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Team: 011

EUROPEAN HUMAN RIGHTS MOOT COURT COMPETITION

Maya Engel v. Artemidia

Maya Engel

vs

Artemidia

SUBMISSION OF THE RESPONDENT

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The European Law Students' Association

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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1.2. Case law of the European Court of Human Rights

1. *A v. Croatia*, 14 October 2010, app. no. 55164/08.
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50. *Pfeifer v. Austria*, 15 November 2007, app. no. 12556/03.
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52. *Pihl v. Sweden*, 7 February 2017, app. no. 74742/14.
53. *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, app. no. 12742/87.

54. *Puolitaival and Pirttiaho v. Finland*, 23 November 2004, app. no. 54857/00.
55. *Reklos and Davourlis v. Greece*, 15 January 2009, app. no. 1234/05.
56. *Salah Sheekh v. the Netherlands*, 11 January 2007, app. no. 1948/04.
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59. *Sinkova v. Ukraine*, 27 February 2018, app. no. 39496/11.
60. *Swedish Engine Drivers' Union v. Sweden*, 6 February 1976, app. no. 5614/72.
61. *Tamiz v. the United Kingdom*, 19 September 2017, app. no. 3877/14.
62. *Uzun v. Germany*, 2 September 2010, app. no. 35623/05.
63. *Van de Hurk v. the Netherlands*, 19 April 1994, app. no. 16034/90.
64. *Van der Mussele v. Belgium*, 23 November 1983, app. no. 8919/80.
65. *Varnava and Others v. Turkey*, 18 September 2009, app. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16070/90 and 16072/90.
66. *Von Hannover v. Germany (No. 2)*, 7 February 2012, app. nos. 40660/08 and 60641/08.

2. Miscellaneous sources

1. High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration, 20 April 2012.

II. LIST OF ABBREVIATIONS

1.	CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
2.	ECHR / Convention	Convention for the Protection of Human Rights and Fundamental Freedoms
3.	ECtHR / Court	European Court of Human Rights
4.	Istanbul Convention	Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

III. SUMMARY OF THE RESULTS

1. The respondent State submits that, firstly, the application should be declared inadmissible, and alternatively, that no breach of its obligations under Articles 6, 8, 13 or 14 ECHR[1] can be established.
2. Concerning the admissibility of the claim, the respondent State contends that the complaints under Articles 6 and 13 do not fall within the scope of the Convention, since these do not confer a right to have third parties prosecuted. Furthermore, the Applicant has lost her victim status under Article 8 by receiving adequate redress in national proceedings. Finally, her claim under Article 14 is manifestly ill-founded.
3. Regarding the alleged violation of the Applicant's right under Article 6, the respondent State submits that it has taken all steps necessary to ensure and facilitate the Applicant's access to justice. The respondent State's obligations under this Article have been fulfilled by the effective investigation of the Applicant's claims and the fair and impartial judicial process at all stages of the criminal proceedings.
4. As regards the alleged violation of Article 8 concerning the Applicant's right to private life, the respondent State recognises that there was an interference with this right by a third party. However, it has taken all measures necessary to fulfil its positive obligations under Article 8. Thus, the respondent State effectively protected the Applicant during the first set of criminal proceedings, by issuing a restraining order and imposing a fine on Mr B. Moreover, it adequately balanced the right to private life and the right to freedom of expression during the second set of criminal proceedings, by following this Court's case law and not exceeding its margin of appreciation.
5. Regarding the alleged violation of the Applicant's right to an effective remedy under Article 13, the respondent State argues that this Article is not applicable in the Applicant's case. The right under Article 6 has not been violated, and the claims under Articles 8 and 14 have been adequately dealt with by the competent national courts, thus ensuring sufficient and effective redress.
6. As regards the alleged discrimination under Article 14, the respondent State submits that the Applicant failed to prove the existence of a discriminatory practice since there is no evidence showing that she was subjected to differential treatment based on gender.

[1] Unless otherwise indicated, all Articles mentioned pertain to the ECHR.

IV. LEGAL PLEADINGS

1. Alleged violation of Article 6

1.1. Admissibility

1. The respondent State submits that the application under Article 6 should be declared inadmissible. Article 34 requires an application to fall within the scope of the Convention. In this regard, the Court has held numerous times that Article 6 does not confer a right to have third parties prosecuted or sentenced for a criminal offence.[2] Therefore, complaining that Mr B has not been convicted of cyber harassment or hate speech[3] does not fall within the scope of this Convention nor its Protocols.

1.2. Merits

2. Should the Court not accept these objections regarding the admissibility of the complaint, the respondent State submits that it has taken all measures necessary to protect the Applicant's right under Article 6 and the fairness of the proceedings as a whole. This concerns both the right to an impartial tribunal (section A) and the right to access to justice (section B).

A. Impartiality

3. As regards the institutional requirement of impartiality under Article 6, the Court has rightly held that there cannot be a fair civil trial before a court which is, or appears to be, biased against the defendant or litigant. In *Piersack v. Belgium* there was a distinction made between the subjective element of impartiality, addressing the personal conviction of a judge, and the objective element, requiring the guarantees in place to be sufficient to exclude any legitimate doubt of impartiality.[4] These will be considered in turn, although it must be noted that there is no strict divide between these two elements.[5]

4. Concerning the subjective element of impartiality, it has been clearly established that personal impartiality must be presumed until there is proof to the contrary.[6] Such proof could take the form of display of hostility or ill will,[7] neither of which has occurred in the present

[2] *Perez v. France* [GC], 12 February 2004, app. no. 4787/99, para. 70; *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], 14 April 2015, app. no. 24014/05, para. 218.
[3] Case, paras. 7, 9-15.
[4] *Piersack v. Belgium*, 1 October 1982, app. no. 8692/79, para. 30.
[5] *Morice v. France* [GC], 23 April 2015, app. no. 29369/10, para. 75; *Kyprianou v. Cyprus* [GC], 15 December 2005, app. no. 73797/01, paras. 119 and 121.
[6] *Piersack v. Belgium*, *op. cit.*, para. 30; *Puolitaival and Pirttiaho v. Finland*, 23 November 2004, app. no. 54857/00, para. 43.
[7] *De Cubber v. Belgium*, 26 October 1984, app. no. 9186/80, para. 25.

case. There is also a complete lack of any other evidence that could serve as proof of a personal bias against the Applicant, or a bias in favour of the accused in the case at hand. This is substantiated by the fact that the first-instance court did indeed issue a restraining order against Mr B and imposed a fine of EUR 200,- on account of a misdemeanour against the public order.[8] The restraining order was even requested by the police authority and the prosecutor's office themselves.[9] As regards the appeal lodged by the Applicant, the respondent State would like to emphasise that even further investigations were conducted. For instance, the questioning of the two former partners of Mr B, in order to be able to examine the case facts again and ensure that the behaviour of Mr B had been assessed correctly.[10] Furthermore, all allegations made by the Applicant were considered on the national level.[11] Notably, there was no need to consider the complaint against Mr B's social media post submitted in the course of the criminal proceedings concerning cyber harassment, as this was already the subject of separate proceedings for hate speech.[12] There can thus be no indication of subjective partiality found in the dealings of this case on the national level.

5. In any event, this Court has stated that a violation of Article 6(1) cannot be based on the lack of impartiality or the breach of an essential procedural guarantee by a tribunal, if the decision taken was subject to subsequent control by a judicial body that has full jurisdiction and ensures respect for all relevant guarantees.[13] The respondent State has clearly ensured this control mechanism required by the objective limb of impartiality. Therefore, there were sufficient institutional guarantees to dispel all doubts about any impartiality in both sets of criminal proceedings.[14] In this regard, the respondent State respectfully requests this Court to consider that the Applicant's claims were examined by the local police authority,[15] the prosecutor's office,[16] the first-instance court,[17] the court of appeal,[18] as well as the Constitutional Court.[19] There was a full review of the claims and prior reasoning in every instance, which is evidenced by the fact that the prosecutor's office examined the findings of the police, and subsequently, the first-instance court provided reasons that were additional to those of the prosecutor's

[8] Case, paras. 7 and 10.
[9] *Ibid*.
[10] Case, para. 10.
[11] Case, paras. 10 and 16.
[12] Case, paras. 10 and 12.
[13] *Den Haan v. the Netherlands*, 26 August 1997, app. no. 22839/93, para. 52.
[14] Case, paras. 21-24.
[15] Case, paras. 7, 8, 12 and 13.
[16] Case, paras. 9 and 14.
[17] Case, paras. 10 and 16.
[18] Case, para. 11.
[19] Case, para. 17.

office.[20] Accordingly, there have been sufficient controls in place in order to prevent an arbitrary or impartial judgement. Thus, the Applicant's claim concerning the alleged impartiality under Article 6(1) must be declared unfounded.

B. Access to justice

6. The respondent State submits that the above described procedures conducted on the national level also clearly dispel any doubts about the Applicant's allegedly impaired access to justice. Contrary to any claim submitted by the Applicant, she did in fact have a wide array of means available to her to address any potential infringements of her rights under the Convention. Article 6 does not entail an absolute right to a judgement concerning criminal accusations,[21] nor does it confer a right, as such, to have third parties prosecuted or sentenced for a criminal offence.[22] In the present case however, the Applicant had access to up to four different authorities vested with the power to safeguard her rights.[23] This included the power to prosecute another individual if deemed necessary which, in her case, it was determined not to be.[24]

7. As submitted above, there was an individual assessment of the circumstances at hand by every instance. Although the outcome envisaged by the Applicant might not have materialised, the first-instance court did impose the legally adequate sanctions against Mr B under Article 78 Artemidian Criminal Code.[25] Unless there are signs of evident arbitrariness, it is not for the Court to question the interpretation of the domestic law by the national courts.[26] In this respect it is essential to stress once more that the Court has limited its own role to verifying whether the effects of such interpretation are compatible with the Convention. Therefore, it is not for the Court to consider whether the national courts in this case should have decided on another charge rather than the one imposed on Mr B as specified above.

8. Additionally, the respondent State submits that the judgement imposed can also be considered to be effective, given that Mr B himself no longer contacted the Applicant after the imposition of a restraining order against him. The subsequent post made by Mr B on Friendzone after 1 September 2018 did not constitute direct contact with the Applicant.[27]

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[20] Case, paras. 9, 14 and 16.
[21] *Kart v. Turkey* [GC], 3 December 2009, app. no. 8917/05, para. 113.
[22] *Perez v. France* [GC], *op. cit.*, para. 70; *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], *op. cit.*, para. 218.
[23] Case, paras. 22-24.
[24] Case, paras. 11 and 16.
[25] Case, paras. 7, 10 and 26.
[26] *Naït-Liman v. Switzerland* [GC], 15 March 2018, app. no. 51357/07, para. 116.
[27] Case, para. 11.

9. Furthermore, as regards the Constitutional Court's decision, Article 6(1) does not require a supreme court "to give more detailed reasoning when it simply applies a specific legal provision to dismiss an appeal on points of law as having no prospects of success, without further explanation."[28] On the contrary, only lower national courts have been required by this Court to "give such reasons as to enable the parties to make effective use of any existing right of appeal."[29] Based on the following two reasons, the Constitutional Court cannot be considered to have violated its obligations under Article 6(1). First, the Constitutional Court in fact applied the law when it dismissed the Applicant's claim as manifestly ill-founded, *inter alia* because this complaint could be considered as having no prospects of success.[30] Second, the Constitutional Court was not required to give reasons, because there was no possibility of appeal left for the Applicant, which means that giving reasons was not necessary for the Applicant to make effective use of a right of appeal.[31]

10. In conclusion, the respondent State emphasises that there has indeed been a fair trial, offering an independent and impartial decision, as well as full access to justice for the Applicant. Consequently, the fairness of the proceedings as a whole was not impaired and thus the respondent State wholly complied with its obligations under Article 6.[32]

2. Alleged violation of Article 8

2.1. Admissibility

11. The respondent State submits that the application for a violation of Article 8 is inadmissible, as the Applicant cannot be considered a victim under Article 34.

12. Firstly, as regards the claim that Mr B was in the possession of nude photographs of the Applicant, it has been argued conclusively in domestic procedures that the display of nude photographs does not fall within the scope of the Applicant's right to private life, as they are contrary to Artemidian morals and as such do not deserve protection.[33] It needs to be noted that Article 8 can indeed be restricted under the legitimate reasons put forward in its subsection (2), which includes the protection of morals. There was thus no interference with the Applicant's right in this respect, as the photos do not receive protection under the Artemidian

[28] *Gorou v. Greece (no. 2)* [GC], 20 March 2009, app. no. 12686/03, para. 41; *Baydar v. the Netherlands*, 24 April 2018, app. no.55385/14, para. 46.
[29] *Hansen v. Norway*, 2 October 2014, app. no. 15319/09, para. 72.
[30] Case, paras. 17 and 22.
[31] Case, para. 17.
[32] *Fejde v. Sweden*, 29 October, app. 12631/87, para. 26.
[33] Case, para. 16.

Constitution.[34] In any event, the photos have not been published, which means that the Applicant cannot be considered a victim in this regard either.[35]

13. Secondly, as regards the alleged interference with the Applicant's psychological integrity due to Mr B's attempts to contact her, any potential interference has been vindicated by the fine imposed on Mr B on 10 May 2018 in accordance with Article 78 Artemidian Criminal Code.[36] Furthermore, Mr B has been placed under a restraining order as of 15 August 2017 and has not contacted the Applicant ever since.[37]

14. Lastly, the Applicant's criminal complaint based on the social media post issued by Mr B allegedly constituting hate speech under Article 397 Artemidian Criminal Code has been held to fall outside of this prohibition, after having been duly considered by three different courts.[38] The respondent State would therefore like to stress that this Court should not reconsider the facts of the Applicant's case, nor the reasoning employed by the national courts to arrive at the decisions contested by the Applicant, instead of decisions that are more favourable to her. This Court has always emphasised that it is not a Court of fourth-instance and will not assess cases from national courts, which are predominantly in a better position to come to an appropriate conclusion when there is no evidence of arbitrariness.[39]

15. Consequently, the Applicant's right to private life has not been violated, nor has any eventual violation been inadequately remedied, and she can therefore not be considered a victim within the meaning of Article 34.

2.2. Merits

16. Should the Court not accept these objections regarding the admissibility of the complaint, the respondent State presents the following objections concerning the merits. The respondent State submits two lines of argument in support of its claim that there was no violation. Firstly, Article 8 is not applicable to the submission made by the Applicant. Secondly, even if Article 8 is considered applicable to the Applicant's situation, the respondent State complied with its obligations under that Article.

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[34] Case, para. 20; Clarification questions, p. 7.
[35] Case, paras. 4 and 8.
[36] Case, para. 10.
[37] Case, para. 11.
[38] Case, paras. 13-16.
[39] *Nejdet Sahin and Perihan Sahin v. Turkey* [GC], 20 October 2011, app. no. 13279/05, paras. 68, 89 and 94; *Garcia Ruiz v. Spain* [GC], 21 January 1999, app. no. 30544/96, para. 28; *Centro Europa 7 S.R.L. and Di Stefano v. Italy* [GC], 7 June 2012, app. no. 38433/09, para. 197.

C. Applicability of Article 8

17. The concept of private life has been construed broadly by the Court.[40] However, the respondent State contends that the Applicant's claim falls outside the scope of private life protected under Article 8. As can be seen from the analysis below, there was no reasonable expectation of privacy, nor did it concern the Applicant's right to protection of her reputation as covered by this Convention right.[41]

18. In *Uzun v. Germany* this Court stated that "private life" entails the protection of a "reasonable expectation of privacy" for every person.[42] The right to respect for "private life" is the right to privacy, the right to live as far as one wishes, protected from publicity.[43] However, this Court has previously ruled that once connected to the internet, users of e-mail no longer enjoy an effective protection of their privacy and expose themselves to receiving unwanted messages.[44] States can in this context not be required to make additional efforts to discharge their positive obligations under Article 8.[45] That same reasoning can accordingly be applied to social media platforms. The Applicant was a member of the online social media platform Friendzone. She actively and deliberately registered herself, which she did out of her own volition. It is known that when a person becomes a member of a social media platform, their identity and the personal information that they have willingly provided the platform with becomes publicly available, subject to the terms and conditions agreed upon with the service provider. This means that, unless blocked by a user, other members can obtain said information, access another user's account, and contact anyone active on the platform.[46] When creating an account on Friendzone, the Applicant knowingly and willingly consented to these terms and conditions and, by doing so, relinquished part of her privacy concerning all private matters that are publicly accessible on the online platform. The Applicant in fact made her full name and profile picture available, and allowed all other Friendzone users to contact her.[47] Hence, there is no reasonable expectation to private life in this respect, since the Applicant purposely used the platform and therefore put herself into this situation.

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[40] *Axel Springer AG v. Germany*, 07 February 2012, app. no. 39954/08, para. 83.
[41] *Pfeifer v. Austria*, 15 November 2007, app. no. 12556/03, para. 35.
[42] U*zun v. Germany*, 2 September 2010, app. no. 35623/05, para. 44.
[43] *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, 18 January 2018, app. nos. 48151/11 and 77769/13, para. 152.
[44] *Muscio v. Italy* (admissibility decision), 13 November 2007, app. no. 31358/03.
[45] *Ibid*.
[46] Clarification questions, pp. 2 and 10.
[47] Clarification questions, p. 10.

19. Article 8 is furthermore not applicable, as the protection of the Applicant's reputation was not at stake in this case. In order for this right to apply, "an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life."[48] As already stated above, the Applicant did not enjoy a right to private life on this online platform, as she made highly sensitive information,[49] i.e. her name and profile picture, publicly available.[50] She did so out of her own volition and subject to her own privacy adjustments.[51] Further, Mr B is known for being an activist regarding the preservation of the environment. Therefore, his primary objective in posting the statement in question[52] was to criticise the practices of the oil company "DOV", making his claims more relatable by identifying a, to him, well-known employee. Accordingly, Mr B's statement on Friendzone cannot be construed as an attack on the Applicant's right to private life under Article 8.[53]

20. Additionally, the Applicant cannot rely on Article 8 in order to complain about a loss of reputation, since this is the consequence of her own actions.[54] In *Flinkillä and Others v. Finland*, a private individual was considered to be in the public domain, solely based on her relationship with a public figure. [55] Therefore, although the Applicant herself was not a public person, she entered the public domain when she willingly started the relationship with Mr B, who himself was a public figure.[56] Accordingly, the Applicant should have been aware that her right to private life would become more limited. As a result, she cannot complain about a loss of reputation, because being in the public domain is the consequence of her own actions.

D. Compliance with Article 8

21. Provided that the Court does not agree with the reasoning above and finds that Article 8 is applicable, the respondent State puts forward the following reasons to prove that first, the present case is not concerned with negative obligations arising on the side of the respondent

[48] *Axel Springer AG v. Germany* [GC], *op. cit.*, para. 83.
[49] *Sciacca v. Italy*, 11 January 2005, app. no. 50774/99 para. 29; *Reklos and Davourlis v. Greece*, 15 January 2009, app. no. 1234/05, para. 40; *Von Hannover v. Germany (No. 2)*, 7 February 2012, app. nos. 40660/08 and 60641/08, para. 96.
[50] Clarification questions, pp. 2 and 10.
[51] *Ibid*.
[52] Case, para. 5.
[53] *Haldimann and Others v. Switzerland*, 24 February 2015, app. no. 21830/09, para. 52.
[54] *Sidabras and Džiautas v. Lithuania*, 27 July 2004, app. nos. 55480/00 and 59330/00, para. 49.
[55] *Flinkkilä and Others v. Finland*, 6 April 2010, app. no. 25576/04, para. 83.
[56] Clarification questions, p. 14.

State, and second, it has been fully compliant with its positive obligations arising from Article 8.

22. Firstly, the Applicant claims a violation of Article 8, which protects her private life from an interference by a public authority, based on the fact that the judicial system allegedly did not grant her favourable decisions in her criminal complaints concerning the alleged cyber harassment and hate speech employed by Mr B.[57] The only conceivable option for the Applicant is to argue that her right to private life was infringed because the respondent State failed to fulfil its obligations by not offering sufficient protection against said infringement. However, the actions taken by the Artemidian judiciary do not amount to an interference with this right. Therefore, any claims under this Article must fall within the respondent State's positive obligations under this provision, not under its negative obligations.[58]

23. Secondly, the respondent State submits that the Artemidian State has fully complied with its positive obligations under Article 8 for three reasons. First, there was no interference with the Applicant's rights by the respondent State during the first set of criminal proceedings. Second, the national authorities effectively found a fair balance between the two conflicting rights under the Convention during the second set of criminal proceedings, namely Articles 8 and 10. Third, when balancing those rights, the national authorities enjoy a large margin of appreciation.

a. Existence of an interference with the Applicant's private life

24. The respondent State does not contest the fact that there was an interference with the Applicant's right to private life by a third party, Mr B, who was convicted for his actions.[59] The respondent State in such situations bears responsibility by means of a positive obligation to protect the person whose rights have been interfered with by a third party from further interference.[60] The national authorities complied with this obligation during both sets of criminal proceedings instituted by the Applicant. Firstly, the judiciary effectively protected the Applicant from Mr B's threats,[61] and secondly, the judiciary effectively found a fair balance between the Applicant's right to private life under Article 8 and Mr B's right to freedom of expression under Article 10.[62] As regards the former, the respondent State submits that the

[57] Case, paras. 7 and 12.
[58] *Lozovyye v. Russia*, 24 April 2018, app. no. 4587/09, para. 36.
[59] Case, para. 10.
[60] *Evans v. the United Kingdom* [GC], 10 April 2007, app. no. 6339/05, para. 75.
[61] Case, para. 11.
[62] Case, paras. 13, 14 and 16.

national authorities effectively protected the Applicant's right to private life, based on four grounds.

25. First, Mr B's actions were examined by four different authorities: the police, the prosecutor's office, the first instance-court and the court of appeal.[63] Second, both courts came to the same conclusion, namely that Mr B's threats amounted to a violation of the Applicant's private life, and that he should therefore be found guilty of a misdemeanour against the public order and fined.[64] Third, the first-instance court already issued a temporary restraining order at the pre-trial investigation and subsequently upheld that restraining order, prohibiting Mr B from contacting the Applicant by any means for a period of two years.[65] The restraining order was reinforced by a conditional prison sentence, taking effect in case Mr B failed to comply.[66] Fourth, the restraining order has proven to be effective because Mr B has not contacted the Applicant ever since.[67] Therefore, the respondent State concludes that there was no violation of the Applicant's right to private life under Article 8, as the national authorities effectively protected her from Mr B's threats and prevented him from contacting her again.

b. Limitations and fair balance between Articles 8 and 10

26. The right to private life guaranteed in Article 8 is a qualified right, subject to certain limitations in cases where the fundamental rights of another individual are at stake.[68] In the present case, the rights concerned are the Applicant's right to private life under Article 8 and Mr B's right to freedom of expression under Article 10. This Court has stated that these two rights deserve equal respect and protection, irrespective of which of them is invoked before the Court.[69]

27. The freedom of expression is one of the first human rights developed, before any international mechanisms existed, and this Court has stated that it constitutes a fundamental right in any democratic society.[70] The respondent State emphasises that the measures and procedures that it has in place, and which have been employed by the State authorities and the judiciary, reflect a fair balancing exercise in accordance with the following principles laid down by this Court.

[63] Case, paras. 8-11.
[64] Case, paras. 10-11.
[65] Case, paras. 7 and 10.
[66] Case, para. 10.
[67] Case, para. 11.
[68] Article 8(2).
[69] *Delfi AS v. Estonia* [GC], 16 June 2015, app. no. 64569/09, para. 139.
[70] *Handyside v. the United Kingdom*, 7 December 1976, app. no. 5493/72, para. 49.

28. The main issue in the second set of criminal proceedings before national courts was whether Mr B's statements qualified as hate speech. Based on the Court's judgement in *Perinçek v. Switzerland*, the main criteria to assess whether a statement amounts to hate speech are: whether the statement, fairly construed and seen in its immediate or wide context, could be seen as a call for violence or justification of violence, hatred, or intolerance; and whether the manner and capacity of the statement could lead to harmful consequences.[71] It should be noted that a statement which is offensive but does not incite violence does not constitute hate speech,[72] and that the "risk" must be a "real risk" of violence occurring, particularly against the "target".[73] As it can be observed in the assessment of the domestic courts, Mr B's statements do not reach the threshold for hate speech, as they do not incite violence which could represent a real risk to the Applicant. Indeed, it was never Mr B's intention to incite hatred or violence towards the Applicant. The main purpose of the post was to contribute to the debate on environmental pollution by large oil companies.[74] The offensive language used describing the Applicant does not incite violence towards her, it is merely an expression of the way in which Mr B perceived the Applicant and could be considered an emotional reaction as a consequence of their break-up, as also recognized by the relevant national authorities.[75] In addition, none of the threats were ever acted upon, which demonstrates once more that there was no real risk for the Applicant.[76] Moreover, the statements clearly do not fall within any of the examples which the Court identified in *Delfi AS v. Estonia* as constituting hate speech. These included for example antisemitism and linking all Muslims to terrorism.[77] It is clear that the statement made by Mr B does not amount to the severity of the topics that have been considered by this Court to constitute hate speech.

29. In respect to the comments which were made by Mr B's followers, the respondent State submits that neither the State nor Mr B are under any responsibility to directly remove these. Millions of online users post comments on a day-to-day basis, expressing themselves in ways that might be regarded as offensive or even defamatory. However, what needs to be taken into consideration is whether the comments could amount to "vulgar abuse" of a kind, which is common in communication on many internet portals.[78] The comments made by Mr B's

[71] *Perinçek v. Switzerland* [GC], 15 October 2015, app. no. 27510/08, para. 198.
[72] *Pihl v. Sweden*, 7 February 2017, app. no. 74742/14, para. 25.
[73] *Dmitriyevskiy v. Russia*, 3 October 2017, app. no. 42168/06, para. 99.
[74] Case, para. 5.
[75] Case, paras. 5 and 14.
[76] Case, para. 10.
[77] *Delfi AS v. Estonia* [GC], *op. cit.*, para. 136.
[78] *Tamiz v. the United Kingdom*, 19 September 2017, app. no. 3877/14, para. 81.

followers in response to his publication on "DOV" and the Applicant could indeed be considered offensive. However, as elaborated below, they do not amount to "vulgar abuse" and therefore do not offer a possible invocation of protection under Article 8.

30. Based on the Court's guidance in *Delfi AS v. Estonia*,[79] there are several aspects which must be taken into account in a situation involving online comments, namely: (1) the context of the comments, (2) liability of the authors of the comments, (3) measures taken to prevent or remove the comments, (4) and consequences.

1) Context of the comments

31. The comments were made during a heated discussion concerning environmental issues, which is a highly debated and controversial topic worldwide. In any event, the comments employed by the Friendzone users were made in anger towards "DOV", which is, according to Mr B, responsible, amongst others, for the pollution of the environment.[80] These comments were made in an overall situation of anger and disbelief and therefore amount to provocative instead of defamatory statements. Furthermore, when assessing the context of the comments in *Pihl v. Sweden,* the Court differentiated between an intermediary with economic interests and one without.[81] Mr B can hardly be said to have an economic interest in the comments and, in any case, is not obliged to remove the comments made by his followers. The monitoring and moderation of the online discussion on Friendzone occurs mainly through the reporting system in place, which allows users to "report posts, comments and messages amounting to hate speech, threats or inciting to violence, related to violence and criminal activity."[82] Hence, the users themselves are the ones primarily responsible for pointing out any comments that they believe would fall under the aforementioned categories. Furthermore, this Court has also observed in *MTE v. Hungary,* that the "victim" never requested the comments to be removed "but opted to seek justice directly in court – an element that did not attract any attention in the domestic evaluation of the circumstances."[83] In the present case, the Applicant, or any other member of the platform, could have reported the comments, but this clearly did not happen as the comments remained untouched and online.[84] The domestic courts thus took into account

[79] *Delfi AS v. Estonia* [GC], *op. cit.*, paras. 142.
[80] Case, paras. 5 and 6.
[81] *Pihl v. Sweden*, *op. cit.*, para. 31.
[82] Clarification questions, p. 1.
[83] *MTE v. Hungary*, 2 February 2016, app. no. 22947/13, para. 83.
[84] Clarification questions, pp. 1, 2 and 6.

this important factor in deciding whether or not the prosecution of or imposition on Mr B would be reasonable and in accordance with the jurisprudence of the Court.

2) Liability of the authors of the comments

32. Even though there are issues with the online disclosure and safeguarding of one's identity and privacy, in principle, each individual is responsible for their own actions online.[85] Thus, Mr B cannot be held accountable for the comments of his followers, nor are these comments attributable to him. In addition, the State does not have a positive obligation in such cases to intervene, as it would be an excessively disproportionate measure to impose any type of blanket ban or any other disproportionate restriction with the effect of limiting the freedom of expression on the Internet.[86] What is more, the State cannot be held more responsible for monitoring online activity on a private social media platform than the State is held responsible for monitoring e-mails.[87]

3) Measures taken to prevent or remove the comments

33. As stated before, the respondent State reiterates that the responsibility to take measures to delete the inappropriate comments does not lie with the State, but with the users of Friendzone and the social media platform itself. Therefore, the respondent State can be considered to be under an obligation to remove the comments made by Mr B's followers.

4) Consequences

34. This case is not about a company, but a private person. Consequently, excessively harsh measures in the form of sanctions or penalties on Mr B would have interfered with his freedom of expression. Criminal prosecution must be heavily scrutinised, and may only in very exceptional circumstances, where there are serious reasons, be considered an appropriate sanction.[88] Therefore, the national courts rightly decided not to apply this sanction.

35. Thus, based on the application of this Court's criteria in *Delfi AS v. Estonia*,[89] no further action was required to protect the Applicant from the comments in question.

c. <u>The State's margin of appreciation</u>

[85] *Delfi AS v. Estonia* [GC], *op. cit.*, paras. 147-151.
[86] *Ahmet Yildirim v. Turkey*, 18 December 2012, app. no. 3111/10, paras. 54 and 56.
[87] *Muscio v. Italy* (admissibility decision), *op. cit.*
[88] *Dmitriyevskiy v. Russia*, *op. cit.*, para. 117; *Sinkova v. Ukraine*, 27 February 2018, app. no. 39496/11, para. 111.
[89] *Delfi AS v. Estonia* [GC], *op. cit.*

35. ECHR contracting States are granted a certain margin of appreciation, as they enjoy discretion as to the choice of measures to take in order to secure their obligations under the Convention.[90] The Court has held that there is a "minimum requirement, that an effective legal system must be in place and operating for the protection of the rights falling within the notion of 'private life',"[91] while the respondent State must also take into account its obligations under Article 10.[92] The respondent State has not exceeded its margin of appreciation when balancing the Applicant's right to private life and Mr B's right to freedom of expression under Article 10. This can be seen from the comprehensive legal framework intended to protect the rights under Article 8, which criminalises such violations whilst also taking into account the importance of the freedom of expression in a democratic society by imposing a high threshold for criminal liability.[93] Furthermore, in the criminal proceedings against Mr B, the national authorities conducted an adequate balancing exercise between the competing rights at stake by taking account of the harm suffered by the Applicant, but also of the facts that Mr B is a public figure who engages in the public debate,[94] and that he has never acted upon his threats.[95] The respondent State would also like to emphasise that this Court has generally agreed that national authorities are in a better position to decide on the proper balancing of rights in a concrete situation.[96] This has been reiterated in several judgements, where the Court stated that it "would require strong reasons to substitute its view for that of the domestic courts"[97] when such a balancing exercise has been adequately conducted in conformity with the Court's criteria. This has already been extensively argued in section b.

36. Moreover, the fact that the respondent State did not exceed its margin of appreciation is corroborated by the existence of sufficient protection measures against interferences with rights under Article 8. This can be seen from the fact that when creating an online account on Friendzone, certain adjustments may be made, as users can customise their privacy settings and hence regulate what other users can view and who can reach their profile and information.[98] The Applicant could thus have easily accessed and adjusted these settings to prevent third parties from being able to access her information or sending messages to her account.[99] In

[90] *Tamiz v. the United Kingdom*, *op. cit.*, para. 90.
[91] *Karakó v. Hungary*, 28 April 2009, app. no. 39311/05, para. 19.
[92] *Ibid*., para. 20.
[93] Case, paras. 26-28.
[94] Clarification questions, p. 14.
[95] Case, paras. 7, 10, 13 and 16.
[96] *Handyside v. the United Kingdom*, *op. cit.*, para. 48.
[97] *Delfi AS v. Estonia* [GC], *op. cit.*, para. 139; *Perinçek v. Switzerland* [GC], *op. cit.*, para. 198.
[98] Clarification questions, pp. 1 and 2.
[99] *Ibid*.

addition, as mentioned before, the Applicant could have requested Mr B or Friendzone to remove the post or the comments to that post.[100] Ultimately, the Applicant could have also blocked Mr B or even report him to the Friendzone moderators in order to take the steps necessary to protect herself from Mr B's behaviour. Friendzone is a leading social media platform,[101] and it is neither the respondent State's responsibility nor its competence to restrict and regulate comments and views spread online. Friendzone itself could have taken further necessary measures.[102]

37. In conclusion, even if there was an interference with the Applicant's rights under Article 8, the respondent State should not be held accountable for this interference, because the national judicial authorities adequately protected the Applicant from cyber harassment in the first set of criminal proceedings and performed an adequate balancing exercise in the second set of criminal proceedings. There was no obligation for the respondent State to provide any further protection beyond the criminalisation of violations of rights under Article 8 and the legal proceedings already available to the Applicant.

3. Alleged violation of Article 14

3.1. Admissibility

38. The application under Article 14 in conjunction with Articles 6 and 8 must be considered inadmissible for two reasons.

39. Firstly, it must be stressed that the Applicant has already taken the chance to bring her discrimination complaint before the first-instance criminal court and lodged a constitutional complaint based on the alleged existence of discrimination against her.[103] Thus, a repeated examination of the facts of the case by this Court amounts to a fourth-instance complaint.[104]

40. Secondly, the evidence provided by the Applicant fails to prove the existence of any discriminatory practice, because it did not include any statistical evidence of a more favourable treatment of men over women, or any other proof of differential treatment.[105] Moreover, the respondent State is committed to equal rights, which becomes apparent from the State being a party to most human rights treaties, such as: the core United Nations human rights treaties and

[100] *Egill Einarsson v. Iceland (No. 2),* 17 July 2018, app. no. 31221/15, para. 38.
[101] Case, para. 5.
[102] Clarification questions, p. 2.
[103] Case, paras. 16 and 17.
[104] *Kemmache v. France (No. 3)*, 24 November 1994, app. no. 17621/91, para. 44.
[105] *A v. Croatia,* 14 October 2010, app. no. 55164/08, para. 97.

all of the ECHR Protocols,[106] and the recent reform of the procedure before the Constitutional Court.[107] As far as the Constitutional Court is concerned, the Applicant already had the possibility to lodge a complaint alleging discrimination, which was aimed at remedying occurrences of discrimination. However, also the Constitutional Court found there to be no discrimination when it declared the complaint inadmissible.[108] For these reasons, the complaint should be declared inadmissible by way of being manifestly ill-founded under Article 35(3)(a).

3.2. Merits

41. Should the Court not accept these objections regarding the admissibility of the complaint, the respondent State submits the following objections regarding the merits of the application.

42. Article 14 provides that the rights conferred upon individuals by the Convention must be ensured without discrimination. In order to determine that there was a violation of Article 14, the Court traditionally sought to establish whether a person can properly compare themselves with another class of persons that is treated more favourably.[109] However, in the case of *Carvalho Pinto de Sousa Morais v. Portugal*, the finding of a violation of Article 14 was primarily based on the failure on part of the judiciary to consider the individual circumstances at hand. Instead, the Portuguese Supreme Court "made a general assumption without attempting to look at its validity in the specific case of the applicant."[110] It must be stressed that the national courts actually considered the individual circumstances of the Applicant's complaints and took into account factors such as Mr B's previous behaviour and social standing.[111]

43. In the case at hand, the Applicant claims that there was discrimination based on gender, which falls within the ambit of "sex" as one of the grounds listed in the provision.[112] However, there is a lack of proof that men finding themselves in situations comparable to that of the Applicant are being treated more favourably than women as regards their rights under Article 6. The Applicant solely invokes reports of the local NGO Themis to corroborate her allegations, which completely omits all information concerning the situation of Artemidian men. In any event, this Court ruled that statistics in themselves cannot "disclose a practice which could be

[106] Case, para. 19.
[107] Case, para. 22.
[108] Case, para. 18.
[109] *Van der Mussele v. Belgium*, 23 November 1983, app. no. 8919/80, para. 43.
[110] *Carvalho Pinto de Sousa Morais v. Portugal*, 25 July 2017, app. no. 17484/15, para. 52.
[111] Case, paras. 10 and 16.
[112] *Konstantin Markin v. Russia* [GC], 22 March 2012, app. no. 30078/06, para. 127.

classified as discriminatory."[113] Accordingly, these reports are not enough to substantiate the allegations put forward by the Applicant. Furthermore, they must be evaluated with due precaution, given that they are not an official source and cannot be considered trustworthy. The respondent State would hence like to emphasise that these reports do not form any legal or authentic source and should be treated with utmost diligence. Accepting this, it must be concluded that there is insufficient evidence of the Applicant having been subjected to differential treatment, and thus no violation of Article 14 can be established. This holds even if the Court chooses to follow the approach taken in *Carvalho Pinto de Sousa Morais v. Portugal*, mentioned above. There, the Court criticised the judiciary for its lack of considering the circumstances in the concrete case at hand.[114] The Applicant's complaints were however duly considered before all relevant national authorities, by four in the first set of criminal proceedings[115] and three in the second set of criminal proceedings.[116] In particular, there were detailed considerations of the behaviour of Mr B, and the decisions issued by the prosecutor's office and the court of first-instance were backed by several reasons tailored specifically to the Applicant's situation.[117]

44. Concerning the alleged discrimination in consideration of the Applicant's claim to a violation of her right to private life under Article 8, the respondent State submits that women are not discriminated against by the respondent State. This holds true even if statistics would show that women were more often found to be victims of cyber harassment and hate speech than men. Rather, as was mentioned before, the Applicant must prove that her right to private life under Article 8 received less protection than that men would receive in a similar situation.[118] Thus, the respondent State stresses that the Applicant's right to private life received adequate protection by the national judiciary, as can be seen from the arguments developed in section 2.

45. First, the national authorities thoroughly examined the Applicant's claims of cyber harassment and hate speech, and, when applying Articles 352 and 397 Artemidian Criminal Code, concluded that the required threshold was not met.[119] Respectively four and three national authorities reached that conclusion, and the same conclusion would have been reached

[113] *Hugh Jordan v. the United Kingdom*, 4 May 2001, app. no. 24746/94, para. 154.
[114] *Carvalho Pinto de Sousa Morais v. Portugal*, *op. cit.*, paras. 52 and 55.
[115] Case, paras. 7-11.
[116] Case, paras. 12-16.
[117] Case, paras. 15-16.
[118] *Van der Mussele v. Belgium*, *op. cit.*, para. 43.
[119] Case, paras. 8-11.

if the case concerned a male victim. Indeed, the actions of Mr B cannot be considered to have reached the required threshold in any circumstances, regardless of the gender of the victim. Second, and connected to the finding that there had not been any hate speech, the balancing between the Applicant's right to private life and Mr B's right to freedom of expression was adequately performed as well, without there being any discrimination, based on the same reasoning as the first point.

46. The respondent State would also like to reiterate that it is fully committed to working towards ensuring that no one is subject to discrimination based on gender in Artemidia. In furtherance of that goal, it has signed and ratified almost all core United Nations treaties, which include the prohibition of discrimination, and has furthermore signed the Istanbul Convention, as well as CEDAW, thus devoting itself to the eradication of gender-based discrimination.[120] Similarly, in furtherance of this aim, the respondent State recently adopted the 2017 Anti-Discrimination Act.

47. Given the arguments provided above, there was no breach of Article 14 and the submission of the Applicant must thus be considered unfounded.

4. Alleged violation of Article 13

48. The respondent State requests this Court to declare the application for a violation of Article 13 inadmissible under Article 34 for the reasons outlined below. When examining a complaint under Article 13, this Court has given consideration to both the merits of the claim and the findings on admissibility concurrently.[121] Therefore, the respondent State, attempting to avoid unnecessary repetition and facilitate the Court's task, will take a similar approach as the Court in combining admissibility and merits in the following.

4.1. Applicability

49. Article 13 provides individuals with the right to obtain relief for violations of their Convention rights on the national level and imposes a positive obligation on all contracting States to provide for such remedies.[122] As the Court held in *Iovchev v. Bulgaria*, Article 13 guarantees the availability of remedies under national law to enforce the rights and freedoms under the Convention.[123] While Article 13 is applicable only in relation to an "arguable

[120] Case, para. 19.
[121] *M.A. v Cyprus*, 23 July 2013, app. no. 41872/10, para. 117; *Ivan Atanasov v Bulgaria*, 2 December 2010, app. no. 12853/03, paras. 100-101.
[122] Article 1 ECHR; *Kudła v. Poland* [GC], 26 October 2000, app. no. 30210/96, para. 152.
[123] *Iovchev v. Bulgaria*, 2 February 2006, app. no. 41211/98, para. 142.

complaint" of another Convention right, it does not presuppose a breach of any other such right.[124]

50. This Court has abstained from giving an abstract definition of what an "arguable complaint" requires. Instead, it preferred to assess each situation on the specific circumstances and merits. The respondent State submits that in the case at hand the Applicant has no arguable complaint in relation to the alleged violations of Articles 6, 8 or 14. Regarding Article 6, the national authorities have taken all steps necessary to ensure the effective investigation and judicial consideration of the Applicant's claims. A detailed account of this has already been given in section 1 and is further discussed in section 4.2. With regard to the complaint under Article 8, again, this has been appropriately dealt with by the domestic courts as described in section 2. Lastly, regarding the alleged discrimination under Article 14, the Constitutional Court, after careful consideration, has declared the Applicant's claim inadmissible. Consequently, the application under Article 13 is manifestly ill-founded, since the Applicant does not have an arguable complaint.

4.2. Effectiveness of national remedies

51. The scope of Article 13 varies according to the Applicant's underlying complaint and States enjoy discretion regarding the form that such remedies may take, as long as these are effective and capable of granting appropriate relief in law as well as in practice.[125] This Court has established that effective remedies might take any form in national law and it is not necessary that one remedy by itself fulfils all requirements in Article 13, but an aggregate of remedies available nationally could also be just as effective.[126] Furthermore, there is no requirement that available remedies must lead to an outcome favourable for the Applicant,[127] nor does Article 13 guarantee a right to have domestic laws challenged before a national authority for allegedly being contrary to the Convention.[128] These principles apply to the present case as follows.

52. Firstly, regarding the alleged violation of Article 13 in conjunction with Article 8, national law granted the Applicant the right to issue a criminal complaint, as well as to contest the national authority's decision to discontinue the proceedings before both the prosecutor's office

[124] *Klass and Others v. Germany* 06 September 1978, app. no 5029/71, para. 64.
[125] *Iovchev v. Bulgaria*, *op. cit.*, para. 142.
[126] *Alisic and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and "The Former Yugoslav Republic of Macedonia"***,** 16 July 2014, app. no.60642/08, para. 131.
[127] *Pine Valley Developments Ltd and Others v. Ireland,* 29 November 1991, app. no. 12742/87, para. 66; S*alah Sheekh v. the Netherlands*, 11 January 2007, app. no. 1948/04, para. 154.
[128] *James and Others v. the United Kingdom*, 21 February 1986, app. no. 8793/79, para. 85.

and the first-instance criminal court.[129] The national authorities conducted effective investigations and independent examinations based on the Applicant's complaints.[130] An illustration of this is the manner in which the first-instance criminal court examined Mr B's behaviour in the online context and towards his former partners.[131] Furthermore, the decision of the first-instance criminal court could be appealed before the court of appeal, which the Applicant pursued. The court of appeal imposed a fine of EUR 200,- on Mr B and upheld the restraining order issued against him earlier in the proceedings.[132]

53. Secondly, regarding the complaint of alleged discrimination before the Constitutional Court, it was determined by this Court that the absence of remedies against decisions of constitutional courts does not constitute a violation of Article 13.[133] Article 6(1) does not require a supreme court to give detailed reasons when dismissing a complaint with reference to the relevant legal provision.[134] An application to this Court based on these grounds has been previously declared inadmissible for being manifestly ill-founded, as should be done in the present case.[135]

54. Overall, the respondent State considers that the measures taken constitute appropriate relief for the Applicant's complaint.[136] Taken together, the investigation by the police, two sets of criminal proceedings before national courts, and the complaint before the Constitutional Court reflect the respondent State's commitment to ensuring effective enforcement of the substance of Convention rights. This stands true, even if the outcome which the Applicant envisaged and hoped for did not materialise. The respondent State therefore requests the Court to declare this application manifestly ill-founded, because there were sufficient and effective remedies available under domestic law and nothing indicated that these could not provide for appropriate redress.[137]

55. The respondent State would also like to draw this Court's attention to the ongoing efforts within the Council of Europe of enforcing the principle of subsidiarity, as emphasised for example in the Brighton Declaration.[138] The Court's task is neither to take the place of national

[129] Case, paras. 24 and 25.
[130] Case, paras. 8-10, 13 and 16.
[131] Case, para. 10.
[132] Case, para. 11.
[133] *Paksas v. Lithuania* [GC], 06 January 2011, app. no. 34932/04, para 114.
[134] *Gorou v. Greece (no. 2)* [GC], *op. cit.*, para. 41; *Baydar v the Netherlands*, *op. cit.*, para. 46.
[135] *Burg and Others v. France* [dec.], 28 January 2003, app. no. 34763/02.
[136] Case, para. 10.
[137] *Pine Valley Developments Ltd and Others v. Ireland*, *op. cit.*, para. 66.
[138] High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration, 20 April 2012, paras. 10-12.

courts, nor to act as a court of fourth instance.[139] Rather, national authorities and courts are the ones who are in the best position to adequately enforce the rights under the ECHR in their jurisdiction, which this Court has recognised and consistently reiterated.[140]

5. Conclusion

56. Based on the aforementioned submissions, the respondent State respectfully requests this Court to declare the applications brought by the Applicant inadmissible, in full.

57. Should this Court find any of the applications to be admissible, the respondent State respectfully requests this Court to declare that the respondent State did not violate any of the Applicant's rights

- under Article 6 regarding the alleged breach of the right to a fair trial and access to court;
- under Article 8 regarding the Applicant's right to private life;
- under Article 13 regarding the alleged lack of an effective remedy; and,
- under Article 14 regarding the alleged discrimination against the Applicant.

[139] *Nejdet Sahin and Perihan Sahin v. Turkey* [GC], *op. cit.*, paras. 68, 89 and 94; *Garcia Ruiz v. Spain* [GC], *op. cit.*, para. 28; *Centro Europa 7 S.R.L. and Di Stefano v. Italy* [GC], *op. cit.*, para. 197.
[140] *Varnava and Others v. Turkey*, 18 September 2009, app. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16070/90 and 16072/90, para. 164; *Swedish Engine Drivers' Union v Sweden*, 6 February 1976, app. no. 5614/72, para. 50.