



Implementing judgments
of the European Court of Human Rights
concerning
domestic and gender-based violence

This report is funded by:



THE GOVERNMENT
OF THE GRAND DUCHY OF LUXEMBOURG
Ministry of Foreign and European Affairs

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Photo front cover page: Motortion

Authors: Ioana Iliescu and George Stafford,
with additional material from Anastasiia Zakharova

Design: Alain Fritsch - www.alainfritsch.fr

First printing edition: 2022

Texts in red are active links in the PDF version.

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Executive Summary

- Judgments of the European Court of Human Rights have an invaluable role in promoting reforms to combat and prevent domestic and gender-based violence.
- There are 17 leading judgments of the European Court of Human Rights concerning domestic and gender-based violence, which are pending implementation. Each unimplemented leading judgment represents a structural and/or serious problem, which has not been resolved.
- For the 17 leading judgments pending implementation, the progress is as follows:
 - » Two recent judgments with little government engagement
 - » Five judgments with little to no progress
 - » Five judgments with limited progress
 - » Five judgments with noteworthy progress
- The key to the effective implementation of ECtHR judgments is the pro-active and good faith engagement of all of the key stakeholders. If national authorities, the Council of Europe and civil society all take an active role in implementing these important rulings, judgments regarding individuals can be turned into rights for all.

Introduction

Domestic and gender-based violence – be it physical, sexual, psychological, or financial – is a widespread problem, common across the Council of Europe region and beyond. Globally, 30% of women aged 15 and older have been subjected to physical and/or sexual intimate partner violence, non-partner sexual violence, or both at least once in their lifetime.¹

Between 2004 and the end of January 2022, the European Court of Human Rights (ECtHR) has found a human rights violation in 50² applications concerning domestic and gender-based violence, finding in favor of applicants in 16 different Council of Europe states. Whilst 15 of the 50 judgments pre-date the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention)³, the other 35 were delivered following the coming into force of the Convention. These judgments highlight violations of the right to life, the prohibition of inhuman and degrading treatment, the right to respect of one's private life and the prohibition of

¹ UN Women Facts and Figures:

<https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>.

² This figure includes both leading cases, as well as repetitive cases, and pending judgments, as well as closed cases. The execution of some of these cases has been closed by the Committee of Ministers, while some are still pending implementation. Similar judgments against one country are grouped together for the purpose of examination under a 'leading case'.

³ The Council of Europe Convention on preventing and combating violence against women and domestic violence, better known as the Istanbul Convention, is a human rights treaty of the Council of Europe against violence against women and domestic violence, which was opened for signature on 11 May 2011, in Istanbul, Turkey. The Convention entered into force on 1 August 2014; it is available here <https://www.coe.int/en/web/gender-matters/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence>.

discrimination. This strong line of jurisprudence is still developing, but already reflects the widespread and systemic failures of national authorities in this area.

ECtHR judgments can have an invaluable role in pushing governments to carry out wide ranging reforms to combat and prevent domestic and gender-based violence. However, the judgments are only the beginning of the road to justice – they require implementation at national level in order for rights to become a reality. Implementation of human rights judgments requires individual measures (which provide justice for the victim(s) in the case), as well as general measures (changes to laws and/or practices which would prevent new similar violations from recurring). Reforms to implement general measures are essential in order to address the factors contributing to the perpetuation of domestic and gender-based violence.

Of the 50 judgments of the European Court of Human Rights finding a violation, 27 have been classified as leading. **Leading judgments** are those which reveal new structural and/or systemic problems that require new general measures reforms in order to prevent the same violation from recurring. In other words, each leading case represents an ongoing problem with domestic or gender-based violence in the relevant country.

17 Number of leading ECtHR judgments pending implementation

At the time of writing, 17 violation leading judgments⁴ concerning domestic and gender-based violence are still pending full and effective implementation. These concern eleven states: Albania⁵, Bulgaria⁶, Georgia⁷, Estonia⁸, Hungary⁹, Italy¹⁰, Republic of Moldova¹¹, Romania¹², Russia¹³, Ukraine¹⁴ and Turkey¹⁵. Reforms in these states have the capacity to prevent or diminish the violence experienced by tens or hundreds of thousands of victims.

In this report, we present a comprehensive analysis of the leading judgments pending implementation.

The first section of the report discusses how ECtHR judgments can help combat domestic and gen-

⁴ 17 leading judgments, which also include 18 repetitive judgments.

⁵ *Tershana v. Albania*, available at: <https://hudoc.exec.coe.int/eng?i=004-56331>.

⁶ *S.Z. v. Bulgaria*, available at: <https://hudoc.exec.coe.int/eng?i=004-1934>.

⁷ *Tkheldize v. George*, available at: <https://hudoc.exec.coe.int/eng?i=004-58703>.

⁸ *R.B. v. Estonia*, available at: <https://hudoc.exec.coe.int/eng?i=004-58557>.

⁹ *Kaluczka v. Hungary*, available at: <https://hudoc.exec.coe.int/eng?i=004-10977>.

¹⁰ *Talpis v. Italy*, available at <https://hudoc.exec.coe.int/eng?i=004-47825> and *J.L. v. Italy*, available at: <https://hudoc.exec.coe.int/eng?i=004-47825>.

¹¹ *T.M. and C.M. v. the Republic of Moldova*, available at: <https://hudoc.exec.coe.int/eng?i=004-14229>, *E.G. v. the Republic of Moldova*, available at: <https://hudoc.exec.coe.int/eng?i=004-58191> and *I.G. v. the Republic of Moldova*, available at: <https://hudoc.exec.coe.int/eng?i=004-6880>.

¹² *Balsan v. Romania*, available at <https://hudoc.exec.coe.int/eng?i=004-47601> and *M.G.C. v. Romania*, available at: <https://hudoc.exec.coe.int/eng?i=004-13219>.

¹³ *Volodina v. Russia*, available at <https://hudoc.exec.coe.int/eng?i=004-54227> and *Bopkhoyeva v. Russia*, available at <https://hudoc.echr.coe.int/eng?i=001-180849>. Although the Russian Federation ceased to be a member of the Council of Europe on 16 March 2022, it is still bound to implement judgments of the European Court of Human Rights.

¹⁴ *Levchuk v. Ukraine*, available at: <https://hudoc.exec.coe.int/eng?i=004-56503>.

¹⁵ *Opuz v. Turkey*, available at: <https://hudoc.exec.coe.int/eng?i=004-37222>.

der-based violence, explaining the ECtHR implementation process and providing a case example where progress has been achieved ([pages 5-8](#)). The following chapter provides an overall assessment of progress in all the judgments pending implementation, applying a classification system for measuring progress ([pages 9 to 12](#)). After setting out certain challenges in ECtHR implementation ([pages 13 to 16](#)), the report lists all of the leading ECtHR judgments which have found a violation in this area, summarizing assessments published by governments, civil society and the Committee of Ministers ([pages 17 to 42](#) for cases pending implementation; and [pages 43 to 46](#) for closed cases). This is followed by a chapter with a selection of best practices and recommendations as to general measures that typically need to be taken in order to prevent further violations ([pages 47 to 50](#)). The report concludes with recommendations for national authorities, the Council of Europe, and NGOs/NHRIs ([pages 51 to 52](#)). The annexes of the report offer further guidance on the structure and timing of submissions to be made by NGOs/NHRIs, potential steps for domestic advocacy, and the details of specialized NGOs already engaged in the implementation process.

Judgments do not get executed by themselves. Progress in the implementation process is only secured through joint efforts by national authorities, civil society actors, lawyers and the Committee of Ministers. The aim of this report is to support all these actors working towards the elimination of domestic and gender-based violence by providing an assessment of the progress in the implementation of these judgments. It identifies the progress made, the challenges encountered, and good practices for reforms. The report in particular highlights the crucial role that NGOs play in the implementation process and aims to further strengthen NGO involvement.

I. How Judgments of The European Court of Human Rights Can Help Combat Violence Against Women and Domestic Violence: Progress Through Dialogue

How the Implementation Process Works

Once a judgment of the European Court of Human Rights becomes final, it is transferred to the Committee of Ministers (“CM”) for supervision of its implementation. From this point onwards information about the implementation of each ECtHR judgment can be found on the [HUDOC EXEC database](#). Cases are classified either under the enhanced supervision track of the standard supervision track by the Department for the Execution of Judgments, based on the classification criteria set out under the twin-track system.¹⁶

In order for a judgment to be fully implemented, the state concerned must take two types of measures. **Individual measures** provide justice to the individual applicant(s) in the case. These often include the payment of the compensation awarded by the Strasbourg Court – and an effective investigation into what happened in the case capable of identifying and punishing the perpetrator or evicting a perpetrator from the commonly owned property¹⁷. In addition to individual measures, **general measures** are often also required. These are meant to ensure that the violation(s) identified in the judgment do not continue to affect the society as a whole. General measures often include changes to legislation, policy or judicial practice. For example, they can include the passing of legislation to apply the standards of the Istanbul Convention¹⁸; or changes to state practices, such as the creation of effective referral mechanisms or proper implementation of protection orders¹⁹.

As soon as possible after the judgment becomes final – and at the latest within six months – the respondent state is expected to provide its **Action Plan** setting out what steps it has already taken/ will take in order to fully implement the judgment. An Action Plan is an evolving document. It should be regularly updated in submissions to the CM with up-to-date information on progress in the adoption of the measures planned. It must also be revised where the measures originally planned need to be revisited in the light of new developments or in response to recommendations by the CM or discussions with the Department for the Execution of Judgments.

When all the measures described in the Action Plan and its updates have been adopted, the state makes a final update by submitting an **Action Report**, listing the measures planned and the actions taken, and **inviting the CM to end its supervision of the case**.

¹⁶ Supervision of the execution of judgments of the European Court of Human Rights: procedure and working methods for the Committee of Ministers’ Human Rights meetings, GR-H(2016)2-final, 30 March 2016 (https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806303a9).

¹⁷ For example, in *Talpis v. Italy*, the Court of Appeal concluded the criminal proceedings against the aggressor, after the Committee of Ministers invited the authorities to do so. The aggressor was sentenced in 2019 to a 20 years’ imprisonment sentence.

¹⁸ For example, in the implementation process of *Balsan v. Romania*, the authorities adopted in 2018 legislative amendments in order to harmonize Law No. 217/2003 on preventing and combating domestic violence with some of the requirements of the Istanbul Convention. Under these amendments, spouses and partners, either current or past and regardless of whether they lived together have access to the protective measures and support services.

¹⁹ For example, in the implementation process of *T.M. and C.M. v. the Republic of Moldova*, in 2018, the Regulation on police intervention for the prevention and combating of domestic violence cases was introduced; it contains methodological instructions on the manner in which cases of domestic violence should be dealt with.

During the entirety of the implementation process, NGOs, NHRIs, injured parties and their legal advisers, the Council of Europe Commissioner for Human Rights and international intergovernmental bodies²⁰, can engage with the CM judgment execution process by submitting written communications to the CM, under Rule 9 of the CM Rules. These submissions are critical for ensuring that the CM is able to make decisions based on independent and reliable information. When the CM considers that the case has been fully implemented, it will end the supervision of the case.

Implementation of ECtHR judgments which require both enacting systemic reforms and ensuring the effectiveness and positive impact of these reforms naturally requires time. What is key to ensure ongoing progress is the effective engagement of all the main stakeholders in the implementation process: the government, the Committee of Ministers, and civil society organizations, as they all have a significant role to play. The openness of government to engage in the dialogue coupled with political will to engage in reforms; the ability of NGOs working on the ground to identify shortcomings in undertaken reforms and gaps between law and practice and the guiding decisions of the Department for the Execution of Judgments and the Committee of Ministers can jointly contribute to positive and lasting advancements in implementation.

²⁰ See Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

How the implementation Process Works in Practice – a Case Example from Moldova

The [*T.M. and C.M. v. the Republic of Moldova*](#) case exemplifies how the implementation process works in practice, how national authorities, the Committee of Ministers and civil society can fulfil their roles in this process, and how NGO involvement can contribute to achieving progress by bringing forward independent information.



Background

The applicants in [*T.M. and C.M. v. the Republic of Moldova*](#) are a mother and daughter who suffered repeated physical and verbal abuse from their former husband and father, M.M. While M.M.'s threatening behavior increased exponentially and the police were aware of his violent actions, they ignored his wife's complaints and failed to take effective measures to protect her for several months.

Judgment of the European Court of Human Rights

In 2014, the ECtHR established that the Moldovan authorities had breached Article 3 of the ECHR (prohibition of ill-treatment) on account of the poor handling of the situation, and Article 14 of the ECHR (prohibition of discrimination) for the discriminatory attitude of the authorities, since their actions had the effect of repeatedly condoning domestic violence.

Implementation – Early Steps

As a matter of individual measures, the applicants were paid the just satisfaction awarded by the Court, and obtained a fresh investigation against M.M. However, the issue goes far beyond the specific case, which is only one example of the systemic issues with combating domestic violence in the country. The authorities took several steps to ensure non-repetition of similar violations, including the introduction of criminal liability for other forms of violence (psychological and economic); an extension of the definition of 'family member' to include former partners and divorced partners living separately; the introduction of emergency barring orders in cases of immediate threat and other emergencies; additional social benefits for victims; legal aid guarantees for victims; and professional training and awareness raising measures for magistrates, law enforcement and other professionals. In December 2019, [the Moldovan government requested](#) to end supervision of the implementation of the judgment.

Implementation – Ongoing Concerns

However, much remained to be done. A Moldovan NGO, the Women’s Law Centre, made three submissions to the Committee of Ministers (available [here](#), [here](#) and [here](#)) stating that the measures taken so far had had an ambivalent impact. The Women’s Law Centre demonstrated that there was still no effective protection for victims - and that the prosecution and punishment of perpetrators remained inadequate in practice. Changes to the law had resulted in fewer cases being treated as criminal, resulting in less accountability for perpetrators as the number of criminal domestic violence offences had halved. The Women’s Law Centre also pointed out that 3 out of 4 complaints by women about domestic violence were still unanswered by the authorities. Finally, the Istanbul Convention had not yet been ratified at that time.

The Committee of Ministers shared many of these concerns. In its [2020 decision](#), the CM acknowledged the considerable steps taken by the authorities, while deciding to keep the case open. It also strongly encouraged the Moldovan authorities to take steps to ratify the Istanbul Convention - and invited them to provide statistics on a number of the key problems highlighted by the Women’s Law Centre.

Further Dialogue and Progress

In 2021, both the [government](#) and the [Women’s Law Centre](#) continued to make submissions to the Council of Europe about the implementation of the case. Both sides agreed that there had been a number of steps forward, including positive changes to national legislation to improve reporting mechanisms, referrals to specialized services, and emergency restraining orders, as well as improved electronic monitoring of perpetrators. Meanwhile, the NGO highlighted a number of important statistics, demonstrating that the reforms had not yet addressed key structural problems. For example, there is still a notable difference between the low prosecution rates and the high number of complaints, which the Women’s Law Centre attributes to the classification of certain domestic violence acts as contraventions rather than crimes.

Monitoring of the implementation of the case continues to date, leading to incremental progress with the benefit of the government’s reporting on progress, the monitoring submissions of civil society, and the supervision of the Council of Europe’s Committee of Ministers.

The next time that the Committee of Ministers debates the case, it will be able to congratulate the Moldovan government on a key development that the CM had requested for implementation – [the ratification of the Istanbul Convention](#).



The story of the *T.M. and C.M.* case demonstrates the huge potential of the process for the implementation of ECtHR judgments; the contribution it can make to promoting reforms to combat domestic and gender-based violence; the need for multiple actors to engage in the process and the role of NGO reporting, in order to ensure that implementation is effective.

II. Overview of the Implementation of Domestic and Gender-Based Violence cases

The case law of the European Court of Human Rights in this area identifies a wide range of systemic issues both as a matter of law and practice. The judgments address failures by authorities to enact restraining orders, carry out preventative measures, and conduct effective investigations. There are also rulings concerning the manner in which eviction claims and the risk of violence are assessed; and on cyber-violence and stalking.

EIN has identified 17 leading judgments pending implementation, concerning domestic and gender-based violence (see *Section IV: Cases pending implementation*). Given that leading judgments are those which the Council of Europe has classified as representing a new structural or systemic problem, each of these 17 leading judgments represent an ongoing problem with combating domestic or gender-based violence, likely to affect tens or hundreds of thousands of people across Europe.

Classification

EIN has carried out an analysis of each of these pending leading judgments, to assess the extent to which they are being implemented. The judgments have been assessed as falling into one of the following categories:

- **Noteworthy Progress:** reforms to laws and practices have meant that substantial steps forward have been taken to implement the judgment.

In cases which have achieved noteworthy progress, the Committee of Ministers has acknowledged and welcomed wide-ranging measures which address the core issue of the judgment, and/or civil society has also expressed recognition of the efforts and progress made by the authorities. Systematic progress in addressing domestic violence achieved before the judgment was delivered was also taken into consideration. Some of these concrete steps have been taken in direct response to recommendations made by civil society and the Committee of Ministers. Furthermore, in these cases the legislative framework is adequate or close to the standards of the Istanbul Convention. However, the impact of these wide-ranging measures has either not been measured yet, or it has not yet had the desired impact – and further steps are required.

- **Limited Progress:** reforms to laws and practices have meant that some steps forward have been taken to implement the judgment.

In cases with limited progress, the authorities have taken some steps forward, but significant measures are still required to address the core issue in the judgment. This category includes cases where, despite notable reforms, the authorities have reported positive developments in law and/or practice, which have been strongly questioned by civil society with appropriate evidence. It also includes situations where authorities have not yet taken measures to address the core issues in the case, or disagreed about the necessity of measures proposed by civil society which address the core issue, despite not having collected data essential to make such an assessment. Finally, there is the category also includes dormant cases, in which the authorities have not fulfilled their reporting obligations to the Committee of Ministers for an extended period.

- **Recent Cases with Little Government Engagement:**

For these cases, the authorities have either not provided any information yet, or have provided information regarding individual measures only. However, as they have become final for less than a year, it would be premature to assess general measures at such an early stage in the implementation process.

- **Little or No Progress:** there have not yet been reforms to laws and practices which amount to a meaningful step forward to implementing the judgment.

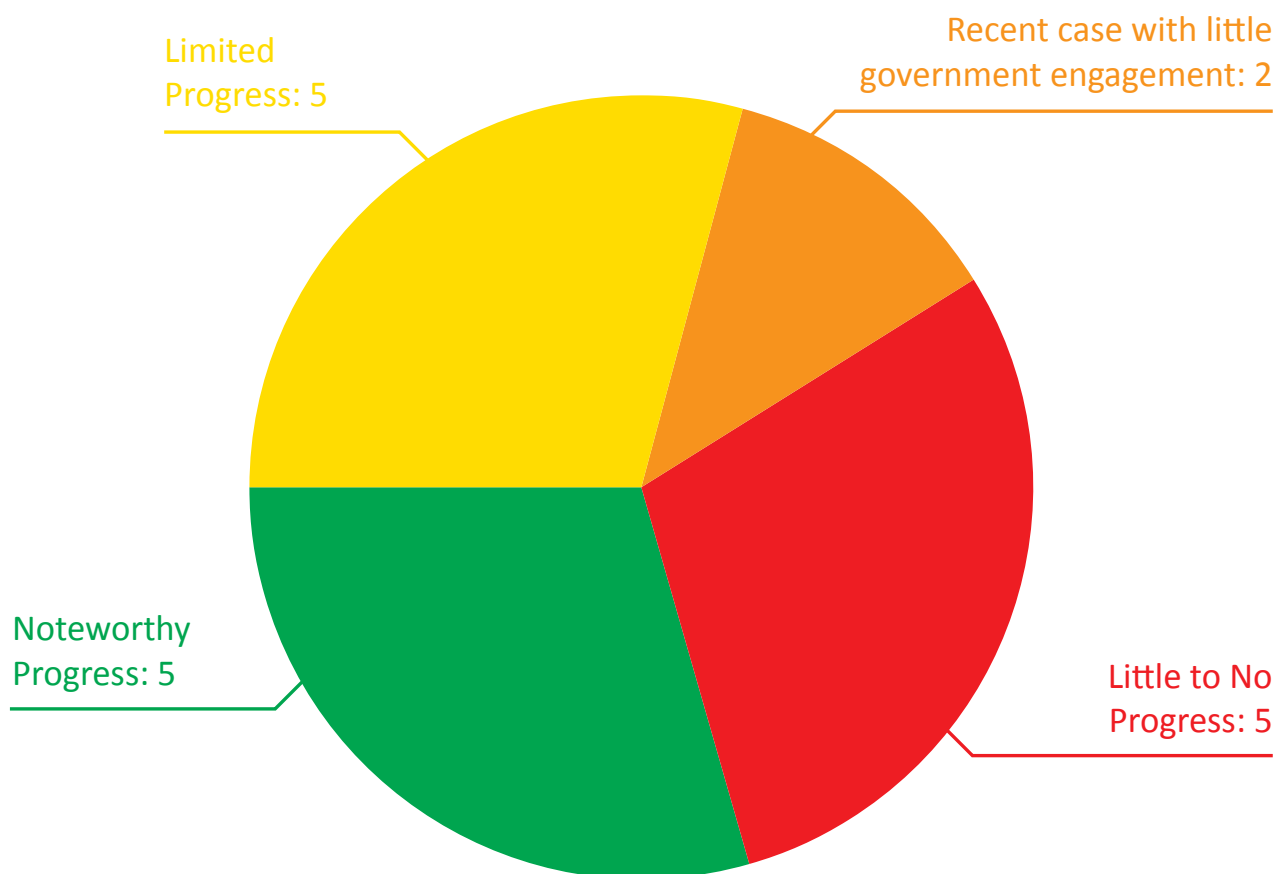
Cases under this category have seen little or no progress due to several potential factors: the judgment has been pending implementation for an extremely long amount of time; the legal framework is marked by important shortcomings, falling below the standards of the Istanbul Convention (for example, the state does not have an adequate definition of ‘domestic violence’ or protection measures); the steps reported so far are not capable of having more than a superficial impact (e.g. the lack of a proper legal framework limits potential progress); potential legislation in progress remains at a draft stage, having not passed yet, or it falls significantly below the standards of the Istanbul Convention and has been criticized by civil society for this; or the authorities have taken regressive steps.

Case name	Final judgment	Progress
Tershana v. Albania (page 17)	4 November 2020	Noteworthy Progress
R.B. v. Estonia (page 21)	22 September 2021	Noteworthy Progress
Talpis v. Italy (page 24)	18 September 2017	Noteworthy Progress
T.M. and C.M. v. the Republic of Moldova group (page 27)	28 April 2014	Noteworthy Progress
Balsan v. Romania (page 29)	23 August 2017	Noteworthy Progress
Tkheldize v. Georgia (page 22)	08 October 2021	Limited Progress
Kaluczka v. Hungary (page 23)	27 July 2012	Limited Progress
M.G.C. v. Romania group (page 32)	15 June 2016	Limited Progress
E.B. v. Romania (page 32)	19 March 2019	Limited Progress
Levchuk v. Ukraine (page 41)	13 December 2020	Limited Progress
J.L. v. Italy (page 26)	27 August 2021	Recent case with little government engagement
E.G. v. the Republic of Moldova (page 27)	13 July 2021	Recent case with little government engagement
S.Z. v. Bulgaria group (page 19)	03 June 2015	Little to No Progress
I. G. v. the Republic of Moldova (page 28)	15 August 2012	Little to No Progress
Bopkhoyeva v. Russia (page 35)	20 February 2018	Little to No Progress
Volodina v. Russia group (page 36)	04 November 2019	Little to No Progress
Opuz v. Turkey group (page 39)	09 September 2009	Little to No Progress

Assessment

Out of the 17 pending leading judgments, there has been noteworthy progress in the implementation of five cases, with authorities having taken wide-ranging measures either noted and welcomed by the Committee of Ministers (for example, *Balsan v. Romania* and *Talpis v. Italy*), or recognised as positive developments by civil society in their submissions (for example, in *Tershana v. Albania*, and in *T.M. and C.M. v. the Republic of Moldova*). However, it must be emphasized that even cases with noteworthy progress, it has been pointed out that domestic and gender-based violence continue to be widespread issues in society, that the judicial responses are still not sufficiently effective in practice, that sexism and gender stereotypes continue to affect the impact of the legislative measures taken so far, or that impact of wide-ranging measures has not been assessed yet. The implementation process will go on – and further measures will be needed – until the impact of the measures is clearly seen in society. Furthermore, the assessment of this progress, in cases without NGO submissions, would also be dependent on civil society input.

In five cases, progress in implementation has been limited. In some, this is because core judgment issues still need addressing through legal amendments. For example, in *M.G.C. v. Romania* (which concerns, in part, the inconsistent national practice of addressing consent of child victims in cases of sexual intercourse with adults), the government has taken notable measures to strengthen procedural guarantees for vulnerable victims of crimes. However, despite the fact they are still expected to complete an ongoing review of the judicial and prosecutorial practice concerning sexual offences against children and adults with mental disabilities, and contrary to the recommendations of civil society, they argue it is not necessary to introduce further legislative measures to establish a clear presumption of lack of discernment for children under a certain age.



Classification of pending VAW cases

In [Kalucza v. Hungary](#), limited progress is also linked to the disengagement of the authorities from the reporting process to the Committee of Ministers: the last time they submitted an [Action Plan/Report](#) was in 2014. The limited steps taken meant that this case could also have been classified as having “*little or no progress*” – but without the input of civil society it is difficult to assess fully. Finally, in the recent case of [Tkhelidze v. Georgia](#), the government has produced an Action Plan with a summary measures taken to date – but the plan does not include plans for further reforms, which will be necessary to implement the judgment.

Finally, there is the category of “Little or no progress”. The least progress in implementation has been made in [Opuz v. Turkey](#) and [Volodina v. Russia](#), where the existing legal frameworks are far below the standards of the Istanbul Convention. Notably, in both states, the authorities have not yet introduced into legislation an adequate definition of domestic violence. Furthermore, Turkey’s withdrawal from the Istanbul Convention in 2021, coupled with the fact that the *Opuz* judgment has been pending for more than 12 years, reflects in particular a certain resistance to implementation. Furthermore, little or no progress was seen in [S.Z. v. Bulgaria](#), [Bopkhoyeva v. Russia](#) and [I.G. v. the Republic of Moldova](#) where there has either been no government reporting, the case has been dormant for a long time, or there has been a lack of steps to address the core issues of domestic or gender-based violence.

Finally, the most recent cases – [J.L. v. Italy](#) and [E. G. v. the Republic of Moldova](#) – became final within the last year. The government are obliged to provide an Action Plan setting out the steps necessary to implement the judgments, but have not done so. Further assessment of implementation progress at this stage would be premature.

For more information on each of the judgments pending implementation, please see the ‘Cases Pending Implementation’ section at [page 17](#) of this report.

At [page 51](#) of this report, EIN sets out some short recommendations to governments, the Council of Europe and civil society to promote the full and timely implementation of the judgments.

“Enhanced” and “Standard” Procedures

Judgments Under Enhanced Procedure: **11**

Judgments Under Standard Procedure: **6**

The Committee of Ministers of the Council of Europe applies a twin-track supervision system for the implementation of all ECtHR judgments. Cases are either classified under an enhanced supervision track, or under a standard supervision track, based on pre-established criteria. For example, cases that disclose major structural or complex problems or require urgent individual measures will be reviewed under the enhanced procedure. Furthermore, under enhanced supervision, the Committee of Ministers has an active role in monitoring implementation, and cases are debated at its’ four annual meetings. For cases supervised under the standard track, it is the Department of Execution of Judgments which exercises the review function.

III. Challenges in Implementing ECtHR Judgments Concerning Domestic and Gender-based violence

Implementation of human rights judgments in the field of domestic and gender-based violence is dependent on the broader political, cultural and social environment in each state, as well as on the root causes of violations identified in specific cases. The type of reforms necessary for implementation vary from one national context to another and specific challenges can also occur on a case-by-case basis.

Challenges in implementing ECtHR judgments present themselves as deficient, delayed or refused execution.

Deficient Execution

Deficient execution occurs when states are either taking measures which aggravate a systemic problem, or where they push for case closure despite the fact that the measures taken have been insufficient to address the core issue.



Violeta Andriuța,
Lawyer at Women's Law Centre

Justice is truth in action.

In the process of monitoring of national legislation and alignment to international standards, WLC learned that ECtHR judgements do not get implemented by themselves. Moreover, in the case of *T.M. and C.M v. the Republic of Moldova*, the authorities regressed when undertaking general measures.

The government asked the Committee of Ministers to end the monitoring of this case, presenting the list of actions taken, which ultimately led to a decrease criminal cases of domestic violence. In response, the WLC presented additional information showing that the number of notifications of domestic violence is increasing annually, while the number of criminal cases is decreasing because the authorities have decriminalized acts of domestic violence, transferring them from the criminal to the contravention sphere. Through the submission addressed to the Committee of Ministers, the WLC had the opportunity to highlight its concerns about ongoing systemic violations of the rights of victims of domestic violence, and to call on the authorities to act in a more timely manner in order not prevent such violations in the future and prevent early case closure by the Committee of Ministers.

The WLC will continue to be involved in the process of monitoring the implementation of relevant ECHR judgements in order to persuade the government to adopt an appropriate legal framework that will provide effective protection to victims of domestic and gender-based violence and in order to promote the recognition and respect of women's rights in the Republic of Moldova.

For example, this was the case in *T.M. and C.M. v. Republic of Moldova*, where a new law allowed for domestic violence acts to be classified only as contraventions (rather than crimes), often with little to no consequences for the perpetrators. This led the government to argue that the number of criminal cases had been in decline, repeatedly asking for case closure despite domestic violence being a persistent problem in Moldova, as was shown by the Women’s Law Centre.

In cases of deficient execution, it is essential for civil society to step in and demonstrate why the measures being taken are inadequate, aggravating the systemic problem or failing to seriously address it. While providing data to show the real impact (or lack of impact) of deficient measures, NGOs will strengthen their advocacy demanding the appropriate measures. Engagement by NGOs, backed up by reliable information, is also key to prevent premature closure of cases by the Committee of Ministers.

Delayed Execution

Delayed execution is caused by a slow-moving state apparatus. In order to address such delays, political will and good faith engagement with the implementation of specific measures are needed. At times, the issue of domestic and gender-based violence may not be a top priority in the practice of authorities. Pressure on the state authorities through decisions of the Committee of Ministers, coupled with national advocacy specifically targeted at the relevant authorities, can address the problem in such cases. For example, in October 2020, the Committee called upon Romanian authorities to establish “*the electronic monitoring system envisaged to enhance compliance with protection measures*”. In May 2021, the Law regarding electronic monitoring bracelets entered into force. Now, the authorities must ensure that the law becomes operational, and that electronic monitoring bracelets are made available to law enforcement.

The execution process is also delayed when states fail to provide the information requested by the Committee of Ministers, thus hindering the Committee’s ability to assess the situation, or the impact of certain measures, based on accurate data. For example, in *Talpis v. Italy*, the authorities were required to provide additional data and information on progress by the end of March 2021. However, no information has been provided to date. The failure to provide this information is delaying the implementation process.



Statement by
Donne in Rete contro la Violenza

The *Talpis v. Italy* judgment has been a milestone for the fight against male violence against women in Italy and our NGO follows its implementation with particular attention. With the collaboration of EIN, D.i.R.e had the opportunity to submit a communication in accordance with Rule 9.2. in the case *Talpis v Italy* (Application No. 41237/14).

When the State submitted its Action Plan, D.i.R.e intervened with additional information to the Committee of Ministers. With this communication, D.i.R.e had the opportunity to challenge the government's claims. In particular, D.i.R.e highlighted that the data in the Action Plan was limited to a single occasional research, which did not show progress in combating male violence against women, and which indeed confirmed a particularly low conviction rate. D.i.R.e easily showed that the State did not have (and does not have yet) the data requested by the CM.

At the same time, D.i.R.e had the opportunity to highlight problems regarding the presence of anti-violence centers and shelters and their financing. The persistence of prejudices and stereotypes that prevent the effective fight against male violence against women has also been highlighted. Every observation was also supported by GREVIO's first baseline report on the implementation of Istanbul Convention in Italy.

The CM took note of the observations offered by D.i.R.e, did not close the supervision of the execution of this case and asked the State for precise data and indications to be provided by a specific date (30th March 2021). This gave us the chance to promote a communication campaign asking the State to respond (see here [#SENTENZATALPIS](#)). However, until today, the State did not provide an answer to the Committee of Ministers, failure which is delaying the execution of this case.

Refused Execution

Finally, refused execution is, evidently, the most difficult challenge to address. While the Turkish authorities have taken some measures to implement *Opuz*, the judgment is pending since 2009, and Turkey's withdrawal from the Istanbul Convention in 2021 casts serious doubts as to the government's intention to fully and effectively implement the case. Similarly, the argument made by state authorities that the criminalisation of domestic violence and protection orders are not necessary could also be construed as demonstrating a reluctance to effectively implement. The lack of acknowledgment of the real nature and gravity of the problem is capable of blocking real progress in implementation. Nonetheless, refused execution can ultimately be only delayed execution. Submissions from civil society and decisions of the Committee of Ministers are important tools to continuously exert pressure for implementation, both nationally and internationally.

Taking steps to address these challenges

Addressing implementation challenges should be approached through sustained advocacy at both national and international level. For civil society, this will mean an ongoing engagement with the national authorities and with the Committee of Ministers of the Council of Europe, as well as monitoring the relevant developments at national level, in order to identify and seize windows of opportunity to promote reforms.

For example, deficient execution can be addressed through monitoring proposed legislative and policy changes in order to give NGOs the opportunity to influence potential developments, either by preventing flawed laws from being enacted (and signaling this risk to the Committee of Ministers) or by contributing to the consultation process and improving draft laws, draft national strategies and action plans, or draft methodologies which would otherwise not address the problem effectively.

When counterproductive steps are being taken, clear and concrete recommendations from the Committee of Ministers, as well as strongly worded interim resolutions, can contribute to steering the implementation process in the right direction.

Parliamentary advocacy has also been shown to be effective in addressing delayed implementation. For example, in the Republic of Moldova, the Women's Law Centre organized an awareness-raising campaign about domestic violence aimed at members of Parliament, which was eventually followed by the ratification of the Istanbul Convention in 2021. In parallel, they had been recommending the ratification of the Istanbul Convention in their submissions before the Committee of Ministers, and the Committee of Ministers itself reflected this recommendation to the authorities. Depending on the national context, NGOs can also increase this pressure by reaching out to foreign embassies on the ground, asking diplomats to raise specific implementation issues in their interactions with local authorities. At the same time, Council of Europe technical co-operation projects have the potential to have a positive impact on reforms.

Naturally, refused execution will be more difficult to address. Civil society attention to changes in government or other relevant political developments may be key to addressing this type of challenge, together with increased and sustained international pressure.

IV. Cases Pending Implementation on Domestic and Gender-Based Violence

The cases below bear different labels which classify them depending on the specific theme of the case and on the level of progress made in implementation.

There are 17 leading judgments concerning domestic and gender-based violence pending implementation. Each leading judgment represents a significant or systemic problem in the state concerned. Some of these leading judgments also have repetitive cases, which are examined by the Council of Europe jointly with the leading case.²¹

In this section, we set out an assessment of the progress made in the implementation of these leading cases, according to the methodology explained in the overview section. The assessment is based on the Action Plans and Action Reports submitted by the governments; the Rule 9 submissions made by civil society and the Commissioner for Human Rights; the decisions of the Committee of Ministers; and also the time for which these cases have been pending implementation. For each case, we assessed whether there has been **little to no progress**, **limited progress**, or **noteworthy progress** in implementation, while also noting **recent cases with little government engagement**. This assessment depends on whether there have been any reforms to laws and practices, and if such reforms have amounted to a meaningful step forward to implementing the judgment (regarding the classification of cases, see Section II: Overview of the Implementation of Domestic and Gender-Based Violence Cases). We hope this assessment can help guide further steps by national authorities in implementing the respective judgments, help civil society plan further advocacy steps, and encourage more NHRIs and NGOs working on women's rights to become involved in this process.

1. *Tershana v. Albania*, judgment final on 04 November 2020²²

Domestic violence; Pending implementation; Noteworthy progress.



In November 2020, the *Tershana v. Albania* judgment became final. Currently pending under the standard supervision track, the case concerns the ineffectiveness of an investigation into an acid attack. The applicant suspected that her former husband had carried it out, as a continuation of past acts of domestic violence. Nevertheless, six years later after the acid attack, the criminal investigation was still pending before the police authorities.

²¹ For example, the *Opuz v. Turkey* judgment represents a group of five cases concerning the same issue. While the *Opuz* judgment was the first judgment in Turkey concerning domestic violence, five more similar cases were subsequently delivered by the Court.

²² Application no. 48756/14

The Court ruled that there had been a violation of the procedural limb of the right to life. While no issues were identified with respect to the legislative framework, the Court found that, while the attack had “hallmarks of a form of gender-based violence”, which should have incited the authorities to react with vigor and special diligence, the domestic authorities had not even ordered a chemical or toxicological expert report to identify the substance. The assailant had not been identified, and the investigation stagnated with no more updates being provided to the victim about its’ status.

Action Plan

The authorities have submitted an [Action Plan in August 2021](#), holding that no general measures are required for the implementation of this case. The government maintains that a set of legislative and institutional measures taken in recent years have already addressed the problem of domestic violence. These measures include amendments to the law on domestic violence, which expanded the definition of domestic violence and introduced an order for immediate emergency protection issuable by police. Further amendments ensured that these protections are applicable to girls and women in non-formal intimate relationships, created measures for the eviction of perpetrators from property, and measures to ensure the effectiveness of protection orders during the pandemic. In 2020, amendments to the Criminal Code criminalised psychological violence and increased sentences for some categories of perpetrators.

Furthermore, at the time of the Action Plan, the National Strategy for Gender Equality and its Action Plan 2021-2030 was being prepared (it was later adopted in June 2021)²³. Among other things, the Action Plan sets out measures which are being taken to increase the efficiency of co-ordinated referral mechanisms, and training and awareness offered to employees in public administration.

NGO submissions

Civil society organisations ([the European Centre Foundation](#) and the [Albanian Monitoring Network Against Gender-Based Violence](#) (a group of 27 CSOs) have made two submissions in the case. Whilst acknowledging the progress made in Albania in the past decade in the fight against domestic violence, they also set out further recommendations.

In September 2021, the European Centre Foundation argued that domestic violence continues to be a prevalent problem in Albanian society and the counter-system is not sufficiently effective yet. The NGO set out recommendations aimed at improving effectiveness, enhancing capacity and ensuring budgeting of existing local mechanisms for support of the victims of domestic violence.

Through their submission made in [January 2022](#), the Albanian Monitoring Network Against Gender-Based Violence outlined a number of gaps in government’s response to gender-based violence, including a much lower ratio of investigations in comparison with reported cases of domestic violence, inefficiencies on implementation of protection measures, and lack of legal aid for victims during investigations (required by the Albanian legislation). The submission recommended measures to improve rapid responses and the effectiveness of investigations. The Monitoring Network also requested that the Government submit a “targeted Action Plan, [...] including an analysis of existing gaps and challenges to an effective investigation”.

Recommendation: The steps taken by the national authorities are noteworthy and civil society has acknowledged this progress. At the same time, noting that the *Tershana* case concerns the ineffec-

²³ The Strategy has been adopted in June 2021, based on Decision of the Council of Ministers No. Nr. 400, 30.6.2021.

tiveness of an investigation into an attack, further measures are needed to ensure the speediness and effectiveness of the investigative response in gender-based violence cases. Full implementation will require measures to guarantee a positive impact of the legislative and institutional measures taken so far.

2. S.Z. v. Bulgaria, judgment final on 03 June 2015²⁴

Sexual violence; Pending implementation; Little to no progress.



The *S.Z. v. Bulgaria* judgment is pending implementation since 2015. Since then, three more repetitive judgments concerning sexual violence have been allocated under the leading *S.Z. v. Bulgaria* case: *Y. v. Bulgaria*, *Z. v. Bulgaria* and *X and others v. Bulgaria*. The first two cases concern the ineffectiveness of investigations into rape complaints made by applicants who are adult women. In *S.Z.*, the investigation and judicial proceedings lasted fourteen years. In *Y.*, the prosecution had closed the case after failing to pursue an obvious line of inquiry (the DNA evidence confirmed the perpetrator's identity) due to the victim's inability to recognize the perpetrator from a line-up.

In *Z. v. Bulgaria*, the Court found a violation of Article 3 of the Convention (prohibition of torture, inhuman and degrading treatment or punishment) and the procedural limb of Article 8 of the Convention (the right to respect for private life), in the context of an ineffective investigation of a rape complaint. Despite the applicant's and the district prosecutor's request to clas-

sify the crime as rape, the regional prosecutor had classified it as sexual intercourse with a minor under the age of fourteen. Several failures of the prosecution were highlighted by the Court, particularly the prosecutor's failure to examine the applicant's actions (of rejection and avoidance) and lack of consent in the context of the rape; the failure to examine her mental state in light of the psychological report, which described her experience as marked by "intense fear and dread"; and the failure to examine the overall circumstances in which the crime had taken place. The Court criticized the fact that neither the prosecution, nor the domestic court applied a child-sensitive approach when assessing the case.

The group also contains three other repetitive cases for which individual measures have been closed – but the general measures are still relevant.

Supervision by the Committee of Ministers

The cases – which concern quite different shortcomings in the context of rape investigations - are being examined under the enhanced supervision track. Since 2016, the *S.Z. group* of cases has been examined together with the *Kolevi* group of cases, which concerns other aspects regarding the effectiveness of criminal investigations. After the government requested that the general measures for each group be assessed separately, the Committee, in its' *December 2021 decision*, separated its' analysis of general measures for each group.

²⁴ Application no. 29263/12

Progress made

The limited progress remarked by the CM in its' [decisions](#) mostly concerns the [Kolevi](#) group of cases, and it does not specifically address investigation of rape complaints made by women and girls.

In its' [December 2021 decision](#), the Committee of Ministers called for the introduction of judicial review of prosecutorial refusals to open an investigation, as well as for measures that would decrease the workload of magistrates. It also requested information, inter alia, on plans to reduce the formalism of the proceedings and to improve *“practices concerning the content, examination and amendment of an indictment”*.

The Bulgarian authorities are also expected to provide a review of judicial and prosecutorial practices for rape investigations, as well as an evaluation of further measures needed to ensure that rape is prosecuted in line with Convention standards, including for situations when the victims are children, and the investigation requires a child-sensitive approach.

Latest Action Plan

In its' October 2021 [Action Plan](#), the Bulgarian government indicated, with regard to the [S.Z. v. Bulgaria](#) group, that a working group set up by the Ministry of Justice is examining general measures aimed at improving the effectiveness of criminal investigations, which include, inter alia, *“options to introduce judicial review of prosecutorial refusals to open an investigation”* and *“arrangements to avoid an excessive additional workload for courts and prosecutors”*. Furthermore, amendments to the Criminal Code which concern the rights of victims of crime (transposing Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime) were introduced through a draft bill, but the work on this project was stopped. No concrete steps forward have been made yet. A [further communication](#) was provided in March 2022, indicating the status of individual measures, mentioning methodologies for investigating rape and sexual crimes against children, elaborated by the National Investigation Service, and plans to examine *“guarantees regarding the bringing of charges, adopt more detailed rules on the reopening of investigations by the Chief Prosecutor”* and *“further limit the remittals of a case based on procedural violations at the investigation stage”*.

The case will be examined by the Committee of Ministers in June 2022.

Recommendation: The [S.Z. group](#) of judgments has been pending implementation since 2015. Little attention has been paid to the general measures in this group while it was examined together with the [Kolevi](#) group. Given the specificities of investigations into sexual crimes, it would be beneficial if, in line with previous requests by the Bulgarian government, this group is examined on its' own and separated from the [Kolevi](#) group. Furthermore, there is a strong need for an intensification of concrete steps on behalf of the Bulgarian government. Until May 2022, civil society submissions to the Committee of Ministers have only focused on the measures required for the implementation of the [Kolevi](#) group of judgments. There has been no input addressing the specific issue of investigation of rape cases against women and girls. Such input would be highly valuable in the context of the CM supervision process.

3. R.B. v. Estonia, judgment final on 22 September 2021²⁵

Sexual violence; Pending implementation; Noteworthy progress.



The R.B. v. Estonia case concerns the sexual abuse of a four-year-old girl and the failure to effectively prosecute the perpetrator, the girl's father. The ECtHR found violations of the procedural limb of Article 3 of the Convention (the prohibition of ill-treatment or inhuman and degrading treatment) and Article 8 of the Convention (the right to respect for one's private life). During the investigation, the authorities had failed to advise the victim of her duty to tell the truth and of her right to not testify against her father. Because of these failings, procedural rules were applied in a strict manner, leading to the exclusion of her testimony, without making a distinction for her status as a minor. This led to the perpetrator's acquittal.

The Estonian authorities have already submitted an Action Report in February 2022, requesting the Committee of Ministers to end supervision of this case. They indicated that re-opening the proceedings would be contrary to the *ne bis in idem* principle. As regards general measures, they argue that this was an isolated case and that the violation was not attributable to incomplete legislation, as the right to refuse testimony against family members, and the obligation to tell the truth are explained to minor victims, as foreseen by law. Such shortcomings were corrected in practice when re-hearing victims in court. The authorities also indicate that various changes have been made to the Criminal Procedure Code to protect the rights of minor victims, and that steps have been initiated for awareness raising and capacity building of relevant bodies.

According to the information provided by authorities, it appears that the progress made in implementing this judgment has been noteworthy. However, this conclusion would be also dependent on local civil society input, as well as any additional data demonstrating the correct application of law in practice.

²⁵ Application no. 22597/16

Recommendation: EIN recommends that Estonian civil society and the Estonian NHRI analyse the steps taken by the government to implement the individual and general measures required in this case. If the steps which have been taken are insufficient, the NGOs/NHRI should make a Rule 9 submission to the Committee of Ministers, to set out any shortcomings and recommended next steps. Before agreeing with the authorities and closing the case, the Department of Execution of Judgments should receive an assessment of the general situation in practice and the impact of the existing legislation.

4. **Tkheldidze v. Georgia, judgment final on 08 October 2021²⁶**

Domestic violence; Pending implementation; Limited Progress.



The *Tkheldidze* judgment became final in October 2021. The Court identified a failure of law-enforcement authorities to take preventive action to protect the applicant’s daughter, who was killed by her live-in partner, against a backdrop of systemic failures and gender-based discrimination. The applicant’s daughter had reached out to the police several times, but each time the police’s response was grossly inadequate.

The case has been classified under the enhanced procedure, and the Georgian authorities submitted an [Action Plan in April 2022](#), providing statistics on cases of domestic and gender-based violence cases, and stating that domestic violence “remains a priority of the strategy and action plan for 2022-2027 for the development of the Prosecutor’s Office of Georgia”. *Inter alia*, the Action Plan indicates there is a high annual rate of protection orders and recognizes the need to build the capacity of law enforcement officers involved in the risk assessment process when communicating with victims. However, the authorities did not foresee plans for the future regarding general measures. This is concerning given the nature of the violation and wider concerns raised by Georgian civil society in the context of GREVIO shadow monitoring reports.²⁷ There have been no NGO or NHRI submissions yet.

²⁶ Application no. 33056/17

²⁷ See the multiple civil society reports listed in the country page for Georgia under the GREVIO procedure: <https://www.coe.int/en/web/istanbul-convention/georgia>

Recommendation: EIN recommends that the government initiate a dialogue with NGOs specialized in domestic and gender-violence, in view of determining general measures required and designing an updated Action Plan.

5. Kaluczka v. Hungary, judgment final on 24 July 2012²⁸

Domestic violence; Pending implementation; Limited progress.



In 2012, a new ECtHR judgment concerning violence against women was rendered against Hungary. The applicant had requested a restraining order against her common law partner, with whom she lived. However, after an excessively long period of time, the request for a restraining order was dismissed on the basis that she had also been involved in a mutual assault. The ECtHR found a violation of Article 8 of the Convention, noting both the insufficient reasoning as well as the unreasonably long length of time it took the domestic courts to decide on the restraining order. It also criticized the fact that common law partners were excluded from the protection granted by domestic legislation on restraining orders, and that restraining orders could not be issued in the case of mutual assaults. Furthermore, the issue of her partner's residence or joint ownership of the shared flat could have been solved within the proceedings initiated by the applicant, which was not done.

While the judgment has been pending implementation for 9 years, it is still being supervised under the standard supervision track. So far, the Hungarian authorities have submitted one Action Plan and one Action Report in the case, in [2013](#)²⁹ and [2014](#)³⁰. In terms of general measures, the authorities have indicated that:

- A working group has been established to elaborate a special criminal law provision on domestic violence with the participation of the relevant public and civil society stakeholders.
- The Act on Restraining Orders due to Violence among Relatives was amended in order to be applicable to common law spouses as well.
- An amendment has been enacted in 2013 to the Criminal Procedure Code, criminalizing some types of domestic violence acts, while categorizing others as misdemeanors.
- New training methods regarding responding to domestic violence have been included in police training.

²⁸ Application no. 57693/10

²⁹ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2013\)292revE](https://hudoc.exec.coe.int/eng?i=DH-DD(2013)292revE)

³⁰ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2014\)719E](https://hudoc.exec.coe.int/eng?i=DH-DD(2014)719E)

However, no updated information has been provided to the Committee of Ministers since 2014. Information about the functioning, activity and results of the working group are not available; the impact of the legislative and capacity building measures in statistics and case law is not clear. Finally, the 2013 amendments to the Criminal Code which qualify certain domestic violence acts as misdemeanors would certainly benefit from a civil society assessment, from the perspective of the Istanbul Convention.

Recommendation: Until today, neither civil society, nor the Hungarian NHRI have made a submission regarding the implementation of this case. In cases regarding domestic violence concerning other states, civil society have raised concerns about the partial decriminalization of domestic violence acts – and the classification of such acts as misdemeanors. Civil society input on this matter would be very valuable. Most importantly, we encourage the Hungarian government to liaise with civil society concerning the general measures still required for the implementation of this case and prepare an updated Action Plan to the attention of the Committee of Ministers – followed by concrete reforms.

6. *Talpis v. Italy*, judgment final on 18 September 2017³¹

Domestic violence; Pending implementation; Noteworthy progress.



In a 2017 judgment against Italy, the European Court of Human Rights held that the authorities' inaction in response to the applicant's complaints of domestic violence against her husband enabled an escalation until he attempted to murder her - and killed her son. The Court found violations of the right to life (Article 2 of the Convention), as well as the prohibition of torture and inhuman and degrading treatment (Article 3 of the Convention) and the prohibition of discrimination (Article 14 of the Convention), noting several shortcomings in the authorities' reaction. These included a failure to rapidly assess the risk; a failure to take preventive measures; a failure to carry out investigative acts for a long period of time after the filing of the complaint; and unnecessarily lengthy criminal proceedings against the perpetrator. Six months after the initial complaint, it had been the prosecution who called upon the police to respond to the request for

³¹ Application no. 41237/14

protective measures. The authorities' complacency was seen as condoning the acts of domestic violence. The Court also found that the applicant had been a victim of discrimination as a woman, because the law enforcement authorities, through their delay and lack of action to assess the risks faced by the applicant, had underestimated the seriousness of the previous domestic violence acts - in essence condoning them.

Progress made

Since it has been pending implementation – under the enhanced supervision track – the Committee of Ministers has assessed the case twice³².

In regard to individual measures, the perpetrator was sentenced to 20 years imprisonment.

In terms of general measures, progress made has included the adoption of new legislation in 2019³³, which aimed to increase the effectiveness of the judicial response to violence against women, to reinforce protections for victims and to build the capacity of law enforcement. In particular, progress remarked by the Committee of Ministers included:

- An increase in sentences for sexual and domestic violence, as well as stalking.
- Criminalization of revenge porn, of forced marriage, deformation of individual appearance by causing permanent facial injuries and breaches of court injunctions by perpetrators.
- A new provision was introduced in the Criminal Procedure Code, stating that victims of gender-based violence must be heard by prosecutors in the three days following their complaint.
- The introduction of compulsory capacity building for law enforcement.
- The creation of a parliamentary commission to investigate the phenomenon of femicide and gender violence, as well as research and monitoring carried out by the National Institute of Statistics.

These measures have not yet been reflected in an impact on the number of victims, which has increased. Furthermore, the Committee indicated that in more than half of the cases, proceedings were discontinued at the pre-trial phase.

Action report

Despite the statistics, the Italian government submitted an Action Report³⁴ in July 2020, requesting that the Committee end supervision of the case. In essence, it was argued that the measures taken had been sufficient to fulfil Italy's obligations under the Convention – that is, to prevent the reoccurrence of similar violations. The authorities did acknowledge that the fight to end gender violence and sexual violence still lies ahead, but maintained that the new legal framework and the National Strategy Plan – which was in line with the Istanbul Convention, taken together with budgetary allocations, should suffice for case closure.

NGO involvement

Prior to this Action Report, and in response to it, the Italian NGO *Donne in Rete contro la violenza* made three Rule 9.2 submissions³⁵ to the Committee of Ministers (available here, here and here).

³² <https://hudoc.exec.coe.int/eng?i=004-47825>

³³ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)630F](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)630F)

³⁴ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)630F](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)630F)

³⁵ See [https://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)572E](https://hudoc.exec.coe.int/eng?i=DH-DD(2018)572E), [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)375E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)375E) and [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)708E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)708E)

These emphasized that the effectiveness of the new legal framework has been impeded by ongoing bias and sexism, insufficient training of both law enforcement and the judiciary, as well as the failure of competent authorities to carry out risk assessments and sufficient data collection. They made recommendations for the improvement of gender-disaggregated data collection; the development and implementation of risk assessment procedures; the creation of effective civil remedies against state authorities failing to take protective measures, as well as training for all professionals centered on the “*understanding of the dynamics of gender-based violence and the challenge of prejudices and assumptions*”.

CM decision

In October 2020, the Committee of Ministers took note of the progress made of the ongoing commitment of the Italian authorities to tackle the problem³⁶, while also underlining the importance of “*adequate, effective and swift response by law enforcement agencies and the judiciary*”, as well as that of an “*effective access to adequate support and assistance*”. The Committee observed that gender stereotypes continue to be present in Italian society, and reflected the main recommendations made by *Donne in Rete contro la violenza* with regard to data collection, capacity building and risk assessment procedures.

The case remains pending, with information from the authorities being expected in March 2021 – information which has not been provided yet. The case is an excellent example of how the input of civil society has shaped the direction of the implementation process and has informed the CM decision.

Recommendation: We encourage the Italian authorities to provide the information requested by the Committee of Ministers as soon as possible – it is essential to assess the impact of measures taken so far, as well as ongoing progress.

7. J.L. v. Italy, judgment final on 27 August 2021³⁷

Sexual violence; Pending implementation; Recent case with little government engagement.

In the *J.L. v. Italy* judgment, which became final last year, the European Court of Human Rights found a violation of Article 8 of the Convention (the right to respect for one’s private life) due to the prejudiced approach and victim blaming wording of the court of appeal, in the context of criminal proceedings concerning a gang rape committed against the applicant, which led to the perpetrators’ acquittal. In April 2022, authorities indicated that just satisfaction was paid, and informed the Committee of Ministers of their intention to submit an Action Plan as soon as possible.

Recommendation: The Italian authorities were expected to submit an Action Plan by the end of February 2022, setting out what measures they plan to take to implement this case. We encourage them to collaborate with specialised NGOs to determine what measures are required for the implementation of this case.

³⁶ <https://hudoc.exec.coe.int/eng?i=004-47825>

³⁷ Application no. 5671/16

8. T.M. and C.M. v. the Republic of Moldova, judgment final on 28 April 2014³⁸

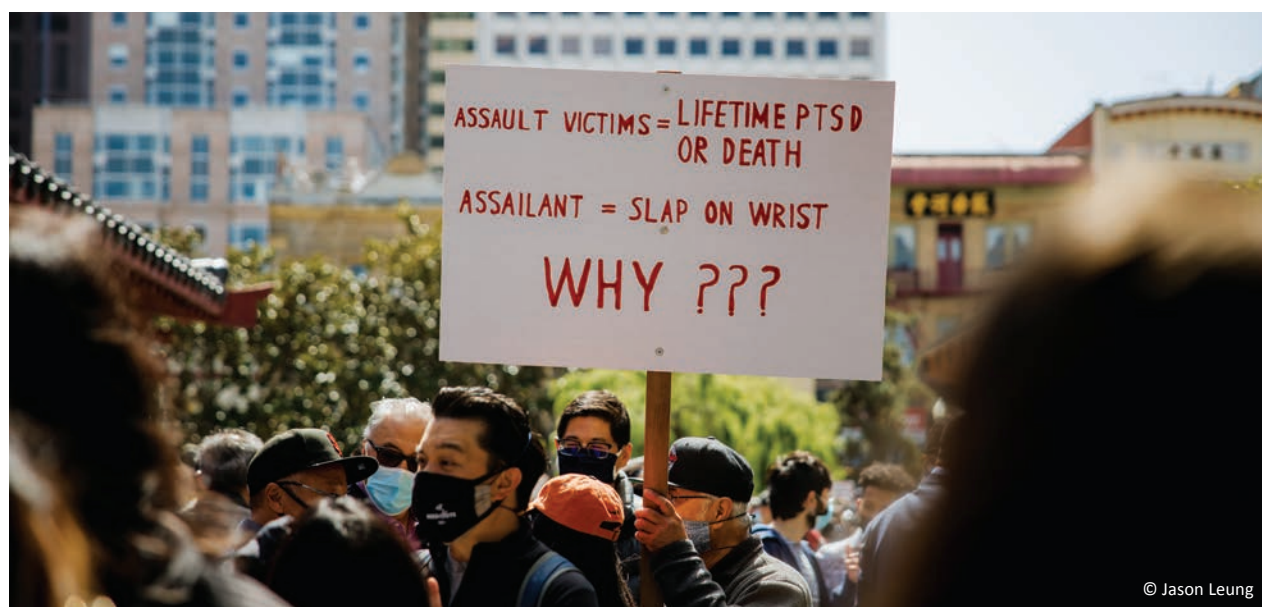
Domestic violence; Pending implementation; Noteworthy progress.

The summary of this judgment is set out in the section, “1. How Judgments of The European Court of Human Rights Can Help Combat Violence Against Women and Domestic Violence”, found on [page 5](#).

Recommendation: EIN recommends that the national authorities take into consideration the standards of the recently ratified Istanbul Convention and reverse the partial decriminalization of domestic violence acts.

9. E. G. v. the Republic of Moldova, judgment final on 13 July 2021³⁹

Sexual violence; Pending implementation; Recent case with little government engagement.



In [E.G. v. the Republic of Moldova](#), the authorities had granted amnesty to the perpetrator of a sexual assault; even after the amnesty decision was annulled, his sentence was still not executed. The Court found violations of Articles 3 and 8 of the Convention, under which the authorities are also obligated to avoid the appearance of tolerating or being accomplice to illegal acts.

The judgment is being supervised under the standard procedure; an overdue Action Plan or Action Report is being awaited by the Committee of Ministers in this case.

Recommendation: EIN recommends to that the Moldovan government fulfil their reporting obligations and submit an Action Plan in the [E.G.](#) case, setting out what measures they plan to take in view of implementation.

³⁸ Application no. 26608/11

³⁹ Application no. 37882/13

10. *I.G. v. the Republic of Moldova*, judgment final on 15 August 2012⁴⁰

Sexual violence; Pending implementation; Little to no progress.



The *I.G. v. the Republic of Moldova* judgment, which has been pending implementation since 2012, concerns the ineffective investigation into the alleged rape of a 14-year-old girl. Charges against the perpetrator had been discharged without any significant measures having been taken in order to determine the parties' credibility, which led the Court to find a procedural violation of Article 3 of the Convention. The charges had also been discharged by another prosecutor than the one originally in charge of the case. Under the relevant legal framework, the applicant did not have a right to appeal because the criminal proceedings had not been initiated upon her prior complaint. Only a hierarchically superior prosecutor could have appealed that. However, the General Prosecutor's Office failed to do so within the relevant deadline, despite the applicant's lawyer request.

After the *I.G.* judgment became final, three more repetitive cases were added to this group: *N.A. v. the Republic of Moldova*, regarding the ineffective investigation into the gang rape of a 13 year old girl; *I.P. v. the Republic of Moldova*, in which the prosecution had refused to initiate criminal proceedings after receiving the complaint, despite medical reports of signs of violence on the victim's body and scratch marks on the perpetrator's neck, and *A.P. v. the Republic of Moldova*, in which authorities had failed to take into account a psychological evaluation of the victim carried out by a specialized association, and had provided no age-appropriate support during the proceedings.

Pending implementation under the standard procedure, the authorities have submitted one [Action Plan in 2014](#). The government indicated that amendments to the Criminal Procedure Code allow all decisions adopted by the prosecutors in the framework of a criminal investigation to be subject to supervision by hierarchically superior prosecutors. In the light of this development, they argued that the shortcomings in the original case have been addressed, and that case does not require a change of judicial or prosecutorial practice.

Recommendation: Noting the accumulation of repetitive cases which concern more ineffective investigations into sexual crimes against girls, it appears that the problem has not been effectively addressed and the scope of implementation may be wider than indicated by the Action Plan. EIN recommends that the attention of the Committee of Ministers and the national authorities towards this group of cases is revived, and that the case is classified under enhanced procedure. We also recommend that the authorities initiate consultation with specialized civil society organizations in view of preparing an Updated Action Plan.

⁴⁰ Application no. 53519/07

11. Bălșan v. Romania, judgment final on 23 August 2017⁴¹

Domestic violence; Pending implementation; Noteworthy progress.



Domestic violence against women was the subject of ECtHR case law when it dealt with the Romanian cases of *Bălșan* in 2017, and *Buturugă* in 2020. In *Bălșan*, in response to the complaint made by the applicant regarding acts of violence committed against her by her former husband, the authorities concluded that she had provoked the violence after drinking alcohol. Her complaints were dismissed based on the fact she had only suffered minor harm which did not attain a minimum level of severity in order to be classified as criminal, or that they were not supported by evidence. Furthermore, her request for protective measures remained without response, and she was refused an *ex officio* lawyer, as it was considered unnecessary.

The Court found a violation of Article 3 of the ECHR (prohibition of torture, inhuman and degrading treatment) in conjunction with Article 14 of the ECHR (prohibition of discrimination), taking note of “the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors”. The Court concluded that the passivity of the authorities was discriminatory to women as it enabled the problem to continue.

In the *Buturugă* judgment, which has been grouped together with *Bălșan*, as a repetitive case, the Court was also faced with the issue of cyberbullying, in the context of the violation of the applicant’s confidentiality of electronic correspondence by her former husband. In these circumstances, the Court also found a violation of the right to respect for one’s private life.

⁴¹ Application no. 49645/09

Progress made

The implementation of these two judgments is being supervised under the enhanced supervision track, having so far been examined twice by the Committee of Ministers in [2018 and 2020](#)⁴².

The authorities presented several amendments to Law No. 217/2003 on preventing and combating domestic violence, particularly regarding protective measures and support services for victims of domestic violence, which were made available to victims regardless of whether they lived together. The amendments introduced the possibility for protection orders to be issued by the police in emergency situations, and they also establish emergency response intervention units who are, among other things, responsible for immediate risk assessment. In addition, the new legal amendments introduced the obligation to grant legal assistance to victims seeking protection orders, including electronic monitoring as a means of compliance with them, and increased prison terms for failures to comply with such orders. The authorities also signaled an increase in support services and plans to establish rape crisis centers. Statistical data regarding the increase in number of restraining and barring orders issues were also provided.

Other information provided by the Romanian government indicated capacity building efforts for law enforcement and magistrates, and ongoing campaigns for public awareness raising and informing victims.

Submission made by the Council of Europe Commissioner for Human Rights

In July 2020, the Council of Europe Commissioner for Human Rights made a [Rule 9 submission](#)⁴³ in the case, highlighting obstacles in access to justice for women who are victims of domestic violence, problems with the availability and accessibility of support measures for victims of domestic violence, and the need to strengthen the promotion of gender equality in Romania.

Regarding obstacles to access to justice, the Commissioner pointed out the restrictive definition of “*family members*” in the Criminal Code; the practice of domestic courts of requiring medical evidence when processing requests for protection orders; the low enforcement rate of protection orders and the low rate of prosecution.

Relying on discussions and information received during her meeting with civil society in Romania, the Commissioner stressed that the capacity building activities indicated by the authorities have not been sufficient to overturn discriminatory practices, which take place particularly in rural areas. She highlighted practices of law enforcement blaming victims for domestic violence ensured, reluctance to register and process complaints, and discouragement from making complaints, emphasizing particular discrimination against Roma victims.

The Commissioner also raised concerns about insufficient data collection, non-allocation of funds from the state budget for shelters, limited access to shelters for victims, indicating the lack of specific quality standards for such services, while also acknowledging some progress made at national level in this regard, making a wide range of recommendations.

⁴² <https://hudoc.exec.coe.int/eng?i=004-47601>

⁴³ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)637E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)637E)

NGO submission

National civil society also responded to the information provided by the government. The Network on Preventing and Combating Violence Against Women raised similar concerns⁴⁴ about the low rate of approved protection orders, and the high rate of breaching protection orders. They indicated the fact that the electronic bracelet monitoring system was not regulated and functional yet and raised attention regarding problems in the functioning of mobile teams which are supposed to intervene (lack of specialized training, lack of budgetary allocations). They presented case examples and information collected from their activities on the ground, emphasizing women's mistrust in the authorities, as well as discriminatory and discouraging attitudes from police officers when receiving complaints. The lack of financing of social services for victims of domestic violence was again highlighted. The Network indicated there had been a 3% increase in domestic violence murders from 2018 to 2019.

Authorities' response

Since 2018, the government has requested that the group of cases be supervised under the standard procedure, instead of the enhanced supervision track⁴⁵, as it is now. This indicates that the authorities do not consider domestic violence against women in Romania is a problem that requires enhanced scrutiny. In response to the concerns raised by civil society and the Commissioner, the authorities denied that services for victims of domestic violence are insufficient; they presented information concerning state run projects aimed at preventing domestic violence, as well as statistics from the national domestic violence hotline, calling again for the case to be supervised under the standard supervision track.

CM decision

In its' latest [decision](#) in October 2020, the Committee of Ministers welcomed the range of measures taken and progress achieved by the authorities, while also taking note of the concerns raised by Romanian civil society and the Commissioner. Regarding protective measures, the CM noted that non-compliance with protective orders remains an issue and called for additional measures in relation to electronic monitoring bracelets. With regard to the sufficiency of shelters, it *"invited the authorities to specify how they have ensured that the existing services meet the current needs in terms of geographic distribution and are accessible also to women in rural and more remote areas"*. It also called for legislative measures to ensure that the investigation and prosecution of domestic violence acts *"are not wholly dependent on the will of the alleged victim"*. Finally, after encouraging ongoing capacity building and awareness-raising efforts, the CM called upon the authorities to monitor progress through the collection of data and information.

Since the CM's decision, [the law regarding electronic bracelet monitoring](#) has been adopted by the Chamber of Deputies in April 2021. However, the deadline for implementing a pilot project for this law has been postponed for October 2022, as the system is not operational⁴⁶.

Recommendation: The authorities were expected to provide further information by the end of September 2021 – we encourage them to do so as soon as possible.

⁴⁴ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)677E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)677E)

⁴⁵ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)733F](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)733F)

⁴⁶ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)733F](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)733F)

12. M.G.C. v. Romania, judgment final on 15 June 2016⁴⁷ and 13. E. B. v. Romania, judgment final on 19 March 2019⁴⁸

Sexual violence; Pending implementation; Limited progress.



The first ECtHR judgments concerning sexual violence against women in Romania were rendered in 2016; a third judgment was rendered in 2019. In *M.G.C. v. Romania* and *I.C. v. Romania*, the Court highlighted the failure of the Romanian authorities to apply criminal legislation regarding lack of consent of children in the context of sexual acts. In both cases, the victims were below the legal age of consent; one of the victims had a psychosocial disability. In spite of the legal provisions and the factual circumstances of the cases, the national authorities requalified the rape complaints as sexual acts with minors, considering that the 11-year-old and the 14-year-old victims had consented to the sexual acts.

The ECtHR criticised the investigative failure to assess the issue of consent in light of the victims' age and mental capacity. The national courts had refused to take into account a psychiatric assessment of the victim or had failed to order such an assessment, while also failing to assess other factors such as the place and time of the assaults, the number of perpetrators involved and the age difference between the victim and the perpetrators. Instead, the courts gave weight to the lack of evidence of physical resistance and the victims' subsequent behavior in order to presume the existence of consent. Noting that the national practice on such cases was inconsistent, the Court found violations of Article 3 of the ECHR (prohibition of inhuman and degrading treatment) in both cases, and of Article 8 of the ECHR (right to respect for private life) in respect of M.G.C. The failure of domestic courts to take a child-sensitive approach in such cases was emphasized, the Court noting that *"In a significant number of cases, the victim's consent to the sexual acts was inferred from facts which were more akin to child-specific reactions to trauma, such as the fact that the victims did not tell their parents or did not scream for help"*.

In *E.B. v. Romania*, the applicant, a victim of a rape, was an adult woman with an intellectual disability. Similar shortcomings took place: her complaint regarding the rape was dismissed and the case was discontinued, as the authorities failed to adopt a context-sensitive approach, failed to carry

⁴⁷ <https://hudoc.exec.coe.int/eng?i=004-13219>

⁴⁸ According to an update provided by the FILIA Centre, a Bucharest-based NGO

out a specialized assessment of her reactions and mental capacity, and failed to inform her of her procedural rights, or provide her with assistance and protective measures. Instead, in reaching the decision to dismiss her complaint, the authorities relied on the absence of “rape-specific injuries” and a lack of proof regarding physical resistance.

Progress made

In the [Action Plan](#) submitted in July 2020⁴⁹, the Romanian government signaled several positive developments, including:

- Amendments and improvements of the legal framework regarding protection measures for vulnerable victims, procedural rights in view of the hearing of children (in the presence of parents and/or psychologists), aggravating circumstances in cases of rape, free legal assistance for victims, the calculation of the statute of limitations in cases when the victim is a minor, ex officio initiation of criminal investigations into crimes against the sexual integrity and liberty of minors, etc.
- General measures regarding the protection of victims, in the context of the implementation of the Istanbul Convention.
- Judicial practice indicating a positive trend in the application of legal provisions.
- Good practices applied by some prosecutors’ offices in cases regard child victims of sexual crimes.

The authorities asked the Committee of Ministers to consider that “*significant progress*” had been achieved in the implementation of the judgements, while also stating that the inclusion of legal provisions regarding the lack of valid consent of the victim into the definitions of rape and sexual assault crimes was unnecessary. In relation to this, the government argued that the current legal framework is now adequate to address sexual crimes against minors and persons unable to express valid consent.

CM decision

Examined together under enhanced procedure, the cases were debated in October 2020 by the Committee of Ministers⁵⁰. The Committee took note of the legislative reforms and the shift in case law which the government had indicated, while also requesting complete and detailed information on judicial and prosecutorial practices, in order to clearly assess its’ compliance with Convention requirements. The authorities were called upon to finalise an ongoing review of these practices when it comes to sexual crimes committed against children, and to do the same in relation to sexual crimes committed against adults with mental disabilities. The Committee also requested information on prosecution rates; on measures taken to ensure the implementation of the new legal provisions; and measures to ensure the adequate training of investigative and prosecution authorities.

In April 2021, the government [communicated](#) that the Superior Council of Magistracy had been informed of the obligation to carry out an assessment of the prosecutorial and judicial practice concerning sexual crimes “*committed against adult persons with psychosocial disabilities*”⁵¹. Furthermore, the question of improving the software used by the judicial system in order to register sexual crimes, for the purpose of data collection, was raised with relevant national authorities.

⁴⁹ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)608E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)608E)

⁵⁰ <https://hudoc.exec.coe.int/eng?i=004-13219>

⁵¹ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)409E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)409E)

NGO submission

In May 2021, in response to the Action Plan, the Network for Preventing and Combating Violence against Women made a [Rule 9.2 submission](#) in May 2021⁵². They advocated for the introduction of a definition of valid consent in the legislation, arguing its' necessity in the light of ongoing inconsistency of national prosecutorial and judicial practices in relation to the classification of sexual crimes committed against minors. Furthermore, the lack of a clear legal provision regarding the age under which children cannot be considered as being able to give genuine consent for sexual intercourse with an adult was argued to be against the best interest of the child, and to enable the perpetuation of divergent practices.

In providing evidence for the necessity of their recommendation, the network also gave numerous examples of practice (cases reported on by the media) which were contrary to the positive case law examples given by the Government, as well as examples of prosecutorial practices marked by discriminatory assessments based on sex, ethnicity and social status, indicating that incorrect practices still occur on a widespread basis when classifying sexual offences against children. Statistics were also provided in relation to the high number of underage mothers' where the fathers are adults, indicating the pervasiveness of sexual abuse against girls and the lack of a proper response.

In their submission, the Network also pushed back on several statements made by the Romanian government, indicating several omissions or inconsistencies regarding the effectiveness and implementation of measures taken so far:

- While the government had indicated that a network of specialized prosecutors had been set up in 2018 in order to handle complex cases concerning crimes committed against children, the Network provided evidence that almost half of the prosecutorial offices involved did not have a designated prosecutor for the task or any case law analyzed during the previous 18 months.
- While the government has highlighted the special rooms for hearing minors, there were only five such rooms attached to prosecutor's offices, and in 2020, only 8 minors had been heard in such rooms;
- While the government had made note of the practice of psychological evaluations/ psychiatric examinations for establishing minors' capacity to give valid consent, the Network pointed out that there is a lack of specialized staff trained to deal with children who have suffered sexual trauma, and that there is no factual data to indicate that such evaluations are carried out on a regular basis;
- It was also clarified that protection orders (in the context of domestic violence legislation) cannot be issued against perpetrators of sexual crimes against children who are not part of their family;
- While the government had set forward the existence of methodologies on multidisciplinary interventions in cases of violence against children, the Network indicated that such multidisciplinary teams do not exist in practice.
- The Network also clarified that the services for victims of domestic violence which had been presented by the government are not specific for sexual violence trauma, and that no rape crisis centers had been established.

The Network also raised to the attention of the Committee of Ministers the absence of a methodology to avoid re-traumatization of underage victims when being heard in connection to sexual crimes committed against them.

⁵² [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)533E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)533E)

While it is not known yet when the group of cases will be examined again by the Committee of Ministers, the information provided by the Network for Preventing and Combating Violence against Women will be valuable of view of informing both the next government submission, as well as the next assessment.

Further civil society input from NGOs specialized in disability rights has not yet made its way to the Committee of Ministers, but would be useful in providing additional information regarding the statistics, practices and necessary measures in relation to addressing sexual crimes committed against adults with intellectual and psychosocial disabilities.

Recommendation: We encourage the Romanian authorities to speed up the finalisation of the Judicial Inspection thematic reports concerning the prosecutorial and judicial practice concerning sexual crimes committed against children and adult persons with psychosocial disabilities. These reports will be essential in informing further measures.

14. Bopkhoyeva v. Russia, judgment final on 02 February 2018⁵³

Domestic violence; Pending implementation; Little or No progress.

At the beginning of 2018, the Court delivered the *Bopkhoyeva v. Russia* judgment, in which it found a violation of the right to life (the procedural limb of Article 2 of the Convention). The applicant had been abducted by S., with the intent to marry her; while she was forcefully held in S.'s family home, her health deteriorated, and she fell into a coma, remaining in a vegetative state since. Her mother had complained to the police about the ill-treatment to which her daughter had been subjected while held against her will in her husband's home. The investigation failed to be comprehensive; the mother's complaint was repeatedly dismissed without addressing the shortcomings.

This case has been allocated to the *Kotelnikov v. Russia* group, which concerns investigations into death and injuries caused by private individuals. While it is classified as a repetitive case in this group, it clearly concerns additional elements regarding gender-based violence, namely bride kidnapping.

In November 2021, the investigator issued a ruling which deprived the applicant's representative of access to all the materials of the criminal case. In four years of the investigation the authorities have not charged anyone with an attempt on the girl's life. A restricted access to the criminal case file deprives the relatives of participation in the investigation and does not contribute to an effective investigation as a whole.

Recommendation: There has been no progress in the case so far – an Action Plan is long overdue. While the Russian Federation has ceased to be a member state of the Council of Europe, its obligations to implement existing ECtHR judgments continues. We encourage the authorities to submit an Action Plan as soon as possible.

⁵³ <https://hudoc.exec.coe.int/eng?i=004-49101>

15. Volodina v. Russia, judgment final on 04 November 2019⁵⁴

Domestic violence; Pending implementation; Little or No progress.



The first case in the Volodina group has been pending implementation since November 2019; three other similar cases were subsequently added to the group. The applicant in *Volodina* had reported numerous violent physical attacks from her partner at the time, including strangling, death threats, stalking on different occasions and abduction, as well as a violent attack during her pregnancy which led to an abortion. Her former partner had also cut the breaks of her car and published her private photographs without her consent and had secretly placed a GPS tracking device in the lining of her bag. The police had repeatedly declined to institute criminal proceedings.

The ECtHR found a violation of Article 3 of the Convention (prohibition of torture, inhuman and degrading treatment and punishment) and of Article 14 of the Convention (prohibition of discrimination). It noted that women are disproportionately affected by domestic violence in Russia (relying, *inter alia*, on official data compiled by the Russian police regarding “*crimes committed within the family and household*”, which was submitted by the applicant, in light of the decriminalization of battery against “*close persons*”). Despite the fact that the Russian government had argued that it would not be necessary to adopt any legislative measures, the Court concluded that the national authorities had not put in place policy measures geared towards achieving substantive gender equality, highlighting the absence of a definition of “*domestic violence*” in Russian law, as well as “*the continued failure to adopt legislation to combat domestic violence and the absence of any form of restraining or protection orders*”. The refusal of domestic authorities to acknowledge the gravity of domestic violence was considered to have a discriminatory effect on women victims.

⁵⁴ <https://hudoc.exec.coe.int/eng?i=004-54227>

The fourth case added to this group concerns the same applicant: *Volodina (no. 2) v. Russia*. The Court found a violation of Article 8 of the Convention (the right to respect for one's private life) due to the failure of authorities to protect her from ongoing cyberviolence (publication of intimate photographs, impersonation and staking) and their reluctance to open and carry out an effective investigation against the perpetrator.

NGO submissions

In July 2020, the Stitching Justice Initiative (SJI) made a [submission](#) to the Committee of Ministers, showing the continuing inadequate response of the authorities to the violence suffered by the applicant (in particular, the refusal to open a criminal case against the perpetrator), and setting out concerns and recommendations with regard to the current legal framework and practice at national level⁵⁵.

With regard to the current legal framework, SJI highlighted the following concerns:

- The lack of a definition of domestic violence in Russian law, and the lack of legal clarity as to what types of acts it would include.
- The lack of criminalization of economic and psychological violence, as well as stalking or persecution.
- The existence of criminal law provisions allowing the classification of domestic violence acts as lesser offences and imposing an excessive burden on victims.
- The existence of criminal law provisions requiring a minimum threshold of gravity for physical injuries in order to initiate criminal prosecution.
- The lack of protective measures for victims of domestic violence, as Russian law does not provide for restraining or barring orders against perpetrators.
- In its' submission, SJI also discussed the shortcomings of the national policy on domestic violence, which is presented as narrow and insufficient.

[Authorities' response](#)

In the [Action Plan](#) submitted in October 2020, the authorities' maintained that the constitutional guarantees against the discrimination of women are in line with the CEDAW principles⁵⁶. They also presented legislative amendments to the Federal Law on Police, which vested police officers with the right to issue official warnings to individuals about 'inadmissible actions', as well as a set of draft laws on the prevention of domestic violence, which, at the time, were under revision. A 2019 report on law enforcement monitoring – which was approved by the presidency, proposes further amendments to legal provisions regarding domestic violence. The Action Plan also referenced training events and exchanges involving public officials, the creation of new methodologies for procedural practices and the involvement of psychological assistance to victims as a new practice.

[CM decision](#)

Being supervised under the enhanced supervision track, a first examination of the case was held by the Committee of Ministers in December 2020⁵⁷. The CM took note of the progress elements indicated by the authorities, particularly the draft legislation, as well as the plans for further legislative

⁵⁵ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)695E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)695E)

⁵⁶ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)933E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)933E)

⁵⁷ <https://hudoc.exec.coe.int/eng?i=004-54227>

amendments. Through its' decision, the CM *“encouraged the authorities to define domestic violence in all its forms as a criminal offence in the Russian law, subject to public prosecution irrespective of the degree of damage caused, and to include in its scope persons who are not related to each other, including by marriage, and do not share a household”*.

As regards the draft law, the CM proposed the extension of its' scope to cover all forms of domestic violence, while also requesting clarification regarding the situations in which protective orders could be issued (having in mind situations where the perpetrator is unable to relocate).

Finally, the latest [submission](#) was made by Stitching Justice Initiative in November 2021⁵⁸. They set out a series of questions for the authorities and raised concerns about several arguments set forward by the Russian authorities: the official warnings by police are not effective preventive measures, the shortcomings in the draft Domestic Violence Prevention Bill have still not been addressed (inadequate definition of domestic violence, proposal for introduction of restrictive orders contains no restrictions on the physical proximity of abusers to victims of their violence, no mandatory educational programs for police officers), and there is a lack of systematic data collection on domestic violence.

The [submission](#) from Stitching Justice Initiative also recognizes two developments which hope to eventually bring domestic violence offences back under the public sphere of charges:

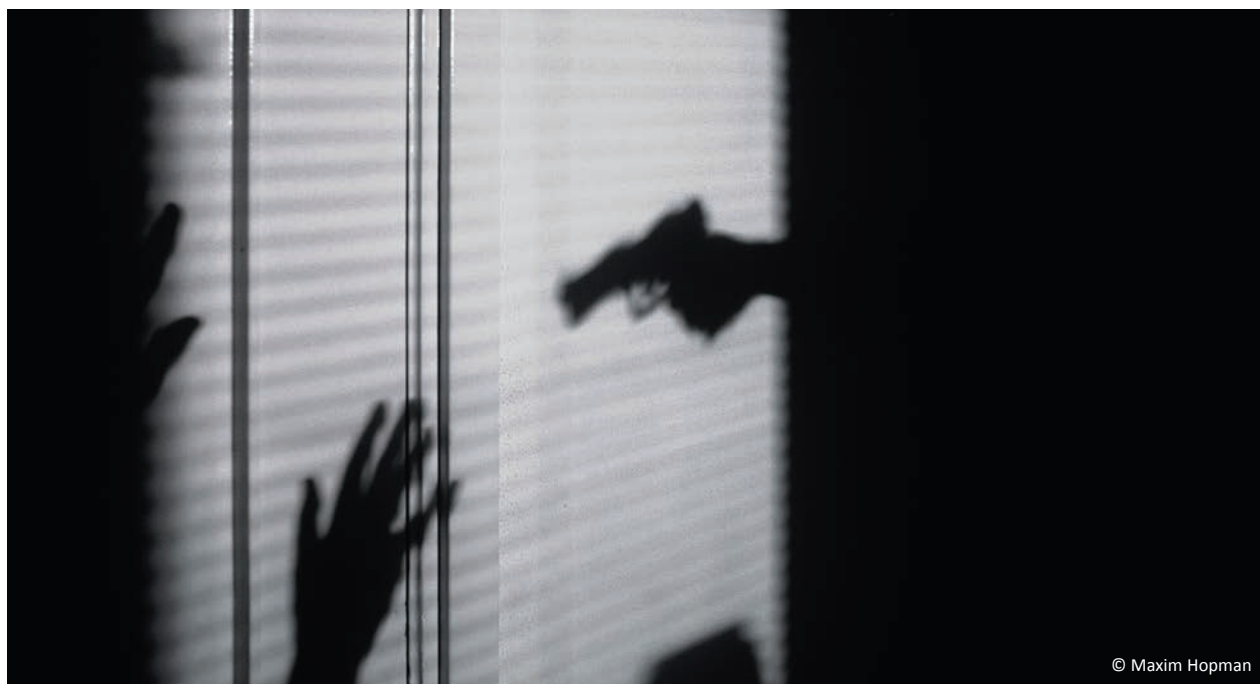
- In April 2021, the Supreme Court of Russia resolved to submit a proposal to the Duma to transfer cases of intentional infliction of minor injury, battery and defamation from the private to the private-public category of charges. If this proposal passes, victims will no longer be obligated to prove the perpetrator's guilt – law enforcement will have to do it.
- Through a 2021 decision, the Constitutional Court deemed unconstitutional a legal provision which excluded criminal liability for battery for persons who have not been subjected to administrative punishment. This development will require amendments to the Criminal Code.

Recommendation: Despite the country's departure from the Council of Europe, Russian authorities still have an obligation to implement existing ECtHR judgments. We strongly encourage Russian authorities to ensure that the draft Domestic Violence Prevention bill is amended in good time, in line with the Istanbul Convention and with the civil society recommendations set out above. Without an adequate definition of “domestic violence”, the effectiveness and impact of this law would be very limited.

⁵⁸ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)1181E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)1181E)

16. Opuz v. Turkey, judgment final on 09 September 2009⁵⁹

Domestic violence; Pending implementation; Little to No progress.



The oldest case concerning violence against women is the *Opuz v. Turkey* case. The judgment has been pending implementation since 2009; since then, five new judgments have been added to the group. In all these cases, the authorities' failure to protect women and their relatives from domestic violence, despite having been adequately informed of the imminent risks and threats, led the Court to find violations of the right to life and of the prohibition of torture, inhuman and degrading treatment. In some of these cases, the Court also found that these failures were discriminatory on the ground of gender, outlining the refusal of national authorities to recognize the gravity of domestic violence acts and the particular vulnerability of victims, which had created an auspicious environment for impunity.

The Court identified problems with preventive measures, the legislative framework, as well as the criminal law system.

Under enhanced procedure, the status of implementation of this group has so far been subject to four decisions of the Committee of Ministers.

Progress made

In 2011, the Committee of Ministers took note⁶⁰ of the reported inadequacy of incipient measures taken by the authorities in terms of capacity building and awareness-raising measures, as well as a national Action Plan on domestic violence. A few years later, Turkey adopted Law No. 6284/2012 to Protect Family and Prevent Violence Against Women, established Violence Protection and Monitoring Centres, and made several amendments to the Criminal Procedure Code in order to introduce effective investigation measures.

⁵⁹ Application no. 33401/02

⁶⁰ <https://hudoc.exec.coe.int/eng?i=004-37222>

In 2015, the Turkish government was credited for having ratified the Istanbul Convention⁶¹, from which it would later withdraw.

In 2020, the Turkish authorities indicated positive developments in case law, both at the Constitutional Court, as well as the practice of issuing protective cautionary orders to protect victims and providing shelter to protect victims and their children⁶². While these steps were received with interest, in 2018, the Committee agreed with the GREVIO report that much more needs to be done in order to effectively address the problem⁶³. It also stated that the positive emerging case law needs to be well-established throughout the judiciary in order to help “reverse the generalized and discriminatory pattern of judicial passivity [...] and to combat the impunity enjoyed by aggressors.”

Regarding individual measures, only one of the alleged perpetrators was convicted for murder; another has died; and in two other case, proceedings are still pending at the appeals phase.

NGO submissions

Submissions regarding the implementation of this group of cases were made by three NGOs. In 2015, IHOP submitted an [extensive monitoring report](#) on the implementation of the Opuz judgment, making recommendations to improve the legislation, the collection of data, the services for victims, and judicial practices⁶⁴. In 2020, before the group was last examined by the Committee of Ministers, both the Federation of Women’s Associations of Turkey and the Mor Çatı Women’s Shelter Foundation also intervened⁶⁵ in the implementation process through two new separate submissions (available [here](#) and [here](#)). They provided statistics on the high number of femicides, as well as information on suspicious deaths of women which are not investigated, being considered suicides, also pointing out the insufficient collection of data by the authorities.

Problems with the implementation of the Law No. 6284/2012 to Protect Family and Prevent Violence Against Women and the Minister of Justice’s Directive on the Implementation of the Law no. 6284/2012 were emphasized, particularly in relation to protective, preventive and supportive measures, showing that the authorities’ response continued to contribute to impunity. The NGOs argued in favor of introducing a definition of gender-based violence or violence against women in the Turkish Criminal Code, and for cooperation between authorities and civil society on the matter.

Government submissions

In [2015](#)⁶⁶, [2017](#)⁶⁷ and [2018](#)⁶⁸, the Turkish government submitted three different Action Reports, arguing that the measures taken had been sufficient to fulfil their human rights obligations under the ECHR and arguing for case closure. Following the 2020 NGO submissions, the government contested the data provided on femicides as unreliable since it had not come from official sources. They argued that a definition of gender-based violence or violence against women was not necessary in Turkish law, while emphasizing ongoing efforts to improve services for victims and data collection, as well as the use of protection orders.

⁶¹ <https://hudoc.exec.coe.int/eng?i=004-37222>

⁶² [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)911E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)911E)

⁶³ <https://hudoc.exec.coe.int/eng?i=004-37222>

⁶⁴ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2015\)1060E](https://hudoc.exec.coe.int/eng?i=DH-DD(2015)1060E)

⁶⁵ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)955E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)955E) and [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)968E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)968E)

⁶⁶ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2015\)526E](https://hudoc.exec.coe.int/eng?i=DH-DD(2015)526E)

⁶⁷ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2017\)16E](https://hudoc.exec.coe.int/eng?i=DH-DD(2017)16E)

⁶⁸ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)997E](https://hudoc.exec.coe.int/eng?i=DH-DD(2018)997E)

CM decision

Under enhanced procedure, the status of implementation of this group has so far been subject to four decisions of the Committee of Ministers. In its' [latest decision in December 2020](#), the Committee of Ministers accepted the arguments from civil society, noting that a persistently high number of women are still victims of violence and that there are shortcomings in the implementation of preventive and protective measures. It called for co-operation with civil society, asking the authorities for further information (regarding alternative measures for women who are refused places in shelters, measures to ensure safety in shelters, delays in issuing and serving injunctions, length and type of sentences, etc.). The CM also directed the authorities towards the Istanbul Convention as a guiding tool for further measures⁶⁹.

Recommendation: Unfortunately, the withdrawal of Turkey from the Istanbul Convention in May 2021⁷⁰ has constituted a huge step backwards for the implementation of the *Opuz* group, and for women's rights in Turkey overall. However, the withdrawal does not change Turkey's obligations in respect to this judgement. The case will be debated again in December 2022; until then, the authorities' explanations will be awaited with interest, while civil society efforts continue. At a minimum, the Turkish government should reconsider this withdrawal, and to commence a systemic effort of data collection on domestic violence.

17. Levchuk v. Ukraine, judgment final on 03 December 2020⁷¹

Domestic violence; Pending Implementation; Limited Progress.



In the case, the Court found a violation of Article 8 of the Convention (the right to respect for private and family life). The authorities had failed to carry out a risk assessment regarding the potential physical and psychological violence which the applicant and her children faced when dismissing their eviction claim against her former husband. Furthermore, the excessive length of the eviction proceedings allowed them to remain in a continuous situation of risk.

NGO submission

The case has been allocated to the enhanced supervision track. In March 2021, the NGO Ukrainian Women Lawyers Association made a [submission](#) advocating for individual and general measures. The NGO raised concerns regarding the impossibility of victims of domestic violence to legally obtain eviction of perpetrators; the ineffective response of law enforcement to domestic violence acts, which according to domestic law, are subject to private prosecution. They indicated that there was a high rate of case closures due

⁶⁹ <https://hudoc.exec.coe.int/eng?i=004-37222>

⁷⁰ <https://www.coe.int/en/web/commissioner/-/turkey-s-announced-withdrawal-from-the-istanbul-convention-endangers-women-s-rights>

⁷¹ Application no. 17496/19

to withdrawal of complaints made by victims under the pressure of perpetrators; that there were delays in the treatment of cases due to perpetrator's failure to appear before courts and statute of limitations; and a tendency to classify domestic violence acts as battery, according to the Criminal Procedure Code. The NGO also pointed out a tendency in domestic case law to dismiss eviction claims against perpetrators on account of lack of proof of systemic violence, as well as a failure in judicial practice to recognize child witnesses as victims of domestic violence, and the lack of gender disaggregated judicial statistics in cases of domestic violence. Recommendations were made to address each category of problems⁷².

In November 2021, the Ukrainian Helsinki Human Rights Union also made a [submission](#) in the case, setting out a series of recommendations. They requested a study of the judicial practice on domestic violence to be carried out and recommended that the authorities create an effective mechanism for the eviction of perpetrators from joint property⁷³.

Authorities' response

The authorities have expressed their openness to comments and recommendations from NGOs. An [Action Plan](#) was submitted in August 2021, setting out information about existing remedies and protection measures, corrective programs for offenders, providing examples of judicial practice in the content of eviction of perpetrators and about cooperation activities with the Council of Europe and other capacity-building activities⁷⁴.

In a later submission (available [here](#)), Ukrainian authorities also indicated that they are developing a Unified State Register of Cases of Domestic Violence and Gender-Based Violence. They reported on the creation and activity of rapid response units of the National Police specialized on domestic violence cases, and indicated that consultations between authorities have been initiated.

CM decision

In December 2021, the Committee of Ministers⁷⁵ took a positive note of measures to enable immediate reactions and temporary solutions in cases of domestic violence and of new provisions in the Criminal Procedure Code, which forbid law enforcement to refuse instituting criminal proceedings in domestic violence cases. The Ukrainian authorities were requested to provide further information, *inter alia*, on the procedures to be followed in cases of continuing threat of violence after the expiration of protection orders, as well as information about the impact of the legislative measures introduced. They are expected to provide this information, as well as updated information about implementation progress, by September 2022.

In January 2022, the authorities reported a positive development concerning individual measures⁷⁶: a final decision regarding alimony payment was enforced against the perpetrator's quota of the joint property, which allowed the applicant to have the full property rights of the apartment, thus ensuring her increased safety.

Recommendation: The Ukrainian government's expression of openness to input from civil society is highly welcome. While acknowledging the unavoidable delays in implementation caused by the war in Ukraine, EIN recommends that the authorities reach out to specialized NGOs working on domestic violence in Ukraine in order to identify remaining gaps and design the necessary measures to address them.

⁷² [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)318E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)318E)

⁷³ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)1275E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)1275E)

⁷⁴ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)793E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)793E)

⁷⁵ <https://hudoc.exec.coe.int/eng?i=004-56503>

⁷⁶ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)69E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)69E)

V. Closed Cases

The Committee of Ministers has already ended the supervision of several cases concerning domestic and gender-based violence. Some of these are set out in the section below. In all but one case, the CM closed the cases based exclusively on the information provided by the governments, in the absence of civil society input.

Civil society input has the potential to provide the Committee of Ministers with valuable information not only about the nature of the measures being taken, but also about their true impact on the scale of domestic and gender-based violence. Without this input, there will be a risk of premature case closure.

1. ***B.V. v. Belgium***⁷⁷, judgment final on 02 August 2017

Sexual violence; Closed case.

The *B.V. v. Belgium* case concerned the ineffective and unthorough investigation into the applicant's complaint regarding rape and indecent assault.

The Committee of Ministers ended supervision of this case through a [final resolution](#) in April 2021, after the Belgian authorities had submitted three Action Reports (available [here](#), [here](#) and [here](#)). The government reported that the National Action Plan on combatting domestic and sexual violence intensified efforts to improve the efficiency of the response of law enforcement and the judiciary, that training efforts for police and judiciary were undertaken, and that it was planned to increase the number of Sexual Violence Management Centres by 2023. Furthermore, authorities reported that the ongoing reform of the Criminal Code will prioritize sexual criminal law, and that it was now compulsory for future judges and prosecutors to undergo training on sexual violence.

2. ***Bevacqua and S. v. Bulgaria***⁷⁸, judgment final on 12 September 2008

Domestic violence; Closed case.

In *Bevacqua and S. v. Bulgaria*, the Court criticized the domestic court's failure, in the context of divorce proceedings, to decide in a timely manner on the issue of interim custody measures requested by the first applicant, due to her ex-husband's violent behavior. The Court also criticized the refusal of the authorities to assist the applicants in relation to the ex-husband's violent behavior.

The authorities' [Action Report](#), which was presented in 2012, indicated that domestic violence legislation had already been enacted before the judgment became final, addressing administrative and policing measures, and protection measures. Furthermore, in 2008, the Bulgarian New Criminal Code of Procedure in Bulgaria included a provision ensuring the speediness in deciding on interim custody measures. Two months after the Action Report, the supervision of the case was ended.

⁷⁷ <https://hudoc.exec.coe.int/eng?i=004-47595>

⁷⁸ Application no. 71127/01

3. M.C. v. Bulgaria, judgment final on 04 March 2004

Sexual violence; Closed case.

In this judgment, the Court found a violation of Articles 3 and 8 of the Convention (prohibition of ill-treatment, inhuman or degrading treatment and the right to respect for one's private life) due to the authorities' failure to punish a young girl's rape in the absence of direct evidence such as marks of violence, instead of examining the absence of the victim's consent.

The Committee of Ministers ended the implementation of this judgment in [2011](#), after the authorities had created and distributed a methodology for the investigation of rape complaints to all regional investigative authorities.

4. A. v. Croatia⁷⁹, judgment final on 14 January 2011

Domestic violence; Closed case.

The [A. v. Croatia](#) group of cases concerned several shortcomings in providing adequate protection in response to domestic violence complaints, including the fact that the perpetrator had never served his prison sentence.

Authorities took a series of general measures ranging from legislative amendments to the Criminal Code to include a definition of domestic violence and new protective measures for victims, to the adoption of two national strategies against domestic violence and of a Government Protocol for Responding to Domestic Violence.

Supervision of the case was ended in October 2020 by the Committee of Ministers, after the case had been pending for 10 years.

5. D.J. v. Croatia⁸⁰, judgment final on 24 October 2012

Sexual violence; Closed case.

In [D.J. v. Croatia](#), the Court found a violation of Articles 3 and 8 of the Convention (prohibition of ill-treatment, inhuman or degrading treatment and the right to respect for one's private life) due to the ineffective investigation into the applicant's complaint of rape, especially with regard to securing evidence and looking into allegations of judges' lack of impartiality.

In implementing this case, the authorities introduced standardized operating procedures in sexual violence cases, which the authorities are obligated to follow, and also issued instructions for police as to how to conduct investigations into sexual crimes. Capacity building efforts for law enforcement and magistrates were also carried out. The Committee ended supervision of this case through a [final resolution](#) in July 2018.

⁷⁹ Application no. 55164/08

⁸⁰ <https://hudoc.exec.coe.int/eng?i=004-10139>

6. Valiuliene v. Lithuania⁸¹, judgment final on 26 June 2013

Domestic violence; Closed case.

In the 2013 judgment in Valiuliene v. Lithuania, not only did the domestic authorities fail to take protective measures, but the proceedings for domestic violence were also discontinued due to statutory limitations, which were met due to shortcomings and delays in the actions of authorities, which the applicant had predicted in her persistent appeals.

In 2015, the Human Rights Monitoring Institute made a Rule 9.2 submission in the case, indicating flaws in the legal framework on conjugal violence, problems with the approach and attitudes of law enforcement and judiciary towards domestic violence and the lack of funding for the implementation of specialized legislation. The NGO made several recommendations, including the expansion of the legal definition of domestic violence; the inclusion of victim protection measures in the Criminal Procedure Code (detailing grounds and conditions for the application, as well as sanctions); and training of law enforcement and judiciary.

The authorities indicated that, in 2015, the General Prosecutor's Office and Police Commissioner issued recommendations, and respectively, adopted guidelines for effectively addressing domestic violence cases. Capacity building for law enforcement dealing with domestic violence was also carried out by the Police Department.

The Committee of Ministers noted that the 2011 legislation provided for protection measures for victims – in essence agreeing with the national authorities that no legislative changes were necessary. Supervision of the case was closed in 2017.

7. M.B. v. Romania⁸², judgment final on 03 February 2012

Sexual violence; Closed case.

The two cases in this group concerned the ineffective investigations into the rape of an adult women with psychosocial disabilities. The supervision of this case was ended by the Committee of Ministers in February 2018⁸³. In this group of cases, there had been no civil society input, and the Committee of Ministers relied on the governments' submissions to end supervision, noting that the "*behavior of the authorities and the investigative techniques used with regard to sex-related crimes significantly improved*", and that "*the Prosecutor's Office attached to the High Court of Cassation and Justice decided to establish a mechanism for the protection of persons in vulnerable situations*". However, the improvement of practice and the effectiveness of the protection mechanism (on which the decision to close the case relied on) appear to be debatable in the light of the ongoing implementation of E.B. v. Romania.

⁸¹ Application no. 33234/07

⁸² Application no. 43982/06

⁸³ <https://hudoc.exec.coe.int/eng?i=001-181685>

8. J.D. and A. v. United Kingdom⁸⁴, judgment final on 24 February 2020

Domestic violence, Closed case.

In the J.D. and A. v. U.K. case, the European Court found a violation of Article 14 of the Convention (prohibition of discrimination), taken together with Article 1 Protocol 1 of the Convention (the right to property), due to the discriminatory effect of the 'Bedroom Tax' on the applicant - a victim of domestic violence who benefited from support services (sanctuary scheme property) which included a panic room. In essence, the impugned tax disadvantaged victims of domestic violence who benefited from such support by reducing their housing benefits.

While it did not concern directly acts of domestic violence, it established that measures taken to support victims of domestic violence and violence against women cannot conflict with other regulations, and produce, as a result, negative and discriminatory consequences for victims.

In October 2021, the U.K. government amended legislation by introducing an exemption which excludes victims of domestic violence who benefit from the sanctuary scheme (and who, under the previous legislation, would have been considered to be under-occupying their home due to the existence of a panic room, and would have had their housing benefits reduced as a result) from the impugned tax. The Committee of Ministers ended the supervision of this case in February 2022.

9. E.S. and others v. Slovakia⁸⁵, judgment final on 15 September 2009

Domestic violence; Sexual violence; Closed case.

This case concerns the failure of authorities to take measures to protect the applicants against physical and sexual abuse perpetrated by their husband and father. Supervision of the 2009 judgment in E.S. and others v. Slovakia was ended in 2012 after the submission of a single Action Report, in which the authorities indicated legislative provisions adopted in 2003 and argued that there is no reason to adopt further general measures.

10. W. v. Slovenia⁸⁶, judgment final on 23 April 2014

Sexual violence; Closed case.

The supervision of the W. v. Slovenia group of cases, which concerns ineffective investigations into sexual assault and rape allegations, supervision was ended through a final resolution in 2018⁸⁷, after the national authorities have submitted three Action Reports in 2015, 2017 and 2018.

⁸⁴ Application no. 32949/17

⁸⁵ Application no. 8227/04

⁸⁶ Application no. 24125/06

⁸⁷ <https://hudoc.exec.coe.int/eng?i=001-187498>

VI. General Measures for the Implementation of ECtHR Judgments Concerning Domestic and Gender-Based Violence: Best Practices

When making recommendations for the implementation of an ECtHR judgement concerning domestic violence and gender-based violence, the main starting point is assessing the national legal framework, practices and policies through the common lens of the scope of the judgment, as well as the Istanbul Convention.

Each state has varying and developing legal frameworks and policies, as well as cultural and societal norms which influence the prevention and response to domestic and gender-based violence. The scope of each judgment on this topic will vary and will impose different general measures from one case to another.

A good source of orientation can be derived from analyzing the Rule 9 submissions of civil society, as well as government communications, made in respect of judgments with a similar scope of implementation, or in respect of judgments against states with a similar background.

EIN has compiled a list of core recommendations made by NGOs in domestic violence and violence against women cases, as well as a list of less common recommendations. We hope that these will provide useful information for those advocating for implementation measures.

List of core recommendations:

- Domestic law must provide a clear legal definition of domestic violence with legal clarity as to what types of acts it includes. The definition should include acts committed between former or current spouses or partners and persons who have established relations similar to those between parents and children, whether or not the perpetrator shares or has shared the same residence with the victim.
- The definition of domestic violence should include all forms of violence (physical, psychological, sexual, financial/economic, as well as stalking and persecution).
- Legal provisions allowing the classification of domestic violence acts as lesser offences and imposing an excessive burden on victims should be abolished, as well as criminal law provisions requiring a minimum threshold of gravity for physical injuries in order to initiate criminal prosecution.
- Domestic law should provide the possibility of protection orders for victims of domestic violence, as well as provisional/emergency protection orders which can be issued by police.
- Authorities should identify the barriers faced in issuing protection orders and address them effectively. All administrative barriers should be eliminated, as well as undue financial and administrative barriers for victims seeking protection orders.
- National legislation should ensure that preventive measures should be employed without authorities requiring medical evidence.
- Authorities should develop risk-assessment measures, to be applied by law enforcement, social protection services and judicial authorities. Risk assessment procedures must be developed and applied to all stages by relevant professionals in contact with victims of gender-based violence. The duration of protection measures should be in accordance with the risk analysis.

- The law should foresee effective remedies against any state authority that has failed in its duty to take the necessary preventive or protective measures within the scope of its powers, in accordance with the requirements of Article 29, paragraph 2 of the Istanbul Convention.
- Mediation and reconciliation in domestic violence cases should be prohibited.
- Specialised training sessions should be provided on an ongoing basis to professionals involved in combating violence against women and domestic violence. Police officers, magistrates, psychologists and interinstitutional mobile team members should be trained in order to end stereotypes regarding victims and aggressors, to assure a better management in cases of domestic violence where the victim`s safety is prioritized.
- National authorities should ensure a sufficient number of adequately staffed and specialised shelters for victims, of adequate geographical distribution. Local authorities should be obliged to budget social services for the victims of domestic violence.
- Access to shelters should not be subjected to conditions compromising their role of providing support to victims in emergency situations.
- Financial allocations should be provided for the work carried out by relevant NGOs (lawyers, psychologists, shelters) working to support victims of domestic violence.
- Education and awareness-raising programmes on domestic violence should be provided to the general public.
- Disaggregated official data should be collected on femicides, domestic and gender-based violence.

List of less common recommendations:

- Authorities should establish emergency response intervention units who are, inter alia, responsible for immediate risk assessment; they should ensure resources for their functioning and specialised training for staff.
- Ensure that eviction proceedings constitute an effective remedy for the protection of victims of domestic violence. Ensure that legal amendments regarding eviction reflect that the property rights of perpetrators may never prevail over victims` rights in eviction cases.
- Authorities should ensure reasonable terms of consideration of domestic violence cases and non-delay of consideration of such cases.
- Authorities should ensure free legal aid and psychological support for victims of domestic violence. Authorities should ensure information to victims of domestic violence about state-guaranteed legal aid and provide state-guaranteed legal aid to all victims of domestic violence in due time.
- Authorities should ensure psychological treatment and rehabilitation of perpetrators of domestic violence.
- Authorities should introduce a 24/7 domestic and gender-based violence hotline.
- Authorities should develop the guidelines and methodologies for the investigation of domestic and gender-based violence crimes.
- Authorities should introduce the definition of stalking in the Criminal Code.
- Authorities should introduce measures to prevent repeated victimisation, retaliation or intimidation by authorities.
- Authorities should enhance inter-institutional coordination and co-operation on this topic, as well as co-operation with civil society organisations.
- Authorities should enact legislation regarding the electronic system for monitoring compliance with protective orders and ensure the availability of the electronic bracelets for aggressors.

Specific recommendations regarding sexual violence against minor girls:

- Authorities should provide a Judicial Inspection thematic control of the practice of domestic courts and prosecutors' offices regarding investigations of sexual crimes against women and girls (or minors).
- Authorities should develop and introduce - in accordance, with the principle of the best interests of the child and in collaboration with experts, including relevant NGOs - legislation that establishes a presumption of lack of discernment for children under a certain age, in case of sexual intercourse with an adult, in accordance with the principle of the best interests of the child.
- Authorities should ensure that there is an official protocol followed by all prosecutors when hearing minors in cases regarding sex crimes committed against them, in order to avoid re-traumatization.
- Authorities should change discriminatory prosecutorial practice in establishing a child's capacity to give valid consent by taking measures to ensure that in all cases of minors giving birth, where the fathers of the new-borns are adults, *ex officio* prosecution is initiated.

When the scope of implementation requires it, such recommendations should be made with an **intersectional perspective**, addressing also specific additional measures to tackle discrimination based not only on gender, but also on ethnicity, disability and social class. For example, the recommendation made by the Network for Preventing and Combating Violence against Women addressed the need to eliminate *“racist and classist biases from magistrates' practices in establishing minors' discernment to give valid consent for sexual relations with adults”*, because the practice is particularly discriminatory against girls of Roma ethnicity who are being married as children, at times even weighing against them their school performance and the social and family environment.

When making recommendations on data collection, the **disaggregation criteria** of data to be collected is also particularly important, as it can help reflect intersectionality issues and inform policy reform. The Network for Preventing and Combating Violence against Women requested data disaggregated *“by age group, gender, decision to prosecute or not to prosecute, conviction or acquittal, information on the sanctions (suspended or not suspended sentence, number of years), environment of origin or the child victim (institutional or family) and other intersectionality factors (such as psycho-social disability and intellectual disability), protection measures that have been taken, rural vs. urban.”*

The list of recommendations above is neither prescriptive, nor exhaustive. It is meant to serve as guidelines for actors who, within the scope of specific ECHR judgments, are in the position of assessing the shortcomings in their own national legal framework, policies and practice. On a case-by-case basis, the appropriate recommendations can be selected, adapted or reframed. New recommendations are expected to arise in order to address the particularities of each new case.

Evidence

When NGOs/NHRIs make recommendations for the implementation of ECtHR judgments, these must be based on the factual situation of shortcomings within the relevant country. These facts should always be diligently substantiated and evidenced, to the best extent possible. NGOs have often relied, in their Rule 9 submissions, on different types of evidence in order to prove the ongoing shortcomings in implementation at national level. In cases regarding domestic violence and gender-based violence, disaggregated statistics on femicides and other violent crimes against women are essential. When they are not available, NGOs can ask the Committee of Ministers to request national authorities to collect and provide such data.

Examples of other types of evidencing can include:

- New ECtHR pending cases or new similar ECtHR judgments demonstrating the ongoing problem;
- Analysis of domestic case law;
- Reports written by national NGOs or national authorities;
- Reports written by international NGOs or organisations:
 - » CEDAW reports and recommendations;
 - » GREVIO Evaluation Reports;
 - » Council of Europe Commissioner for Human Rights;
- NGO Surveys on violence against women;
- Statistical data from year to year showing the impact of new measures:
 - » Data on number of femicides and aggressions, rate of reporting;
 - » Data on number withdrawn complaints;
 - » Data collected on shelters for victims of domestic violence (public and private, number of places, staffing and training, occupancy, approved and non-approved requests for shelter, security, practices);
 - » Data collected on classification of offences, closed cases, acquittals, sanctions applied, statistical data on application and compliance with protective orders;
 - » Total percentage of cases which were not properly dealt with by authorities;
- Research on the legal system and judicial practices carried out by academics or NGOs;
- Interviews with victims and authorities which demonstrates a stereotypical approach to victims of domestic violence;
- Press articles and media sources.

VII. Report Recommendations



The key to the effective implementation of ECtHR judgments concerning domestic and gender-based violence is the pro-active and good faith engagement of all of the key stakeholders with the implementation process. If national authorities, the Council of Europe and civil society all take an active role in implementing these important rulings, judgments regarding certain individuals can be turned into rights for all.

National Authorities

National authorities have the primary responsibility for implementing judgments of the ECtHR. It is vital that they engage in the process in a comprehensive and open manner. Best practice would involve the following: consulting with civil society, the Council of Europe and other experts about the necessary reforms to implement any

particular ruling; drawing up a comprehensive Action Plan of individual and general measures; consulting again to consider necessary changes; effectively resourcing and executing the resulting plan; regularly informing the Council of Europe and civil society about progress; and making ongoing amendments to the plans as necessary.

Council of Europe

The role of the Council of Europe in this process is also indispensable. Country and case-focused projects on domestic and gender-based violence can help make important improvements to legal and policy frameworks, as well as the capacity of public servants to implement them. We recommend that such projects are carried out for as many countries as possible which have an ECtHR judgment pending on this issue – and that they take into account the ECtHR implementation process.

Committee of Ministers

The Committee of Ministers has the power to shape the direction of the implementation of ECtHR judgments through its' decisions and recommendations. Its' own standards for assessing progress have evolved in the past years, and this has been, at least in part, thanks to the independent information provided by civil society. This standard should be applied uniformly in all pending cases which concern domestic and gender-based violence, by taking the steps necessary to assess the real impact of measures taken by the authorities, even in the absence of civil society input.

We recommend that the Committee of Ministers maintains increased scrutiny of these cases and increases its scrutiny for those cases which have seen minimal reporting, scheduling these cases for debate on an annual basis. Where it agrees with the recommendations made by civil society, we encourage the Committee of Ministers to explicitly say so, and to set forward strong and concrete recommendations.

Civil Society and NHRIs

Once an ECtHR judgment becomes final, NGOs and NHRIs can make recommendations to national authorities regarding the implementation of ECtHR cases. If the authorities are open to such submissions, this input can be made outside the Council of Europe implementation monitoring process – and ideally before the writing of an Action Plan.

Most importantly, NGOs/NHRIs can engage in the implementation monitoring process. Through submissions to the Committee of Ministers under Rule 9, NGOs and NHRIs are able to ensure that the right individual and general measures are being taken - and that these measures are effective and properly implemented.

NGO/NHRI submissions inform the decisions of the Committee of Ministers with evidence regarding the situation on the ground and the impact of measures taken. They can also prevent the premature closure of cases. For the purpose of facilitating the process, EIN has made available a Rule 9 submission template, as well as the non-exhaustive and non-prescriptive list of general measures in this report (for this information, see Appendix 2: General Measures for the Implementation of ECtHR Judgments Concerning Domestic and Gender-Based Violence). NGOs/NHRIs should also combine advocacy efforts at the Council of Europe with national advocacy by raising awareness about implementation shortcomings, to maintain pressure on national authorities.

We note that there have unfortunately been no Rule 9 submissions by NHRIs in any of the cases pending implementation listed in this report. EIN highly recommends that NHRIs also become engaged with the implementation process of these judgments before the Committee of Ministers.

Implementing ECtHR judgments in the field of domestic and gender-based may be a long and multifaceted journey – but it is a process which can lead to vital reforms which protect a huge number of people.

Appendix 1: Template for Rule 9.2 Submissions

1. Covering email for sending your Rule 9.2 to the Department for the Execution of Judgments

Email address: DGI-Execution@coe.int

Dear Madam/Sir, This message is sent to you in the context of consideration by the Committee of Ministers of the execution by [name of the country] of the [name of the case/ group of cases, and application No]. Please find enclosed a Communication prepared by [name of the organisation] pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. Should you need any further clarifications, please do not hesitate to contact us.

[Contact details of the person/ organisation sending the Communication]

2. The submission itself

DGI Directorate General of Human Rights and Rule of Law Department for the Execution of Judgments of the ECtHR F-67075 Strasbourg Cedex FRANCE

Email: DGI-Execution@coe.int

Date of the submission

COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by [the names of the submitting NGO(s)]

NAME of the CASE/ GROUP of CASES (Application No)⁸⁸

INTRODUCTORY PARAGRAPH – Description of the case and of the organization(s)

Brief description of the case, including:

- *An indication of the subject of the case/cases, a summary of the relevant facts, and a description of the violation(s) found by the ECtHR.*
- *The date the judgment became final; and whether the case is under enhanced or standard supervision.*

The case description should focus on the elements of the judgment relevant to determining the individual and general measures required for implementation. A good starting point is the case description published in the HUDOC-EXEC database.

⁸⁸ Include hyperlink to the Hudoc-Exec page for your case. Make sure to use the permanent document URL from the top of the page rather than the long link in your browser window.

Brief description of the NGO or NGOs who are the authors of the communication, their focus areas and expertise, and the relevance of their experience to the subject matter of the case. For NGOs well known to the Council of Europe, this section can be kept very brief indeed, or perhaps even covered by way of footnote.

EXECUTIVE SUMMARY

Put here main recommendations to the CM (perhaps up to 4 or 5) in the form of bullet points.

INDIVIDUAL MEASURES

If the authorities have already submitted an Action Plan, your information and presentation should directly respond to that of the Action Plan in terms of the information covered, the order in which it is presented, and if possible, the headings.

- *Address the adequateness of the individual measures adopted/ envisaged, pointing where individual measures require prior adoption of general measures and how these should be conceived;*
- *Provide any updated information on actions taken regarding individual measures such as, e.g.: payment of compensation, effective investigation measures into domestic violence acts, protection measures, social services.*

You can also make recommendations for individual measures before the authorities have submitted an Action Plan, especially when urgent individual measures are required.

GENERAL MEASURES

Respond directly to the information presented in the Action Plan, where possible using the same headings and sub sections as the Action Plan.

Describe any progress/ challenges related to the general measures. Challenge any information provided by the state which is considered to misrepresent or exaggerate progress achieved in implementing the measures.

Subjects you may need to address include gaps in legislative developments, law enforcement/ executive/ administrative practice, public policy, judicial practice and social services for victims.

Take a look at Section III on General Measures to see which recommendations might be appropriate for your national context.

Recommend additional general measures where those proposed by the state are insufficient or are proving ineffective.

Provide more general contextual information if, for example, the Action Plan is considered not to reflect fully the seriousness of the factors giving rise to the violation.

You should support your comments with evidence from your own sources. You could also cite reports by national institutions and other domestic NGOs, particularly where these are not available in English.

You may also refer to reports from expert bodies of the Council of Europe and other international institutions particularly where these support your arguments. However, you need not quote these at length, as it's more than likely that the DEJ will already be aware of this information.

It will be particularly valuable to refer to recent cases or statistics, as well as press sources, which show how systematic failures perpetuate the situation covered by the case. Make sure that you include facts and figures, as well as your sources/ partners in collecting evidence.

CONCLUSIONS AND RECOMMENDATIONS TO THE CM

Set out here your recommendations to the CM. These recommendations should be as realistic as possible, setting out what you request the CM to urge the respondent state to do. NGOs should avoid:

- *presenting recommendations or information which goes beyond the scope of what is required for implementation of the judgment.*
- *Adopting a tone that is too "campaigning" or emotive.*

Examples of recommendations:

- NGOs can suggest the type of evidence the CM might request that the state provide to demonstrate progress in implementing measures, or the efficacy of measures already implemented.
- NGOs can make proposals as to any broader steps to be taken, such as law or policy reform, or training; in making such proposals, NGOs should seek to show that such steps are indeed required in order to implement the judgment in question.
- So far as procedural questions are concerned, NGOs may also:
- Request that states present Action Plan/ Reports where delayed (States are required to present Action Plans/Reports no later than 6 months after a judgment)
- Call for a debate on a case at the quarterly CM-DH meeting (for cases which are not under enhanced supervision)
- Call for a case to be moved from the standard supervision track to the enhanced supervision track
- Call for an interim resolution of the CM
- Call for the CM to refer the judgment to the ECtHR for interpretation
- Call for the initiation of infringement proceedings in exceptional circumstances

Appendix 2: Contact details of specialised NGOs

NGOs play a crucial role in the implementation process. Through their Rule 9.2 communications and informal briefings they can shed light on the actual state of execution of a given judgment or group of cases, and prevent them from being closed too early. NGOs also push forward reforms at the national level through their advocacy. These are some of the NGOs engaged in the process of the implementation of ECtHR judgments concerning domestic and gender-based violence.



Women's Law Centre

str. M. Kogalniceanu 87
Chişinău, Republic of Moldova
(+373) 22 811 999
office@cdf.md



JURFEM – Ukrainian Women's Lawyers Association

Lviv, Ukraine
jurfem.ua@gmail.com



Ukrainian Helsinki Human Rights Union (UHHRU)

3/34 Frolivska St. (the 3rd floor)
Kyiv, Ukraine
+38 (044) 485 17 92
office@helsinki.org.ua



FILIA Centre

Povernei Street, no. 6-8, Sector 1
Bucharest, Romania
021/313.80.24
office@centrulfilia.ro



Stichting Justice Initiative

P.O Box 19318,
Utrecht, The Netherlands, 3501 DH
srji.org@gmail.com



Mor Çati Women's Shelter Foundation

Kocatepe Mah.
Cumhuriyet Caddesi, Cumhuriyet Apartmanı No.:17
Kat 5 – D: 11. Beyoğlu / İstanbul
(212) 292 52 31-32
morcati@morcati.org.tr



Federation of Women Associations of Turkey (TKDF)

Küçükkesat Akay Cad. 15/2
06660 ANKARA Türkiye
+90 (549) 417 26 05
tkdfederasyon@gmail.com



Donne in Rete contro la violenza

Casa Internazionale delle Donne
Via della Lungara, 19.
Roma 00165
+39 392 720 0580
segreteria@direcontrolaviolenza.it



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St. Vaso Pasha, P. 20, Ap.57
1001 Tirana, Albania
+355 44 51 9076
info@euro-centre.eu

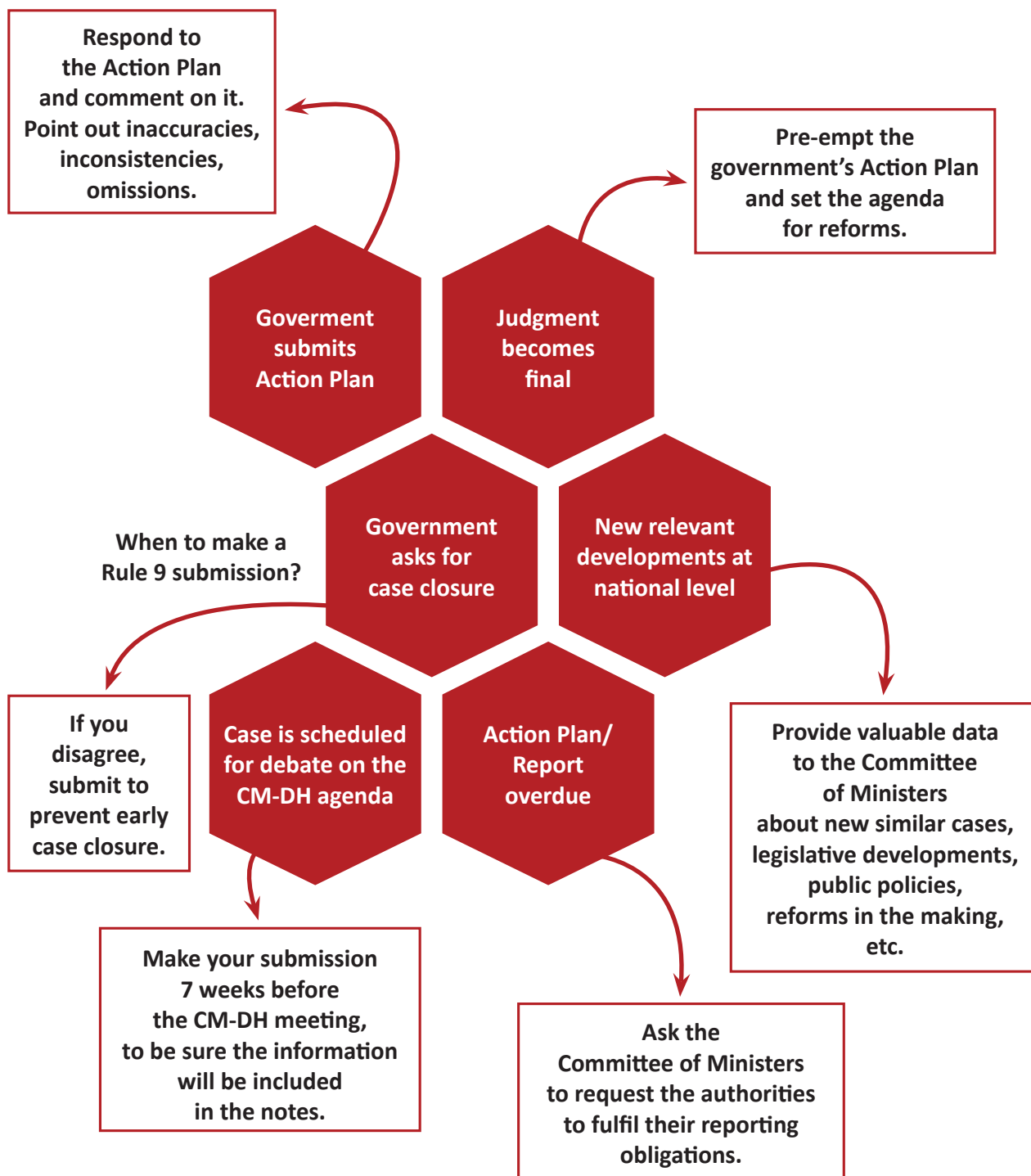


Albanian Monitoring Network Against Gender-Based Violence

Launched by [The Center for Legal Civic Initiatives](#)
Rr. «Vaso Pasha», Pall 12, Shk 1, Ap 1.
Tirane-Albania.
P.O BOX 1549,
Tel +355 4 240 933, Fax +355 4 241 914
avokatore@albmail.com

Appendix 3: Model Action Plan for Civil Society

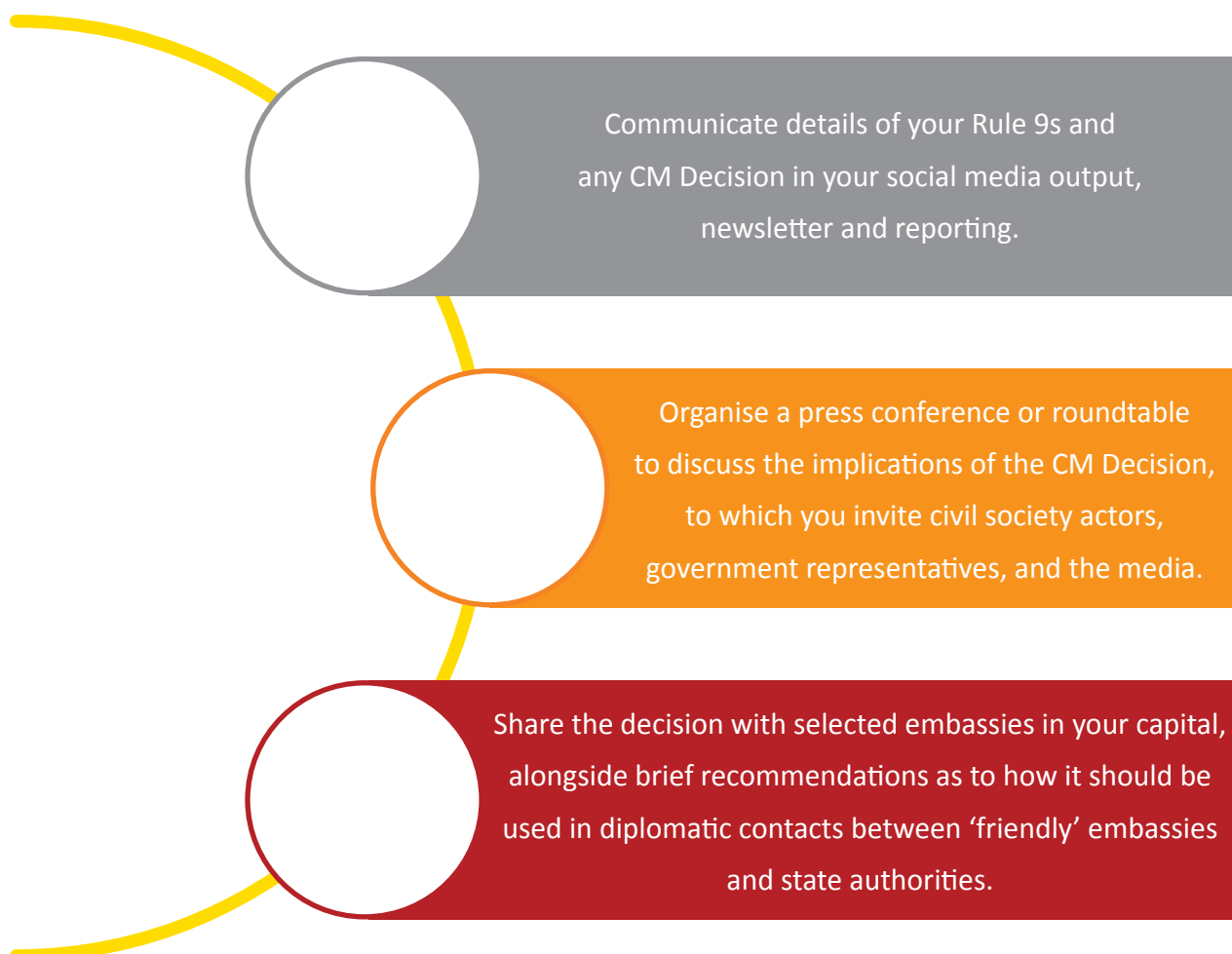
A. Plan for making Rule 9 submissions



B. Plan your advocacy strategy



C. Plan your communication strategy



This report is funded by:



THE GOVERNMENT
OF THE GRAND DUCHY OF LUXEMBOURG
Ministry of Foreign and European Affairs

CONTACT

EIN Secretariat
contact@einnetwork.org

Postal address:
BP 80007, F-67015 STRASBOURG

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