

**2018-2019**

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Team: 67

**EUROPEAN HUMAN RIGHTS  
MOOT COURT COMPETITION**

**Maya Engel v. Artemidia**

*Maya Engel*

(Applicant)

**VS**

*The State of ARTEMIDIA*

(Respondent)

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**SUBMISSION OF THE APPLICANT**

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## SUMMARY OF THE ARGUMENTS

- The Applicant argues that the State has failed to protect her inviolable psychological integrity and human dignity. The State has breached its obligation to protect her fundamental human rights, guaranteed by the Convention, which are the cornerstone of justice and peace in Europe and the world. The intensity of the interference and the unfairness of the domestic proceedings let her no option but to turn to the Court.
- The Applicant submits that all the admissibility criteria set forth in Art. 34 and Art. 35 have been fulfilled in respect of all the Articles violated and thus, the application is admissible.
- First, the Applicant claims that the State has breached its obligation to protect her reputation and psychological integrity guaranteed as a part of the right to respect for private and family life under Art. 8. Having failed to strike a fair balance between two competing Convention rights and to combat the intentional spread of hatred and incitement to violence, undermining the basic ideas of human dignity, equality and tolerance, the State has not satisfied its positive obligation to protect the above-mentioned rights of the Applicant.
- Secondly, the Applicant claims that she has been subjected to discriminatory treatment contrary to Art. 14. and Art. 1 of Protocol 12. Both sets of judicial proceedings on the domestic level were conducted based on gender stereotyping, setting her to a disadvantaged position from the very beginning. Contrary to the idea of equality of the sexes, the Applicant has suffered a less favourable treatment with all its negative consequences.
- At the same time, by breaching the principles inherent to the right to fair trial under Art. 6 § 1 in both sets of proceedings, namely the principle of the right to a reasoned judgment, the State failed to ensure the Applicant her right to fair trial under Art. 6.
- Finally, the Applicant puts forward that her right to an effective remedy under Art. 13 in conjunction with Art. 8 has been violated as no effective remedy was available to her to redress the violation of her rights enshrined in Art. 8, due to the systemic lack of remedies for victims of harmful conduct not reaching the intensity of a crime or a misdemeanour in Artemidia.

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## LIST OF REFERENCES

### *Court decisions*

#### **European Court of Human Rights, European Commission of Human Rights**

1. A v. Norway, app. no. 28070/06, (09/04/2009).
2. Abdulaziz, Cabales and Balkandali v. The United Kingdom, apps. nos. 9214/80, 9473/81, 9474/81, (28/05/1985).
3. Airey v. Ireland, app. no. 6289/73, (06/02/1981).
4. Aksoy v. Turkey, app. no. 21987/93, (18/12/1996).
5. Armoniené v. Lithuania, app. no. 36919/02, (25/11/2008).
6. Assanidze v. Georgia [GC], app. no. 71503/01, (08/04/2004).
7. Axel Springer AG v. Germany [GC], app. no. 39954/08, (07/02/2012).
8. Berdzenishvili v. Russia, apps. nos. 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07, (20/12/2016).
9. Biao v. Denmark [GC], app. no. 38590/10, (24/05/2016).
10. Burden v. The United Kingdom, app. no. 13378/05, (12/12/2006).
11. Buzescu v. Romania, app. no. 61302/00, (24/05/2005).
12. Carson and Others v. The United Kingdom [GC], app. no. 42184/05, (16/03/2010).
13. Carvalho Pinto de Sousa Morais v. Portugal, app. no. 17484/15, (25/07/2017).
14. Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal, apps. nos. 11182/03 and 11319/03, (26/04/2007).
15. D.H. and Others v. The Czech Republic [GC], app. no. 57325/00, (13/11/2007).
16. Delfi AS v. Estonia [GC], app. no. 64569/09, (16/06/2015).
17. Do Carmo de Portugal e Castro Câmara v. Portugal, app. no. 53139/11, (04/10/2016).
18. Donadze v. Georgia, app. no. 74644/01, (07/03/2006).
19. E. B. v. France [GC], app. no. 43546/02, (22/01/2008).
20. Egeland and Hanseid v. Norway, app. no. 34438/04, (16/04/2009).
21. Egil Einarsson v. Iceland, app. no. 24703/15, (07/11/2017).
22. Eon v. France, app. no. 26118/10, (14/03/2013).
23. Evans v. The United Kingdom [GC], app. no. 6339/05, (10/04/2007).
24. Fabris v. France [GC], app. no. 16574/08, (07/02/2013).

25. Fürst-Pfeifer v. Austria, apps. nos. 33677/10 and 52340/10, (17/15/2016).
26. García Ruiz v. Spain [GC], app. no. 30544/96, (21/01/1999).
27. Georgia v. Russia [GC], app. no. 13255/07, (03/07/2014).
28. Georgiadis v. Greece, app. no. 21522/93, (29/05/1997).
29. Gurgendize v. Georgia, app. no. 71678/01, (17/10/2006).
30. Giuran v. Romania, app. no. 14150/08, (21/06/2011).
31. Hajduová v. Slovakia, app. no. 2660/03, (30/11/2010).
32. Hiro Balani v. Spain, app. no. 18064/91, (09/12/1994).
33. Hoogendijk v. The Netherlands, app. no. 58641/00, (06/02/2005).
34. Hüsnüye Tekin v. Turkey, app. no. 50971/99, (25/10/2005).
35. Chauvy and Others v. France, app. no. 64915/01, (29/06/2004).
36. Church of Jesus Christ of Latter-Day Saints v. The United Kingdom, app. no. 7552/09, (04/03/2014).
37. Károly Nagy v. Hungary [GC], app. no. 56665/09, (14/09/2017).
38. Khamtokhu and Aksenchik v. Russia [GC], apps. nos. 60367/08 and 961/11, (24/01/2017).
39. Klass and Others v. Germany, app. no. 5029/71, (06/09/1978).
40. Konstantin Markin v. Russia [GC], app. no. 30078/06, (22/03/12).
41. Larkos v. Cyprus [GC], app. no. 29515/195, (18/02/1999).
42. Leander v. Sweden, app. no. 9248/81, (26/03/1978).
43. Leempoel & SA Ed., Ciné Revue v. Belgium, app. no. 64772/01, (09/11/2006).
44. Lingens v. Austria, app. no. 9815/82, (08/07/1986).
45. M.C. v. Bulgaria, app. no. 39272/98, (26/07/2011).
46. M.S.S. v. Belgium and Greece [GC], app. no. 30696/09, (21/01/2011).
47. Marckx v. Belgium, app. no. 6833/74, (13/06/1979).
48. McFarlane v. Ireland [GC], app. no. 31333/06, (10/09/2010).
49. Mitzinger v. Germany, app. no. 29762/10, (25/01/2018).
50. Moreira Ferreira v. Portugal (no. 2) [GC], app. no. 19867/12, (11/07/2017).
51. NA. v. The United Kingdom, app. no. 25904/07, (17/07/2008).
52. Nachova and Others v. Bulgaria [GC], apps. nos. 43577/98 and 43579/98, (06/07/2005).
53. Naït-Liman v. Switzerland [GC], app. no. 51357/07, (15/03/2018).

54. Nikowitz and Verlagsgruppe News GmbH v. Austria, 22 app. no. 5266/03, (22/02/2007).
55. Odièvre v. France [GC], app. no. 42326/98, (13/02/2003).
56. Osman v. The United Kingdom [GC], app. no. 23452/94, (28/10/1998).
57. Pajić v. Croatia, app. no. 68453/13, (23/02/2016).
58. Palomo Sánchez and Others v. Spain [GC], apps. nos. 28955/06, 28957/06, 28959/06 and 28964/06, (12/09/2011).
59. Perez v. France [GC], app. no. 47287/99, (12/02/2004).
60. Petrie v. Italy, app. no. 25322/12, (18/05/2017).
61. Petrina v. Romania, app. no. 78060/01, (14/10/2008).
62. Petrovic v. Austria, app. no. 20458/92, (27/03/1998).
63. Pilav v. Bosnia and Herzegovina, app. no. 41939/07, (09/06/2016).
64. Polanco Torres and Movilla Polanco v. Spain, app. no. 34147/06, (21/09/2010).
65. Regner v. The Czech Republic [GC], app. no. 35289/11, (19/09/2017).
66. Ruiz Torija v. Spain, app. no. 30544/96, (09/12/1994).
67. Saadi v. Italy [GC], app. no. 37201/06, (28/02/2008).
68. Sandra Janković v. Croatia, app. no. 38478/05, (05/03/2009).
69. Sapan v. Turkey, app. no. 44102/04, (08/06/2010).
70. Sapeyan v. Armenia, app. no. 35738/03, (13/01/2009).
71. Sejdić and Finci v. Bosnia and Herzegovina [GC], nos. 27996/06 and 34836/06, (22/12/09).
72. Sevgin and İnce v. Turkey, app. no. 46262/99, (20/09/2005).
73. Shulepova v. Russia, app. no. 34449/03, (11/12/2008).
74. Schuler-Zraggen v. Switzerland [GC], app. no. 14518/89, (24/06/1993).
75. Söderman v. Sweden [GC], app. no. 50786/08, (12/11/2013).
76. Sommerfeld v. Germany [GC], app. no. 31871/96, (08/07/2003).
77. Stec and Others v. The United Kingdom [GC], apps. nos. 65731/01 and 65900/01, (12/04/2006).
78. Tanrikulu v. Turkey [GC], app. no. 23763/94, (08/07/1999).
79. Thlimmenos v. Greece [GC], app. no. 34369/97, (06/04/2000).
80. Vallianatos and Others v. Greece [GC], apps. nos. 29381/09 and 32684/09, (07/11/2013).
81. Von Hannover v. Germany, app. no. 59320/00, (24/06/2004).

82. Von Hannover v. Germany (no. 2) [GC], apps. nos. 40660/08 and 60641/08, (07/02/2012).
83. Von Hannover v. Germany, app. no. 59320/00, (24/06/2004).
84. Vučković and Others v. Serbia, app. no. 17153/11, (25/03/2014).
85. Wagner and J.M.W.L. v. Luxembourg, app. no. 76240/01, (28/06/2007).
86. White v. Sweden, app. no. 42435/02, (19/09/2006).
87. X. and Y. v. the Netherlands, app. no. 8978/80, (26/03/1985).
88. Zarb Adami v. Malta, app. no. 17209/02, (20/06/2006).

#### *Literature*

1. Kmec, J., Kosař, D., Kratochvíl, J., Bobek, M., Evropská úmluva o lidských právech. Komentář, Praha: C. H. Beck, 2012.
2. Schabas, William A., The European Convention on Human Rights: A Commentary, Oxford University Press, 2015.
3. Leanza, Piero. Přidal, Ondřej. The Right to a Fair Trial: Article 6 of the European Convention on Human Rights. Kluwer Law International, 2014.
4. Gerards, J. H. Judicial Review in Equal Treatment Cases. International Studies in Human Rights, Martin Nijhoff Publishers, 2005.

#### *Other sources*

1. Convention on Preventing and Combating Violence Against Women and Domestic Violence.
2. Convention on the Elimination of all Forms of Discrimination Against Women.
3. Guide on Article 8 of the European Convention on Human Rights – Right to respect for private and family life, home and correspondence. European Court of Human Rights. Version of 31 August 2018.
4. The Exceptions to Articles 8 to 11 of the European Convention on Human Rights. Steven Greer, Reader in Law, University of Bristol. Council of Europe Publishing.

## **LIST OF ABBREVIATIONS**

European Convention on Human Rights	<b>Convention</b>
European Court of Human Rights	<b>Court</b>
The United Nations	<b>UN</b>
Council of Europe	<b>CoE</b>
Article of the Convention	<b>Art.</b>
The first set of proceedings	<b>1SP</b>
The second set of proceedings	<b>2SP</b>
Convention on the Elimination of all Forms of Discrimination Against Women	<b>CEDAW</b>
Venice Commission	<b>VC</b>
Convention on preventing and combating violence against women and domestic violence	<b>Istanbul Convention</b>



## **I ADMISSIBILITY OF THE APPLICATION**

### **I.1 THE APPLICATION IS ADMISSIBLE**

[1] All the requirements set forth in Art. 34 and Art. 35 as to the admissibility are satisfied. First, all the domestic remedies have been exhausted (I.1.1). Secondly, the application has been lodged within six months after the final decision (I.1.2). Thirdly, the Applicant qualifies as a direct victim (I.1.3). Finally, the application is not manifestly ill-founded and the Applicant has suffered a significant disadvantage (I.1.4).

#### **I.1.1 All the domestic remedies have been exhausted**

[2] The Applicant has exhausted all effective, i.e. adequate and accessible<sup>1</sup> remedies provided by the national legal system, as required by the Court.<sup>2</sup> After the decision of the appellate courts in the 1SP and the 2SP became final and the Applicant's constitutional complaint was declared inadmissible, the national legal system did not provide any further appeal, thus, **all domestic remedies have been exhausted.**

#### **I.1.2 The application meets the six-month limit condition**

[3] The application was lodged with the Court on 15 September 2018, 14 days after the final decision in the 1SP, less than 3 months after the final decision in the 2SP and 5 days after the decision on Applicant's constitutional complaint regarding discriminatory treatment during both sets of proceedings. Pursuant to Art. 35, this six month period runs from the final decision in the process of exhaustion of domestic remedies.<sup>3</sup> Since there was no further appeal available after the judgment of the court of appeal in the 1SP, the judgment of the first instance court in the 2SP and the final decision of the Constitutional Court, these decisions were the decisions ending the process of exhaustion of domestic remedies within the meaning of Art. 35.<sup>4</sup> Therefore, **the requirement of six month period has been met.**

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<sup>1</sup> Paulino Tomás v. Portugal, app. no. 58698/00; McFarlane v. Ireland, app. no. 31333/06, § 107.

<sup>2</sup> Berdzenishvili v. Russia, apps. nos. 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07.

<sup>3</sup> Sapeyan v. Armenia, app. no. 35738/03, § 23.

<sup>4</sup> Assanidze v. Georgia, app. no. 71503/01, § 159.

### **I.1.3 The Applicant qualifies as a victim**

[4] The Applicant claims to be a victim of a violation of the Convention rights<sup>5</sup> and she was directly affected<sup>6</sup> by the omissions of the State. The Applicant qualifies as a direct victim in respect of Art. 6, Art. 13 and Art. 14 since she was not granted the required protection by the courts. As a result, **her right to a fair trial, right to an effective remedy and right not to be discriminated against were directly affected by the impugned decisions.** Furthermore, these decisions and their consequences led into **interference with the Applicant's right to personal integrity under Art. 8.**

### **I.1.4 Other criteria**

[5] The Applicant submits that the application is not manifestly ill-founded and that she has suffered a significant disadvantage since the violation of the Convention rights and concern **a question of principle for the Applicant** regardless of any pecuniary interest for her.<sup>7</sup>

## **II MERITS OF THE APPLICATION**

### **II.1 VIOLATION OF ART. 8**

[6] The Applicant submits that the State has violated her right to private life under Art. 8 with regard to the 2SP since domestic authorities failed to protect the Applicant's reputation and psychological integrity against harassment and hate speech from Mr B and his followers. First, in respect of Mr B's Friendzone post, the domestic authorities failed to strike a fair balance between the Applicant's rights under Art. 8 and Mr B's rights under Art. 10 (II.1.2). Secondly, as for the hateful comments and private messages of Mr B's followers, domestic authorities failed to fulfil their positive obligations under Art. 8 when they did not *ex officio* initiate criminal proceedings with authors of the impugned comments and private messages or any other liable persons, despite being aware of the harmful comments (II.1.3).

#### **II.1.1 The Applicant's claim falls within the ambit of Art. 8**

[7] In order to invoke Art. 8, it is up to an applicant to show that her complaint falls within at least one of the four dimensions protected by this Article. These dimensions are private and

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<sup>5</sup> *Burden v. The United Kingdom*, app. no. 13378/05, § 33.

<sup>6</sup> *Klass and Others v. Germany*, app. no. 5029/71, § 33.

<sup>7</sup> *Giuran v. Romania*, app. no. 14150/08, §§ 17-25; *Eon v. France*, app. no. 26118/10, § 34.

family life, correspondence, and home. The established broad concept of private life does not lend itself to the exhaustive definition and it covers both physical and **psychological integrity**.<sup>8</sup> Moreover, the concept of private life includes the right of persons to the protection of their reputation.<sup>9</sup> Reputation is a part of their personal identity and moral integrity.<sup>10</sup> Furthermore, Art. 8 includes both negative and positive obligations of the Contracting States. Negative obligations entail the obligation to protect an individual against arbitrary action by the public authorities, whereas positive obligations require the adoption of measures designed to secure respect for private life in the sphere of individuals between themselves.<sup>11</sup> In the case of **positive obligations**, the Court considers whether the importance of the interest at stake requires the imposition of the positive obligation sought by an applicant.<sup>12</sup>

[8] Since domestic authorities have failed to protect the Applicant's psychological integrity from acts of harassment and hate speech perpetrated by Mr B and his followers, the present case, indeed, falls within the scope of Art. 8.<sup>13</sup>

### **II.1.2 The State failed to strike a fair balance between the Applicant's rights under Art. 8 and Mr B's rights under Art. 10**

[9] The domestic authorities breached their positive obligations under Art. 8 when they failed to protect the Applicant's reputation and psychological integrity with regard to Mr B's defamatory post insofar, they did not strike a fair balance between Mr B's right to freedom of expression and the Applicant's right to private life.

[10] While the essential object of Art. 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the Contracting States to abstain from such interference. Besides the negative obligations, there may be positive obligations inherent in effective respect for private life. The latter obligations require the adoption of measures designed to secure respect for private life even in the sphere of the relations of

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<sup>8</sup> Von Hannover v. Germany, app. no. 59320/00, § 50.

<sup>9</sup> Chauvy and Others v. France, app. no. 64915/01, § 70; Leempoel & SA Ed., Ciné Revue v. Belgium, app. no. 64772/01, § 67; Petrina v. Romania, app. no. 78060/01, § 28.

<sup>10</sup> Polanco Torres and Movilla Polanco v. Spain, app. no. 34147/06, § 40.

<sup>11</sup> Airey v. Ireland, app. no. 6289/73, § 32.

<sup>12</sup> Marckx v. Belgium, app. no. 6833/74, § 31; Evans v. The United Kingdom, app. no. 6339/05, § 75.

<sup>13</sup> X. and Y. v. The Netherlands, app. no. 8978/80, §§ 22-23.

individuals between themselves.<sup>14</sup> The boundary between the Contracting State's positive and negative obligations does not lend itself to precise definition, but the applicable principles are similar – in both contexts regard must be had to the fair balance that has to be struck between the relevant interests.<sup>15</sup>

[11] In respect to the rights set forth in Art. 8 and Art. 10, the Court has ruled that when there is a conflict, certain aspects need to be considered in a 'balancing exercise'.<sup>16</sup> When the application has been lodged with the Court under Art. 8, the aspects are as follows: (A.) a contribution to a debate of general interest, (B.) the degree of notoriety of the person affected and the subject of the news report, (C.) the prior conduct of the person concerned and (D.) the content, form and consequences of the publication.<sup>17</sup> Where this balancing exercise between two rights has been undertaken by the domestic authorities in conformity with the criteria laid down in the Court's case-law, the Court requires strong reasons to substitute its view for that of the domestic courts.<sup>18</sup>

[12] The Applicant submits that the domestic authorities failed to undertake the balancing exercise properly during making decisions about the impugned post. Thus, they failed to strike a fair balance between the Applicant's rights under Art. 8 and Mr B's rights under Art. 10 as will be demonstrated in the next subchapter of the Application which copies the above-mentioned balancing exercise criteria (A. - D.) Consequently, this omission negatively impacted the Applicant's personal integrity (E.)

***A. The social media post did not contribute to a debate of general interest***

[13] The first criterion is the contribution to a debate of general interest. The definition of what constitutes a subject of general interest depends on the circumstances of the case.<sup>19</sup> The existence of such interest might occur by publications concerning public affairs such as

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<sup>14</sup> Von Hannover v. Germany (no. 2), apps. nos. 40660/08 and 60641/08, §§ 98-99; Armoniené v. Lithuania, app. no. 36919/02, § 36.

<sup>15</sup> Von Hannover v. Germany (no. 2), cited above, §§ 98-99; White v. Sweden, app. no. 42435/02, § 20; Gurguenidze v. Georgia, app. no. 71678/01, § 38.

<sup>16</sup> Axel Springer AG v. Germany, app. no. 39954/08, §§ 89-95.

<sup>17</sup> Guide on Article 8 of the European Convention on Human Rights – Right to respect for private and family law, home and correspondence. European Court of Human Rights. The Version of 31 August 2018.

<sup>18</sup> Axel Springer AG v. Germany, cited above, §§ 85-88; Von Hannover v. Germany (no. 2), cited above, §§ 104-107; Palomo Sánchez and Others v. Spain, apps. nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 57.

<sup>19</sup> Von Hannover v. Germany (no. 2), cited above, § 109.

political issues or crimes<sup>20</sup> as well as more personal information concerning public figures as sports stars<sup>21</sup> or performing artists.<sup>22</sup> The Court also takes into consideration the nature of such report (the social media post in the present case), i.e. whether it contains details of the private person who does serve public functions or not and whether it relates to the public activities of the individual or to its private life in this regard.<sup>23</sup>

[14] The Applicant argues that the impugned post as a whole cannot be regarded as a contribution to a debate of general interest. Although one part of the post concerns a topic of climate change, the other part concerning the person of the Applicant includes unnecessary invectives against her. Moreover, Mr B revealed sensitive personal information about the Applicant such as her full name and information about her employment. Had Mr B wanted to express his concern for the state of the climate, he could have done so without revealing private information about the Applicant and insulting her. The Applicant categorically refuses any presumption that the part of the post, providing personal information of her as a private individual and, especially, in such offensive context, would be capable of any contribution to a debate of general interest.

***B. The Applicant is a private individual***

[15] The role or function of the person concerned and the nature of the activities that are the subject of the report constitute another important criterion, related to the preceding one. In that regard, a distinction has to be made between private individuals and persons acting in the public sphere. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same cannot be said about public figures.<sup>24</sup> Nevertheless, there are certain limits set to the public's right to be informed even about public figures, such as the details of a person's private life, having the sole aim to satisfy public curiosity in that respect.<sup>25</sup>

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<sup>20</sup> White v. Sweden, cited above, § 29; Egeland and Hanseid v. Norway, app. no. 34438/04, § 58.

<sup>21</sup> Nikowitz and Verlagsgruppe News GmbH v. Austria, app. no. 5266/03, § 25; Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal, apps. nos. 11182/03 and 11319/03, § 28.

<sup>22</sup> Sapan v. Turkey, app. no. 44102/04, § 34.

<sup>23</sup> Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal, cited above, § 28.

<sup>24</sup> Von Hannover v. Germany (no. 2), cited above, § 110.

<sup>25</sup> *Ibid.*

[16] In this context, the Applicant points out that she is a private individual, neither serving any public function nor being well-known to the public for any other activity. Moreover, should certain aspects of a person's private life be protected when it comes to public figures, it should, *a fortiori*, be protected when it comes to private individuals. This has been omitted by the domestic authorities.

***C. The Applicant did not provoke the publication of the impugned social media post***

[17] As follows from the well-established case-law of the Court, another factor to be taken into consideration is the conduct of the person concerned prior to publication of the report.<sup>26</sup>

[18] The Applicant did nothing to provoke the personal attack against her. And although it is uncontested that both the Applicant and Mr B were in huge emotional distress resulting from their recent breakup, any such reaction as the reaction of Mr B should be considered inadequate.

***D. The content, form and consequences of the Friendzone post shall be not afforded legal protection***

[19] As to the content of a publication or a statement, the Court has distinguished between statements of fact and value judgements. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof.<sup>27</sup> The classification of a statement of a fact or a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular, the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive.<sup>28</sup> Importantly, as regards value judgments which have been found by the national courts to be of a defamatory character, the Court has in its previous case-law, reviewed the national court's findings on whether the language used in the statement was of an excessive or dispassionate nature, whether an intention of defaming or stigmatising the opponent was disclosed, and whether the statement had a sufficient factual basis.<sup>29</sup>

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<sup>26</sup> *Axel Springer AG v. Germany*, cited above, § 92; *Von Hannover v. Germany* (no. 2), cited above, § 111.

<sup>27</sup> *Lingens v. Austria*, app. no. 9815/82, § 46.

<sup>28</sup> *Do Carmo de Portugal e Castro Câmara v. Portugal*, app. no. 53139/11, § 31.

<sup>29</sup> *Ibid.*

[20] As for the content of the impugned post, the Applicant acknowledges that the post contained factual statements (“*does not hesitate to pose naked in front of a camera*”) as well as value judgements (“*‘angelic’ Maya Engel, a deranged - man-hating woman*”). The applicant points out that this indeed false statement was not proved in the course of the proceedings. As for the consequences of the impugned post, the social media post contained the full name of the Applicant, information about her employment and a hyperlink to her profile on the same social media platform. Thus, it provided a direct contact method to the public since the post was accessible not only to Mr B’s ‘friends’ on the social network but also to the general public. After being published, the post has drawn huge attention and the reactions were not waiting for long. It was re-shared over 2,000 times and therefore could reach a number of persons, not only Mr B's followers. In addition, there were 720 comments to the post, some of them even initiating acts of violence towards the Applicant. The sudden attention in its measure and especially in its offensive form seriously harmed the Applicant’s psychological integrity.

#### ***E. Conclusion***

[21] Not only did Mr B publicly defame the Applicant, but he also provided her full name and hyperlink to her private social media profile to his followers and enabled them to directly contact her. In this respect, the Applicant points out that she could not limit the public access to the social media post as this option is only available to the owner of social media platform profile where the post has been published. Moreover, the offensive post published by Mr B definitely constituted an attack on the Applicant’s personal honour<sup>30</sup> and since she had to seek psychological and psychiatric treatment, it attained a considerable level of seriousness.<sup>31</sup> It may be also argued that the attack was carried out in a way causing prejudice to personal enjoyment of the right to respect for the Applicant’s private life and as such, the impugned post violated the Applicant’s reputation as a part of her personal identity and moral integrity.<sup>32</sup> Finally, the applicant stresses that the State did not take any action to eliminate the negative effects of the post (for example to order its removal).

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<sup>30</sup> A. v. Norway, app. no. 28070/06, § 63-64.

<sup>31</sup> Axel Springer AG v. Germany, cited above, § 83; Egill Einarsson v. Iceland, app. no. 24703/15, § 33 – 34.

<sup>32</sup> *Ibid*; Fürst-Pfeifer v. Austria, apps. nos. 33677/10 and 52340/10, § 35; Petrie v. Italy, app. no. 25322/12, § 39.

[22] In the light of the above considerations, the Applicant contends that the State failed to strike a fair balance between her rights under Art. 8 and Mr B's rights under Art. 10. Had they not failed it, they would have ordered Mr B to remove the post and award the Applicant non-pecuniary damages. Consequently and thus, the State breached its positive obligations to protect the Applicant's reputation and psychological integrity. Accordingly, with respect to Mr B's social media post, the State has violated the Applicant's right to private life under Art. 8.

### **II.1.3 The State failed to prosecute the liable persons**

[23] The Applicant further claims that the State failed to fulfil its positive obligation to protect the Applicant's reputation and psychological integrity in relation to the hateful comments under Mr B's post and the threatening messages sent to the Applicant by Mr B's followers.

[24] As stated above, the Contracting States have negative obligations as well as positive ones under Art. 8 of the Convention.<sup>33</sup> The Court ruled that where a particularly important facet of an individual's existence or identity is at stake, the otherwise wide<sup>34</sup> margin allowed to the State is correspondingly narrowed.<sup>35</sup> Regarding the protection of psychological integrity, the positive obligations include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.<sup>36</sup> Moreover, where 'fundamental values' and 'essential aspects' of private life are at stake, the Contracting States shall ensure efficient criminal-law provisions<sup>37</sup> and in regard to 'severe acts' even the effectiveness of the criminal investigation.<sup>38</sup>

[25] The Applicant is mindful that the means to secure compliance with Art. 8 fall within the margin of appreciation of the Contracting States. However, the Court may review under the Convention the decisions that national authorities have adopted in the course of the exercise of their margin of appreciation.<sup>39</sup> Similarly, as in the case of *Sandra Janković v. Croatia*

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<sup>33</sup> Airey v. Ireland, app. no. 6289/73, § 32.

<sup>34</sup> Von Hannover v. Germany (no. 2), apps. nos. 40660/08 and 60641/08, § 104, Odièvre v. France, app. no. 42326/98, § 46.

<sup>35</sup> Söderman v. Sweden, app. no. 50786/08, § 79.

<sup>36</sup> *Ibid.* § 80.

<sup>37</sup> X and Y v. The Netherlands, app. no. 8978/80, § 27.

<sup>38</sup> M.C. v. Bulgaria, app. no. 39272/98, § 152, Osman v. the United Kingdom, app. no. 23452/94, § 128.

<sup>39</sup> Sandra Janković v. Croatia, app. no. 38478/05, § 46.



concerning attacks on the applicant's physical and psychological integrity,<sup>40</sup> the Court should not avoid the assessment of the decisions that domestic authorities have taken in the present case.

[26] With respect to abusive threats, the Court held in *Hajduová v. Slovakia*<sup>41</sup> that although the threats made by the applicant's former abusive partner had never materialised into concrete acts, the Applicant's fear that they might be carried out was well-founded and Slovakia violated its obligation to protect the applicant's private life. Even though the circumstances in the present case are not identical, the Applicant's fear concerning the non-materialised threats can be assessed similarly. While it is true that the Applicant did not have – contrary to Mrs Hajduová – any experience with abuse by Mr B's followers who were the authors of abusive and threatening comments about the Applicant and had also directly sent her similar messages on Friendzone, precisely the uncertainty about their past in connection with the knowledge they had about her person set up the basis for the Applicant's well-founded fear.

[27] As regards the personal information, the followers learned from Mr B's post about the company she worked for from Mr B's post. Due to the hyperlink included in the post, they also knew her full name and knew what she looked like. The Applicant's fear that they could easily, in the Internet era, find out the address of her workplace and – while being able to recognise her – turn their threats to “protect the environment at all costs”, “track her down” and make her “pay for what she has done” into reality, is understandable. Moreover, this objectively founded fear was only intensified due to her lack of knowledge about the past and character of the followers. The Applicant could not be sure whether the followers had ever acted violently in their past and therefore assess the probability they would act on their threats. Viewed in connection with the information they had about her and her working place, her fear is well-founded. What is more, the Applicant was in a process of mental recovery from the abusive behaviour by her former partner, Mr B. His controlling, stalkerish, abusive behaviour, including direct threats to her life, had led her to undergo counselling with a psychologist and treatment by a psychiatrist for stress, severe anxiety,

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<sup>40</sup> Sandra Janković v. Croatia, cited above, § 46.

<sup>41</sup> *Hajduová v. Slovakia*, app. no. 2660/03.

panic attacks, agoraphobia and depression. This made her even more sensitive to any abuse and potential threat to her life. Her mental state and the recent experience with abusive behaviour, both of which the domestic authorities were aware of, corroborate the claim that her fear of the threats was well-founded.

[28] Therefore, the State had a positive obligation to protect the Applicant in relation to the threats, especially since an important facet of the Applicant's psychological integrity is in question. However, the police failed to fulfil its task to prosecute the authors of the comments and any other liable persons. Notwithstanding that Mr B was named as the only liable person in the Applicant's criminal complaint, the police was authorised to determine which crime had been committed and by whom. The Applicant trusted the competent authorities to take appropriate steps to protect her against the consequences of any crime they might find to have been committed. Being aware of the existence of the threatening and hateful comments and the above-described special circumstances of the case, based on the statutory obligation to initiate *ex officio* investigations, the police was compelled to apply the relevant provisions of domestic law in practice, to conduct a criminal investigation and to prosecute the liable persons.

[29] Furthermore, the obligation of the national authorities to take appropriate action was even greater since the comments were unlawful on their face, similarly as in *Delfi v. Estonia*.<sup>42</sup> Therein the domestic courts had classified the comments in question as humiliating and defamatory, while the Court took the view that the majority of the comments amounted to hate speech or incitements to violence and were thus, based on the prohibition of abuse of rights under Article 17, excluded from protection under Article 10.

[30] Based on the comparison with the comments that were the subject-matter in *Delfi v. Estonia*, there can be no doubt that the comments in the present case were of the same nature. For they also contained direct threats to the Applicant's life and amounted to incitement to violence and were therefore clearly unlawful on their face.

[31] Consequently, the national authorities should have taken appropriate action to secure that the intentional spread of hatred, intolerance and incitement to violence, as excluded by

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<sup>42</sup> *Delfi v. Estonia*, app. no. 64569/09.

virtue of Article 17, which undermine the core values of democracy and human rights law, is not tolerated in a High Contracting Party to the European Convention on Human Rights.

[32] By failing to take any action, the State breached its positive obligation to protect the private integrity and reputation of the Applicant in regard to the manifestly unlawful comments and messages sent by Mr B's followers.

#### **II.1.4 There has been a violation of Art. 8**

[33] In conclusion, the State breached its positive obligation by not striking a fair balance between the Applicant's right for private life and Mr B's right to freedom of expression in regard to the social media post and by not prosecuting the liable persons in regard to the comments. Therefore, the Applicant's right to psychological integrity and reputation have not been protected, and the State's inaction thus amounted to a violation of Art. 8.

#### **II.2 VIOLATION OF ART. 14 IN CONJUNCTION WITH ART. 8 AND ART. 1 OF PROTOCOL NO.12**

[34] The Applicant claims that there has been a violation of Art. 14 in conjunction with Art. 8 and Art. 1 of Protocol No. 12. The established practices of Artemidia result in less favourable treatment of women in all areas of access to justice. The applicant takes into consideration that there is a similar situation (II.3.2), there is a comparator and a difference in treatment (II.3.3) and there is no objective and reasonable justification of it (II.3.4).

[35] The character of Art. 14 has been stressed by the Court on many occasions in its extensive case-law: Art. 14 is applicable when 'the facts at issue fall **within the ambit** of' one or more substantive provisions.<sup>43</sup> It has no independent existence for it has effect solely in relation to the enjoyment of the rights and freedoms safeguarded by those provisions.<sup>44</sup> Nevertheless, the applicability of Art. 14 does not necessarily presuppose the violation of those provisions and to this extent it is autonomous.<sup>45</sup> In order for an issue to arise under Article 14, there must be a difference in the treatment of persons in analogous or relevantly similar situations.

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<sup>43</sup> Church of Jesus Christ of Latter-Day Saints v. The United Kingdom, app. no. 7552/09, § 39; Sejdić and Finci v. Bosnia and Herzegovina, apps. nos. 27996/06 and 34836/06, § 39; Abdulaziz, Cabales and Balkandali v. The United Kingdom, apps. nos. 9214/80, 9473/81, 9474/81, § 71; Petrovic v. Austria, app. no. 20458/92, § 22; Biao v. Denmark, app. no. 38590/10, § 88.

<sup>44</sup> Abdulaziz, Cabales and Balkandali v. The United Kingdom, cited above, § 71; Thlimmenos v. Greece, app. no. 34369/97, § 40; Pajić v. Croatia, app. no. 68453/13, § 53; Biao v. Denmark, cited above, § 88; Mitzinger v. Germany, app. no. 29762/10, § 30.

<sup>45</sup> Carvalho Pinto de Sousa Morais v. Portugal, app. no. 17484/15, § 34.

Such a difference of treatment is discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.<sup>46</sup> These differences in treatment must be based on an identifiable characteristic or status, by which person or group of persons are distinguishable from each other.<sup>47</sup> As for Art. 1 of Protocol No. 12, the Court sees no reason to depart from the settled interpretation of “discrimination”, as developed in the jurisprudence concerning Art. 14.<sup>48</sup> The difference is their scope since the Protocol No. 12 applies also to the domestic law.

[36] The Court has distinguished between direct and indirect discrimination. The concept of indirect discrimination has been defined mainly in the case of *D. H. and Others v. The Czech Republic*, or more recently in *Biao v. Denmark*, providing that **forbidden difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group**. The Court has in such cases extensively relied on statistics to establish a difference in treatment between two groups in similar situations.<sup>49</sup> Though statistics themselves are not sufficient to disclose a difference in treatment.<sup>50</sup> Where an applicant is able to show, on the basis of undisputed official statistics, the existence of a *prima facie* indication that a specific rule – although formulated in a neutral manner – in fact, affects a clearly higher percentage of women than men, it is for the Contracting State to show that this is the result of objective factors unrelated to any discrimination on grounds of sex.<sup>51</sup>

[37] Since the Applicant has been a victim of prevalent institutional discrimination, this application focuses solely on indirect discrimination claiming that the Applicant has been a subject to discriminatory treatment resulting from general prejudice and stereotyping.

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<sup>46</sup> *Khamtokhu and Aksenchik v. Russia*, apps. nos. 60367/08 and 961/11, § 64.

<sup>47</sup> *Carson and Others v. The United Kingdom*, 42184/05, § 70.

<sup>48</sup> *Pilav v. Bosnia and Herzegovina*, app. no. 41939/07, § 39.

<sup>49</sup> *D. H. and Others v. The Czech Republic*, app. no. 57325/00, § 180.

<sup>50</sup> *Zarb Adami v. Malta*, app. no. 17209/02, § 76.

<sup>51</sup> *Hoogendijk v. The Netherlands*, app. No. 58641/00.

### **II.2.1 The Applicant's claim falls within the ambit of Art. 8**

[38] The Court has pointed out that it is necessary but also sufficient for the facts of the case to fall within the ambit of one or more Convention articles.<sup>52</sup> The existence of discriminatory intent is not required<sup>53</sup> and neither the violation of a substantive right of itself must take place.<sup>54</sup>

[39] The Applicant claims that the State failed to protect her private life contrary to its obligation set forth in Art. 8 (III.1.3). The Applicant also admits that there might not have been the intention of the State to discriminate her as a woman, however, the discrimination did take place. Finally, the discrimination claim is related to the right explicitly enshrined in the Convention articles, therefore the facts of the case fall within the ambit of Art.8.

### **II.2.2 The Applicant is in relevantly situation as men who were victims of hate speech**

[40] The Court has established that in order for an issue to arise under Art.14, there must be a difference in the treatment of persons in relevantly similar situations.<sup>55</sup>

[41] In the present case, the similar situation in question is the access of justice of women being subject to hate speech and access to justice of men being subject to hate speech. Both genders are potential victims of this crime notwithstanding their gender. On top of that, both genders enjoy the same procedural position, rights, and obligations. Thus, men in the Applicant's situation are a suitable comparator of persons in a relevantly similar situation.

### **II.2.3 The conduct of the domestic authorities within the context of the discriminatory environment in Artemidia amounted to a difference in treatment based on the applicant's gender**

[42] The Court has recognized the importance of official statistics<sup>56</sup> and has shown that it is prepared to accept and take into consideration various types of evidence.<sup>57</sup> Though statistics

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<sup>52</sup> Biao v. Denmark, cited above, § 88; Stec and Others v. the United Kingdom, apps. nos. 65731/01 and 65900/01, §§ 39-40; E. B. v. France, app. no. 43546/02, §§ 47-48; Vallianatos and Others v. Greece, apps. nos. 29381/09 and 32684/09, § 72.

<sup>53</sup> D. H. and Others v. Czech Republic, cited above, § 184.

<sup>54</sup> Sommerfeld v. Germany, app. no. 31871/96, § 84.

<sup>55</sup> Burden v. the United Kingdom, cited above, § 60.

<sup>56</sup> Hoogendijk v. the Netherlands, cited above; Zarb Adami v. Malta, cited above; D. H and Others v. the Czech Republic, cited above.

<sup>57</sup> Nachova and Others v. Bulgaria, apps. nos. 43577/98, 43579/98, § 157.

themselves are not sufficient to disclose a difference in treatment.<sup>58</sup> Where an applicant is able to show, on the basis of undisputed official statistics, the existence of a *prima facie* indication that a specific rule – although formulated in a neutral manner – in fact, affects a clearly higher percentage of women than men, it is for the Contracting State to show that this is the result of objective factors unrelated to any discrimination on grounds of sex.<sup>59</sup>

[43] In the case of *A. v Croatia*, a case showing factual resemblance to the present one (a female applicant receiving threats to her life from her still current husband at that time), the Applicant claims a violation of Art. 8 since the domestic authorities failed to implement sufficient measures to protect an applicant. As for Art. 14, the Court declared the complaint of an applicant inadmissible, on the ground, in particular, that an applicant had not given sufficient evidence for such allegation, such as reports or statistics.

[44] Accordingly, the Applicant provided a number of statistics affirming the reality of discrimination. The reports of both national and international NGOs show widespread discrimination against women and members of minority groups. The report of NGO Themis shows that that hate speech, although criminalised, is routinely tolerated, particularly on the social media platforms, by the authorities creating an environment of impunity for women. The majority of victims of hate speech are women and in 72% of cases, the perpetrators are men. The statistics of NGO *HRI* show that when women attempt to seek justice, their criminal complaints are treated through the lens of family values and the role of a woman in society. The Court itself *de facto* affirmed the credibility of reports of the NGO Themis by considering them relevant in previous cases against the State.

[45] Similarly, as in the case of *A. v Croatia*, the domestic authorities failed to recognise or even belittled the real danger constituted by Mr B's behaviour and his followers. These decisions were based on preconceptions and stereotypes in Artemidian society. In contrast to *A. v Croatia*, the Applicant provided the required statistical evidence. During the 2SP, the prosecutor's office upheld the decision of the police authority on discontinuation of the

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<sup>58</sup> *Zarb Adami v. Malta*, cited above, § 76.

<sup>59</sup> *Hoogendijk v. The Netherlands*, cited above.

criminal investigation of this crime, stating that none of the threats constituted a real danger to the Applicant. In doing so, the domestic authorities trivialized the gravity of Mr B's and his followers threats despite the fact that some of the comments were initiating direct acts of violence against the Applicant and contained threats as "*whoever Maya Engel is, she should pay for what she has done, all of us in the region must join forces to track her down*". The discontinuation of the criminal proceedings was later upheld by the domestic court. The reasoning of the decision referred to traditional values enshrined in Artemidian Constitution, specifically that "*any nude photographs flouted traditional values enshrined in the Constitution and, as such did not deserve protection*". The statistics show that references to traditional values are the justification of the widespread institutional discrimination against women in criminal proceedings. The references to traditional values in the present case thus show that the applicant indeed was a victim of discrimination against women during criminal proceedings as show the statistics.

[46] The applicant contends that her case is a blatant example of institutional discrimination against women in Artemidia. In regard to this claim, the Applicant points out that although Artemidia is a CoE member state and has ratified most of its conventions, it has signed but not ratified the Istanbul Convention. Furthermore, Artemidia has ratified all core UN human rights treaties but CEDAW. That completes the full picture of the State as a country that fails to ensure that women seeking the help of public authorities and courts will be treated fairly and with the minimum of international standards insofar systematically ignores the importance of these issues.

[47] In the light of the above considerations, the Applicant submits that the access to justice of women being subject to hate speech is more restricted compared to the access of men in a relevantly similar situation. This creates a discriminatory environment against women, where institutional discrimination is prevalent, which, most importantly, seriously impacted the way of which the Applicant's criminal complaint regarding hate speech has been dealt with.

#### **II.2.4 There is an absence of an objective and reasonable justification for discriminatory treatment**

[48] The difference in treatment is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable

relationship of proportionality between the means employed and the aim sought to be realised.<sup>60</sup> In respect to the advancement of the equality of the sexes, gender equality is today a major goal in the member States of the CoE and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention.<sup>61</sup> The same goal is being pursued by VC or UN.<sup>62</sup> References, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex.<sup>63</sup>

[49] In Artemidia, the domestic authorities tend to refer to the traditional values. This is reflected both in established practices (as showed in the above-mentioned NGO reports) and in the present case (II.2.3). The reference to the traditional values cannot objectively and reasonably justify discriminatory treatment.

### **II.2.5 There has been a violation of Art. 14 in conjunction with Art. 8 and Art. 1 of Protocol No. 12**

[50] In the light of the above considerations, the applicant submits that the State **has violated her right not to be discriminated guaranteed by Art. 14 in conjunction with Art. 8 and Art. 1 of Protocol No. 12.**

### **II.3 VIOLATION OF ART. 6**

[51] The Applicant claims that her right to a reasoned judgment under Art. 6 § 1 has been violated by the national courts failing to address the Applicant's decisive arguments and to provide the required rigour and care.

#### **II.3.1 The Applicant's claim falls within the ambit of Art. 6**

[52] The Applicant argues that in her case the five criteria set out by the Court's case-law<sup>64</sup> for the applicability of Art. 6 under its "civil" limb are fulfilled. The Applicant requested compensation in both proceedings and was a civil party to the criminal proceedings,

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<sup>60</sup> D. H. and Others v. Czech Republic, cited above, § 196; Larkos v. Cyprus, app. no. 29515/195, § 29; Stec and Others v. The United Kingdom, cited above, § 51.

<sup>61</sup> Schuler-Zraggen v. Switzerland, app. no. 14518/89, § 67.

<sup>62</sup> Council of Europe, Convention On Preventing And Combating Violence Against Women And Domestic Violence. Istanbul, 11. V. 2011; Council of Europe Gender Equality Strategy 2018 - 2023; CEDAW.

<sup>63</sup> Konstantin Markin v. Russia, app. no. 30078/06, § 127.

<sup>64</sup> Regner v. the Czech Republic, app. no. 35289/11, § 99; Károly Nagy v. Hungary, app. no. 56665/09, § 60; Näit-Liman v. Switzerland, app. no. 51357/07, § 106.



similarly as in *Perez v. France*.<sup>65</sup> Therefore, the Applicant has claimed a right which is of civil nature<sup>66</sup> and is recognised under domestic law, and both subsequent proceedings constituted a genuine and serious dispute, the result of which was directly decisive for the right in question since victims of crimes may seek compensation through criminal proceedings in Artemidia.<sup>67</sup> Consequently, Art. 6 § 1 is applicable in the present case.

### **II.3.2 The Applicant's right to a reasoned judgment has been violated**

[53] The Applicant's right to a reasoned judgment as guaranteed under Art. 6 § 1 has been violated in both judicial proceedings because the domestic courts failed to address decisive arguments of the Applicant.

[54] 'Fair hearing' under Art. 6 § 1 requires domestic courts to duly examine and consider the arguments of the parties to the proceedings.<sup>68</sup> The court must provide a specific and explicit reply to all the arguments which are decisive for the outcome of the proceedings<sup>69</sup> and the main pleas of the parties.<sup>70</sup> Furthermore, pleas concerning the rights and freedoms guaranteed by the Convention and its Protocols must always be examined with particular rigour and care.<sup>71</sup>

[55] In 1SP, the Applicant raised the argument that there was a link between Mr B's threatening e-mails, calls and messages, the subject-matter of the proceeding, and his social media post, for which separate proceedings were initiated. Having regard to the obvious temporal (events occurring in the same time period) and substantive (same purpose, namely harassing the Applicant, even using the same allegations) link, the social media post clearly formed a part of the cyber harassment against the Applicant.

[56] On the grounds of the "course of conduct" criterion set out for cyber harassment in Article 532 of the Criminal Code of Artemidia, defined as *a pattern of conduct composed of a series of acts over a period of time*, the raised argument was decisive. If the court had accepted the

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<sup>65</sup> *Perez v France*, app. no. 47287/99, § 74.

<sup>66</sup> *Georgiadis v. Greece*, app. no. 21522/93, § 35; *Shulepova v. Russia*, app. no. 34449/03, § 60.

<sup>67</sup> § 25 of the facts of the case

<sup>68</sup> *Donadze v Georgia*, app. no. 74644/01 § 35.

<sup>69</sup> *García Ruiz v. Spain*, app. no. 30544/96 § 29; *Ruiz Torija v. Spain*, app. no. 30544/96, § 30; *Hiro Balani v. Spain*, app. no. 18064/91 § 28; *Moreira Ferreira v. Portugal*, app. no. 19867/12, § 84.

<sup>70</sup> *Buzescu v Romania*, app. no. 61302/00, § 67.

<sup>71</sup> *Fabris v. France*, app. no. 16574/08, § 72; *Wagner and J.M.W.L. v. Luxembourg*, app. no. 76240/01, § 96.

argument, the considered “course of conduct” would have comprised the insulting social media post and its consequences. The resulting length and severity of Mr B’s conduct would have changed rapidly. Furthermore, Mr B’s purpose to harass the Applicant would have been more evident. This would have been reflected in the resolution of the case, the judgment and arguably even the decision whether to redress damages to the Applicant.

[57] Therefore, the Applicant’s argument was decisive and as such should have been addressed by the domestic court.

[58] Furthermore, when lodging an appeal with the first-instance court against the decision to discontinue the investigation in the 2SP, the Applicant argued that the way the case had been handled by the authorities was an example of the institutional discrimination of women in Artemidia. The court rejected her appeal and did not respond to her argument about the alleged discrimination. Therefore, the appellate court failed to answer her main plea and to provide the required particular rigour and care.

[59] This failure was not remedied by the Constitutional Court because the Applicant’s constitutional complaint was declared inadmissible and was thus reviewed solely on procedural grounds without giving any reasons for the decision.

### **II.3.3 There has been a violation of Art. 6**

[60] For the reasons that the domestic courts failed to address the Applicant’s decisive arguments and provide the required rigour and care, her right to fair trial under Art. 6 § 1 has been violated.

## **II.4 VIOLATION OF ART. 13**

[61] The Applicant argues that there is no “effective” remedy available for the violation of Art. 8 which is at stake in the present case due to the ineffectiveness of the available remedy and the systemic absence of any remedy for victims of harmful conduct not amounting to the intensity of crimes or misdemeanours.

#### **II.4.1 The Applicant’s claim falls within the ambit of Art. 13**

[62] In order to be entitled to a remedy for a violation of a Convention right, the victim’s claim that his or her right guaranteed by another Convention Article must be “arguable”,<sup>72</sup> i.e. supported by evidence demonstrating the grievance<sup>73</sup> or at least indicating a violation.<sup>74</sup> The remedy must be available and “effective“ in law as well as in practice, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the domestic authorities.<sup>75</sup> The “effectiveness” does not depend on the certainty of a favourable outcome, but the reasonable prospect of success.<sup>76</sup>

[63] The Applicant argues that the State has failed to fulfil its positive obligations to protect her reputation and psychological integrity under Art. 8. Based on the evidence indicating the violation of Art. 8 in chapter II.1., the Applicant has an “arguable complaint” under the Convention. She was, however, not able to obtain an “effective” remedy before the national authorities, as will be demonstrated.

#### **II.4.2 There is a systemic lack of remedies for victims of harmful conduct**

[64] In the 2SP, the Applicant was not granted an “effective” remedy for the violation of Art. 8. In its case-law,<sup>77</sup> the Court has acknowledged NGO reports as decisive for determining whether a remedy is effective. The reports referred to in point 44 of this submission demonstrate the systemic discrimination against women in access to remedies. In other words, if cases of violence against women are systemically not taken seriously, the prospect of obtaining a remedy in such cases is not reasonable.

[65] The present case is analogous to *Georgia v. Russia*, where the Court found a violation of Art. 13 because Georgian nationals had been systematically hindered in obtaining the available remedies.<sup>78</sup> In both cases, the remedies offered no reasonable prospect of success to persons based on their belonging to a certain group. In both cases, the claim was

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<sup>72</sup> *Leander v. Sweden*, app. no. 9248/81, § 77.

<sup>73</sup> *Sevgin and İnce v. Turkey*, app. no. 46262/99, § 87.

<sup>74</sup> *Hüsniye Tekin v. Turkey*, app. no. 50971/99, § 50.

<sup>75</sup> *Tanrikulu v. Turkey*, app. no. 23763/94, § 117; *Aksoy v. Turkey*, app. no. 21987/93, § 95.

<sup>76</sup> *Vučković and Others v. Serbia*, app. no. 17153/11, § 74.

<sup>77</sup> *Saadi v. Italy*, app. no. 37201/06, § 131; *NA. v. The United Kingdom*, app. no. 25904/07, § 119; *M.S.S. v. Belgium and Greece*, app. no. 30696/09, §§ 227 and 255; *Georgia v. Russia*, app. no. 13255/07, § 138.

<sup>78</sup> *Georgia v. Russia*, app. no. 13255/07, § 213.

substantiated by descriptions provided by the affected persons and NGO reports. Therefore, the available remedy obtainable through criminal proceedings in the Applicant's case cannot be considered effective in regard to the clearly unlawful comments by Mr B's followers.

[66] In regard to Mr B's post, the Applicant's case further reveals the systemic lack of remedies for victims of harmful conduct which are not considered to have reached the intensity of a crime or a misdemeanour such as defamatory or other civil wrongs.

[67] In Artemidia, criminal proceedings constitute the only means to obtain legal protection and compensation for non-pecuniary damage in respect of injurious conduct.

[68] In the 2SP, the domestic authorities had not found Mr B guilty. Even though the conduct of Mr B might have truly not reached the intensity of a crime or a misdemeanour, it still constitutes a harmful conduct that damages the reputation of the Applicant and causes her distresses, as demonstrated in chapter II.1.2. However, once a perpetrator is not found guilty in criminal proceedings, no redress is possible for such harmful acts. There are **no remedies obtainable through civil proceedings or any other means for victims of harmful conduct.**

#### **II.4.3 There has been a violation of Art. 13 in conjunction with Art. 8**

[69] Accordingly, there was no effective remedy available to the Applicant. Since she was hindered in obtaining the only available remedy and since the lack of remedies for victims of harmful conduct not amounting to crimes or misdemeanours is systemic, there has been a violation of Art. 13 in conjunction with Art. 8.

### **III CONCLUSION**

[70] For the reasons stated above, the Applicant respectfully requests the Court:

1. to declare the Application admissible,
2. to adjudge and declare that the State has violated the Applicant's rights under Art. 6, Art. 8, Art. 13, Art. 14 and Art. 1 of Protocol No. 12,
3. to award just satisfaction under Art. 41, in respect to the Applicant's non-pecuniary damages, and order the reimbursement of the full costs and expenses incurred.