

## ECHR Case Law Monitoring

In 2022, Victim Support Europe continued to regularly monitor case law stemming from the European Court of Human Rights. This document provides a summary of relevant case law, covering various topics such as ineffective investigation and revictimization in relation to domestic abuse, harassment in the workplace, and forced abortion and contraception.

### [B v. Russia \(application no. 36328/20\)](#)

**Underlying issue:** The case explored the re-traumatisation of a child victim of child sexual abuse during the criminal proceedings.

**Legal matter:** Violation of Article 3 (prohibition of inhuman or degrading treatment).

**Summary of facts:** After the passing of her mother and an interview by psychologists in 2019, it was revealed B, age 12, had been abused by several males when she was younger. In the criminal proceedings she was put through processes that lead to secondary victimisation and being diagnosed with PTSD, asthenia, anxiety and depression, suicide risk and self-harm. She was interviewed up to 12 times by different interviewers, she was put through extensive questioning in trials, had to face the alleged perpetrators in person, and was asked to carry out on-site verifications. Her mental health kept deteriorating through the processes. Three of the defendants were convicted and two were sentenced to twelve years' and nine years' imprisonment. Appeal proceedings in two of the cases and the trial against one defendant is still pending.

The case concerns a violation of Article 3, stating there was no consideration for the victim's young age (12) and the nature of the crime – which caused severe stress and mental hardship leading to psychological disorders and re-traumatisation.

**Legal reasoning:** The Court concluded that procedures were not adequate considering the applicant's acute vulnerability. Disregarding the guardian's and psychologists' concerns about B's deteriorating mental health, the court failed to take into account her particularly vulnerability as a child victim of sexual abuse. Interviews were not kept to a minimum, video-recording was not allowed in all cases, there was nothing to show proper procedures had been put in place to keep her safe, multiple investigators (it is recommended that child victims are interviewed by the same person every time), verifications were carried in person and multiple times, and she was put through distressing circumstances. The Court considered that the proceedings were incompatible with the sensitive approach required on the part of the authorities to the conduct of criminal proceedings concerning the sexual abuse of a minor.

The Court concluded that the Russian authorities had displayed utter disregard for B's suffering and thus found a violation of Article 3. This case highlights the importance of safe justice systems in which different vulnerabilities are taken into account on a case-to-case basis.

### Tunikova and Others v. Russia

**Underlying issue:** Domestic courts and domestic law failed to protect the applicants from acts of domestic violence. They failed to carry out effective investigation of the cases and showed the lack of an adequate domestic legal framework that provides sufficient measures of protection for victims of domestic violence.

**Legal matter:** Violation of Article 3 (prohibition of inhuman or degrading treatment), violation of Article 14 (protection from discrimination).

**Summary of facts:** The four applicants were the victims of a series of domestic violence incidents that took place over the course of several years, their cases continuously disregarded on the basis of a legal framework that did not cover the offense of “battery” and due to discrimination by law enforcement officers (one of the applicants was told the violence was “a manifestation of love”). The assaults included physical abuse, stalking, threats and kidnappings. In one case, the applicant was even mutilated by her former husband, leaving her to deal with a disability for life. In a couple of the cases, this violence went on for up to eight years, their reports continuously disregarded.

**Legal reasoning:** The Court found in all instances there had been a failure to protect the victims, to respond promptly to the reports, and to carry out effective investigation. There were records of physical and psychological violence that the Court found were sufficiently serious to fall under the scope of Article 3 of the Convention. The lack of action and failure to protect the victims from further violence greatly contributed to the psychological suffering in addition to the physical suffering experienced by the applicants. The Russian legal framework does not provide protection for victims of assaults in administrative proceeding. It provides general measures of crime prevention that target perpetrators of domestic violence but do nothing to protect its victims. Victims often live under constant threat of escalating violence due to the lack of immediate and effective protection.

The Court has reiterated that states have an obligation to adopt criminal-law protection measures to combat domestic violence. This includes the criminalization of domestic violence through effective, proportionate, and dissuasive sanctions, which can be categorized as a separate offense or an aggravating element of other offenses. Russia, in particular, has failed to enact such legislation to address domestic violence. Its legal framework cannot punish all forms of domestic violence, nor does it have penalty-enhancing provisions relating to domestic violence. Under Russian law, forms of domestic violence that do not result in physical injury or pain, such as stalking, verbal, psychological, or economic violence, are not prosecutable under any legislation. Comprehensive legal and other measures are necessary to provide effective protection and safeguards to victims of domestic violence. This case reflects the importance of a legislative framework that adequately addresses the phenomenon of domestic or family violence.

### G.M. and Others v. The Republic of Moldova

**Underlying issue:** Ineffective investigation into allegations of forced abortion and forced contraception after rape by a doctor of three intellectual disabled applicants in a neuropsychiatric residential asylum.

**Legal matter:** Violation of Article 3 of the Convention (prohibition of inhuman or degrading treatment).

**Summary of facts:** The case involves three applicants, G.M., T.M., and M.P., who have varying levels of intellectual disabilities and have been institutionalized in the Bălți neuropsychiatric residential asylum for different periods of time. During their stays in the asylum, they were allegedly raped by F.S., the head doctor of one of the units. The first and third applicants claimed to have become pregnant after being raped by F.S. and all three applicants claimed to have been subjected to forced abortions. All three applicants also claimed that after the forced abortions, intrauterine contraceptive devices were implanted without their consent. The complaints were disregarded multiple times, stating the termination of the pregnancies had been lawful and in accordance with domestic law. The police claimed that the residents' health condition, social status, and consent had been taken into consideration. The police also noted that no breaches of the law had been found in respect of spontaneous termination of births and that it was lawful by existing legal provisions.

**Legal reasoning:** The Court noted that patients confined in psychiatric hospitals are especially vulnerable and protected under Article 3. Forced abortion, sterilisation, and birth control are forms of gender-based violence. In this case, non-consensual medical interventions on women with intellectual disabilities, if established, combine with the applicants' vulnerability fall under Article 3 of the Convention. The complaints concerning non-consensual contraception were also examined under Article 3 of the Convention given the gravity of the allegations and the vulnerability of the applicants. Thus, the Court found that Moldova failed to carry out an effective investigation into allegations of ill-treatment of three women.

The Court also found that, while the Moldovan law established a system of "presumed consent" for medical interventions that did not pose significant risks, sufficient legal safeguards were not in place to protect women with intellectual disabilities from forced abortions and birth control measures, and concluded that the consent of the women was required under domestic law for the said interventions. In relation to the alleged forced sterilisation, for at least one case, the Court found that there was sufficient evidence to prove a contraceptive device was implanted on one of the applicants without her consent.

The Court concluded that the government violated the rights of three women who were held in a Moldovan asylum. The Court also found that the government failed to properly investigate the women's complaints of mistreatment. The Court ordered the government to pay the women compensation for the harm they suffered, and to cover their legal costs.

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

**Underlying issue:** Failure to effectively investigate alleged death threats against vulnerable rape victim by her abuser and father, in breach of domestic law.

**Legal matter:** Violation of Article 3 (prohibition of inhuman or degrading treatment).

**Summary of facts:** The applicant's father, B.S., was convicted and imprisoned on several counts of rape and incest against her. During his prison leave, he allegedly threatened to kill the applicant through their relatives. The applicant contacted the police on several occasions, including after seeing B.S. at a bus station. The police intervened at the scene but no further action was taken. The applicant complained about the police conduct, resulting in an ultimately unsuccessful internal inquiry at the Ministry of the Interior, and lodged an unsuccessful complaint before the Constitutional Court.

**Legal reasoning:** Looking at the victim's particular vulnerability as a highly traumatised young woman of Roma origin, and her previous experience, the Court concluded her fear of further abuse and retaliation was founded and caused her intense anxiety and feelings of powerlessness. The Court concluded she had suffered inhuman treatment under Article 3. The applicant had contacted the police on three separate occasions, informing them about a serious threat. Although the authorities had had the duty to investigate the allegations of serious threat to the applicant's life, at none of those occasions had they started a proper criminal investigation, as they had been obliged to do under domestic law. Authorities failed to consider the applicant's particular vulnerability on account of her sex, ethnic origin and past traumas, and failed to begin proceedings in order to protect her. The Court found the authorities failed to effectively investigate a particularly vulnerable rape victims' allegation of a serious threat to her life. Taking intersectionality into account, and paying attention to specific circumstances of vulnerability, are essential to avoid re-victimisation and adequately protect victims from further harms, as reflected by this case.

### C. v. Romania (application no. 47358/20)

**Underlying issue:** Significant flaws in criminal investigation concerning alleged sexual harassment at the workplace.

**Legal matter:** Violation of Article 8 (Respect for your private and family life).

**Summary of the facts:** The applicant, who was employed in a cleaning company which provided services to a railway station belonging to a railway company, filed a criminal complaint against the station manager (C.P.) for sexual harassment. After an investigation, the prosecutor's office closed the case on the grounds that the acts committed did not meet the requirements provided for by the criminal law to constitute the offence of sexual harassment. This decision was upheld by the chief prosecutor of the same office and then by a District Court. The main reason permeating the decisions was the absence of humiliation of the applicant by the acts in question, which is a required element in domestic law to constitute an offense. Following the failed procedures, and in relation to the railway company being State-owned; the Court explored whether, in the criminal proceedings concerning the allegations of sexual harassment perpetrated against the applicant, the State had sufficiently protected her right to respect for her private life and her personal integrity.

**Legal reasoning:** Despite the investigation into the complaint being prompt and the alleged acts being confirmed, the Court highlighted several issues with the authorities' approach – including lack of explanations on how they reached their conclusions (such as the lack of humiliation), a failure to order

a psychological assessment of the applicant, and the presence of the accused and a witness confrontation. These did not take into account the possible psychological consequences for the victim nor the sensitive nature of the case. For those reasons, the Court found that the investigation of the applicant's case had had such significant flaws as to amount to a breach of the States' positive obligations under Article 8.

Overall, the Court's decision highlights the importance of protecting victims' rights and dignity during criminal proceedings related to sexual harassment and the need for thorough and contextually sensitive investigations.