

EUROPEAN COURT OF HUMAN RIGHTS

Application No. 42008/23

BETWEEN:

D.H.

Applicant

v.

Hungary

Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENERS

The AIRE Centre (Advice on Individual Rights in Europe), The European Council on Refugees and Exiles (ECRE), and the Dutch Council for Refugees.

pursuant to the Registrar's notification dated 16th September 2025 on the Court's permission to intervene under Rule 44 § 3 of the Rules of the European Court of Human Rights

21st October 2025

I. Positive obligations under Article 3 ECHR

1. Article 1 of the Convention, taken in conjunction with Article 3, imposes positive obligations upon Contracting States to ensure that individuals are protected from ill-treatment prohibited under Article 3. This **includes treatment administered by private individuals**.¹
2. The Court has previously recognised that violence, being that which manifests as physical injury or as damage to an individual's psychological integrity, deemed sufficiently serious will fall within the meaning of ill-treatment in Article 3.² It is well established throughout the Court's case law that rape and sexual abuse constitute treatment within the scope of Article 3 (and which also implicate Article 8).³
3. Article 3 imposes both substantive and procedural positive obligations upon Contracting States to ensure that individuals are not exposed to treatment prohibited under Article 3.⁴ **Firstly**, there is an obligation for Contracting States to implement a sufficient legislative and regulatory framework to protect individuals from treatment prohibited under Article 3.⁵ **Secondly**, "*in certain well-defined circumstances*",⁶ States have an obligation to take operational measures to protect identified, specific individuals from the risks of ill-treatment contrary to the implemented framework.⁷ **Finally**, Article 3 imposes on States a procedural obligation to undertake an effective investigation into claims of potential Article 3 violations.⁸
4. These measures should provide effective protection and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.⁹ In cases concerning vulnerable individuals, including children and persons with disabilities, the Court has held that the authorities must be particularly vigilant and afford increased protection as the capacity for such individuals to pursue a complaint will often be impaired.¹⁰

A. Substantive obligations under Article 3 ECHR

5. Article 3 requires the implementation of a legislative and regulatory framework which protects individuals from "*breaches of their physical and psychological integrity*".¹¹ This is to be achieved through the enactment of "*criminal-law provisions and their effective application in practice*".¹² For a Contracting State to be found to have violated this positive obligation, it must be demonstrated that there was a failure to provide practical and effective protection of the rights guaranteed under Article 3.¹³ In cases of rape and sexual abuse, national legislation must provide for "***the criminalisation and***

¹ *A v the United Kingdom*, no. 25599/94, 23 September 1998; *Opuz v Turkey*, no. 33401/02, § 139, 9 June 2009; *M.C. v Bulgaria*, no. 39272/98, 4 December 2003.

² *N.T. v Cyprus*, no. 28150/22, 3 July 2025; *X v Greece*, no. 38588/21, 13 February 2024.

³ *N.T. v Cyprus*, no. 28150/22, § 68, 3 July 2025; *X v Greece*, no. 38588/21, 13 February 2024; *L and Others v France*, nos. 46949/21 and 2 others, 24 April 2025.

⁴ *X and Others v Bulgaria*, no. 22457/16, § 178, 2 February 2021. See also *M.C. v Bulgaria*, no. 39272/98, 4 December 2003.

⁵ *M.C. v Bulgaria*, no. 39272/98, § 178, 4 December 2003.

⁶ *X and Others v Bulgaria*, no. 22457/16, § 178, 2 February 2021. See also *Osman v the United Kingdom*, no. 23452/94, 28 October 1998.

⁷ *X and Others v Bulgaria*, no. 22457/16, § 178, 2 February 2021.

⁸ *X and Others v Bulgaria*, no. 22457/16, § 178, 2 February 2021; *N.T. v. Cyprus*, no. 28150/22, 3 July 2025; *X v Cyprus*, no. 40733/22, 27 February 2025; *L and Others v France*, nos. 46949/21 and 2 others, 24 April 2025.

⁹ *M.C. v Bulgaria*, no. 39272/98, § 150, 4 December 2003.

¹⁰ *B. v Romania*, no. 42390/07, § 50, 10 January 2012; *I.C. v Romania*, no. 36934/08, § 51-52, 24 May 2016.

¹¹ *X and Others v Bulgaria*, no. 22457/16, § 179, 2 February 2021.

¹² *Ibid*; *S.Z. v Bulgaria*, no. 29263/12, § 43, 3 March 2015.

¹³ *Valiulienė v Lithuania*, no. 33234/07, § 75, 26 March 2013.

prosecution of all non-consensual sexual acts, including where the victim has not resisted physically”.¹⁴

6. The interveners respectfully remind the Court of the approach it has taken in recent cases concerning rape.¹⁵ It is well established that it is the **absence of consent, not the use of force or violence**, that is the **key issue** in cases of rape. It is also well established that rape can occur regardless of whether the victim and perpetrator are married or in a relationship.¹⁶ In the 2025 case of *H.W. v France*, concerning consent and “*marital duties*”, it was established that consenting to marriage does not equate to consenting to sexual relations.¹⁷ Rather, consent is an expression of our “*free will to engage in a specific sexual relationship*”¹⁸ and the mere existence of a relationship should not be mistaken for ongoing or future consent to sexual relations.¹⁹ While the Court assessed that case under Article 8, **it is clear from the Court’s approach in its most recent cases concerning the obligations on States in cases of rape and sexual violence that applicant’s complaints may be examined jointly under Articles 3 and 8 of the Convention.**²⁰
7. The interveners invite the Court to consider the definition of the offence of rape and sexual violence in the national law of Contracting States, observing that the offence should be centred on the issue of non-consent without the need to demonstrate violence or use of force.²¹ The Court is invited to consider this in light of its own approach adopted in cases such as *N.T. v Cyprus*,²² being particularly cognisant of the offence of rape as one centred around the absence of consent, not the existence of violence or use of force, *inter alia*.
8. In regard to the second substantive obligation, Contracting States may be required to take operational measures to protect victims or potential victims of ill-treatment.²³ The measures in question must “*provide effective protection in particular of children and other vulnerable persons*”.²⁴ Operational measures must include “*reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge*”.²⁵
9. In *Osman v the UK*, the Court held that Article 2 imposes an obligation upon States to “*take preventive operational measures*”²⁶ in order to protect a **private individual from the criminal acts of another private individual**. The Court established that for there to be a violation of this positive duty to take operational measures, it must be established that the relevant authorities “*knew or ought to have known at the time of the existence of a real and immediate risk to life of an identified individual [...] from the criminal acts*

¹⁴ *N.T. v Cyprus*, no. 28150/22, § 69, 3 July 2025.

¹⁵ *N.T. v Cyprus*, no. 28150/22, § 69, 3 July 2025; *L and Others v France*, nos. 46949/21 and 2 others, § 195, 24 April 2025.

¹⁶ *H.W. v France*, no. 13805/21, § 91, 23 January 2025.

¹⁷ *H.W. v France*, no. 13805/21, § 86, 23 January 2025.

¹⁸ *L. and Others v France*, nos. 46949/21 and 2 others, § 250, 24 April 2025; see also *H.W. v France*, no. 13805/21, § 91, 23 January 2025.

¹⁹ *H.W. v France*, no. 13805/21, § 91, 23 January 2025. See also the Concurring Opinion of Judge Krenč in *N.T. v Cyprus*, no. 28150/22, 3 July 2025.

²⁰ *N.T. v Cyprus*, no. 28150/22, § 68, 3 July 2025.

²¹ Per s.197 of Hungary’s Criminal Code, the offence of sexual violence is defined as follows: “(1) Sexual violence is a felony punishable by imprisonment between two to eight years if committed: a) by force or threat against the life or bodily integrity of the victim; b) by exploiting a person who is incapable of self-defense or unable to express his will, for the purpose of sexual acts.”

²² *N.T. v Cyprus*, no. 28150/22, 3 July 2025.

²³ *X and Others v Bulgaria*, no. 22457/16, § 181, 2 February 2021.

²⁴ *X and Others v Bulgaria*, no. 22457/16, § 182, 2 February 2021. See also *O’Keeffe v Ireland*, no. 35810/09, 28 January 2014.

²⁵ *Ibid.*

²⁶ *Osman v The United Kingdom*, no. 23452/94, § 115, 28 October 1998.

of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.”²⁷ The test established in *Osman* applies, *mutatis mutandis*, to Article 3.²⁸

10. In *I.G. v Moldova*, the Court made it clear that Article 3 requires States to take measures to ensure that individuals are not subjected to ill-treatment, including ill-treatment inflicted by private individuals. This case also made clear that Article 3 gives rise to a positive obligation to conduct an official investigation which is not limited solely to ill-treatment by State agents.²⁹ As such, Contracting States have a positive obligation under Article 3 to enact criminal-law provisions to effectively punish rape and to apply said criminal law provisions through effective investigations and prosecutions.³⁰
11. The Court is invited to consider the multiple and compound forms of vulnerability when assessing the relevant measures to be taken for the adequate protection of individuals. In *J.I. v Croatia*, the Court found that the authorities were aware of the applicant’s particular vulnerability on the basis of her sex, ethnic origin, and previous trauma, and, as a result, should have reacted promptly to her criminal complaints to protect against the realisation of the threat of rape.³¹ The Court has also taken into consideration the particular vulnerability of women with disabilities: in *I.C. v the Republic of Moldova*, the Court found that the State was required to assess and give weight to the applicant’s vulnerability based on, *inter alia*, her gender and intellectual disability.³²
12. In *M.S.S. v Belgium and Greece*, the Court held, *inter alia*, that the Greek authorities did not have due regard to the applicant’s vulnerability as an asylum seeker³³ and to provide for his essential needs, rendering him homeless and in extreme poverty.³⁴ Similarly, in *Tarakhel v Switzerland*, the Court held that the conditions of the accommodation provided were unsuitable for children and should have been adapted to their age and needs in light of their extreme vulnerability as children.³⁵ This applies, *mutatis mutandis*, to other particularly vulnerable groups of migrants. States must provide vulnerable migrants, including persons with disabilities and mental issues, with accommodation adapted to their needs, including measures to prevent potential abuse. The Court has previously underscored the importance of providing suitable accommodation to vulnerable asylum seekers.
13. The Court is further invited to consider the special situation of vulnerability of Ukrainian women displaced as a result of the full-scale Russian invasion of Ukraine when clarifying the scope of the rights guaranteed by the Convention in the context of Article 3. As of 31 December 2024, 49,119 individuals had registered for temporary protection through the EU Temporary Protection Directive³⁶ in Hungary.³⁷ According to the 2024 Asylum Information Database update on Temporary Protection Hungary, no specific identification mechanisms are in place to identify vulnerable individuals, nor is there comprehensive screening to identify people with special protection needs.

²⁷ *Osman v The United Kingdom*, no. 23452/94, § 116, 28 October 1998.

²⁸ *X and Others v Bulgaria*, no. 22457/16, § 181, 2 February 2021; *O’Keefe v Ireland*, no. 35810/09, § 144, 28 January 2014; *E. and Others v the United Kingdom*, no. 33218/96, §§ 96-97, 99, 26 November 2002.

²⁹ *I.G. v Moldova*, no. 53519/07, § 40-41, 15 May 2012.

³⁰ *I.G. v Moldova*, no. 53519/07, § 43, 15 May 2012.

³¹ *J.I. v Croatia*, no. 35898/16, § 97, 8 September 2022.

³² *I.C. v the Republic of Moldova*, no. 36436/22, § 170-172, 27 February 2025.

³³ *MSS v Belgium and Greece*, no. 30696/09, § 263, 12 January 2011.

³⁴ *MSS v Belgium and Greece*, no. 30696/09, § 250, 12 January 2011.

³⁵ *Tarakhel v. Switzerland* [GC], no. 29217/12, § 119, ECHR 2014 (extracts).

³⁶ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L 212/12.

³⁷ AIDA Temporary Protection Hungary 2024 update, page 7.

Hungarian authorities had no data on the number of individuals fleeing Ukraine to Hungary and identified as vulnerable during the years 2022-2024.³⁸

14. Of all the changes Hungary has implemented through its temporary protection scheme under the EU Temporary Protection Directive, “*housing has been one of the most chaotic*”.³⁹ This is largely due to the failure of the Hungarian authorities to adopt an effectively coordinated and centralised approach to the provision of housing.⁴⁰

B. Procedural obligation under Article 3 ECHR

15. The procedural obligation under Article 3 requires a State to conduct an effective official criminal investigation in response to arguable allegations that an individual has been subject to prohibited ill-treatment.⁴¹ The Court has made clear in cases of rape, sexual violence, domestic violence, cyberviolence and other forms of violence against women that the effectiveness of an investigation relies on domestic authorities not allowing physical or psychological suffering to go unpunished.⁴² Effective investigations are therefore an essential part of maintaining public confidence in the rule of law and preventing the perception that the relevant national authorities tolerate acts of violence.⁴³ Moreover, when concerning gender-based violence against women,⁴⁴ national authorities are required to consider the particular moral, physical and/or material precariousness and vulnerability of the victim as well as to assess the situation accordingly.⁴⁵
16. As in *N.T. v Cyprus*, the “*central task*” for the relevant authorities carrying out such an investigation is to determine the issue of non-consent.⁴⁶ This emphasis upon consent reflects an individual’s “*free will to engage in a specific sexual relationship*”,⁴⁷ which the Court has recognised as a vital component in assessing whether the offence of rape has been committed. While it may be difficult to prove lack of consent in the absence of “*direct*” proof, the relevant authorities are required to explore all the facts and reach a conclusion on the basis of an assessment of all the surrounding circumstances, **focussing on how the evidence has been collected and how it goes to the issue of non-consent**.⁴⁸
17. In *I.G. v the Republic of Moldova*, the Court concluded that a decision on the allegations of rape had been made without important investigative measures. Where the central task is to determine the issue of non-consent, it is “*imperative to form an opinion concerning each party’s credibility*”.⁴⁹ Such an approach is particularly important when

³⁸ AIDA, Temporary Protection Hungary 2024 update, page 24.

³⁹ AIDA, Temporary Protection Hungary 2024 update, page 35.

⁴⁰ AIDA, Temporary Protection Hungary 2024 update, page 35.

⁴¹ *L. and Others v France*, nos. 4649/21 and 2 others, § 195, 24 April 2025.

⁴² *L. and Others v France*, nos. 46949/21 and 2 others, § 196, 24 April 2025. *Maslova and Nalbandov v Russia*, nos. 839/02 and 2 others, § 91, 24 January 2008.

⁴³ *Volodina v Russia* (no. 2), no. 40419/19, 14 September 2021; *Tunikova and Others v Russia*, nos. 55974/16 and 3 others, 14 December 2021.

⁴⁴ See CEDAW, General Recommendation No. 35 (GR No. 35) on gender-based violence against women, updating general recommendation No.19 (2017), CEDAW/C/GC/35 § 26. <http://bit.ly/4pzwgKs>.

⁴⁵ *M.G. v Turkey*, no. 646/10, §95, 22 March 2016; *Talpis v Italy*, no. 41237/14, §§ 128-130, 2 March 2017.

⁴⁶ *N.T. v Cyprus*, no. 28150/22, §§ 71 and 78, 3 July 2025.

⁴⁷ *L. and Others v France*, nos. 46949/21 and 2 others, § 250, 24 April 2025; see also *H.W. v France*, no. 13805/21, § 91, 23 January 2025.

⁴⁸ *N.T. v Cyprus*, no. 28150/22, 3 July 2025; *L. and Others v France*, nos. 46949/21 and 2 others, 24 April 2025; *M.C. v Bulgaria*, no. 39272/98, ECHR 2003-XII.

⁴⁹ *I.G. v Moldova*, no. 53519/07, § 43, 15 May 2012.

there may be two irreconcilable versions of facts.⁵⁰ The Court has held that this could be done by questioning individuals known to the applicant and the accused to determine the trustworthiness of their statements or by seeking an opinion from a specialist psychologist.⁵¹ The authorities are required to assess in an unbiased manner the credibility of those statements to form a reasoned opinion concerning their credibility and trustworthiness, and to draw conclusions specifically as to their relevance to the issue of non-consent.⁵²

18. In light of this Court's evolving understanding of how rape is experienced, the interveners invite the Court to consider whether the authorities' investigations were influenced by sexist stereotypes or misogynistic attitudes.⁵³ It is noted that the obligation to protect the dignity of individuals extends to the investigation itself and the trial/prosecution of the accused.⁵⁴ In *N.T. v Cyprus*, the Court noted the importance of protecting the rights of victims at that stage and the need to protect survivors of sexual violence to **secondary victimisation**.⁵⁵ In *L. and Others v France*, the Court observed that the applicants were confronted with questions criticising their behaviour.⁵⁶ Rather than addressing the central issue of non-consent, the conclusions of the investigation described in a pejorative manner the facts of the case and only provided a description of the facts.⁵⁷ In *I.C. v the Republic of Moldova*, the Court reiterated that it is essential to avoid reproducing sexist stereotypes in court decisions and exposing women to secondary victimisation through guilt-inducing and judgmental comments capable of undermining their trust in the justice system.⁵⁸
19. The Court has also considered how language and arguments used by national investigative authorities may point to motives, prejudices, and stereotypes that might "discourage women's confidence, as victims of gender-based violence, in the justice system".⁵⁹ The interveners submit that cases of violence and discrimination are inextricably linked and recall the concurring opinion of Judge Krenč in *N.T. v Cyprus*, where he "**considered it essential that the Court also examine the complaint under Article 14 of the Convention, in conjunction with Articles 3 and 8**".⁶⁰
20. The Court is also invited to determine whether the Contracting State has conducted a **context-sensitive assessment of both the evidence and surrounding circumstances**.⁶¹ As part of a **context-sensitive assessment**, the Court has taken into account an applicant's vulnerability and how this goes to the issue of non-consent. While the Court recognised the vulnerability of the applicants in *L. and Others v France* on the basis of their age, it noted several other factors relevant to their capacity to consent, including their health, drug consumption, and the imbalance in relationships.⁶² Similarly, in *N.Ö. v Turkey*, the Court had regard to the fact that the sexual assault was

⁵⁰ *N.T. v Cyprus*, no. 28150/22, § 75, 3 July 2025; *M.C. v Bulgaria*, no. 39272/98, § 177, 4 December 2003; *C.A.S. and C.S. v Romania*, no. 26692/05, § 78, 20 March 2012.

⁵¹ *I.G. v Moldova*, no. 53519/07, § 43, 15 May 2012; *N.T. v Cyprus*, no. 28150/22, § 75, 3 July 2025; *M.C. v Bulgaria*, no. 39272/98, § 177, ECHR 2003-XII; *C.A.S. and C.S. v Romania*, no. 26692/05, § 78, 20 March 2012.

⁵² *N.Ö. v Turkey*, no. 24733/15, §§ 49-52, 7 January 2025.

⁵³ *N.T. v Cyprus*, no. 28150/22, § 73 and 84, 3 July 2025.

⁵⁴ *Ibid.*, § 73, 3 July 2025; *L. and Others v France*, nos. 46949/21 and 2 others, § 226, 24 April 2025.

⁵⁵ *N.T. v Cyprus*, no. 28150/22, § 84, 3 July 2025.

⁵⁶ *L. and Others v France*, nos. 46949/21 and 2 others, § 226; see also § 227, 24 April 2025.

⁵⁷ *L. and Others v France*, nos. 46949/21 and 2 others, § 228, 24 April 2025.

⁵⁸ *I.C. v the Republic of Moldova*, no. 36436/22, §§ 198-199, 27 February 2025.

⁵⁹ *N.T. v Cyprus*, no. 28150/22, § 83, 3 July 2025.

⁶⁰ *N.T. v Cyprus*, no. 28150/22, 3 July 2025, concurring opinion of Judge Krenč.

⁶¹ *N.T. v Cyprus*, no. 28150/22, 3 July 2025; *X v Cyprus*, no. 40733/22, 27 February 2025; *L. and Others v France*, nos. 46949/21 and 2 others, 24 April 2025.

⁶² *L. and Others v France*, nos. 46949/21 and 2 others, § 214 and 221, 24 April 2025.

committed by a person who was the applicant's workplace superior.⁶³ The interveners submit that the Court should assess whether the national authorities considered potential imbalances of power and evidence of potential exploitation **as well as their potential impact on the capacity of an individual to consent to sexual relations with free will.**⁶⁴

21. The Court has also acknowledged the “*special vulnerability of mentally ill persons in its case-law*”.⁶⁵ In *G.M. and Others v Moldova*, which concerned a violation of Article 3 in the context of sexual abuse and forced abortion/sterilisation committed by a doctor against vulnerable patients, the Court noted that the “*thorough, effective and prompt investigation*” conducted by the relevant authorities ought to have considered “*whether they afforded sufficient protection to the applicants’ right to respect for their personal integrity in the light of their vulnerability as women with intellectual disabilities exposed to sexual abuse in an institutional context.*”⁶⁶ The relevant authorities should be aware of the heightened vulnerability of those with intellectual disabilities and severe mental health issues as well as the particular vulnerability of such women in institutions and, in this instance, state-provided accommodation. The interveners remind the Court that the aforementioned vulnerabilities are not to be considered in isolation.⁶⁷
22. In assessing these shortcomings, the Court is further invited to consider whether prejudice or entrenched cultural attitudes may have played a role in the alleged failure to conduct an effective investigation.⁶⁸ This has been addressed in other contexts of violence against women. In *Opuz v Turkey*, the Court noted that the general attitude of local authorities and the manner in which the women were treated at police stations reflected the State authorities’ lack of effort to prevent gender-based violence against women (‘GBVAW’).⁶⁹ Moreover, in *Halime Kilic v Turkey*, the Court held that, by failing to sanction the applicant’s husband for not complying with injunctions issued to him, the national authorities rendered those injunctions ineffective.⁷⁰ It was found that such inaction by the national authorities reflected a clear negation of the seriousness of domestic violence and a climate conducive to such violence⁷¹ and had created a context of impunity in which her husband was permitted to operate.

II. Relevant International and Regional law

23. In accordance with Article 53 ECHR, the Court must interpret the Convention compatibly with other international agreements to which the respondent State is party. This principle of safeguarding human rights is particularly relevant when a case before this Court **relates to other international instruments which may be more specialised**

⁶³ *N.Ö. v Türkiye*, no. 24733/15, § 52, 7 January 2025.

⁶⁴ *H.W. v France*, no. 13805/21, 23 January 2025. *L. and Others v France*, nos. 46949/21 and 2 others, 24 April 2025; *X v Cyprus*, no. 40733/22, 27 February 2025.

⁶⁵ *M.S. v Croatia*, no. 75450/12, § 96, 19 February 2015; *Keenan v the United Kingdom*, no. 27229/95, § 111, 3 April 2001.

⁶⁶ *G.M. and Others v Moldova*, no. 44394/15, § 95, 22 November 2022.

⁶⁷ *Kurt v Austria*, no. 62903/15, 15 June 2021. See also *J.I. v Croatia*, no. 35898/16, § 97, 8 September 2022.

⁶⁸ For example, *Abdu v Bulgaria*, no. 26827/08, § 44, 11 March 2014, where the protected characteristic in question was race. See *B.S. v Spain*, no. 47159/08, § 59, 24 July 2012 where the Court found that Article 3 and Article 14 interplay in situations where state authorities are not effective in their investigations of violence due to discriminatory attitudes. These incidents also constitute breaches of the authorities’ procedural obligations arising under both Article 3 and Article 14.

⁶⁹ *Opuz v Turkey*, no. 33401/02, § 197, 9 June 2009.

⁷⁰ *Halime Kilic v Turkey*, no. 63034/11, § 119, 28 June 2016.

⁷¹ *Halime Kilic v Turkey*, no. 63034/11, § 119-120, 28 June 2016. See also: *Opuz v Turkey*, no. 33401/02, § 184-191, 9 June 2009.

in a given area. Moreover, in determining whether a Contracting Parties' obligations under the Convention are engaged in a particular case - and, if so, the scope and content of these obligations - this Court has considered EU law materially relevant when the respondent States are legally bound by that corpus of law.

a. Istanbul Convention

24. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the 'Istanbul Convention') came into force on 1 August 2014.⁷² The Council of Europe describes it as the most comprehensive international treaty on this topic and a benchmark for international standards on violence against women.⁷³
25. 39 Council of Europe members have ratified the Istanbul Convention. Hungary became a signatory to the Convention on 14th March 2014, but has not yet ratified it. The Court should note that the ratification of the Istanbul Convention is a priority for the Council of Europe.⁷⁴ PACE stressed that the Convention is at the core of the Council of Europe's legal system aimed at protecting human rights, and PACE itself is very committed to the success of the Convention.⁷⁵ In *Y. and Others v Bulgaria*, the Court observed that the refusal to ratify the Istanbul Convention by Bulgaria could be seen as lack of sufficient regard for the need to provide women with effective protection against domestic violence.⁷⁶ The EU signed the Convention in June 2017 and acceded to it on 28 June 2023. In other areas that fall within EU competences including, *inter alia*, in the area of asylum and international protection, the Istanbul Convention has relevance regardless of whether a Member State has ratified it.
26. The interveners invite the Court to recall its conclusion in *Demir and Baykara v Turkey* and the approach to be taken when States have not ratified relevant Conventions:
- "The consensus emerging from specialised international instruments and from the practice of Contracting States may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases. In this context, it is not necessary for the respondent State to have ratified the entire collection of instruments that are applicable in respect of the precise subject matter of the case concerned. It will be sufficient for the Court that the relevant international instruments denote a continuous evolution in the norms and principles applied in international law or in the domestic law of the majority of member States of the Council of Europe and show, in a precise area, that there is common ground in modern societies".*⁷⁷
27. The Istanbul Convention stipulates that all acts of GBVAW should be established as a criminal offence by States. Aligning with the Court's own case law and following Article 36(2) of the Convention, consent must be given voluntarily as the result of the

⁷² Council of Europe Convention on preventing and combating violence against women and domestic violence, (CETS No. 210), entered into force 1 August 2014; see also Council of Europe, 'Historical Background' <<https://www.coe.int/en/web/istanbul-convention/historical-background>>.

⁷³ Council of Europe, 'Gap Analysis of the Legislative and Policy Framework in the Field of Violence Against Women and Domestic Violence in Azerbaijan by Reference to Council of Europe and Other International Standards' (2022) <<https://rm.coe.int/gap-analysis-of-the-legislative-and-policy-framework-in-the-field-of-v/1680a81636>>.

⁷⁴ Parliamentary Assembly of the Council of Europe, 'Gender Equality and the Istanbul Convention: a decade of action' <<https://pace.coe.int/en/pages/daems-speech-gender-equality>> .

⁷⁵ Parliamentary Assembly of the Council of Europe, 'Gender Equality and the Istanbul Convention: a decade of action' <<https://pace.coe.int/en/pages/daems-speech-gender-equality>> .

⁷⁶ *Y and Others v Bulgaria*, no. 9077/18, 5 September 2022, § 130.

⁷⁷ *Demir and Baykara v Turkey* [GC], no. 34503/97, 12 November 2008, § 85 and 86.

person's free will, assessed in the context of the surrounding circumstances. The Convention ensures the application of these offences shall be established regardless of the relationship between perpetrator and victim.⁷⁸

28. States must act without undue delay with regard to the rights of the victims at all stages of the proceedings.⁷⁹ They must also exercise “*due diligence*” to prevent, investigate, punish, and provide reparation for all forms of violence against women,⁸⁰ which includes the obligation to provide protection to victims. The principle of due diligence is “*not an obligation of result, but an obligation of means*”.⁸¹
29. Articles 50-55 of the Istanbul Convention demand that complaints of GBVAW are promptly and appropriately responded to by offering immediate protection to victims and that States should have in place appropriate procedures for the collection of evidence.⁸² Professionals dealing with victims of violence should be appropriately trained and services and counselling should be available and easily accessible for victims.⁸³ The provision of services should not be dependent on the victim's willingness to press charges or testify against the perpetrator.⁸⁴ Even if a victim withdraws their complaint, State parties must ensure that appropriate and context-sensitive evidence gathering procedures are in place to enable an investigation to continue.
30. **The interveners submit that the Istanbul Convention is the benchmark international standard for protection against violence against women and domestic violence. Its ratification and implementation is recognised as a priority within the Council of Europe and is therefore relevant for the Court's interpretation of substantive and procedural obligations in the context of domestic violence, including sexual violence, even where the relevant State has not ratified the instrument, and particularly so when it concerns an EU Member State.**⁸⁵

B. European Union law

31. Article 20 of the **Charter of Fundamental Rights of the European Union** provides that everyone is equal before the law, while Article 23 specifically guarantees equality between men and women. Article 21 provides that any discrimination on grounds of, *inter alia*, sex, social origin, nationality, or disability, shall be prohibited. In light of this, the interveners consider the following EU directives to be of particular relevance.
32. The interveners note that the **Temporary Protection Directive of the EU (‘TDP’)** came into effect in response to the Russian invasion of Ukraine on 24 February 2022 and invite the Court to refer, *inter alia*, to Article 13 TPD which guarantees that EU Member States shall ensure persons enjoying temporary protection have access to suitable accommodation.⁸⁶
33. The **EU Directive establishing minimum standards on the rights, support, and protection of victims of crime** (‘Victim's Directive’) sets out a comprehensive framework of rights (including the right to access information, support, remedy,

⁷⁸ The Istanbul Convention, Article 43.

⁷⁹ The Istanbul Convention, Article 49 (1).

⁸⁰ The Istanbul Convention, Article 5(2).

⁸¹ Council of Europe, Explanatory Report to the Convention on preventing and combating violence against women and domestic violence, (2011) CETS No. 210, § 59: <https://rm.coe.int/1680a48903>.

⁸² The Istanbul Convention, Article 50(1).

⁸³ The Istanbul Convention, Article 15 and Article 25.

⁸⁴ The Istanbul Convention, Article 18 (4).

⁸⁵ *Demir and Baykara v Turkey* [GC], no. 34503/97, 12 November 2008, §§ 85 and 86.

⁸⁶ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L 212/12, recital 16.

protection during investigations and protection from contact with the offender etc.), which shall apply to a wide range of victims of crime, and further supports the guarantees of protection that must be afforded to victims during criminal investigations.⁸⁷ Article 9(3) guarantees the right to support from victim support services, and, more specifically, targeted and integrated support for victims of sexual violence, GBV, and other violence in close relationships.⁸⁸

34. The **EU Directive on combating violence against women and domestic violence** sets out a comprehensive framework to prevent and combat violence against women and domestic violence throughout the EU.⁸⁹ It supports the international commitments the Member States have undertaken to combat and prevent violence against women and domestic violence.⁹⁰ Article 35 provides that States are required to take specific measures to prevent rape and to promote the central role of consent in sexual relationships. The interveners also invite the Court to take account of the Directive's provisions relating to the requirement to provide easily accessible rape crisis or sexual violence referral centres and the clinical management of rape, i.e., the safekeeping and documentation of evidence.⁹¹

C. Convention on the Elimination of All Forms of Discrimination Against Women

35. The interveners invite the Court to consider relevant provisions of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW'). Hungary ratified CEDAW on 22 December 1980.⁹²
36. Pursuant to General Recommendation ('GR') No. 19 ('GR No. 19'), the definition of discrimination in Article 1 CEDAW has developed to include gender-based violence.
37. General Recommendation (GR) No. 35 imposes general obligations on States to develop legal norms and introduce public policy and monitoring mechanisms with the aim of eliminating all forms of GBVAW by both State **and non-State actors**. This includes a requirement to investigate cases of GBVAW sufficiently and to implement sanctions against relevant public authorities for negligence, complicity and inefficiency in their prevention or investigation of GBVAW.⁹³ These are due diligence obligations and failure to adhere to these constitute human rights violations.⁹⁴ GR No. 35 further recommends that the legislative standard in cases of rape, including marital and acquaintance rape, is based on the lack of freely given consent and takes into account coercive circumstances.⁹⁵
38. In its 2023 concluding observations on Hungary, the CEDAW Committee noted its concerns regarding the absence of a comprehensive law specifically criminalising all forms of gender based violence and the inadequate protection of women facing intersecting forms of discrimination.⁹⁶ Women with disabilities and women who are refugees, asylum seekers, and migrants continue to face intersecting forms of

⁸⁷ Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (2012). <https://bit.ly/3CT8mmq>, Arts. 20, 23.

⁸⁸ Victim's Directive, Article 9(3).

⁸⁹ EU Directive on combating violence against women and domestic violence 2024, recital 1.

⁹⁰ EU Directive on combating violence against women and domestic violence 2024, recital 4.

⁹¹ EU Directive on combating violence against women and domestic violence 2024, Article 26(1).

⁹² See Hungary's ratification status here:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=77&Lang=en.

⁹³ See CEDAW, General Recommendation No. 35 (GR No. 35) on gender-based violence against women, updating general recommendation No.19 (2017), CEDAW/C/GC/35 § 26: <http://bit.ly/4pzwgKs>.

⁹⁴ See CEDAW, GR No. 35, § 22.

⁹⁵ CEDAW GR No. 35, § 29 (e).

⁹⁶ CEDAW Concluding Observations on Hungary 2023, § 25(a).

discrimination in Hungary, leading CEDAW to recommend that Hungary adopt measures to ensure access to justice.⁹⁷

D. Convention on the Rights of Persons with Disabilities

39. The interveners further invite the Court to consider relevant provisions of the Convention on the Rights of Persons with Disabilities ('CRPD'). Hungary ratified the CRPD on 20 July 2007.⁹⁸
40. As the Convention's preamble already declares, women with disabilities are often at greater risk of violence or abuse.⁹⁹ Article 6 of the Convention specifically concerns women with disabilities as they encounter multiple and intersecting forms of discrimination, interacting with each other at the same time in such a way as to be inseparable and leading to discrimination that is compounded or aggravated. Grounds for discrimination include, *inter alia*, disability, sex and refugee, asylum seeker or migrant status.¹⁰⁰ Article 6 is thus a "*cross-cutting article and must be taken into account in relation to all provisions of the Convention*".¹⁰¹
41. The interveners bring to the Court's attention the relevant provisions of General Comments elaborating on the articles of the CRPD. General comment No. 3 on women and girls with disabilities ('GC No. 3') clarifies that while disabled persons already face a high risk of sexual abuse, "*women with intellectual disabilities, may be at an even greater risk of violence and abuse because of their isolation, dependency or oppression*".¹⁰²
42. The interveners emphasise the barriers to accessing justice by women with disabilities (Article 6 and Article 13) due to harmful stereotypes and discrimination leading to their credibility being doubted and their claims being dismissed prematurely. As a result, persons with disabilities may also be discouraged from reporting exploitation or pursuing justice which may contribute to impunity and the invisibility of violence.¹⁰³
43. **The interveners invite the Court to pay particular attention to the vulnerability of women with disabilities in the context of reporting allegations of sexual violence and investigation into these complaints.**

⁹⁷ CEDAW Concluding Observations on Hungary 2023 §§ 37-38.

⁹⁸ The CRPD entered into force on 3 May 2008.

⁹⁹ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=77&Lang=EN.

¹⁰⁰ CRPD Preamble (q).

¹⁰¹ CRPD/C/GC/3, General comment No. 3 (2016) on women and girls with disabilities, § 4:

<https://docs.un.org/en/CRPD/C/GC/3>.

¹⁰² General comment No. 6 (2018) on equality and nondiscrimination, § 36:

<https://docs.un.org/en/CRPD/C/GC/6>.

¹⁰³ CRPD, General comment No. 3 (2016) on women and girls with disabilities, § 33. See also § 29, 31, and 34.

¹⁰⁴ CRPD, General comment No. 3 (2016) on women and girls with disabilities, § 52. CRPD, General comment No. 6 (2018) on equality and nondiscrimination, § 36.