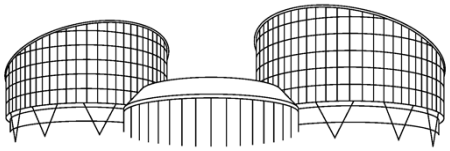

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TËRSHANA v. ALBANIA

(Application no. 48756/14)

JUDGMENT

Art 2 (substantive) • Positive obligations • Acid attack on a woman in the street • Existence of an effective criminal-law framework • Risk to applicant's life, by suspected former husband, not being brought to attention of authorities before attack • State authorities not responsible
Art 2 (procedural) • Effective investigation • Court having regard to general situation of violence against women in Albania • Ineffectual approach to violence against women by law-enforcement officials • Obligation on the part of the investigative authorities to react with special diligence in conducting a thorough investigation • Failure to carry out with due expedition and determination investigative measure of crucial importance • Inability of applicant to appeal against decision staying investigation, to challenge (lack of) investigative steps or to bring claim for damages

STRASBOURG

4 August 2020

FINAL

04/11/2020

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

In the case of Tërshana v. Albania,

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

Robert Spano, *President*,
Paul Lemmens,
Ledi Bianku,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Arnfinn Bårdsen, *judges*,
and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 3 July 2018 and 23 June 2020,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 48756/14) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Albanian national, Ms Dhurata Tërshana ("the applicant"), on 30 June 2014.

2. The applicant was represented by Mr N. Marku, a lawyer practising in Tirana. The Albanian Government ("the Government") were represented by their Agent, Ms A. Hicka, of the State Advocate's Office.

3. The applicant alleged that the authorities had failed to protect her life and her right to respect for her private life under Articles 2, 3, 8, 13 and 14 of the Convention. She further complained about the authorities' failure to conduct a prompt and effective investigation leading to the identification, prosecution and punishment of the assailant.

4. On 6 October 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1984 and lives in Tirana.

A. Background of the case

6. On 29 July 2009, at around 4 p.m., while walking along a back street in Tirana, the applicant suffered grievous injuries in an acid attack by an unidentified assailant. She was taken immediately to Tirana's Mother Teresa Hospital to receive urgent medical treatment. The hospital record read that 25% of the applicant's body – mainly her face and upper body – had been burned (*combusio corporis, facies et extremitas superior*) owing to the acid attack and that she was in a critical condition. On 1 August 2009 she was taken to Italy for more specialised hospital treatment. The hospital record of 2 October 2009 read that the applicant had medium to deep facial, neck and body burns (*ustioni intermedio-profonde di volto, collo, tronco, arti superiori ed inferiori*) caused by sulphuric acid. According to the record of her hospital treatment in Italy, between 2009 and 2012 the applicant underwent at least fourteen operations. The costs for such operations were borne by the regions of Apulia and the Marches in Italy, as well as by the applicant. She suffered from anxiety and from psychological problems and was scared to go back to Albania. She was granted sick leave by the Albanian authorities for at least seven months but it appears that she was unable to work for several years.

B. Criminal investigation into the attack of 29 July 2009

7. On 29 July 2009 the prosecutor opened a criminal investigation into the acid attack under Article 88 of the Criminal Code (see paragraph 64 below). The applicant made a statement in which she said she had not recognised her assailant. She stated that she was not in a dispute with anyone, but suspected that the attack had been organised by her former husband (E.A.) as an act of revenge and a continuation of past domestic violence. In the past he had threatened the applicant, saying that he would kill her. She and E.A. had finally separated after he had refused to allow her to attend a specialised training course in Italy. In addition she stated that at the time of the attack, the assailant had been wearing a brown/beige hat and black sunglasses and a black shirt. The assailant had thrown a substance over her face and body and had then walked away. She had sensed that her face and chest were getting burnt and her clothes were melting. The substance had also been thrown over her colleague, who had been with her. She further stated that E.A. had been imprisoned in Italy and that he had friends with criminal records.

8. On the same day the prosecutor obtained a statement from the applicant's colleague, who had also suffered grievous injuries. The colleague stated that she too had not recognised the assailant. The assailant had been wearing dark trousers and a dark shirt and had been holding a container with a red substance inside. While walking towards her and the

applicant, he had opened the container and had thrown the contents all over them. She stated that she was not in a dispute with anyone and that she had heard from the applicant's family members that they had suspicions about the applicant's former husband. She also stated that she had seen other people at the scene of the attack and a man on the main street.

9. On 29 July and 6 August 2009 E.D., one of the applicant's colleagues, gave a statement declaring that he had been unable to see the perpetrator's face because he had had his back to him. He gave a description of him as wearing a red shirt, white striped jeans and sunglasses. He further described how he had helped the applicant and the other victim and that, together with another colleague, E.S., he had sent both of them to hospital. He also stated that other people had arrived at the scene and had tried to help the victims. The aforementioned colleague E.S. stated that she had helped to get the victims to hospital. She had not seen the perpetrator at all.

10. On 29 July 2009 B.D., the applicant's sister, stated that her sister had told her in the past that E.A. was jealous and used violence against her. She had wanted to attend a specialised training course in Italy but E.A. had not allowed her. He had threatened to kill her if they were to get divorced. She also stated that her cousin, R.T., had met E.A. to give some items back to him on behalf of the applicant. E.A. had told R.T. that he would not cause the applicant any problems, and that she could continue with her life as normal. B.D. also stated that in May 2009 she had met E.A. and his mother in the presence of her sister to discuss the continuation of their relationship. According to B.D., it had been obvious from the discussions they had that E.A. had used violence against her sister. On 21 December 2009 B.D. made another statement in which she confirmed her statements of 29 July 2009 and said that she still had suspicions that E.A. might have committed the attack.

11. On 29 July 2009 R.T., the applicant's cousin, stated that he was aware that E.A. had used violence against the applicant and had been jealous. He had met E.A. two months earlier and had given some items back to him on behalf of the applicant. E.A. had told R.T. that he would not contact the applicant or cause her any problems.

12. On 29 July 2009 L.D., the applicant's brother-in law, stated that he had learnt from his wife, B.D., that his sister-in-law had been subjected to violence and insults by her husband.

13. On 29 July 2009 V.T., the applicant's mother, stated that E.A. had been involved in criminal offences such as the theft of safe deposits and murder. He had used violence against the applicant. Once, he had locked her in his apartment for three days, preventing her from going to work, as revenge for threatening to report him to the police. After the divorce they had had some arguments concerning certain items that they had to return to each other.

14. On 29 July 2009 another eyewitness, G.D., who had been having a coffee in a nearby café at the time of the attack, stated that he had gone to help the applicant and the other victim after hearing screams. He had not seen who had committed the assault. He had seen a container in the street and had kicked it over. According to him, the substance which spilled onto the street had been acid.

15. In a statement provided on the same day, E.A. stated that on 29 July 2009 he had been in Durres until 6 p.m. He further stated that he and the applicant had divorced in May 2009 because they were having problems; he had disagreed with the applicant when she had wanted to go to Italy to attend a specialised professional course. He further stated that the divorce had gone smoothly and that since then he had had no contact with the applicant. He did not have any information as to who could have been the perpetrator. He also gave information about the people he knew, namely family members, friends and cousins.

16. On 29 July 2009 F.P., E.A.'s mother, stated that her son and the applicant had had good relations, but they had divorced in 2009 because the applicant had wanted to attend a specialised training course in Italy and E.A. had not consented to the idea. She further stated that on the day they got divorced she had met her son, the applicant and the applicant's sister to find a solution. However, her son and the applicant had decided to end their relationship. Since then, as far as she was aware, they had not had any contact. She confirmed that her son had been in Durres the whole day. E.A.'s cousin, L.A., also stated that as far as he was aware his cousin did not have any dispute with the applicant.

17. On 29 July 2009 a judicial police officer conducted an on-site examination and secured some evidence, including the applicant's and her colleague's clothes and a glass container containing a small quantity of a red liquid substance.

18. On 29 July and 1 October 2009 the judicial police officer decided that several expert reports should be drawn up, namely a forensic medical report, a fingerprint expert report on the glass container used for throwing the acid, a chemical and toxicology expert report on the glass container in order to identify the liquid substance and the method whereby the liquid had been produced, and a chemical and toxicology expert report on the applicant's and the other victim's clothes to identify the liquid substance and to determine whether the damage to the clothes had occurred as a result of the use of that substance.

19. On 29 July 2009, interception of E.A.'s telephone conversations over the period from 29 July to 12 August 2009 was ordered by the prosecutor and was subsequently approved by the district court on 30 July 2009. On 13 August 2009 the general prosecutor sent the results of the interception to the district prosecutor.

20. On 30 July 2009 the judicial police officer referred the criminal offence of causing serious intentional injury attributed to E.A. to the district prosecutor's office. He noted that on 29 July 2009 in a back street near the Ministry of Justice, an unidentified person had thrown acid over the applicant and another victim, leaving both of them in a critical condition. He considered that on the basis of the evidence in the file, as well as statements made by the applicant, the other victim and other family members, it was apparent that there were suspicions that E.A. might have committed the attack.

21. On 31 July 2009 the applicant made another statement, saying that she still had suspicions that E.A. had wanted revenge because of the divorce. She also added that in the past he had committed criminal offences – namely thefts from safe deposits and houses − and that he had possessed a gun.

22. On 3 August 2009 the district prosecutor ordered that a number of procedural actions be taken, such as the examination of the fingerprint expert report on the container used for throwing the acid and that its results be compared with fingerprints of other suspected persons, as well as any other person who was included in the Central Criminology Laboratory's list of suspected persons; the examination of the forensic medical report and other expert reports; the questioning of every person with any knowledge about the event; the examination of telephone interceptions; the obtaining of the victims' and E.A.'s telephone records, as well as those of any other person who could be concerned with the investigation; the finding and verification on the Internet of telephone numbers used by E.A.; the confiscation of video footage from some nearby cameras, as one of them might have captured and recorded the perpetrator; establishing the origin of the television sets found in E.A.'s apartment (see paragraph 44 below); and any other action deemed appropriate.

23. On 3 August 2009 an expert report prepared by the Institute of Scientific Police (*Instituti i Policisë Shkencore*) concluded that no fingerprints could be identified on the glass container.

24. On 6 August 2009 a forensic report prepared by the Forensic Medicine Institute (*Instituti i Mjekësisë Ligjore*) concluded that 25% of the applicant's face, abdomen and upper extremities had been burnt, the injuries having been caused by a corrosive substance. It further concluded that on the basis of the medical report alone, it was not possible to give an accurate conclusion concerning the category of the applicant's injuries. It would therefore be necessary to examine the applicant three months after the date on which she had been injured.

25. On 11 August 2009 Internet research was conducted by the judicial police officer to find the telephone numbers listed in E.A.'s name. On the same day the prosecutor requested that a mobile telephone company provide him with the call log history relating to several of E.A.'s telephone numbers

for the period from 25 to 30 July 2009, as well as the location and the area they had covered on 29 July 2009. On 18 August the mobile telephone company submitted the information as requested by the prosecutor.

26. On 15 August and 15 December 2009 further information was requested in respect of some other telephone numbers so as to identify the persons to whom they belonged and who had made telephone calls during the hours when the attack had occurred. On 21 December 2009 the mobile telephone company submitted the information as requested by the prosecutor. In January 2011 two individuals questioned by the judicial police officer stated that they did not have any information about the incident of 29 July 2009. Despite being friends with E.A., they maintained that he had not discussed the event with them. Another person who was questioned stated that she did not know E.A. at all.

27. On 11 August 2009 the district prosecutor requested that video footage be provided by three nearby banks, whose security cameras were believed to have recorded images of the events of 29 July 2009. On 13 and 18 August 2009 two banks submitted video footage on CD-ROM. The record written by the judicial police officer on 24 September 2009 on the examination of evidence stated that the CD-ROMs had been examined with a view to identifying any person who had the same characteristics as the person described in the statements given by witnesses. They were also examined by the applicant and her colleague. However, nobody could be identified as the suspected perpetrator.

28. On 9 September 2009 another witness, G.V., the applicant's colleague, was questioned and described how a man whom she had seen near the site was dressed. According to her, the assailant was wearing a dark hat, sunglasses and dark clothes. On the same day another witness, Y.K., stated that she had seen two young men holding a glass container, one of whom had been wearing a red shirt and the other one a black shirt.

29. On 16 December 2009, E.K. – E.A.'s sister – made a statement before the judicial police officer in which she confirmed that on 29 July 2009 E.A. had been in Durres with her. She stated that the applicant and E.A. had had a good relationship. They had divorced because the applicant had wished to go to Italy to attend a specialised training course and E.A. had disagreed with the idea for his own personal reasons.

30. On 30 September 2009 the Faculty of Natural Sciences (*Fakulteti i Shkencave Natyrore*) informed the judicial police officer that it was unable to draw up the requested chemical expert report (most probably referring to the expert report to be drawn up concerning the red substance – see paragraph 18 above) as it lacked the necessary specialised equipment.

31. On 23 October 2009 the Institute of Scientific Police informed the judicial police officer that it could not compile an expert report on the applicant's and the other victim's clothes since this did not fall within its sphere of competence.

32. On 7 December 2009 the judicial police officer decided that a further forensic report should be compiled by the Forensic Medicine Institute in view of the conclusions drawn in the report of 6 August 2009 (see paragraph 24 above). On 15 December 2009 the doctor replied that the report could be prepared once he had at his disposal a copy of the applicant's medical reports prepared by the Italian hospital.

33. On 18 December 2009 a group of experts from the Forensic Medicine Institute prepared another forensic report. They noted that they could not examine the applicant as she was in Italy undergoing specialist treatment and they had not been able to examine the medical reports from the Italian hospital. They reiterated the conclusion stated in the forensic report of 6 August 2009. They concluded that, on the basis of the documents at their disposal, at the time the injuries were inflicted, they were so grievous that they would have put the applicant's life in danger had no specialist medical aid been given.

34. On 2 February 2010 the district prosecutor, in a reasoned decision, decided to stay, in accordance with Article 326 of the Code of Criminal Procedure (see paragraph 59 below), the investigation concerning the criminal offence of causing serious intentional injury and referred the case file to the Tirana Police Directorate for further actions to identify the perpetrator. The decision described all the evidence that had been obtained as well as statements that had been given by the applicant and other persons. It stated, in so far as relevant, the following:

> "[F]orensic reports concluded that 25% of the applicant's face, abdomen and upper extremities were burnt. The injuries had been caused by a corrosive substance. The injuries were so grievous that the applicant's life would have been in danger if no specialist medical aid had been given ... the fingerprint expert report concluded that no fingerprints could be identified ...
>
> the [Faculty of Natural Sciences] replied that it lacked the specialist equipment needed to produce the relevant expert reports ...
>
> the [Institute of Scientific Police] replied that it was not its duty to carry out the requested expert report concerning the examination of the clothes the applicant was wearing at the time of the attack ...
>
> after examination of the video footage from two nearby cameras, nobody could be identified as a suspect in connection with the crime, taking into consideration the features mentioned by the witnesses in their statements; it was not possible to obtain a copy of the CD-ROM from the other bank owing to technical difficulties encountered with its transcription ...
>
> the telephone communication intercepts did not reveal any conversation relevant to the investigation ...
>
> three other individuals who conducted telephone communications during the period when the assault occurred were questioned, but with no result ...
>
> it is apparent that the district prosecutor undertook numerous investigative actions, such as the examination of many items of evidence, as well as the applicant's questioning. For the above reasons, all possible investigative actions have been

carried out, but it has not been possible to identify the perpetrator(s) of the criminal offence ..."

35. No further official communication having been received by the applicant following the launch of the criminal investigation, on 10 March 2012 she authorised the Albanian Centre for the Rehabilitation of Trauma and Torture ("the Centre") to pursue her case.

36. On 2 April 2012 the Centre sought information from the prosecutor about the progress of the investigation.

37. On 17 April 2012 the prosecutor informed the Centre that the criminal investigation had been stayed and the case file had been transferred to the police for further action in order to identify the assailant. The Centre was informed that it should seek copies of the documents it required from the relevant police authority.

38. On 19 April 2012 the Centre asked the Tirana Police Directorate to provide information about the progress of the investigation.

39. On 23 May 2012 the Tirana Police Directorate informed the Centre that the investigation was ongoing and made available a copy of the medical reports. A copy of the prosecutor's decision staying the investigation could not be provided without the prosecutor's prior authorisation.

40. On 5 December 2013 the Centre asked the prosecutor to provide it with a copy of the investigation file. The Centre also urged the prosecutor to find and punish the perpetrator.

41. On 8 January 2014 the prosecutor informed the Centre that the investigation had been stayed because the assailant could not be identified. The case file had been entirely transferred to the police authority, from which the Centre could obtain a copy.

42. The criminal file which was submitted by the Government as part of their observations indicated that an investigation had been opened into the criminal offences of causing serious intentional injury and the production and illegal possession of weapons as provided for in Articles 88 and 279 of the Criminal Code, respectively. On two occasions, on 30 October and 31 December 2009, the district prosecutor had extended the investigation on the grounds that the investigation was complex and the questioning of many individuals and the examination of several other acts were necessary.

43. It appears that until the end of 2015, when the parties filed their written submissions with the Court, the case was still pending before the police authorities; the parties have not provided an update in respect thereof.

C. Proceedings concerning the criminal offence of production and illegal possession of weapons

44. On 29 July 2009 E.A.'s apartment was searched and two knives, four television sets, two laptop computers and a camera were found. They were subsequently seized.

45. On 30 July 2009 the district prosecutor attributed to E.A. the criminal offence of production and illegal possession of weapons under Article 279 of the Criminal Code on the grounds that two knives had been found in E.A.'s apartment (see paragraph 64 below).

46. On 30 July 2009 E.A. was arrested in the act of committing the criminal offence of production and illegal possession of bladed weapons. Subsequently, the prosecutor imposed an obligation on him to appear before the judicial police office ("compulsion order" – *masë shtrënguese*), which was approved by the district court on 1 August 2009.

47. On 6 August 2009 the Tirana Police Commissariat stated that the items seized in E.A.'s apartment on 29 July 2009 did not match the description of any object that had been stolen in the territory covered by that commissariat.

48. On 11 January 2010 the Ministry of Culture informed the district prosecutor that the two knives were for purely ornamental use.

49. On 2 February 2010 the district prosecutor, in a reasoned decision, discontinued in accordance with criminal procedural law the investigation concerning the criminal offence of production and illegal possession of bladed weapons (see paragraph 61 below). It also ordered that the coercive measure against E.A. be lifted. The decision described all the evidence that had been obtained, as well as the statements given by the applicant and others. It reasoned that since the knives had been found in E.A.'s apartment and not in a public place and that the Ministry of Culture's letter of 11 January 2010 had stated that they were only for ornamental use, it was clear that no criminal offence had been committed.

D. Proceedings concerning the applicant's claim for damages

50. On 2 May 2012 the applicant, relying on the European Convention on the Compensation of Victims of Violent Crimes ("the European Convention on Compensation to Victims"), lodged a request with the Ministry of Justice seeking compensation from the State as a result of the acid attack (see paragraph 89 below).

51. On 3 September 2012 the applicant, relying on the European Convention on Compensation to Victims and Articles 625, 640 and 641 of the Civil Code, as well as decision no. 12 of 14 September 2007 of the Supreme Court Joint Benches (see paragraph 73 below), lodged a claim for damages with the Tirana District Court against the Ministry of Justice, seeking compensation from the State as a result of the acid attack. She also requested to be exempted from paying the court fees on the grounds of lack of financial means, and to have the amount of the compensation determined by experts.

52. The applicant submitted that she had subsequently withdrawn her claim as she had found it impossible to pay the court fees.

53. On 30 May 2013 the Tirana District Court discontinued the proceedings (*pushimin e gjykimit*) when the applicant and her lawyer failed to appear at the hearing.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

54. The relevant provisions of the Constitution read as follows.

Article 21

"The life of the person is protected by law."

Article 25

"No one shall be subject to torture, or to inhuman or degrading punishment or treatment."

Article 44

"Everyone has the right to rehabilitation and/or compensation in compliance with the law in the event that he has experienced damage owing to an unlawful act, action or the omission of the State authorities."

B. Code of Criminal Procedure

55. The provisions of the Code of Criminal Procedure ("the CCP") in force at the material time had the following content.

56. Article 24 § 4 of the CCP provided that the orders and directives of a higher-ranking prosecutor were binding on a lower-ranking prosecutor. Article 24 § 5 provided that a higher-ranking prosecutor, either *proprio motu* or following an appeal, had the right to amend or repeal the decisions of a lower-ranking prosecutor.

57. Under Article 61, a person who had suffered pecuniary damage as a result of the commission of a criminal offence could lodge a civil claim during the criminal proceedings to seek compensation for damage. Under Article 62 § 1, the request was to be submitted prior to the commencement of the judicial examination. In accordance with Article 62 § 3, a court could decide to sever the civil claim from the criminal proceedings if its examination delayed or complicated the criminal proceedings.

58. Article 105 of the CCP provided for the right of any interested party to request copies and extracts of separate documents from the criminal investigation file, at that party's expense.

59. Article 326 of the CCP, which provided for the prosecutor's right to stay the criminal investigation (*pezullimi i hetimeve*), read as follows:

"1. When the perpetrator of the offence is unknown ..., the prosecutor may decide to stay the criminal investigation.

2. The criminal investigation may be stayed once all possible actions have been carried out.

3. The stayed criminal investigation may recommence by a decision of the prosecutor."

60. At the material time, there was no specific provision in the CCP for a right to appeal against a prosecutor's decision staying a criminal investigation.

61. Article 328 of the CCP provided for the prosecutor's right to discontinue the criminal investigation (*pushimi i çështjes*). Under Article 329 of the CCP, an appeal lay with the district court against the prosecutor's decision to discontinue the criminal investigation.

Relevant domestic case-law concerning the stay of the investigation

62. In one case a complainant, H.S., lodged a criminal complaint with the prosecutor's office concerning the death of his sister. The prosecutor stayed the investigation on the basis of Article 326 § 1 of the CCP on the grounds that no perpetrator of the crime could be traced. The complainant instituted legal proceedings against the stay of the criminal investigation. He complained that he had not been informed of the content of the investigation file or the stay of the criminal investigation, that the prosecutor had not questioned all the witnesses and that he had no effective remedy to complain about the decision to stay the criminal investigation. The domestic courts dismissed his action. The Tirana Court of Appeal held that, since the criminal investigation had been ongoing, and since the prosecutor's office had had the discretion to determine the investigative actions to be carried out, the complainant did not have legal standing. It reaffirmed that there was no right of appeal against a decision to stay criminal proceedings under the criminal procedural law. The complainant lodged a constitutional complaint with the Constitutional Court, which was dismissed by decision no. 4 of 18 January 2013. The Constitutional Court stated, among other things, that there was no remedy under domestic law against a prosecutor's decision staying a criminal investigation. However, the fact that the complainant had had access to the domestic courts indicated that he had an effective right to appeal to a court.

C. Criminal Code

63. The Criminal Code consists of chapters, which themselves are made up of sections. Chapter II of the Specific Part of the Code is devoted to criminal offences against the person. Section I of Chapter II covers intentional crimes against life and, at the relevant time, contained more than ten different provisions in respect of murder. Section III of Chapter II deals with intentional crimes against health. Assault offences, which are further

categorised according to the level of severity of the inflicted injury, fall under Section III and include torture (Article 86), causing serious intentional injury (Article 88), non-serious intentional injury (Article 89) and other intentional harm (Article 90). Of those offences, only the criminal offence of causing non-serious intentional injury (Article 89) falls into the category of private prosecution cases, which have to be brought by the individual concerned directly before the competent court, and can be withdrawn at any stage of the proceedings (Article 284 of the CCP).

64. Article 88 of the Criminal Code provides that causing serious intentional injury resulting in disfigurement, mutilation or any other permanent damage to health is to be punished with imprisonment of between three and ten years. Article 279 provides, among other things, that the production and illegal possession of bladed weapons is punishable by a fine or up to five years' imprisonment.

65. Following amendments made to the Criminal Code in 2012, Article 130/a introduced domestic violence as a criminal offence. Battery or any other violent act, serious threat of death or serious injury, intentional injury against the spouse, former spouse, cohabitee, former cohabitee or any other person related by way of family ties to the perpetrator, with the intention of violating that person's physical, psychosocial and economic integrity, is to be punished with imprisonment of between two and five years.

66. In 2013 amendments were made to Article 50 of the Criminal Code, which now treats as an aggravating circumstance the commission of a criminal offence committed during or after a court protection order issued in respect of domestic violence.

D. Civil Code

67. Article 608 of the Civil Code provides that anyone who unlawfully and wrongfully causes damage to another person or to that person's property is obliged to pay compensation for the damage. He is not liable if he proves that he was not at fault.

68. Article 609 provides that the damage must be the result of a person's direct and immediate act or omission.

69. Article 625 provides that a person who suffers non-pecuniary damage is entitled to compensation if there has been damage to his health or physical or mental integrity or if his honour, personality or reputation have been infringed, or if his right to respect for his private life has been infringed.

70. Under Article 640, pecuniary damage includes the actual loss suffered and loss of profit. Reasonable and necessary expenses incurred may also be subject to compensation.

71. Under Article 641, a person who causes damage to someone else's health must pay compensation, regard being had to the loss or reduction of

ability to work and medical or other expenses incurred in connection with the damage caused.

Relevant domestic case-law concerning the payment of damages

72. The Government submitted, as part of their observations, some domestic case-law concerning the payment of damages.

73. In unifying decision no. 12 of 14 September 2007, following a civil claim for damages and expenses against the Albanian Insurance Bureau (a State entity) for the death of three people in a car accident, the Supreme Court Joint Benches ruled, in so far as relevant, as follows:

> "... [T]he domestic courts have accepted that three people lost their lives in a car accident ... [S]ubstantially under Article 608 of the Civil Code ... the legislature provides for the protection of the right to life, health, personality, dignity, private life and so on from the unlawful acts of a third party. If there is a violation of any of these rights as a result of the unlawful act, the injured party has the right to extra-contractual compensation ... In applying Article 609 of the Civil Code, the causal *material* link between the unlawful behaviour (the act or omission) and the fault and the damage should be proved. In determining the actual damage caused by the unlawful fact and the relevant compensation, the causal *juridical* link between them should also be proved. The causal material link serves to identify the person responsible and the causal links among the three elements of the unlawful act: the unlawful behaviour, the fault and the consequence resulting therefrom, that is the damage to another person or to that person's property ... The causal juridical link serves to demonstrate the causal link between the unlawful act, taken in its entirety, and the specific infringement of the lawful rights and interests [of another person] ...
>
> The loss of profit [provided for in Article 640 of the Civil Code] relates to the inability to obtain future pecuniary damages, that is, an asset which does not belong to the injured person at the time the damage has been caused.
>
> ...
>
> Non-pecuniary compensation for damage to one's health under Article 625 of the Civil Code may be sought independently of a claim for pecuniary damage as a result of the loss or reduction of ability to work as provided for in Article 641 of the Civil Code. An injured person seeking compensation in reliance on Article 641 of the Civil Code bears the burden of proving the amount of income that he could no longer earn as a result of the loss or reduction of ability to work, after discharging the obligation to demonstrate damage to his health, its permanent or temporary nature, and the degree of damage."

74. In another case, a complainant had requested compensation from a State entity under Article 640 of the Civil Code for damage caused to his health as a result of a firearm injury caused by State police officers. In its decision no. 275 of 24 September 2009, the Supreme Court remitted the case for re-examination to the relevant court of appeal. It reasoned that, as a result of the complainant's injury by the State police officers, it had been duly proved that damage had been caused to his health.

75. In a decision of 25 November 2011, the Tirana District Court accepted a civil claim by complainants for compensation against State

authorities and two private companies jointly and severally, lodged under, *inter alia*, Articles 625 and 640 of the Civil Code, as a result of their family member's death in a massive explosion at a weapons decommissioning facility. The court reasoned that criminal responsibility was independent of the civil obligation to pay compensation, which related only to compensation for damage inflicted by the dangerous activity of decommissioning weapons.

E. The Domestic Violence Act (Law no. 9669 on measures against violence in family relations of 18 January 2006, as amended by Law no. 9914 of 12 May 2008, Law no. 10329 of 30 September 2010 and Law no. 47/2018 of 23 July 2018)

76. The Domestic Violence Act, which entered into force on 1 June 2007, established a mechanism by which to provide victims of domestic violence with a protection order which may be issued by a civil court at the request of the victim. An emergency ("immediate") protection order may be granted provisionally by a court if the perpetrator has threatened to commit acts of domestic violence or if the perpetrator poses a direct and immediate threat to the security, health or well-being of the victim or other family members (section 19). An emergency protection order remains valid until the court grants a protection order. The Act provides for better protection, not only for persons who are currently in a family relationship but also for persons who used to be in a family relationship, such as former spouses or partners (section 3).

77. The adoption of a protection order or an emergency protection order does not prevent the victim from instituting criminal proceedings under the Criminal Code (section 24). The police, the prosecutor or a non-governmental organisation may also request the adoption of a protection order or an emergency protection order (section 13). When the request has been submitted by the police or the prosecutor, the victim's withdrawal will not lead to the discontinuation of the case (section 16).

78. Section 10 lists the protection measures that may be ordered by a court. A protection order may thus include, among other measures, the removal of the perpetrator from the victim's home (regardless of the perpetrator's property rights), a prohibition on the perpetrator coming within a certain distance of the victim or other family members, a prohibition on the perpetrator entering or staying in the temporary or permanent residence of the victim, or any part thereof, the placement of women and their children in temporary shelters, or an order for the perpetrator to participate in rehabilitation programmes.

79. The Domestic Violence Act also provides for the establishment of a shelter for victims of domestic violence (section 6 as amended) and a

coordinated system for referring cases of domestic violence to the authorities.

80. Breaching a protection order constitutes a criminal offence under Article 321 of the Criminal Code and is punishable by a fine or up to two years' imprisonment.

III. RELEVANT INTERNATIONAL LAW AND MATERIAL CONCERNING GENDER-BASED VIOLENCE

A. United Nations Convention on the Elimination of All Forms of Discrimination against Women

81. The Convention on the Elimination of All Forms of Discrimination against Women ("the CEDAW Convention") was adopted in 1979 by the United Nations General Assembly and Albania ratified it on 9 November 1993. The implementation of the CEDAW Convention is monitored by the Committee on the Elimination of Discrimination against Women ("the CEDAW Committee"), which makes general recommendations to the States parties on any specific matters concerning the elimination of discrimination against women

82. At its eleventh session in 1992, the CEDAW Committee adopted General Recommendation no. 19 on violence against women (A/47/38). It defined gender-based violence as "violence which is directed against a woman because she is a woman or that affects women disproportionately". General Recommendation no. 19 stated that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation". As regards comments on specific Articles of the CEDAW Convention, General Recommendation no. 19 further noted that "traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities".

83. On 26 July 2017 the CEDAW Committee updated its General Recommendation no. 19 by adopting General Recommendation no. 35 on gender-based violence against women (CEDAW/C/GC/35). According to

General Recommendation no. 35, gender-based violence against women "is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated. Throughout its work, the [CEDAW] Committee has made clear that this violence is a critical obstacle to achieving substantive equality between women and men as well as to women's enjoyment of human rights and fundamental freedoms enshrined in the [CEDAW] Convention. It takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty. ... Gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices. ... When acts of gender-based violence against women amount to torture or cruel, inhuman or degrading treatment, a gender-sensitive approach is required to understand the level of pain and suffering experienced by women, and that the purpose and intent requirements for classifying such acts as torture are satisfied when acts or omissions are gender-specific or perpetrated against a person on the basis of sex".

84. The CEDAW Committee recommended that measures should be taken in the areas of prevention, protection, prosecution and punishment, redress, data collection and monitoring, and international cooperation in order to accelerate the elimination of gender-based violence against women.

85. As regards protection, the CEDAW Committee recommended that States parties, among other things, "adopt and implement effective measures to protect and assist women complainants of and witnesses to gender-based violence before, during and after legal proceedings and ensure that all legal proceedings, protective and support measures and services concerning victims/survivors respect and strengthen their autonomy".

86. As regards prosecution and punishment, the CEDAW Committee recommended that States parties, among other things, "(a) ensure effective access for victims to courts and tribunals and that the authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and, as appropriate, *ex officio* prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties; fees or court charges should not be imposed on victims/survivors; and (b) address factors that heighten the risk to women of exposure to serious forms of gender-based violence, such as the ready accessibility and availability of firearms, including their export, a high crime rate and pervasive impunity, which may increase in situations of armed conflict or heightened insecurity. Efforts should be undertaken to control the availability and accessibility of acid and other substances used to attack women".

87. As regards reparation, the CEDAW Committee recommended that States parties, among other things, "(a) provide effective reparations to victims/survivors of gender-based violence against women. Reparations should include different measures, such as monetary compensation, the provision of legal, social and health services, including sexual, reproductive and mental health services for a complete recovery, and satisfaction and guarantees of non-repetition. Such reparations should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered; and (b) establish specific funds for reparations or include allocations in the budgets of existing funds, including under transitional justice mechanisms, for reparations to victims of gender-based violence against women".

B. Council of Europe materials

1. Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention")

88. The Istanbul Convention was adopted by the Committee of Ministers on 7 April 2011. It was opened for signature on 11 May 2011 and came into force on 1 August 2014. Albania ratified the Istanbul Convention on 4 February 2013. The Istanbul Convention applies to all forms of violence against women, including domestic violence, and it provides a comprehensive framework to prevent, prosecute and eliminate violence against women and domestic violence and to protect victims.

2. The European Convention on the Compensation of Victims of Violent Crimes

89. The European Convention on Compensation to Victims was ratified by Albania on 26 November 2004 and it entered into force in respect of Albania on 1 March 2005. The Ministry of Justice is the Central Authority for the purpose of the European Convention on Compensation to Victims. The European Convention on Compensation to Victims requires its Contracting Parties, in the absence of compensation from other sources, to contribute to compensate the victims of intentional and violent offences, which have been committed on their territory and have resulted in bodily injury or death. Compensation should be awarded even if the offender has not been prosecuted or punished.

90. Its Explanatory Report states that the European Convention on Compensation to Victims is not directly enforceable, and that it is for the "Contracting States to establish the legal basis, the administrative framework and the methods of operation of the compensation schemes".

3. Committee of Ministers' Recommendation 2002(5) on the protection of women against violence

91. In its Recommendation (2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe recommended, among other things, that member States should "have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims".

92. The Committee of Ministers recommended, in particular, that member States should penalise serious violence against women such as sexual violence and rape, abuse of the vulnerability of pregnant, defenceless, ill, disabled or dependent victims, as well as abuse of position by the perpetrator. The Recommendation also stated that member States should ensure that all victims of violence are able to institute proceedings, make provisions to ensure that criminal proceedings can be initiated by the public prosecutor, encourage prosecutors to regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest, ensure where necessary that measures are taken to protect victims effectively against threats and possible acts of revenge, and take specific measures to ensure that children's rights are protected during proceedings.

C. Reports on acid violence

1. United Nations Secretary-General report on violence against women

93. In a report on violence against women of 20 August 2004 (A/59/281), the United Nations Secretary-General provided information about legislative, policy and other measures undertaken by various countries and other international institutions to combat all forms of violence against women, as well as crimes against women committed in the name of honour. Of particular relevance for the present case was the fact that Bangladesh had enacted, among other things, the Acid Control Act in 2002 and that a special tribunal had been established throughout the country to deal with cases related to violence against women.

2. United Nations Special Rapporteur's report on violence against women, its causes and consequences, on her mission to Bangladesh

94. In 2013 the United Nations Special Rapporteur on violence against women conducted an official visit to Bangladesh in order to examine the situation of violence against women in the country. In her report to the United Nations General Assembly (A/HRC/26/38/Add.2), the Special Rapporteur stated, *inter alia*, as follows:

> "11. The prevalence of acid attacks remains problematic in the country, and these attacks occur within both the family and the community spheres. Civil society organizations reported 31 cases of acid violence in Bangladesh between January and August 2013. Of this total, 22 attacks were against adult women and 4 against girls. Likewise, in 2012, women and girls were the main victims of acid violence, with 58 women and 20 girls being targeted out of a total of 105 cases. Acid is generally thrown on the face or sexual organs of female victims when demands for sex or marriage proposals are refused. The ultimate aim is to damage the victim's appearance in order to destroy her marriage prospects.
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> ...
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> 55. As regards acid attacks, the Acid Crime Control Act of 2002 stipulates that the punishment for killing a person with acid or injuring a person resulting in the loss of vision, hearing, or damage or disfigurement of the face, breasts or sexual organs can result in capital punishment or life imprisonment and a fine not exceeding one *lakh taka* (approximately USD 1190). Furthermore, damage for disfigurement to any part of the body will result in a 14-year prison sentence or at least 7 years of 'rigorous imprisonment'."

3. European Parliament's Committee on Civil Liberties, Justice and Home Affairs' opinion on violence against women

95. On 14 January 2014 the European Parliament's Committee on Civil Liberties, Justice and Home Affairs gave an opinion to the European Parliament's Commission on Combating Violence Against Women on a motion for a European Parliament resolution relating to violence against women. The opinion stated that violence against women could include, without limitation, "violence in close relationships, rape, including marital rape, dowry violence, female genital mutilation, acid throwing, forced marriage, sexual abuse, forced prostitution and pornography, trafficking of women and forced suicide".

4. Other relevant materials

(a) Combating acid violence in Bangladesh, India and Cambodia

96. In 2011 the Avon Global Centre for Women and Justice at Cornell Law School, the Committee on International Human Rights of the New York City Bar Association, the Cornell Law School International Human Rights Clinic and the Virtue Foundation, having regard to the highest recorded incidence of acid violence in Bangladesh, India and Cambodia, released a report on combating acid violence in those countries. The report emphasised that acid attacks were often perpetrated against women because they transgressed gender norms that relegate women to subordinate positions. Moreover, the duty to prevent human rights violations included an obligation to enact legislation designed to curb acid violence. In addition to legislation the governments should: (1) conduct appropriate investigations of acid attacks; (2) protect victims from threats that could

undermine those investigations; and (3) prosecute and punish perpetrators of acid attacks.

(b) Justice? What justice? Tackling acid violence and ensuring justice for survivors

97. In 2015 the Thomson Reuters Foundation, Acid Survivors Trust International and J. Sagar Associates issued a comparative study on the existing legislation and its implementation to combat acid violence in four countries: Cambodia, Colombia, India and the United Kingdom. As regards the existence of a legal framework, the report stated that there was a special acid law in Colombia under which acid violence was a separate and specific criminal offence. There was no special legislation in India or in the United Kingdom to deal with acid violence. Instead, there were provisions in other criminal laws that made injury through the use of a corrosive substance a penal offence and provided for severe punishments for such injuries.

98. As regards prosecutions for criminal offences, the report states that "intention to commit the offence – the *mens rea* – and the actual act constituting the offence – the *actus reus* – are both essential components. It is only when both are present that a crime is said to be completed. However, there are certain instances where the liability is made absolute, i.e. the mere occurrence of the incident is sufficient to constitute an offence irrespective of the presence or absence of intention. The report states that section 20 of the United Kingdom's Offences Against the Person Act ('OAPA'), which does not apply to Scotland, makes it an offence to inflict grievous bodily harm upon another person without any requirement to intend to commit such harm. Charges may be brought under this provision where bystanders have been incidentally injured as the result of an attack. On the other hand, under section 29 of the OAPA, an offence is said to be committed regardless of whether injury is actually caused by the commission of the offence, provided that the offender had the requisite intent".

99. In so far as penalties are concerned, the report added that "the laws usually provide for a spectrum of punishment and the judges decide on the punishment within the spectrum, based on a variety of factors using their discretion. In India, the considerations for increased or decreased punishments are very erratic and there are no clear sentencing guidelines. In comparison, the sentencing manual of the Crown Prosecution Service of England and Wales notes the use of acid as a factor that points to higher culpability of the offender thereby affecting the severity of the punishment. In Colombia, the sentence is also dependent on the part of the body that is affected, and a deformity of the face is considered to be more severe".

IV. RELEVANT NATIONAL AND INTERNATIONAL MATERIAL CONCERNING THE SITUATION OF WOMEN IN ALBANIA

A. National reports

1. National population-based surveys of the Institute of Statistics

100. In March 2009 the national Institute of Statistics (INSTAT) released a research report entitled "Domestic violence in Albania: a national population-based survey" on the basis of data collected in 2007. The purpose of the 2007 national survey was to generate reliable data and findings about the nature and prevalence of domestic violence in the country, which would be used to inform the development of effective prevention, protection, and legal measures and policies. INSTAT carried out fresh surveys in 2013 and 2018, when women were asked about "ever" and "current" experiences with each of the different forms of domestic violence.

101. Both national population-based surveys confirmed that domestic violence against women was a widespread problem in families and communities throughout Albania. The findings revealed that the proportion of women who had "ever" experienced one form of domestic violence had increased from 56.09% in 2007 to 59.4% in 2013. It was well documented that women continued to experience multiple types of domestic violence concurrently in their marriage or intimate relationships, including multiple forms of psychological, physical and sexual violence.

102. In 2007 and 2013 battered women revealed they often experienced more or less the same domestic violence-related injuries of varying degrees of severity. In 2007 48.3% of women that experienced domestic violence reported they were injured with cuts, bruises or aches, while in 2013 only 18.8% of "ever" physically abused women reported experiencing domestic violence-related injuries.

103. The 2018 national population-based survey, which was released in March 2019, was the third attempt in Albania to collect data on violence against women and girls, including not only domestic violence, but also dating violence, non-partner violence, child sexual abuse, sexual harassment and stalking. Data in the 2019 survey provided evidence that violence against women and girls in Albania was widespread and that it affected the majority of women. The 2018 survey revealed that 52.9% of women aged between 18 and 74 had "ever" experienced one or more of the five different types of violence (intimate partner violence, dating violence, non-partner violence, sexual harassment and/or stalking) during their lifetime and 36.6% of women "currently" experienced violence. 75.4% of women reported that domestic violence against women was a major problem in Albania. 70.8% of women reported that sexual violence against women and girls was a major problem in Albania, 69.9% reported that sexual harassment of women

and girls was a major problem, and 68.4% reported that stalking of women was a major problem in Albania. Given these findings, it is not surprising that the majority of women maintained it was very important to have laws in Albania that protected women and girls from violence in their marriage or families (83.0%) and from sexual assault and rape (81.9%).

104. The 2018 survey also measured social norms related to violence against women and girls, women's perceptions of the seriousness of violence against women and girls, and the importance of having legislation related to violence against women and girls. As regards social norms related to domestic violence, the 2018 survey found that 52.2% of women aged between 18 and 74 maintained that all or most people in the community believed violence between a husband and wife was a private matter and that others should not intervene, and 46.5% maintained that all or most people in the community believed a woman should tolerate some violence to keep her family together. In addition, 27.5% of women maintained that all or most people in the community believed that when a woman was beaten by her husband, she was partly to blame or at fault and that a woman should be ashamed or embarrassed to talk to anyone outside of her family about abuse or violence in her marriage. These social norms can contribute to the prevalence of intimate partner domestic violence against women and keep battered women trapped in abusive and violent relationships.

2. Centre for Legal Civic Initiatives Report

105. In November 2010 the Centre for Legal Civic Initiatives released a report on the implementation of the Domestic Violence Act. The report monitored protection orders and emergency protection orders issued by Tirana District Court from 1 June 2009 to 1 June 2010. According to the report, there had been a marked increase in the number of women reporting incidents to the police, which was due to an increased awareness among women of the importance of reporting domestic violence and of better preparation and qualifications on the part of the relevant bodies that received and assisted victims of domestic violence.

3. Commissioner for Protection from Discrimination

106. The Commissioner for Protection from Discrimination ("the Commissioner against Discrimination") was established by the Anti-Discrimination Act (Law no. 10221 of 4 February 2010), and is the national body responsible for ensuring equality and effective protection from discrimination.

107. The 2011 annual report of the Commissioner against Discrimination stated that "women suffer from domestic violence". The 2012 annual report stated that "several cases of violence against women had been reported, which sometimes had resulted in the loss of lives of battered

women. According to statistics provided by the General Directorate of Police, 2,526 cases of domestic violence had been identified, which marked an increase by 345 cases compared to the previous year. Such increase ha[d] also been reflected in the growing number of applications for protection orders, which had totalled 1,562 in 2012, that is 217 more applications than the previous year".

B. International reports

1. Council of Europe materials

(a) Report by the Group of Experts against violence against women and domestic violence

108. The Istanbul Convention's monitoring is ensured by two distinct bodies: the Group of Experts against violence against women and domestic violence (GREVIO), an independent expert body; and the Committee of the Parties, a political body composed of representatives of the States Parties to the Istanbul Convention.

109. GREVIO's 2017 evaluation report for Albania (GREVIO/Inf(2017)13) stated that "official statistics on cases of domestic violence portray a mixed picture, where elevated figures are the flipside of efforts aiming at encouraging reporting. From 2010 to 2014, reported cases of domestic violence rose sharply with approximately three times more women victims than men. Domestic violence far exceeds all other crimes as the criminal offence with the largest number of victims and in 2015, domestic violence related deaths alone represented 37% of all crime driven deaths".

110. GREVIO's evaluation report further stated that "data on domestic violence allows drawing a plausible portrait of the reality of domestic violence in Albania. Data on other forms of violence against women such as sexual violence, however, barely hint at the existence of a phenomenon which by many accounts remains largely unchartered territory, fenced off by taboos and severe under-reporting". It encouraged the authorities to "make domestic violence against women and the gendered nature of other forms of violence against women more visible in the crime statistics presented to the public, by clearly identifying the number of women victims per type of offence. This would include the visible presentation to the public of information on the number of homicides of women at the hands of men (gender-related killing of women); and develop data categories on the type of relationship between perpetrator and victim for all forms of violence against women that would allow the nature of their relationship to be more specifically documented".

111. GREVIO's evaluation report stated, in so far as the victims' right to seek compensation is concerned, as follows:

> "115. Pursuant to Articles 61 to 68 of the [Code of Criminal Procedure], victims of violence are entitled to apply within criminal proceedings for compensation in connection with damages suffered for the criminal act. Compensation claims settled in criminal proceedings are limited to economic damage and their payment depends on the outcome of the criminal trial. Alternatively, victims may file a compensation claim extended to all forms of damage, including non-pecuniary damage, under Article 625 of the Civil Code. There is no available information to indicate that any victim of violence against women, including domestic violence, ever instituted or benefited from such proceedings. Reports submitted to GREVIO point to elevated court fees as one of the factors preventing victims' access to compensation, despite the principle established by law that victims of domestic violence are exempted from court fees. Moreover, there is no state compensation scheme available to victims of violence against women in Albania. No reservation was entered into by Albania exempting it from implementing Article 30, paragraph 2 of the Convention on subsidiary state compensation for serious bodily injury or impairment of health."

112. In the light of the measures identified in GREVIO's evaluation report, the Committee of the Parties recommended that the government of Albania take action to, among other things, ensure victims' access to civil remedies against State authorities in particular by informing victims of their rights and raising awareness among public officials in relation thereto, and establish and fund appropriately an effective system of legal aid for the victims of all forms of violence against women covered by the Istanbul Convention and promote the exercise of victims' right to access legal aid.

(b) Reports by the Commissioner for Human Rights

113. Following an official visit to Albania from 27 October to 2 November 2007 as part of his regular country missions, the Council of Europe Commissioner for Human Rights released his report on 18 June 2008 (CommDH(2008)8), the relevant part of which states that violence against women, particularly domestic violence, was a widespread human rights violation which had been under-reported, under-investigated, under-prosecuted and under-sentenced in Albania. There were an unquantified number of offenders enjoying impunity as the crime was still seen as a private issue and therefore seldom reported.

114. Following an official visit to Albania from 23 to 27 September 2013, the Commissioner released his report on 13 January 2014 (CommDH(2014)1), in which it was noted that in May 2013 amendments to the Legal Aid Act had been enacted which tasked the State Commission with granting exemptions from the payment of court fees under certain conditions. Those amendments specified that beneficiaries of legal aid, when filing civil or administrative complaints with a court, may be exempted from court fees (and court expenses) if they prove that they are, among other things, victims of domestic violence. The request would be examined by the State Commission for Legal Aid within ten days of submission. If the Commission did not decide on the request within ten days

or refused it, the court could decide on the request for a fee exemption at the preliminary hearing.

2. CEDAW Committee's Concluding Observations in respect of Albania

115. Albania has submitted three periodic reports to the CEDAW Committee on the implementation of the CEDAW Convention.

116. In its Concluding Observations of 2003 on the combined initial and second periodic reports submitted by Albania (A/58/38), the CEDAW Committee expressed "concern about the high incidence of violence against women, including domestic violence" and the "lack of systematic data collection on violence against women, in particular domestic violence". It called upon Albania "to adopt legislation on domestic violence and to ensure that violence against women is prosecuted and punished with the required seriousness and speed" and to "devise a structure for systematic data collection on violence against women, including domestic violence".

117. In its Concluding Observations of 16 September 2010 on the third periodic report submitted by Albania (CEDAW/C/ALB/CO/3), the CEDAW Committee remained "concerned about the continued high prevalence of violence against women in Albania". It was particularly concerned "that domestic violence is not appropriately sanctioned and criminalized" and about "the high rate of suicide among female victims of domestic violence, about gaps in the [Domestic Violence Act] and its implementation and the lack of statistical data". It recommended, among other things, that "[the authorities] strengthen [their] efforts to ensure that female victims of violence have immediate protection", that "public officials, especially law enforcement officials, members of the judiciary, health-care providers and social workers, are fully sensitized to all forms of violence against women" and that "structures be established to help female victims of violence to rebuild their lives".

118. In its Concluding Observations of 25 July 2016 on the fourth periodic report submitted by Albania (CEDAW/C/ALB/CO/4), the CEDAW Committee was concerned "about the lack of implementation of the legislation on gender equality and non-discrimination, as well as the lack of monitoring of implementation of such laws and policies" and that "women, especially those belonging to disadvantaged and marginalized groups, remain unaware of their right to legal aid and continue to face significant legal and practical barriers in gaining access to justice, which is reflected in the low number of complaints filed. It is also concerned about the widespread problem of non-execution of court orders, including orders concerning the payment of alimony". The CEDAW Committee was also concerned that gender-based violence against women remained prevalent, which was reflected by "(a) the low rate of reporting of cases of gender-based violence against women owing to women's limited access to legal aid services, especially in rural and remote areas, as well as the

absence of hotline services for women who are victims of such violence; (b) the insufficient implementation of the national referral mechanism aimed at preventing and providing protection from gender-based violence, in particular at the local level, owing to the lack of coordination among responsible entities and the lack of the necessary skills and capacity among the responsible staff; (c) the insufficient number of shelters for women who are victims of gender-based violence and the restrictive criteria for admission to such shelters, as well as the lack of medical and psychological rehabilitation services for women; and (d) the frequent failure to enforce protection orders and emergency protection orders".

3. European Commission Progress Reports

119. The European Commission issues annual progress reports on countries which wish to accede to the European Union. The progress reports analyse, among other things, the capacity of such countries to implement European standards.

120. The 2008 Albania Progress Reports (SEC(2008) 2692) stated, among other things, that "the strategy on the prevention of domestic violence has not been enforced due to lack of implementation mechanisms. The proportion of women having suffered from domestic violence is significant and increasing. What is needed now is to allocate sufficient human and financial resources to ensure full implementation of the existing legislation".

121. The 2009 Progress Report (SEC(2009) 1337) stated, among other things, that "domestic violence remains widespread. Many incidents went unreported. Sound data is missing. Further measures are required to strengthen the level of protection for women victims of domestic violence, including media awareness campaigns and specialised training for judges".

122. The 2010 Analytical Report (SEC(2010) 1335) stated that "[d]omestic violence is a persistent phenomenon that affects numerous families in Albania and is an issue of serious concern ... [C]ases continue to be largely under-reported and insufficiently investigated and prosecuted, especially in rural areas. Relatively few complaints lead to criminal prosecutions, as it is generally the duty of the victim to initiate this procedure. The duty only falls upon the prosecutor to initiate a prosecution in cases that result in death, serious injury or threats to life. The protection of women and other victims against all forms of violence needs to be considerably strengthened".

4. Amnesty International report

123. In March 2006 Amnesty International, on the basis of its own research, including the monitoring of documentation in criminal proceedings and reports in the Albanian media over a three-year period, as

well as research by Albanian non-governmental organisations, professionals and academics, released a report on Albania entitled "Violence against women in the family: 'It's not her shame'". The report stated, among other things, as follows:

> "At least a third of all women in Albania are estimated to have experienced physical violence within their families. They are hit, beaten, raped, and in some cases even killed. Many more endure psychological violence, physical and economic control ... Husbands, former husbands and partners are responsible for most of these abuses, but other family members may take part in or support acts of violence, which may often be condoned by the wider community in which the woman lives.
>
> Social attitudes and cultural values – not just of the wider public, state agents such as police, but also women themselves – encourage women to accept violence. This is not inevitable, nor does it mean that the state can abdicate from responsibility. Albania is responsible for failing to address such attitudes, which maintain women's continuing abuse. Due to a strong sense of shame and lack of confidence in the police, women rarely call the police, and when exceptionally they do call, the police generally fail to recognize violence in the family as a criminal matter and frequently fail to investigate allegations of domestic violence. Moreover, prosecutors will generally only bring charges in cases of death or serious injury or threats with firearms or other weapons. Women are generally not encouraged to bring complaints against their attackers, and receive no effective protection from assaults or threats, including with firearms, by their husbands and relatives. Those responsible – except in cases of death or very serious injury – are not often brought to justice. There is a lack of consistency in the judiciary's approach and in at least one case known to Amnesty International courts have shown leniency towards perpetrators who kill women on grounds of 'honour'."

124. The report called for "a coordinated response to violence against women in the family, an integrated multi-agency approach that includes not only law enforcement and judicial authorities, but also health care and education professionals ... Where prevention fails, law enforcement officials and prosecutors should record and monitor reported incidents, act to protect victims of violence, and respond promptly and effectively to allegations of, or threats of, violence against women. Prosecutors and judiciary should ensure that perpetrators are brought to justice. Women should have prompt access to judicial mechanisms affording protection, and to appropriate health care and shelters providing physical protection, medical assistance and psychological support".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

125. The applicant complained under Articles 2, 3 and 8 of the Convention that the authorities had failed to protect her life. She further

complained about the authorities' failure to conduct a prompt and effective investigation leading to the identification, prosecution and punishment of the assailant.

126. Being the master of the characterisation to be given in law to the facts of the case, the Court is not bound by the characterisation given by the applicant or the Government (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). The Court considers that the applicant's complaints raised under Articles 3 and 8 should be examined from the standpoint of Article 2 under its substantive and procedural aspects, in so far as they relate to the applicants' right to life. The relevant part of this provision reads as follows:

> "Everyone's right to life shall be protected by law."

A. Admissibility

1. The parties' submissions

127. The Government submitted that the applicant had never raised her complaints before the domestic courts. She had also failed to bring a civil claim for damages under Articles 608, 625 and 640 of the Civil Code, as well as under the unifying decision of the Supreme Court Joint Benches of 14 September 2007, or a civil claim under Article 61 of the CCP in the course of criminal proceedings. The applicant's claim seeking damages before the district court had been withdrawn as a result of her failure to appear at the hearing. Moreover, the applicant had abused her right of application since she had failed to appeal against the prosecutor's decision staying the investigation and to make use of any other remedies. No final decision had yet been issued by the authorities.

128. The Government also submitted that the application had been lodged outside the six-month time-limit, the proceedings having been stayed on 26 February 2010 and the final decision being that of 30 May 2013. The applicant had been duly informed of the ongoing investigation.

129. The applicant submitted that there was no effective remedy of which she could make use. She had not addressed the Court with a direct application for compensation; instead her complaint had been focused on the Government's inability to protect her life and health. A civil claim for damages would not have led to the identification and punishment of those responsible for the violation of Article 2 of the Convention. In any event a remedy under the Civil Code could be effective only after the perpetrator had been identified. The remedy under Article 61 of the CCP could be used only in the event that the case was sent for trial before a domestic court. Moreover, the Government had failed to submit any examples of domestic practice concerning the use of violence against women. No compensation had ever been awarded to women who had suffered violence. The domestic

case-law submitted by the Government was not applicable in the applicant's case since all those cases were different from hers.

130. The applicant further submitted that the authorities had not been diligent and had only replied to her request for information for the first time on 17 April 2012. Moreover, the prosecutor had failed to inform the applicant of his investigative acts and had also failed to provide her with a copy of those acts, thus making it impossible for the applicant to challenge those acts. In any event, no appeal against the prosecutor's decision staying the proceedings was provided by law. The authorities had not been able to identify or punish the perpetrator for the violation of Article 2 of the Convention. The applicant's situation was thus an ongoing one.

2. The Court's assessment

(a) Applicability of Article 2

131. With regard to the applicability of Article 2 in the present case, the Court notes that the applicant alleged that her injuries had been inflicted by an individual and not a State agent. The Court observes, however, that the absence of any direct State responsibility for the death of a person does not exclude the application of Article 2 of the Convention (see, for example, *Yotova v. Bulgaria*, no. 43606/04, § 68, 23 October 2012).

132. The Court further notes that the protection of this provision of the Convention may not only be relied upon in the event of the death of the victim of violent acts. Article 2 also comes into play in situations where the person concerned was the victim of an activity or conduct, whether public or private, which by its nature put his or her life at real and imminent risk and he or she suffered injuries that appeared to be life-threatening when they occurred, even though the person ultimately survived (see, among other authorities, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 140, 25 June 2019; *Makaratzis v. Greece* [GC], no. 50385/99, § 55, ECHR 2004-XI; and *Soare and Others v. Romania*, no. 24329/02, § 108, 22 February 2011). In the present case the Court notes that the applicant was the subject of a violent attack which resulted in grievous injuries and pain, as well as disfigurement of 25% of her body. She was sent to hospital in a critical condition (see paragraph 6 above), and according to the report of 18 December 2009, her life would have been in danger if no specialist medical aid had been given (see paragraph 33 above). The Court therefore considers that the method used by the assailant was of a nature and intensity likely to endanger the life of the applicant. Article 2 of the Convention is therefore applicable in this case.

(b) Failure to observe the six-month rule under Article 35 § 1 of the Convention

133. The Court reiterates that the purpose of the six-month rule under Article 35 § 1 of the Convention is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time (see, for example, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 129, 19 December 2017, and *Opuz v. Turkey*, no. 33401/02, § 110, ECHR 2009). According to its well-established case-law, where no domestic remedy is available, the six-month period runs from the date of the act complained of.

134. In that regard, the Court notes that the applicant was assaulted by an unknown person on 29 July 2009. An investigation was opened by the prosecutor, who on 2 February 2010 stayed the investigation. The applicant was never informed of the outcome of the investigation. More specifically, it was only on 17 April 2012, after the request for information made by the Centre (see paragraph 35 above), that the prosecutor informed it that the criminal investigation had been stayed. However, the prosecutor informed the Centre that the case file had been transferred to the police for further action in order to identify the assailant. On 23 May 2012 the police informed the Centre that the investigation was ongoing. It was not until 8 January 2014 that the prosecutor informed the Centre that the investigation had been stayed owing to the non-identification of the assailant (see paragraph 41 above).

135. The Court notes that since the authorities informed the Centre on 8 January 2014 that the investigation had been stayed owing to the non-identification of the assailant, that event may be considered to constitute the date on which the applicant became aware of the ineffectiveness of the remedies in domestic law. The Court also notes that before that, the applicant had contacted the authorities several times for information about the progress of the investigation. Given that these circumstances indicate that the applicant acted with the requisite diligence in lodging her application once it became apparent that no redress for her complaints was forthcoming, the Court considers that the relevant date for the purposes of the six-month time-limit should not be considered to be a date earlier than 8 January 2014 (see, for example, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 258-69, ECHR 2014).

136. In the specific context of the present case, it follows that the applicant's complaints have been lodged within the six-month time-limit provided for in Article 35 § 1 of the Convention. The Court therefore dismisses the Government's preliminary objection in this regard.

(c) Failure to exhaust domestic remedies

137. The Court notes that the Government have raised two objections based on the requirement to exhaust domestic remedies. In the first place,

they contended that the applicant had failed to bring a claim for damages and, secondly, they argued that the applicant had not challenged the prosecutor's decision staying the investigation, as a result of which no final decision had been given.

138. As regards the Government's first objection, the Court notes that an investigation was opened by the prosecutor. The applicant had clearly expected to be informed about the outcome of the investigation and to be told that the perpetrator had been identified and punished in accordance with the criminal law. In this connection, the Court observes that, in view of the outline of domestic practice submitted by the Government, it would be very difficult for the applicant to prove her case in the event of her bringing civil proceedings under the Civil Code, seeking damages for the injuries sustained, without the perpetrator being identified. As regards a civil claim in the course of criminal proceedings under Article 61 of the CCP, the Court notes that such a claim could be submitted only if a case had been sent to trial before the domestic courts. In circumstances such as those prevailing here, with the case never having come to trial, the Court does not see how this remedy could have been effective (see also paragraph 111 above).

139. In any event, the Court considers that efficient criminal-law provisions are required to ensure the effective deterrence against threats to the right to life. The civil remedies relied on by the Government cannot be regarded as sufficient for the fulfilment of a Contracting State's obligations under Article 2 of the Convention in cases such as the present one, because their aim is to obtain an award of damages rather than to prevent, suppress and punish breaches of such provisions (see *Akelienė v. Lithuania*, no. 54917/13, § 69, 16 October 2018). It therefore dismisses the Government's first objection based on non-exhaustion of domestic remedies in this respect.

140. As regards the Government's second objection, the Court observes that the applicant was barred from challenging the prosecutor's decision to stay the criminal investigation, as the CCP did not provide for any such right. In its decision of 18 January 2013 the Constitutional Court noted that there was no remedy under domestic law against a prosecutor's decision staying an investigation (see paragraph 62 above). It was at the discretion of the prosecutor to reopen an investigation or not, as provided for under Article 326 of the CCP (see paragraph 59 above; see also *Pihoni v. Albania*, no. 74389/13, § 95, 13 February 2018). In these circumstances, the Court dismisses the Government's second objection.

(d) Conclusion

141. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant's submissions

142. Under Article 2 of the Convention the applicant submitted that the acid attack against her had been grievous and had threatened her right to life. She submitted that the legislative framework in place did not provide sufficient protection for women against violence as the authorities had failed to comply with their obligations under the Istanbul Convention. Article 88 of the Criminal Code, for example, did not conform to Article 49 of the Istanbul Convention. Moreover, that convention was not applied by the authorities at the domestic level in cases of violence against women. In the light of the statistical data on the frequency of violence against women, the authorities ought to have known and to have taken the preventive measures necessary to protect the applicant. She also submitted that the investigation had not been effective, thorough and expeditious. The authorities had failed to take the necessary measures, in that they had been unable to examine the type of substance found in the container, or to examine the container which the perpetrator was holding, or to identify the fingerprints on the container, or to examine the applicant's clothes. Furthermore, no measures had been taken to establish how the corrosive substance had been bought or how it had been sourced by the perpetrator. The applicant had not been informed of the continuation of the investigation or about the prosecutor's decision discontinuing the investigation against E.A. The authorities had failed to raise suspicions in regard to any other person and no further action had been taken by them since the staying of the investigation. The applicant had not been involved in the investigation and she had never been provided with the documentation detailing the investigative actions undertaken.

(b) The Government's submissions

143. The Government submitted that the applicant had not been subjected to domestic violence or violence under Article 2 of the Convention. The legislative framework then in force provided adequate protection for victims of domestic violence in the form of the Constitution, several conventions on women rights that had been ratified by Albania, and a specific law on domestic violence that was in place. Moreover, in 2012 the Criminal Code had been amended to provide a specific offence of domestic violence and abuse, and a national action plan had been put into place.

144. As regards the general situation concerning domestic violence in Albania, the Government submitted some information from the General Directorate of the State Police (*Drejtoria e Përgjithshme e Policisë së Shtetit*) covering the period from January to December 2014. According to that information the police had identified 4,121 domestic violence criminal

offences and other criminal offences which had occurred in the domestic environment, of which the police had instituted of their own motion judicial proceedings for the issuance of a protection order or an emergency protection order in 2,422 instances. The police had instituted criminal proceedings and sent the file to the prosecutor in respect of 1,797 of the remaining cases. The total number of victims had been 3,090, of whom 1,798 had been the spouse of the perpetrator. 551 perpetrators had been arrested whilst committing the offence; 48 had been detained and 147 others were still being sought by the police. In 2014, 17 cases of murder had been identified, resulting in the deaths of 22 people. There had been 10 female victims of family homicides, of whom 6 had been the spouse of the respective perpetrator.

145. The Government further submitted that, in order to protect the victims of domestic violence, the police had undertaken various actions, including the following: the issuing of an action plan dated 14 April 2014 "On the implementation of the National Action Plan 2011-2015"; the preparation of civil claims for the issuance of protection orders and emergency protection orders; follow-up of the implementation of the domestic courts' decisions; the institution of criminal proceedings against anyone breaching the protection orders; cooperation with other institutions and civil society organisations; various campaigns in different cities in Albania; and the training of police officers.

146. Turning to the present case, the Government submitted that the investigation had been effective and thorough, the applicant having been able to make effective use of all the remedies for the realisation of her rights. The prosecutor had started the investigation immediately and had undertaken several investigative actions. The prosecutor had also arrested the applicant's former husband. The applicant had not challenged the prosecutor's decision staying the investigation. The investigation had been stayed for reasons that were not dependent on the parties' behaviour. The authorities had not denied the applicant her right to information and cooperation during the investigation. It had been the applicant who had not given proper assistance to the authorities.

2. The Court's assessment

(a) Substantive aspect

147. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up

by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 67, ECHR 2002-VIII). It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 244, ECHR 2011; and *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 108, 31 January 2019).

148. Bearing in mind the difficulties inherent in policing modern societies, the unpredictability of human conduct, and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation to take preventive operational measures must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every alleged risk to life, therefore, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual resulting from the criminal acts of a third party. Where the Court finds that the authorities knew or ought to have known of that risk, it must assess whether they took measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see, among many other authorities, *Osman*, § 116; *Fernandes de Oliveira*, § 110; and *Nicolae Virgiliu Tănase*, § 136, all cited above).

149. In the light of the foregoing, the Court must establish whether there existed an effective legislative framework in Albania at the time and whether the authorities knew or ought to have known of the existence of a real and immediate risk to the life or physical integrity of the applicant.

150. The Court observes at the outset that the facts of the case concern a serious acid attack on the applicant perpetrated by an unidentified individual. The Court notes that in Albania a criminal offence is subject to public prosecution, unless it falls into the category of crimes subject to private prosecution. At the relevant time, the Criminal Code provided for a number of offences committed against a person's life or health. These offences, including that provided for in Article 88 of the Code, under which the prosecutor opened the criminal investigation into the acid attack, are subject to investigation by the prosecutor of his own motion (see also paragraph 63 above). The Court is satisfied that, in the absence of any arguments by the applicant that the criminal-law provisions were ineffective, there existed an effective legislative framework in Albania at the relevant time concerning crimes against life and health. The Court further notes, although not relevant to the present case, that, following

legislative amendments in 2012 and 2013, the Criminal Code contains specific provisions proscribing domestic violence and battery, and criminalising as an aggravating circumstance the commission of another offence during or after a court protection order given in relation to the occurrence of domestic violence (see paragraphs 65 and 66 above).

151. The Court further notes that the applicant suspected that her former husband had been the assailant behind the acid attack, bearing in mind also the domestic violence to which she alleged she had been subjected in the past. The applicant complained about her former husband's violence against her for the first time when she made the statement before the district prosecutor after the acid attack on 29 July 2009. The applicant's statement was corroborated by the applicant's family members. However, it does not appear that the applicant at any time before the attack brought to the authorities' attention any risks posed to her life by her former husband, which would have triggered the authorities' positive obligation to take preventive measures or other reasonable steps to protect the applicant's life (compare and contrast *Osman*, cited above, and *Civek v. Turkey*, no. 55354/11, 23 February 2016). In the Court's view, in the circumstances of the present case, the Court cannot see how the State authorities could be held responsible for not having prevented the attack against the applicant.

152. It follows that there has been no violation of Article 2 of the Convention with regard to the authorities' positive obligation to protect the applicant's life and physical integrity.

(b) Procedural aspect

153. The Court observes that the positive obligation of the State to safeguard the lives of those within its jurisdiction requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances. The investigation must be capable of establishing the cause of the injuries and, where appropriate, the identification of those responsible with a view to their punishment (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 172, 14 April 2015). Whenever there are any doubts about the occurrence of domestic violence or violence against women, special diligence is required of the authorities to deal with the specific nature of the violence in the course of the domestic proceedings (see *Volodina v. Russia*, no. 41261/17, § 92, 9 July 2019).

154. A requirement of promptness and reasonable expedition is implicit in the context of an effective investigation within the meaning of Article 2 of the Convention (see, among many other authorities, *Talpis v. Italy*, no. 41237/14, § 106, 2 March 2017). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in

investigating any use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of tolerance of unlawful acts (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 237, 30 March 2016). In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests (see *Giuliani and Gaggio*, cited above, § 303).

155. The Court will now examine whether the investigation carried out by the State authorities met the requirements of the procedural limb of Article 2 of the Convention. It will do so by having regard to the general situation of women in Albania in which the acid attack occurred and the authorities' response in investigating the incident.

156. The Court notes that, since at least 2003, international reports in respect of Albania have repeatedly pointed out the high prevalence of violence against women (see paragraphs 108-24 above). Moreover, the national reports lend support to the view that between 2007 and 2013 violence against women was a widespread problem (see paragraphs 100-07 above). Between 2006 and 2012 the international reports further noted that violence against women was under-reported, under-investigated, under-prosecuted and under-sentenced. They suggested that the police and prosecuting authorities manifested an ineffectual approach to violence against women on the grounds of "social attitude and cultural values" and that a climate of leniency or impunity prevailed towards perpetrators of violence against women (see paragraphs 113, 117 and 120-22 above). In its 2010 Concluding Observations, the CEDAW Committee recommended, among other things, that "public officials, especially law enforcement officials [and] members of the judiciary" become fully "sensitized to all forms of violence against women". In the light of the foregoing, the Court considers that, at the time of the attack, there existed prima facie a general climate in Albania that was conducive to violence against women. Moreover, the 2017 GREVIO evaluation report noted that domestic violence exceeded "all other crimes as the criminal offence with the largest number of victims" (see paragraph 109 above).

157. Where an attack happens in a general climate as described above, the investigation assumes even greater importance and the investigative authorities should be more diligent in conducting a thorough investigation, in order to secure the effective implementation of the domestic laws which protect the right to life. Such diligence to investigate, among other things, an acid attack – which, according to the CEDAW Committee and other reports referred to in paragraphs 93-99 above, may be a practice of "gender-based violence" against women – has been reiterated in General Recommendation no. 19, according to which "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for

providing compensation", as has been firmly re-established in General Recommendation no. 35 (see paragraphs 82 and 86, as well as paragraph 89 above).

158. Turning to the effectiveness of the investigation in the present case, the Court notes that an investigation into the acid attack was opened by the prosecutor and that several investigative actions were carried out in respect of E.A., upon whom a compulsion order was imposed. His apartment was searched and several items owned by him were seized. Further investigative steps comprising the following measures were undertaken: an on-site examination was carried out, several persons were questioned, footage from the video cameras of two nearby banks was obtained and examined, forensic reports were obtained and other expert reports were ordered. Nevertheless, at no point were the authorities able to establish the nature of the substance found in the container and on the applicant's clothes. No chemical or toxicology expert report was obtained as the Faculty of Natural Sciences and the Institute of Scientific Police either lacked the necessary specialist equipment or it was not within their competence to compile such reports (see paragraphs 30-31 above).

159. In this regard, it is difficult for the Court to accept that an investigative measure of crucial importance for the case, namely an expert report to enable the identification of the substance used to attack the applicant, was not carried out with due expedition and determination. It is up to the domestic authorities to sort out the issues of competence or to establish specialised institutions to carry out such procedural steps which are decisive for the progress of the investigation and to meet the procedural obligations under Article 2 of the Convention.

160. The Court considers that the circumstances of the attack on the applicant – which has the hallmarks of a form of gender-based violence – should have incited the authorities to react with special diligence in carrying out the investigative measures. Whenever there is a suspicion that an attack might be gender-motivated, it is particularly important that the investigation is pursued with vigour.

161. Lastly, the Court notes that the final decision in the case – that of 2 February 2010 to stay the investigation, which was not amenable to appeal (see paragraph 140 above) – does not provide a definite answer as to the nature of the substance found in the container and on the applicant's clothes. Moreover, despite the applicant's repeated enquiries about the progress of the investigation, she was not given any information or documents in response. She could not therefore challenge any investigative actions (or omissions) or request the authorities to take other measures (see *Pihoni*, cited above, § 95). Nor could she bring a claim for damages in the absence of an identified perpetrator (see paragraph 138 above).

162. Accordingly, the criminal investigation in question, which has been stayed since 2010 by the prosecutor, cannot be described as an effective

response by the authorities to the acid attack. There has thus been a violation of Article 2 of the Convention as regards the State's procedural obligation.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

163. The applicant also complained about the authorities' failure to provide psychotherapy or rehabilitation treatment, and about the absence of financial compensation. She relied on Article 8 of the Convention, the relevant part of which reads as follows:

> "1. Everyone has the right to respect for his private ... life ..."

164. The Government did not submit any particular observations.

165. The Court considers, on the basis of the material submitted to it, that there is no appearance of any violation in this regard, and therefore rejects this complaint as being manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

166. The applicant complained of a violation of Article 13 of the Convention taken in conjunction with Article 2 in view of the fact that she could not challenge the prosecutor's acts and that she could not apply for compensation for the actual attack.

167. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

168. As regards the applicant's inability to challenge the prosecutor's acts, the Court considers that this complaint is linked to the one examined above under Article 2 of the Convention and must therefore likewise be declared admissible. However, having regard to its findings under Article 2 (see paragraphs 161 and 140 above), it is not necessary to examine the merits of this complaint.

169. As regards the possibility for the applicant to obtain compensation from the perpetrator, the Court also considers that this complaint is linked to the one examined under Article 2 above and must therefore likewise be declared admissible. However, having regard to its findings under Article 2 (see paragraphs 161 and 138 above), it is not necessary to examine the merits of this complaint.

170. As regards the possibility for the applicant to obtain compensation from the State, the Court observes that the proceedings relating to her claim for damages were discontinued by the Tirana District Court on 30 May 2013 because the applicant and her lawyer had failed to put in an

appearance (see paragraph 53 above). The Court notes that the applicant did not provide any explanation or any evidence that the reason for her failure to appear in the court hearings was related to her inability to pay court fees. Nor did she submit that the District Court had dismissed her request for exemption from the requirement to pay court fees before deciding to discontinue the proceedings. In any event. the applicant's claim for damages had not been quantified, in respect of which court fees would be determined as a percentage of the claim. Accordingly, in the absence of any substantiation, this part of the complaint must be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARITCLE 14 OF THE CONVENTION

171. Lastly, the applicant complained under Article 14 of the Convention that the authorities had remained passive even though she had voiced suspicions regarding her former husband. The authorities' actions had shown that they were discriminating against her because of her gender.

172. Having regard to the fact that the Court has already examined the circumstances of this case under Article 2 of the Convention (see, in particular, paragraphs 156 and 157 above), it does not find it necessary to examine the admissibility or merits of this complaint.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

173. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

174. The applicant claimed 3,730.20 euros (EUR) in respect of pecuniary damage – consisting of the expenses the applicant had incurred for her treatment in Italy – and 4,938,469 Albanian leks (ALL) (approximately EUR 36,452) in respect of loss of profits, this amount representing her salary for a period of one year. The applicant further claimed ALL 9,890,004 (approximately EUR 73,000) in respect of non-pecuniary damage consisting of: ALL 4,945,002 in respect of damage to her physical and psychological integrity; ALL 2,472,501 in respect of the pain and suffering she had endured; and ALL 2,472,501 in respect of harm to her quality of life. The applicant submitted an expert report according to

which the calculation was based on the unifying decision of the Supreme Court of 14 September 2007 (see paragraph 73 above).

175. The Government argued that the applicant had not submitted a civil claim for damages. The expert report had been based on the Albanian insurance law. They therefore requested the Court to reject her claims as unsubstantiated.

176. The Court notes that the rule that domestic remedies should be exhausted does not apply to just satisfaction claims submitted to the Court under Article 41 of the Convention (see *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, §§ 15-16, Series A no. 14, and *Salah v. the Netherlands*, no. 8196/02, § 67, ECHR 2006-IX).

177. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant, on an equitable basis, EUR 12,000 in respect of non-pecuniary damage as a result of the violation found on account of the ineffectiveness of the investigation.

B. Costs and expenses

178. The applicant also claimed EUR 1,500 for her representation before the Court, as well as EUR 1,220 and ALL 70,150 (approximately EUR 518) in respect of translation costs and administrative and other costs and expenses before the domestic courts and the Court.

179. The Government did not submit any particular comment.

180. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Gjyli v. Albania*, no. 32907/07, § 72, 29 September 2009). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,720 covering costs under all heads.

C. Default interest

181. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 2 of the Convention and the complaints under Article 13 concerning the absence of a remedy to

challenge the prosecutor's acts and apply for compensation from the perpetrator admissible, and the complaint under Article 8, as well as the complaint under Article 13, concerning the absence of a remedy to obtain compensation from the State inadmissible;

2. *Holds* that there has been no violation of Article 2 of the Convention under its substantive limb;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds* that there is no need to examine the merits of the complaints under Article 13 of the Convention;

5. *Holds* that there is no need to examine the admissibility or merits of the complaint under Article 14 of the Convention;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,720 (two thousand seven hundred and twenty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 August 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President