 3 and 8 of the Convention.

### **J.L. c. Italie (n° 5671/16)**

27 May 2021

This case concerned criminal proceedings against seven men who had been charged with the gang rape of the applicant and had been acquitted by the Italian courts. The applicant complained in particular that the national authorities had failed to protect her right to respect for her private life and for her personal integrity in the context of the criminal proceedings.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It found in particular that the applicant's rights and interests under Article 8 had not been adequately protected, given the wording of the Court of Appeal's judgment. In particular, the national authorities had not protected the applicant from secondary victimisation throughout the entire proceedings, in which the wording of the judgment played a very important role, especially in view of its public character. Among other points, the Court considered the comments regarding the applicant's bisexuality, her relationships and casual sexual relations prior to the events in question to have been unjustified. It found that the language and arguments used by the court of appeal conveyed prejudices existing in Italian society regarding the role of women and were likely to be an obstacle to providing effective protection for the rights of victims of gender-based violence, in spite of a satisfactory legislative framework. The Court was convinced that criminal proceedings and sanctions played a crucial role in the institutional response to gender-based violence and in combatting gender inequality. It was therefore essential that the judicial authorities avoided reproducing sexist stereotypes in court decisions, playing down gender-based violence and exposing women to secondary victimisation by making guilt-inducing and judgmental comments that were capable of discouraging victims' trust in the justice system.

### **J.I. v. Croatia (no. 35898/16)**

8 September 2022

This case concerned a rape victim's complaint that the authorities had not taken seriously her allegation that her rapist – her father – had threatened to kill her during prison leave. The applicant alleged in particular that the authorities had failed to protect her from her rapist's intimidation and repeat victimisation<sup>3</sup> and to effectively investigate his death threats. She also submitted that her allegations had not been taken seriously because of her Roma ethnicity.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in the applicant's case because of the lack of an effective investigation into her complaint. It found in particular that even though the applicant had informed the police on three occasions of a serious threat to her life by her rapist, they had never even commenced criminal enquiries, let alone opened an investigation. The Court also observed that the authorities had been well aware that the applicant was particularly vulnerable as a Roma woman and victim of serious sexual offences, and found that they should therefore have reacted promptly and efficiently to protect her from her rapist's threat being carried out as well as from intimidation, retaliation and repeat victimisation.

### **Vučković v. Croatia**

12 December 2023

This case concerned the sexual assaults that the applicant, a nurse, suffered at the hands of an ambulance driver colleague while working shifts together. Her assailant was sentenced to 10 months' imprisonment, but that sentence was commuted to community service on appeal. The applicant complained of the commuting of the sentence of her co-worker, arguing that it had been disproportionately lenient given the seriousness of the offences committed.

The Court held that there had been a **violation of Articles 3** (prohibition of inhuman and degrading treatment) **and 8** (right to respect for private a life) of the Convention, finding that the Croatian State had not dealt appropriately with the repeated sexual violence that the applicant had been subjected to in her workplace. In particular, the Court found concerning that the appellate court had chosen to replace the prison sentence with community service without giving adequate reasons or considering in any way the interests of the victim. Such an approach suggested that the Croatian courts were lenient in punishing violence against women.

### **X v. Greece (no. 38588/21)**

13 February 2024<sup>4</sup>

The applicant alleged that the Greek authorities had not carried out an effective investigation into her accusation that she was raped by a hotel bartender in September 2019 when she was 18 years old and on holiday with her mother, and that the criminal proceedings had fallen short of the required standards. She claimed that the authorities had breached their duty to provide effective legal protection and to protect her as a victim of gender-based violence.

The Court held that there had been a **violation** of the procedural limb of **Article 3** (prohibition of inhuman or degrading treatment) of the Convention and a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of the applicant. Without expressing an opinion as to the guilt of the accused, it found that the Greek authorities had not given enough careful scrutiny to the case to have properly fulfilled their duties ("positive obligations") under the Convention.

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<sup>3</sup> A legal term meaning "a situation when the same person suffers from more than one criminal incident over a specific period of time" (Council of Europe's Committee of Ministers [Recommendation Rec\(2006\)8](#) on assistance to crime victims).

<sup>4</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

## Risk of ill-treatment in case of expulsion

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### Female genital mutilation

#### [Collins and Akaziebie v. Sweden](#)

8 March 2007 (decision on the admissibility)

The applicants, Nigerian nationals, are mother and daughter. They alleged that they would be subjected to female genital mutilation if they were returned to Nigeria, in violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. The Swedish Migration Board rejected their applications for asylum, refugee status or a residence permit, stating, inter alia, that female genital mutilation was prohibited by law in Nigeria and that this prohibition was observed in at least six Nigerian states. Thus, if the applicants returned to one of those states it would be unlikely that they would be forced to undergo female genital mutilation. The applicants appealed unsuccessfully, maintaining that the practice of female genital mutilation persisted despite the law against it and had never been prosecuted or punished.

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that the applicants had failed to substantiate that they would face a real and concrete risk of being subjected to female genital mutilation upon returning to Nigeria. It was not in dispute that subjecting a woman to female genital mutilation amounted to ill-treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention. Nor was it in dispute that women in Nigeria had traditionally been subjected to female genital mutilation and to some extent still were. However, several states in Nigeria had prohibited female genital mutilation by law, including the state where the applicants came from. Furthermore, while pregnant, the first applicant had not chosen to go to another state within Nigeria or to a neighbouring country, in which she could still have received help and support from her own family. Instead she had managed to obtain the necessary practical and financial means to travel to Sweden, having thus shown a considerable amount of strength and independence. Viewed in this light, it was difficult to see why she could not protect her daughter from being subjected to female genital mutilation, if not in her home state, then at least in one of the other states in Nigeria where female genital mutilation was prohibited by law and/or less widespread.

#### [Izevbekhai v. Ireland](#)

17 May 2011 (decision on the admissibility)

The applicant and her two daughters claimed the girls risk female genital mutilation if the family was returned to Nigeria. They alleged that the mother's eldest daughter died aged one from profuse bleeding after female genital mutilation was performed by an "elder". The family left Nigeria for Ireland in the face of pressure from the father's family to perform female genital mutilation on the two younger girls. Their request for asylum was unsuccessful.

The Court declared the application **inadmissible** as being manifestly ill-founded. It found in particular that there were strong reasons to doubt the claims made concerning the birth and death of the eldest daughter. The family was also in a financially and socially privileged position in Nigeria. The first applicant was an educated professional and her husband and parents were against female genital mutilation. No attempt was made by her or her husband to report any issue concerning their daughters and female genital mutilation to the police, to seek help or to relocate to northern Nigeria, where the rate of female genital mutilation was significantly lower or rare. The Court therefore considered that she and her husband could protect the daughters from female genital mutilation if returned to Nigeria.

#### [Omeredo v. Austria](#)

20 September 2011 (decision on the admissibility)

The applicant, born in 1973, fled Nigeria in 2003 to avoid female genital mutilation. Her sister had already died of the consequences and she alleged there was a risk villagers

would kill her if she refused and that her mother had told her she must co-operate. Her request for asylum was unsuccessful.

The Court declared the case **inadmissible** as being manifestly ill-founded. It was not in dispute that subjecting any person, child or adult, to female genital mutilation would amount to ill-treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention. The Court noted, however, that while the domestic authorities had found that the applicant's fear of being forced to undergo female genital mutilation in Nigeria was well-founded they considered that she disposed of an internal flight alternative within the country. The Court therefore had to assess the applicant's personal situation in Nigeria. In this respect it found that, given her education and working experience as a seamstress, there was reason to believe that the applicant would be able to build up her life in Nigeria without having to rely on her family's support.

### **Sow v. Belgium**

19 January 2016

The applicant complained that she risked being subjected to a further excision procedure in the event of her removal to Guinea, her country of origin, and that no effective remedy had been available to her in respect of her complaint.

The Court held that there would be **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in the event of the applicant's removal to her country of origin, finding that she had failed to substantiate a real risk of being subjected to a further excision procedure in the event of her removal to Guinea. The Court also held that there had been **no violation of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 3**.

### **Bangura v. Belgium**

14 June 2016 (strike-out decision)

The applicant in this case alleged that she risked female genital mutilation if returned to Sierra Leone, her country of origin.

Noting in particular that in January 2016 the applicant had received a residence permit in the context of her application for family reunion with her spouse and that there was therefore no risk for the time being and for a considerable period of time that she would be removed to Sierra Leone, the Court, in accordance with Article 37 (striking out applications) of the Convention, considered that it was no longer justified to continue the examination of the application and **decided to strike the case out of the list**.

## Honour crime and ill-treatment by the family

### **A.A. and Others v. Sweden (no. 14499/09)**

28 June 2012

The applicants, Yemeni nationals (a mother and her five children) living in Sweden pending enforcement of a deportation order, alleged that, if deported to Yemen, they would face a real risk of being the victims of an honour crime as they had disobeyed their husband/father and had left their country without his permission. The Swedish courts considered that the applicant family's problems mainly concerned the personal sphere and had been related to financial matters, rather than to honour.

The Court found that substantial grounds for believing that the applicants would be exposed to a real risk of being killed or subjected to inhuman or degrading treatment if deported to Yemen had not been shown in the present case and therefore held that **implementation of the deportation order** against the applicants **would not give rise to a violation of Articles 2** (right to life) **or 3** (prohibition of inhuman and degrading treatment) of the Convention.

### **R.D. v. France (no. 34648/14)**

16 June 2016

This case concerned the procedure for the applicant's deportation to Guinea, her country of origin. Married to a Christian, she had endured all sorts of violent reprisals on the part of her Muslim father and brothers. The applicant alleged in particular that enforcement of her deportation to Guinea would expose her to a risk of ill-treatment.

The Court held that the applicant's **deportation** to Guinea **would constitute a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, on account of the serious risk of her being subjected to treatment contrary to this provision. It noted in particular that the applicant had produced documents which content was such as to make the alleged risk credible and that the treatment she feared to undergo originated from the actions of her family. Moreover, the applicant's account, which the French Government had not questioned on this point, established that the family had the means to find her, even if she moved outside Conakry. Finally, the Court found it unlikely that the passage of time had diminished the risk of ill-treatment in the applicant's case.

### Risk of trafficking or re-trafficking

#### **L.R. v. the United Kingdom (no. 49113/09)**

14 June 2011 (strike-out decision)

The applicant claimed that she had been trafficked to the United Kingdom from Italy by an Albanian man who forced her into prostitution in a night club collecting all the money which that brought. She escaped and started living in an undisclosed shelter. She submitted that removing her from the United Kingdom to Albania would expose her to the risk, in particular, of ill-treatment.

The Court **decided to strike the case out of the list**, in accordance with Article 37 (striking out applications) of the Convention, as it found that the applicant and her daughter had been granted refugee status in the United Kingdom and that there was no longer any risk that they would be removed to Albania. The Government had also undertaken to pay to the applicant a sum for the legal costs incurred by her.

#### **V.F. v. France (no. 7196/10)**

29 November 2011 (decision on the admissibility)

This case concerned the proceedings for the applicant's deportation to Nigeria, her country of origin. The applicant alleged in particular that if she were expelled to Nigeria she would be at risk of being forced back into the prostitution ring from which she had escaped and being subjected to reprisals by those concerned, and that the Nigerian authorities would be unable to protect her. In her view, the French authorities were under a duty not to expel potential victims of trafficking.

The Court declared the application **inadmissible** as being manifestly ill-founded. While it was well aware of the scale of the trafficking of Nigerian women in France and the difficulties experienced by these women in reporting to the authorities with a view to obtaining protection, it nevertheless considered, in particular, that the information provided by the applicant in this case was not sufficient to prove that the police knew or should have known when they made the order for her deportation that the applicant was the victim of a human trafficking network. As to the risk that the applicant would be forced back into a prostitution ring in Nigeria, the Court observed that, while the Nigerian legislation on preventing prostitution and combating such networks had not fully achieved its aims, considerable progress had nevertheless been made and it was likely that the applicant would receive assistance on her return.

See also: **Idemugia v. France**, decision on the admissibility of 27 March 2012.

### **F.A. v. the United Kingdom (no. 20658/11)**

10 September 2013 (decision on the admissibility)

The applicant, a Ghanaian national, alleged that she had been trafficked to the United Kingdom and forced into prostitution. She complained in particular that her removal to Ghana would put her at risk of falling into the hands of her former traffickers or into the hands of new traffickers. She further alleged that, as she had contracted HIV in the United Kingdom as a direct result of trafficking and sexual exploitation, the State was under a positive obligation to allow her to remain in the United Kingdom to access the necessary medical treatment.

The Court declared the applicant's complaints under Articles 3 (prohibition of inhuman or degrading treatment) and 4 (prohibition of slavery and forced labour) **inadmissible**. It noted in particular that the applicant could have raised all of her Convention complaints in an appeal to the Upper Tribunal. By not applying for permission to appeal to the Upper Tribunal, she had failed to meet the requirements of Article 35 § 1 (admissibility criteria) of the Convention.

### **O.G.O. v. the United Kingdom (no. 13950/12)**

18 February 2014 (strike-out decision)

The applicant, a Nigerian national, who claimed to be a victim of human trafficking, complained that her expulsion to Nigeria would expose her to a real risk of re-trafficking. The Court **decided to strike the application out of its list of cases**, in accordance with Article 37 (striking out applications) of the Convention, noting that the applicant was no longer at risk of being removed as she had been granted refugee status and an indefinite leave to remain in the United Kingdom. Moreover, the United Kingdom authorities had accepted that she had been a victim of trafficking.

## Social exclusion

### **N. v. Sweden (no. 23505/09)**

20 July 2010

The applicant, an Afghan national having an extra-marital affair with a man in Sweden, maintained that she risked social exclusion, long imprisonment or even death if returned to Afghanistan. Her applications for asylum were unsuccessful.

The Court found that the applicant's **deportation** from Sweden to Afghanistan **would constitute a violation of Article 3** (prohibition of inhuman or degrading treatment or punishment) of the Convention. It noted that women were at particular risk of ill-treatment in Afghanistan if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. The mere fact that the applicant had lived in Sweden might well be perceived as her having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband, and did not want to live with him any longer, might result in serious life-threatening repercussions. The Shiite Personal Status Act of April 2009 required women to obey their husbands' sexual demands and not to leave home without permission. Reports had further shown that around 80 % of Afghani women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male "tutor", faced continuous severe limitations on having a personal or professional life, and were doomed to social exclusion. It was clear that they also often lacked the means for survival if not protected by a male relative. In the special circumstances of the present case, there were substantial grounds for believing that if deported to Afghanistan, the applicant would face various cumulative risks of reprisals from her husband, his family, her own family and from the Afghan society which fell under Article 3 of the Convention.

### **W.H. v. Sweden (no. 49341/10)**

8 April 2015 (Grand Chamber)

This case concerned an asylum seeker's threatened expulsion from Sweden to Iraq, where she alleged she would be at risk of ill-treatment as a single woman of Mandaean

denomination, a vulnerable ethnic/religious minority. The applicant submitted that, a divorcee belonging to a small, vulnerable ethnic/religious minority, she would be at real risk of inhuman and degrading treatment if returned to Iraq. She alleged in particular that, without a male network or any remaining relatives in Iraq, she would be at risk of persecution, assault, rape, forced conversion to another religion and forced marriage.

The Court observed that the applicant had been granted a residence permit following a decision by the Migration Board of 15 October 2014. The Board found that the prevailing general security situation in Baghdad, combined with the fact that the applicant is a woman belonging to a religious minority and lacking any social network in Iraq, meant that she was in need of protection in Sweden. Following this decision the applicant submitted that she no longer wished to pursue her application before the European Court. The Court therefore considered that the matter had been resolved at national level. Nor did it find any special circumstances regarding respect for human rights as defined in the European Convention and its Protocols which required the Court to continue examining her case. It was therefore **appropriate to strike the application out of the Court’s list of cases**.

### **R.H. v. Sweden (no. 4601/14)**

10 September 2015

The applicant, a Somalian national, alleged that, if removed to Mogadishu, she would face a real risk of either being killed by her uncles for refusing to agree to a forced marriage before fleeing Somalia or forced to marry a man against her will again upon her return. She further claimed that the general situation in Somalia for women was very difficult, in particular for those – such as herself – who lacked a male network and were therefore all the more vulnerable.

The Court held that the applicant’s **deportation** to Mogadishu **would not constitute a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. While not overlooking the difficult situation of women in Somalia, including Mogadishu, the Court could not find on the particular facts of the applicant’s case that she would face a real risk of treatment contrary to Article 3 if returned to that city. There had been significant inconsistencies in her submissions and the claims concerning her personal experiences and the dangers she faced upon a return had not been plausible. There was also no basis for finding that she would return to Mogadishu as a lone woman with the risks that such a situation entailed. Instead, she had to be considered to have access to both family support and a male protection network. Nor had it been shown that it would have to resort to living in a camp for refugees and displaced persons.

## Trafficking in human beings<sup>5</sup>

### **Rantsev v. Cyprus and Russia**<sup>6</sup>

7 January 2010

The applicant was the father of a young woman who died in Cyprus where she had gone to work in March 2001. He complained that the Cypriot police had not done everything possible to protect his daughter from trafficking while she had been alive and to punish those responsible for her death. He also complained about the failure of the Russian authorities to investigate his daughter’s trafficking and subsequent death and to take steps to protect her from the risk of trafficking.

The Court noted that, like slavery, trafficking in human beings, by its very nature and aim of exploitation, was based on the exercise of powers attaching to the right of ownership; it treated human beings as commodities to be bought and sold and put to forced labour; it implied close surveillance of the activities of victims, whose movements were often circumscribed; and it involved the use of violence and threats against victims. Accordingly the Court held that trafficking itself was prohibited by Article 4 (prohibition

<sup>5</sup>. See also the factsheet on “[Trafficking in human beings](#)”.

<sup>6</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

of slavery and forced labour) of the Convention. It concluded that there had been a **violation** by Cyprus of its **positive obligations arising under Article 4** of the Convention on two counts: first, its failure to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of artiste visas, and, second, the failure of the police to take operational measures to protect the applicant's daughter from trafficking, despite circumstances which had given rise to a credible suspicion that she might have been a victim of trafficking. The Court held that there had also been a violation of Article 4 of the Convention by Russia on account of its failure to investigate how and where the applicant's daughter had been recruited and, in particular, to take steps to identify those involved in her recruitment or the methods of recruitment used.

The Court further held that there had been a **violation** by Cyprus of **Article 2** (right to life) of the Convention, as a result of the failure of the Cypriot authorities to investigate effectively the applicant's daughter's death.

### **L.E. v. Greece (no. 71545/12)**

21 January 2016

This case concerned a complaint by a Nigerian national who was forced into prostitution in Greece. Officially recognised as a victim of human trafficking for the purpose of sexual exploitation, the applicant had nonetheless been required to wait more than nine months after informing the authorities of her situation before the justice system granted her that status.

The Court held that there had been a **violation of Article 4** (prohibition of slavery and forced labour) of the Convention. It found in particular that the effectiveness of the preliminary inquiry and subsequent investigation of the case had been compromised by a number of shortcomings. With regard to the administrative and judicial proceedings, the Court also noted multiple delays and failings with regard to the Greek State's procedural obligations. In this case the Court also held that there had been a **violation of Article 6 § 1** (right to a fair trial within a reasonable time) of the Convention, finding that the length of the proceedings in question had been excessive for one level of jurisdiction and did not meet the "reasonable time" requirement. Lastly, the Court held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention, on account of the absence in domestic law of a remedy by which the applicant could have enforced her right to a hearing within a reasonable time.

### **J. and Others v. Austria (no. 58216/12)**

17 January 2017

This case concerned the Austrian authorities' investigation into an allegation of human trafficking. The applicants, two Filipino nationals, who had gone to work as maids or au pairs in the United Arab Emirates, alleged that their employers had taken their passports away from them and exploited them. They claimed that this treatment had continued during a short stay in Vienna where their employers had taken them and where they had eventually managed to escape. Following a criminal complaint filed by the applicants against their employers in Austria, the authorities found that they did not have jurisdiction over the alleged offences committed abroad and decided to discontinue the investigation into the applicants' case concerning the events in Austria. The applicants maintained that they had been subjected to forced labour and human trafficking, and that the Austrian authorities had failed to carry out an effective and exhaustive investigation into their allegations. They argued in particular that what had happened to them in Austria could not be viewed in isolation, and that the Austrian authorities had a duty under international law to investigate also those events which had occurred abroad. The Court, finding that the Austrian authorities had complied with their duty to protect the applicants as (potential) victims of human trafficking, held that there had been **no violation of Article 4** (prohibition of forced labour) and **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It notably noted that there had been no obligation under the Convention to investigate the applicants' recruitment in the Philippines or their alleged exploitation in the United Arab

Emirates, as States are not required under Article 4 of the Convention to provide for universal jurisdiction over trafficking offences committed abroad. Turning to the events in Austria, the Court concluded that the authorities had taken all steps which could have reasonably been expected in the situation. The applicants, supported by a government-funded NGO, had been interviewed by specially trained police officers, had been granted residence and work permits in order to regularise their stay in Austria, and a personal data disclosure ban had been imposed for their protection. Moreover, the investigation into the applicants' allegations about their stay in Vienna had been sufficient and the authorities' resulting assessment, given the facts of the case and the evidence available, had been reasonable. Any further steps in the case – such as confronting the applicants' employers – would not have had any reasonable prospect of success, as no mutual legal assistance agreement existed between Austria and the United Arab Emirates, and as the applicants had only turned to the police approximately one year after the events in question, when their employers had long left the country.

### **S.M. v. Croatia (no. 60561/14)**

25 June 2020 (Grand Chamber)

This case concerned a Croatian national's complaint of human trafficking and forced prostitution. The applicant complained in particular of an inadequate official procedural response to her allegations.

The Court held that there had been a **violation of Article 4** (prohibition of forced labour) of the Convention on account of the shortcomings in the Croatian authorities' investigation into the applicant's allegation of forced prostitution. Taking the opportunity via the applicant's case to clarify its case-law on human trafficking for the purpose of exploitation of prostitution, the Court pointed out in particular that it relied on the definition under international law to decide whether it could characterise conduct or a situation as human trafficking under Article 4 of the Convention and therefore whether that provision could be applied in the particular circumstances of a case. The Court also clarified that the notion of "forced or compulsory labour" under Article 4 of the Convention aimed to protect against instances of serious exploitation, such as forced prostitution, irrespective of whether, in the particular circumstances of a case, they were related to the specific human trafficking context. It found that Article 4 could be applied in the applicant's case as certain characteristics of trafficking and forced prostitution had arguably been present, such as abuse of power over a vulnerable individual, coercion, deception and harbouring. In particular, the applicant's alleged abuser was a policeman, while she had been in public care from the age of 10, and he had first contacted her by Facebook, leading her to believe that he would help her to find a job. Instead, he had arranged for her to provide sexual services, either in the flat he had rented or by driving her to meet clients. That situation meant that the prosecuting authorities had been under an obligation to investigate the applicant's allegations. However, they had not followed all obvious lines of enquiry, notably they had not interviewed all possible witnesses, and therefore in the court proceedings it had been a question of the applicant's word against her alleged abuser's. Such shortcomings had fundamentally undermined the domestic authorities' ability to determine the true nature of the relationship between the applicant and her alleged abuser and whether she had indeed been exploited by him.

## Violence by private individuals

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### **Sandra Janković v. Croatia**

5 March 2009

The applicant complained in particular that, despite her attempts to have her allegations of being attacked and threatened by her flatmates investigated, the authorities had failed to ensure her adequate protection.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, on account of the failure by the Croatian authorities to

adequately protect the applicant from an attack on her physical integrity and of the manner in which the national criminal-law mechanisms had been implemented, contrary to the State's positive obligations under Article 8.

### **Ebcin v. Turkey**

1 February 2011

The applicant, a teacher by profession, was attacked in the street, on her way to work, by two individuals who threw acid in her face. She was unable to work for a year and a half, and underwent three years of therapy. She still suffers from serious physical after-effects. She alleged in particular that the authorities had failed in their obligation to protect her safety and promptly punish her aggressors.

The Court held that there had been a **violation of Articles 3** (prohibition of inhuman or degrading treatment) **and 8** (right to respect for private life) of the Convention under their procedural limb, finding that the administrative and criminal proceedings had failed to provide adequate protection against a serious act of violence.

### **Irina Smirnova v. Ukraine**

13 October 2016

This case concerned in particular the systematic abuse carried out against the applicant by a criminal group, and the alleged failure of the Ukrainian authorities to prevent it.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted in particular that the repeated and premeditated nature of the verbal attacks to which the applicant was subjected coupled with the incidents of physical violence by a group of men against a single senior woman reached the threshold of severity required to come within the ambit of Article 3 and engaged the State's positive duty to set in motion the protective legislative and administrative framework. Although the principal offenders were prosecuted and sentenced to significant prison terms, it nonetheless took the Ukrainian authorities over twelve years to resolve the matter. In view of the extreme delays in instituting and conducting the criminal proceedings, the Court found that Ukraine had failed to discharge its positive obligation under Article 3 of the Convention.

### **Tërshana v. Albania**

4 August 2020

This case concerned an acid attack on the applicant in 2009. The applicant suspected that her former husband, whom she accused of domestic violence, was behind the attack. She alleged in particular that the Albanian authorities had failed to take measures to protect her from the acid attack and to conduct a prompt and effective investigation for the identification, prosecution and punishment of her assailant.

The Court held that there had been **no violation of Article 2** (right to life) of the Convention in its substantial aspect, finding that the Albanian State could not be held responsible for the attack. It noted in particular that, if the State had been aware of a risk to the applicant, it would have been its duty to take preventive measures. In the present case, however, the national authorities had only found out about the violent behaviour of the applicant's former husband after the incident. On the other hand, the Court held that there had been a **violation of Article 2** in its procedural aspect, finding that the authorities' response to the acid attack had been ineffective. In this respect, it noted in particular that the investigation into the attack, which had had the hallmarks of gender-based violence and therefore should have incited the authorities to react with special diligence, had not even been able to identify the substance thrown over her. The investigation was moreover stayed in 2010, without identifying the person responsible, and the applicant had not been given any information about its progress since, despite her repeated enquiries.

### **Sabalić v. Croatia**

14 January 2021

The applicant, who had been attacked in a bar by a man to whom she had disclosed her homosexual orientation, complained in particular of the lack of an appropriate procedural response of the domestic authorities to an act of violence by a private party motivated by her sexual orientation.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) **in conjunction with Article 14** (prohibition of discrimination) of the Convention. It found in particular that the minor-offence proceedings against the applicant's aggressor had not addressed the hate-crime element of the offence and had resulted in a derisory fine. Those shortcomings had amounted to a fundamental defect in the proceedings. It would therefore have been justified for the authorities to terminate or annul the minor-offence proceedings and to re-examine the case, instead of them rejecting the applicant's criminal complaint on grounds of double jeopardy.

See also:

### **Pulfer v. Albania**

20 November 2018

## Further reading

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Council of Europe webpage on "**Violence against women and domestic violence**".

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