



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, on 22 March 2023
Ref.no.: AGJ 2146/23

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI129/21

Applicant

Velerda Sopi

**Constitutional review of “actions and inactions” of the Basic Court in Gjilan,
the Basic Prosecutor’s Office in Gjilan, the Police Station in Gracanica
and the Basic Prosecutor’s Office in Prishtina**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Bajram Ljatifi, Deputy President
Selvete Gërxhaliu-Krasniqi, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge
Nexhmi Rexhepi, Judge and
Enver Peci, Judge

Applicant

1. The Referral was submitted by Velerda Sopi, the daughter of the deceased S.M., residing in Gjilan (hereinafter: the Applicant).

Subject matter

2. The Applicant challenges “*all actions and inactions*” of public authorities, as follows: (i) of the Basic Court in Gjilan; (ii) the Basic Prosecutor’s Office in Gjilan; (iii) the Police Station in Gracanica ; and (iv) the Basic Prosecutor’s Office in Prishtina, which actions or inactions, according to her, violated the right to life of her mother, namely the deceased S.M., guaranteed by (i) Article 25 [Right to Life] of the Constitution of the Republic of Kosovo (hereinafter the Constitution) in conjunction with Article 2 (Right to life) of the European Convention on Human Rights (hereinafter: ECHR), as well as (ii) Articles 18 (General obligations), 50 (Immediate response, prevention and protection) and 51 (Risk assessment and risk management) of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter: Istanbul Convention).

Legal basis

3. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

4. On 13 July 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
5. On 14 July 2021, the President of the Court by Decision [KSH. KI. 129/21] appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel, composed of judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
6. On 28 July 2021, the Court notified the Applicant about the registration of the Referral. On the same date, in the capacity of opposing parties, the Court notified the Basic Court in Gjilan, the Basic Prosecutor’s Office in Prishtina, the Basic Prosecutor’s Office in Gjilan and the Kosovo Police, giving them the opportunity to submit their comments and submit the relevant documentation regarding the Referral. In addition to the opportunity to provide comments, the Court specifically requested the Basic Court to submit copies of the following documents (i) the minutes of the hearing in relation to the case [2019:263376] taken at the Basic Court in Gjilan, on 25 November 2019; as well as (i) the case file [P. no. 1042/19] regarding the conduct of the criminal procedure against L.S.
7. On 28 July 2021, the Court notified the Ombudsperson as an interested party, giving him the opportunity to submit comments regarding the Referral.
8. On 3 August 2021, the Basic Court in Gjilan submitted the case file to the Court [P. no. 1042/2019] and the case file [C. no. 1002/2019], regarding the procedure of issuing a protection order.
9. On 11 August 2021, the Basic Prosecutor’s Office in Prishtina submitted to the Court its comments regarding the Referral, accompanied by the relevant documentation.
10. On 11 August 2021, the Basic Prosecutor’s Office in Gjilan submitted to the Court its comments regarding the Referral, accompanied by the relevant documentation.

11. On 11 August 2021, the Kosovo Police, namely the General Directorate of the Kosovo Police, submitted to the Court its comments regarding the Referral, accompanied by the relevant documentation.
12. On 19 August 2021, the Ombudsperson submitted to the Court the *Ex-Officio* Report of the Ombudsperson [No. 150/2021] of 27 April 2021, entitled “*State’s positive obligations for the right to life and protection from domestic violence*” (hereinafter: Report of the Ombudsperson).
13. On 6 May 2022, the Court notified the National Coordinator for Protection from Domestic Violence about the registration of the Referral, giving him the opportunity to submit comments regarding the Referral.
14. On 16 December 2022, Judge Enver Peci took the oath in front of the President, in which case his mandate at the Court began.
15. On 25 January 2023, the Court considered the report of the Judge Rapporteur and unanimously decided to postpone the further consideration of the Referral to the next session after it is completed with additional analysis.
16. On 7 March 2023, the Review Panel considered- the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral. On the same date, the Court decided, (i) to declare the Referral admissible; (ii) to hold that the Police of the Republic of Kosovo, namely, the Police Station in Gracanica and the State Prosecutor, respectively the Basic Prosecutor’s Office in Prishtina, have failed in their positive obligation to protect the life of S.M., guaranteed by paragraph 1 of Article 25 [Right to Life] of the Constitution and paragraph 1 of Article 2 (Right to life) of the European Convention on Human Rights; and (iii) to hold that the Police of the Republic of Kosovo, namely the Police Station in Gracanica and the State Prosecutor, namely the Basic Prosecutor’s Office in Prishtina, have failed to fulfill the obligations provided by paragraph 4 of Article 18 (General obligations), paragraph 1 of Article 50 (Immediate response, prevention and protection), paragraph 1 of Article 51 (Risk assessment and risk management) and paragraph 1 of Article 55 (*Ex parte* and *ex officio* proceedings) of the Convention on Preventing and Combating Violence against Women and Domestic Violence.

Summary of facts

17. The Court first points out that the Applicant is the daughter of S.M., who on 14 March 2021 was deprived of life with firearm by L.S [father of the Applicant], who at the scene then committed suicide. The Court refers to the deceased S.M. with the initials S.M., for the reason that the same were used in the Referral submitted to the Court, even though the deceased is presented in the official documentation with her husband’s last name, respectively the initials [S.S.]. In relation to the latter, it appears from the case file that the deceased, S.M. and L.S., respectively, had been in the process of dissolution of their marriage.

I. Summary of the facts preceding the murder of the deceased S.M.

(a) Summary of facts relevant to the protection order

18. On 10 November 2019, S.M. at the Police Station in Gjilan had reported the case of assault and continuous domestic violence by the deceased L.S.

19. On 12 November 2019, S.M. submitted a request for a Protection Order to the Basic Court in Gjilan against her husband L.S. In her request for a Protection Order, the deceased, S.M., in the capacity of the victim, among other things, emphasized that: *“Since the marriage we have had disagreements with [L.S.] and every time he has used physical and mental violence against me, but I have not reported him to the police because I thought he was getting better, but he has not improved and has always continued violence against me”*.
20. Likewise, the victim S.M., among others, stated that: *“[...] since that day that I returned to my ex-husband, every time I had problems where he used continuous psychological and systematic violence and threatened me with the words “you can separate from me, but I will not leave you alone and I will find the weak point that you have”, and I think that the weak point is my brother because I have only one brother and I was afraid that he will harm him”, and concluded that “I don't trust my husband [L.S.] because recently he has been very aggressive and has also been to the psychiatrist Dr. [A.L.] and it seem that he uses therapy”*.
21. On 12 November 2019, L.S. was interviewed as a suspect and then released in a regular procedure. On the same date, the prosecutor of the case requested the re-interview of the suspect L.S. in the presence of the defense lawyer, and consequently detained L.S. in duration of forty-eight (48) hours.
22. On 12 November 2019, the pre-trial judge at the Basic Court in Gjilan issued a verbal order to search the house of L.S. and accompanying facilities. On the same date, the Police Station in Gjilan submitted to the Basic Court in Gjilan the request [ref. no. 04/0106GJ-H-433/2019] for retroactive approval of the control of L.S. house and accompanying facilities.
23. On 13 November 2019, the Kosovo Police submitted the criminal report to the Basic Prosecutor's Office in Gjilan [PP. II. nr. 1835/19] against the suspect L.S.
24. On 13 November 2019, the Basic Prosecutor's Office in Gjilan rendered the Decision [PP. II. nr. 1835/19] for the initiation of the investigation against L.S. due to the suspicion of committing the criminal offenses established in paragraph 1 of Article 248 [Domestic Violence] and sub-paragraph 3.1 of article 184 [Assault] of the Criminal Code of the Republic of Kosovo (hereinafter: CCRK).
25. On 13 November 2019, the Basic Prosecutor's Office in Gjilan submitted to the Basic Court in Gjilan the request for the detention of suspect L.S. In order to ensure the safety of the victim S.M., a copy of the criminal report was sent to the Office for Victim Protection and Assistance (hereinafter: OVPA).
26. On an unspecified date, the daughters of S.M. submitted to OVPA a request for the termination of detention of L.S. The daughters of S.M. submitted the same request to the Basic Prosecutor's Office in Gjilan and to the relevant Basic Court.
27. On 13 November 2019, the Basic Prosecutor's Office in Gjilan at the Center for Social Work (hereinafter: CSW), submitted the request for the visit of S.M., in the capacity of the victim, and the drafting of a report with findings from this center.
28. On 13 November 2019, the Basic Prosecutor's Office in Gjilan received the statement of the victim S.M. in the presence of the representative of OVPA.

29. On 14 November 2019, the OVPA received the statement of S.M.'s son and forwarded it to the Basic Prosecutor's Office in Gjilan.
30. On 18 November 2019, the Basic Prosecutor's Office in Gjilan received the statement of suspect L.S. in the presence of his defense lawyer.
31. On 18 November 2019, the CPS in Gjilan held an advisory meeting with S.M. and compiled the Report [04-141986/19] for the criminal offenses "Domestic Violence" and "Assault", which report was sent by the prosecutor of the case to Basic Prosecutor's Office in Gjilan. The report compiled by the CSW describes S.M. relationship with her husband L.S. over the years, describing them as: *"initially good relations until the birth of the first daughter, where the disagreements arose due to jealousy on the part of the husband, there was physical and psychological violence, but the victim did not present the cases to the police until the last case, which happened on 10.11.2019."* The report states that the victim S.M. suffers from cancer, which she is treating and has initiated the lawsuit for divorce.
32. On 26 November 2019, the Basic Court in Gjilan issued the protection order [C. no. 1002/2019] to S.M. and her brother in duration of twelve (12) months, with the possibility of extension, but not more than twenty-four (24) months. In the Protection Order it was specified as follows:

"I. PROHIBITION OF HARASSMENT of the protected party, namely prohibition of disturbing, insulting, humiliating or contempt, not to attack or threaten to attack her either physically or mentally, to follow or block the movement, or not to contact directly or indirectly in any form with the protected party and the protective measure of the approach in the vicinity of 100 m from the residence of the protected party.

II. PROHIBITION of the approach of the victim of domestic violence [S.M] from Gjilan, as well as the protection measure prohibiting the approach of the children and the brother of the protected party [F.M], both at the children's school and in different parts of the city in the vicinity of 20 m wherever the protected party is located."
33. On 12 December 2019, the Basic Court in Gjilan by the Decision [P. no. 1042/19] approved the request of the Basic Prosecutor's Office in Gjilan and extended the measure of detention of L.S. for a duration of two (2) months, namely until 20 January 2020.
34. On 25 December 2019, the Basic Prosecutor's Office in Gjilan filed the Indictment [PP. II. 1835/19] against L.S. on the grounds of the suspicion that the latter had committed the criminal offenses provided for in paragraph 1 of Article 248 of the CCRK and subparagraph 3.1 of Article 184 of the CCRK. At the same time, the Basic Prosecutor's Office in Gjilan submitted a request for the extension of the measure of detention to the relevant Basic Court.
35. On 27 January 2020, the Basic Court in Gjilan by the Judgment [P. no. 1042/19], the defendant L.S. (i) was found guilty for committing the criminal offense "Domestic Violence" under paragraph 1 of Article 248 of the CCRK and the criminal offense "Assault" from subparagraph 3.1 of Article 184 of the CCRK; (ii) for committing the criminal offense of "Domestic Violence" he was sentenced to ninety (90) days of imprisonment and a fine of two hundred (200) euro, while for the commission of the criminal offense of "Assault" he was sentenced to thirty (30) days of imprisonment; (iii) the prison sentence was replaced by a fine in the amount of one thousand three hundred (1300) euros and in case of non-payment of this amount, this fine sentence would be converted into a prison sentence for a duration of seventy-five (75) days;

(iv) a 14 cm long razor knife was confiscated from L.S.; and (v) S.M., in the capacity of the victim, was instructed in a civil dispute for compensation.

36. On 26 November 2020, the order [C. no. 1002/2019] to S.M. and her brother expired.

(b) Summary of facts after expiration of protection order

37. On 3 March 2021, S.M.'s daughter, respectively the Applicant's sister, reported the "domestic violence" case at the Police Station in Gracanica .
38. In the Officer's report [2021-AT-086] of 3 March 2021 at the Police Station in Gracanica [submitted by the Basic Prosecutor's Office in Prishtina], it is noted that *"after receiving information [7:40 p.m.] about a family problem, around 8:15 p.m., the police patrol went to the scene (Uglare) and after contacting the investigation department, received the statements of the witness [M. S.] and the victim [S.M.]"*.
39. In the statement of S.M., received on 3 March 2021, it is emphasized, among other things, *"[...] that today, while I was at my daughter's apartment, where I live temporarily, my ex-husband [L.S], with whom I separated through the Court, came [...] in the presence of my daughter, hit me on the face and left the apartment [...] my ex-husband lives in Gjilan and he comes every day and follows me both to Fushë Kosovë and to work in Prishtina."* She also stated that her father [L.S.] hit S.M. in her apartment on the same day.
40. According to the documentation submitted by the Basic Prosecutor's Office in Prishtina, on 3 March 2021, it appears that the Police Station in Gracanica informed the prosecutor on duty about the case initiated as "domestic violence" and the actions taken by this police station regarding the case.
41. On 4 March 2021, L.S., in the capacity of a suspect, was invited to the Police Station in Gracanica and a statement was taken from him regarding the case.
42. In the Officer's report [2021-AT-086] of 4 March 2021, among other things, it is emphasized that *"on 03.03.2021, the suspect [L.S.] was interviewed in the capacity of a suspect, then the prosecutor on duty of domestic violence [H.K] was notified, who instructed that the suspect be released and the case continue in regular procedure."* According to the Report of the official record for the case [2021-AT-0086] of the State Prosecutor in the Basic Prosecutor's Office in Prishtina on 15 April 2021, submitted to the Ombudsperson, it is specified that: *"[S.M] was contacted by the police the next day on 04.03.2021 at 8.30 for an additional statement, whether there is a problem and to submit additional documents, the latter refused, emphasizing that it is not interested in continuing with the case against [L.S] as it was momentarily All these notices were also made on 04.03.2021 while the suspect [L.S] was at the Gracanica Police Station being interrogated, and was available to request a protection order as a preventive measure for a longer period of time."*
43. On 14 March 2021, S.M. was deprived of life with a firearm by her husband L.S., who then committed suicide.

II. Summary of facts after the murder of the deceased S.M.

(a) Actions taken by the Ombudsperson

44. On 19 March 2021, the Ombudsperson started the *ex officio* investigation regarding the death of the deceased S.M.
45. On 27 April 2021, the Ombudsperson published the *ex officio* Report and sent the latter to the Court. The summary of this Report will be reflected in the comments section of this Judgment.
46. As a result of the *ex officio* Report of the Ombudsperson, on 7 May 2021, the Kosovo Police started disciplinary proceedings against police officers.

(a) Actions taken by the Applicant

47. On 29 June 2021, the Applicant, based on articles 4 and 12 of the Law on Access to Public Documents (OG, number 13, 4 July 2019), submitted a request for access to public documents to (i) the Basic Prosecutor's Office in Prishtina; (ii) Basic Court in Gjilan; (iii) in OVPA; and (iv) in the Correctional Service of the Republic of Kosovo.
48. In her request for access to public documents submitted to the Basic Prosecutor's Office in Prishtina, the Applicant asked the latter for access (i) to all the documents of the case; and (ii) information regarding the actions taken by this Prosecutor's Office from 3 March 2021 to 14 March 2021.
49. In her request for access to public documents, submitted to the Basic Court in Gjilan, the Applicant requested access to the Decision of this Court for the assignment of the protection order; and (ii) Judgment [P. no. 1042/19] of 27 January 2020.
50. In her request for access to public documents, submitted to the Correctional Service, the Applicant requested access to *"the complete file of [L.S] who was serving his sentence, in particular the data regarding his psychiatric treatment."*
51. In her request for access to public documents submitted to the OVPA, the Applicant requested access to the case file with all the documents of the case, which according to her should include *"among others: 1. S.M. statement to the police, with no. 2019-CA-136. Request for protection order no. 13-11/19, of 12 November 2019. 3. The indictment filed by the competent prosecutor's office regarding this case."*
52. On 30 June 2021, the Correctional Service, by the relevant Decision, partially rejected the Applicant's request for access to public documents, informing her that this service does not have *"competence to decide on access to data on the psychiatric treatment of [L.S]"*. In relation to the latter, the Correctional Service informed the Applicant that: *"Access to data on psychiatric treatment is not within the competence of the Correctional Service, since health treatment within the Correctional Institutions of the Correctional Service is managed by the Health Department of prisons within of the Ministry of Health"* and instructed her that for this purpose she could submit a request to the Ministry of Justice and the Ministry of Health.

Applicant's allegations

53. The Applicant alleges that the Basic Court in Gjilan, the Basic Prosecutor's Office in Gjilan, the Police Station in Gračanica and the Basic Prosecutor's Office in Prishtina by their *"actions and inactions"* have violated the right to life of her mother, the deceased S.M. guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR as well as Articles 18, 50 and 51 of the Istanbul Convention.

I. Allegations regarding the admissibility of the Referral

(i) Status of a victim

54. The Applicant emphasizes that “*she can be a party to the Constitutional Court - as an indirect victim - due to the death of her mother.*” In this regard, the Applicant refers to the case of the Court [KI41/12](#), Applicant *Gëzim and Makfire Kastrati*, Judgment of 26 February 2013 and the case law of the European Court of Human Rights (hereinafter: ECtHR), namely the following cases: *Van Colle v. United Kingdom*, [no. 7678/09](#), Judgment of 13 November 2012, paragraph 86; *Tsalikidis and others v. Greece*, [no. 73974/14](#), Judgment of 16 November 2017, paragraph 64; and *Yasa v. Turkey*, [no. 22495/93](#), Judgment of 2 September 1998, paragraphs 61-62.

(ii) Time limit

55. The Applicant states that: “*in terms of time, [...] she may require the constitutional review of the (in)actions of the state authorities since 2019 onwards (beyond the four-month limit). This is because all these (in)actions should be seen as chain events, not as separate episodes.*” In this regard, the Applicant refers to the ECtHR case *Opuz v. Turkey*, [no. 33401/02](#), Judgment of 9 June 2009, paragraphs 108-113.

(iii) Exhaustion of legal remedies

56. Regarding the exhaustion of legal remedies, the Applicant claims that after the death of her mother S.M., she did not have any available effective legal remedy.
57. In this regard, the Applicant specifies that “*in principle, the possibility of compensation for the death of a person as a result of the state’s failure to protect the right to life represents an adequate and sufficient legal remedy [...] However, in the Kosovo legal order, such an opportunity does not exist. Even if it existed, the fact that the state authorities have not conducted any criminal, disciplinary, or other procedure against the responsible officials, means that this legal remedy would have no chance of success, so it would not be effective [...]. In any case, the problems with the (in)action of the authorities that are addressed in this referral are related to chain and institutional problems in the case in question that could not be addressed by any other legal remedies in Kosovo [...] On the other hand, the filing of criminal reports or initiation of other procedures by the victim’s relatives is not an adequate legal remedy either. In cases that may invoke the responsibility of the state for the death of individuals, the authorities must act in this direction according to their official duties, without waiting for actions from the relatives of the victim (ibid., paragraph 43). For other potential legal remedies, it is not up to the Applicant to argue that the latter would be effective and adequate, since the burden of proof does not fall on her) [...].*”
58. In support of this allegation, the Applicant refers to the cases of the ECtHR: *E. and Others v. the United Kingdom*, [no. 33218/96](#), Judgment of 26 November 2002, paragraph 110; *Branko Tomašić and Others v. Croatia*, [no. 46598/06 74448/12](#), Judgment of 15 January 2009, paras. 39-45; and *Akdivar v. Turkey*, [no. 21893/93](#), Judgment of 16 September 1996.

II. Allegations regarding merits of the Referral

(i) Allegations regarding Article 25 of the Constitution in conjunction with Article 2 of the ECHR

59. The Applicant initially supports her allegation of violation of the right to life, guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR, in the ECtHR cases: *Armani Da Silva v. United Kingdom*, [no. 5878/08](#), Judgment of 30 March 2016, paragraph 229; *Center for Legal Resources on behalf of Valentin Campeanu v. Romania*, [no. 47848/08](#), Judgment of 17 July 2014, paragraph 130; *Kurt v. Austria*, [no. 62903/15](#), Judgment of 15 June 2021; *Branko Tomašić and others v. Croatia*, cited above, paragraph 50; *Paul and Audrey Edwards v United Kingdom*, [no. 46477/99](#), Judgment of 14 March 2002, paragraph 55; *Mastromatteo v. Italy*, [no. 37703/97](#), Judgment of 24 October 2002, paragraph 68; and *Osman v. United Kingdom*, [no. 23452/94](#), Judgment of 28 October 1998, paragraph 116.
60. In her referral, the Applicant states that the state authorities were informed about the ongoing domestic violence against the deceased S.M. According to her, in November 2019, for the first time L.S. was reported to the police. The Applicant specifies below that: *“The state authorities became aware of the dangerousness of [L.S.] as a perpetrator of domestic violence, therefore a protection order was issued against him as well as, in parallel, a criminal procedure was conducted for the offenses of assault and domestic violence. Precisely because of his perceived dangerousness, [L.S.] was detained for 69 days and ultimately sentenced (although not sufficiently, as will be argued below).”*
61. Furthermore, the Applicant considers that: *“the state authorities have not taken everything that (reasonably) should have been taken by them to avoid danger to life of [S.M.]”*.
62. To support the aforementioned allegation, firstly, the Applicant states that the state authorities failed to address the problems of L.S.’s mental nature, since they were informed by the deceased S.M., *“[...] except that L.S. was treated privately by a psychiatrist and was visited by the same psychiatrist in the Detention Center. The prosecution has never requested a psychiatric examination of L.S., despite all the indications of mental health problems, which were the source of his violent behavior. Nor was the measure of psychosocial treatment within the procedure for issuing the protective order ever taken into consideration by the authorities. L.S. was only punished with fines and there was never an adequate assessment of whether he would pose a risk to the victim in the future.”*
63. Secondly, the Applicant claims that fine against L.S. in 2019 for two criminal offenses *“has created a climate of impunity as well as weakened the victim’s trust in justice (for this reason, she later neither reported the violations of the protection order by L.S. nor the violence, which was reported again in 2021 by the children of the deceased).”*
64. Thirdly, the Applicant specifies that *“in the last reported case of domestic violence, on 3 March 2021, the state authorities did not take adequate measures to protect the victim, ignoring their legal obligations.”* According to her, the only actions of the authorities regarding the case of 3 March 2021, were the initiation of the criminal case, the interview of the witness and the perpetrator. The Applicant further states that no other action was taken between 4 and 14 March 2021. She supports this allegation in the press release of the Basic Prosecutor’s Office in Prishtina, issued two (2) days after the tragic event and in the Report of the Ombudsperson, where it is established that *“there was a lack of coordination of actions between the authorities, while the responsible officials, in violation of their*

obligations, had not notified the advocate of the victims who must be present with the victim, and no plan had been drawn up for the victim's safety".

65. Further, the Applicant states that, *"the fact that the deceased [S.M.], as stated in the press release of the Prosecutor's Office, "does not want to continue with the case" should not be used as a justification for the prosecution's refusal to pursue the criminal offense. The criminal offense "domestic violence" provided by Article 248 of the Criminal Code 06/L-074 of the Republic of Kosovo, is a criminal offense that is prosecuted ex officio and the prosecutor of the case did not dare to rely on the victim's statements. This is even foreseen by what is considered as "one of the most important links in the legal infrastructure for protection from violence in the family". In this regard, the Applicant refers to the "Standard Operation Procedures for Protection from Domestic Violence in Kosovo", namely refers to the content of this Document, citing that, "the prosecution of criminal offenses is important for the security of Kosovo. The prosecution of criminal offenses is a matter between the state and the perpetrator/defendant. The victim is a witness of criminal offense."*
66. Further, the Applicant again refers to the Document of "Standard Operation Procedures for Protection from Domestic Violence in Kosovo" citing that, *"once informed of the case, the Prosecutor shall act with urgency and priority taking into account the specificities of the case. From this point forward prosecutor is obliged to oversee the work of the police, mainly the domestic violence units on steps undertaken to collect evidence. Prosecutor is obliged to ensure that during the victim's interview, all persons envisaged by the law are present"* Following this, the Applicant claims that: *"These requirements arising from the Standard Operation Procedures were not respected by the Prosecutor's Office in this present case."*
67. Finally, the Applicant specifies that *"as a result of the negligence and unprofessionalism of the authorities, life of [S.M] ended tragically. The state has failed to protect her right to life, violating the constitutional obligations stipulated by Article 25 of the Constitution in conjunction with Article 2 of the ECHR."*

(ii) Allegations regarding Articles 50 and 51 of the Istanbul Convention

68. Regarding the violation of Article 50 of the Istanbul Convention, the Applicant alleges that the responsible authorities have not taken measures *"immediately and appropriately [to] provide adequate and immediate protection to the victim of domestic violence"*.
69. Regarding the violation of Article 51 of this Convention, the Applicant alleges that the risk assessment by the responsible authorities was inadequate and despite the indications of the dangerousness of L.S. towards the victim, the case was treated *"without any haste"*.
70. Finally, the Applicant requests the Court to:
 - (i) declare the Referral admissible;
 - (ii) to hold that the cumulative (in)actions of the state authorities [the Basic Court in Gjilan, the Basic Prosecutor's Office in Gjilan, the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina] have violated the right to life to S.M, guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR; and
 - (iii) to hold that the cumulative (in)actions of the state authorities were not in compliance with Articles 50 and 51 of the Convention on the Prevention and Combating of Violence.

Comments of opposing parties

(i) Comments of the Basic Court in Gjilan

71. On 3 August 2021, the Court accepted the case file from the Basic Court [P. no. 1042/2019] regarding the procedure conducted against L.S. and the case file [C. no. 1002/2019] regarding the procedure of issuing the protection order.
72. The Basic Court did not offer any comments regarding the Applicant's request, but attached the following documentation to the aforementioned case file: (i) the Criminal Report of the Police Station in Gjilan for the criminal offenses "Domestic Violence" and "Assault" of 12 November 2019; (ii) Decision [PP. I. No. 1005437055] of the Basic Prosecutor's Office in Gjilan on the detention of the arrested person L.S., of 12 November 2019; (iii) Receipt from the Police Station in Gjilan on the confiscation of property (brown metal razor blade 5 cm) of 12 November 2019; (iv) Certification [no. 2019-CA-1336] of the Police Station in Gjilan for the house searched on 12 November 2019; (v) Request [no. 04/0106GJ-H-433/2019] of the Police Station in Gjilan for the Retroactive Judicial Approval of the Control of the House and accompanying facilities of the suspect L.S. of 12 November 2019; (vi) Decision [PP. II. 1835/19] of the Basic Prosecutor's Office in Gjilan for the beginning of the investigations of 13 November 2019; (vii) The request [PP. II. no. 1835/2019] of the Basic Prosecutor's Office in Gjilan for imposing detention on L.S. of 13 November 2019; (viii) Minutes [PP. II. 1835] of the Basic Prosecutor's Office in Gjilan on the questioning of the defendant of 18 November 2019; (ix) Minutes [PP. II. 1835] of the Basic Prosecutor's Office in Gjilan on the questioning of the victim as witness S.M. of 13 November 2019; (x) The submission [PP. II. No. 1835/2019] of the victims' advocate for the victim S.M. of 13 November 2019; (xi) The request of the victim S.M. for the issuance of the Protection Order of 12 November 2019; (xii) The submission of the advocate of the victims for the son of the victim S.M., with his statement of 14 November 2021; (xiii) Minutes [PPr. no. 206/2019] of the hearing for extension of detention of 14 November 2019; (xiv) Decision [PPr. II. 206/2019] on imposing the detention of 14 November 2019; (xv) The appeal of the defense counsel of the defendant L.S., against the Decision [PPr. II. 206/2019] on imposition of detention of 14 November 2019; (xvi) Decision [PN. DP. no. 1291/2019] of the Court of Appeals of Kosovo rejecting the appeal of the defense counsel of the defendant L.S., of 22 November 2019; (xvii) The indictment [PP. II. no. 1835/2019] of the Basic Prosecutor's Office in Gjilan, against the defendant L.S., of 25 November 2019; (xviii) Judgment [P. no. 1042/19] of the Basic Court, against the defendant L.S., of 27 January 2020; (xviii) Minutes [C. no. 1002/19] of the Preparatory Session of the Basic Court of 25 November 2019; and (xix) Decision [C. no. 1002/2019] of the Basic Court on issuing the protection order of 26 November 2019.

(ii) Comments of the Basic Prosecutor's Office in Prishtina

73. On 11 August 2021, the Court received from the Basic Prosecutor's Office in Prishtina, General Department, Domestic Violence Unit, the relevant comments accompanied by the documentation as follows: (i) Official note for case 2021-AT-086 by the prosecutor of case; (ii) Follow-up Act [PPN/II. No. 666/21] of the General Department addressed to the Department for Serious Crimes within the Basic Prosecutor's Office in Prishtina, together with the Special Report, received at the Prosecutor's Office on 11 May 2021; (iii) The hand-over form [2021-AT-86] from the Police Station in Gračanica to KPI [Kosovo Police Inspectorate]; (iv) The death certificate of the deceased S.M., issued by the Ministry of Internal Affairs; (v) The letter of the Ombudsperson addressed to the Basic Prosecutor's Office in Prishtina

for the case [A. no. 150/2021] initiated *Ex-officio* against the Kosovo Police, of 1 April 2021; and (vi) The response of the Basic Prosecutor's Office in Prishtina to the letter of the Ombudsperson with reference [A. no. 150/2021, of. 01.04.2021].

74. The Basic Prosecutor's Office in Prishtina in the relevant comments first offered the procedural history of the case of the deceased S.M., and emphasized that the deceased S.M. did not have an active protection order because it had only lasted until 26 November 2020.
75. The Basic Prosecutor's Office in Prishtina emphasized that on the day the murder took place, the case of S.M. was being handled by the justice bodies and on the day of reporting the case, the Prosecutor's Office was in the phase of gathering the necessary evidence and information for the clarification of factual circumstances that were not known to the relevant bodies.
76. The Basic Prosecutor's Office in Prishtina further specifies that despite the fact that the deceased S.M. stated that she is not interested in proceeding with the criminal prosecution, this has not stopped the Prosecutor's Office from undertaking other investigative actions in order to prove the criminal offense and the factual state and in the absence of information and the refusal of the injured party for further cooperation, has requested additional information to verify the reason for the refusal of the deceased to proceed with the case.
77. The Basic Prosecutor's Office in Prishtina concludes its comments by emphasizing that *"the prosecutor of the case, who deals only with cases of domestic violence, has taken, according to his powers and authorizations, all the necessary investigative and legal actions to handle this case and, as always, he is in defense and at the service of ensuring the life and rights of any kind of constitutional category of society, in particular the most sensitive cases of domestic violence, which are the most difficult and sensitive cases to handle with because they affect the foundations of the family and society every time"*.

(iii) Comments of the Basic Prosecutor's Office in Gjilan

78. On 11 August 2021, the Court accepted from the Basic Prosecutor's Office in Gjilan the comments related to the referral, accompanied by relevant documentation.
79. The Basic Prosecutor's Office in Gjilan in the relevant comments first offered the procedural background of the case of the deceased S.M., adding that it acted in full accordance with the legal provisions and that under no circumstances did it neglect the case. According to the Basic Prosecutor's Office in Gjilan (i) the investigation was completed within a reasonable time frame; (ii) the perpetrator has not shown signs of any mental health disorder; (iii) the victim had engaged a lawyer; (iv) the defendant was stopped and then detained; (v) the OVPA in Gjilan has been notified; (vi) the protective order has been issued for a duration of twelve (12) months, during which period no violation of the order has been reported; as well as (vii) the CSW in Gjilan was also notified, which conducted counseling sessions with the deceased S.M.

(iv) Comments of the Police of Kosovo

80. On 11 August 2020, the Court accepted the comments of the General Directorate of the Kosovo Police regarding the referral, accompanied by the Report [DDO-04/1-229/2021] addressed to the National Coordinator Against Domestic Violence regarding *"recommendations for the Police of Kosovo from the Ombudsperson*

Report, of 18 May 2021” (hereinafter: Report of the Kosovo Police on the Ombudsperson's recommendations).

81. The Kosovo Police in the relevant comments states that in response to the recommendations from the Ombudsperson's report, it immediately established a professional committee (ad-hoc) to assess the actions of responsible police officers in relation to the domestic violence case presented on 3 March 2021 at the Gračanica Police Station and if they had acted in accordance with the Standard Operation Procedures for Protection from Domestic Violence, as well as Law no. 03/L-182 on Protection from Domestic Violence (OG, number 76, 10 August 2010). Likewise, the Kosovo Police informs the Court that on 12 May 2021, it has initiated and conducted an administrative-disciplinary (investigative) procedure against two (2) police officers from the Directorate of Disciplinary Standards of the Kosovo Police and is awaiting a decision by the Internal Disciplinary Commission of the Kosovo Police.
82. The Kosovo Police in its Report on the recommendations of the Ombudsperson states that:

On 07.05.2021, the professional committee (ad-hoc) was established to evaluate the actions of responsible police officers regarding the case of domestic violence, filed on 3 March 2021 at the Gračanica Police Station.

The professional committee (ad-hoc) on 11.05.2021 visited the police station in Gračanica to analyze all the case file and the actions of the police officers. The professional committee in the report compiled on 12.05.2021 has found some actions that were not taken by the responsible police officers of the Gračanica police station as follows:

- The case was not handled by the domestic violence investigator (the official handling these cases was on annual leave), but the case was handled by another investigator;*
- The investigator has not notified other institutions such as the center for social work and the advocate of victims;*
- The basic forms have not been completed, the completion of these forms is an obligation of the Kosovo Police, according to the Standard Operation Procedures for protection from domestic violence. This basic form of data must be confidential, it must be in service only for the actors in the procedure, that is, when the victim is sent to a shelter or is sent to other institutions for any service, while in cases where the victim does not need shelter or other services, the original form is kept in the case file;*
- The risk assessment for the case has not been carried out and the risk assessment form has not been completed;*
- The checklist has not been completed, which is required according to the standard procedure of the national action and which helps the Kosovo Police not to make any possible mistakes during the handling of cases of domestic violence;*
- It has not been recorded whether the victim was advised about the safety plan, which is very important for the victim of domestic violence.*

Comments of the Ombudsperson and ex officio Report

83. On 19 August 2021, the Court accepted from the Ombudsperson his accompanying letter regarding the referral, accompanied by his “*Ex-Officio Report no. 150/21 with regard to state's positive obligations for the right to life and protection from domestic violence*”, published on 27 April 2021.

84. In his follow-up letter, the Ombudsperson notified the Court that regarding this issue on 19 March 2021, he initiated *Ex-Officio* case no. 150/2021 and on 27 April 2021 published his Report with recommendations for the relevant institutions, namely the Kosovo Police, the Judicial Council, the Prosecutorial Council and the OVPA.

Ex-Officio Report of the Ombudsperson “with regard to state’s positive obligations for the right to life and protection from domestic violence”

85. The Ombudsperson’s report contains: (i) the purpose of the report; (ii) the competence of the Ombudsperson defined by the Constitution and the Law on the Ombudsperson (OG, number 16, 26 June 2015), to initiate such an investigation; (iii) Actions of the Ombudsperson Institution; (iv) The legal basis, which contains relevant provisions of the Constitution, International Conventions, legislation in force in the Republic of Kosovo, the National Strategy for Protection from Domestic Violence and the Action Plan [2016-2020]; (v) Legal Analysis; (vi) Findings; and (vii) Recommendations.
86. In the Report it is noted that on 25 March 2021, the representative of the Ombudsperson talked with the psychiatrist in charge of the Psychiatric Department of the General Hospital in Gjilan, for which the victim S.M. stated that she had treated her husband L.S. In front of the representative of the Ombudsperson, the psychiatrist stated that she treated the person L.S. some years ago in the specialist ambulance of the Psychiatric Department and prescribed the same therapy. Furthermore, the psychiatrist clarified that at the end of 2019, she had visited L.S. again, but this time at the Detention Center in Gjilan, after he was detained because he had exercised physical and mental violence against S.M. After that, the representative of the Ombudsperson spoke with the responsible officials of the Mental Health Center in Gjilan, from whom he requested information on whether L.S. treated and received an answer that L.S. was never a patient of this center.
87. Further, the Ombudsperson’s Report enumerates the constitutional and legal basis for the protection of the right to life and the state's obligations regarding the guarantee of this right and the prevention and combating of domestic violence, emphasizing the relevant provisions of the Constitution, ECHR, the Istanbul Convention, the Convention on the Elimination of All Forms of Discrimination against Women, Law No. 03/L-182 on Protection from Domestic Violence (hereinafter: Law on Protection from Domestic Violence), Law No. 02/L-17 on Social and Family Services (OG, number 12, 1 May 2007) (hereinafter: Law on Social and Family Services), Law No. 05/L-036 on Crime Victim Compensation (OG, number 17, 30 June 2015) (hereinafter: Law on Crime Victim Compensation), Administrative Instruction (GRK) – No. 01/2017 on the Method of Compensation including the Calculation of Compensation for Multiple Damages (hereinafter: Administrative Instruction for the Method and Calculation of Compensation for Multiple Damages), Administrative Instruction No. 12/2012 on Determining the Place and Way of Psychosocial Treatment of Perpetrators of Domestic Violence (Administrative Instruction Determining the Place for Psychosocial Treatment of Perpetrators of Domestic Violence), as well as the National Strategy of the Republic of Kosovo for Protection from Domestic Violence and Action Plan 2016-2020 (hereinafter: Strategy for Protection from Domestic Violence).
88. In his report, the Ombudsperson, regarding the application of the relevant constitutional provisions in the present case, claims that: *“as a result of negligence or lack of professionalism of relevant authorities, firstly when the victim S.M. had reported the case in Gjilan as well as secondly when the daughter of the victim*

S.M., had reported the case to the PS in Gracanica, the victim had faced authorities' negligence or lack of professionalism, therefore this event ended with fatality."

89. Also, the Ombudsperson's Report states that the Standard Operation Procedures for Protection from Domestic Violence, a document which defines the checklist of actions to be taken when dealing with cases of domestic violence, according to the Ombudsperson, was neglected by the responsible officials at the Police Station in Gracanica, who, during the handling of the case of the deceased S.M., did not notify the CSW, the victim's advocate or the victim's legal representative and did not compile the report.
90. In his report, the Ombudsperson states that in the present case (i) the Standard Operation Procedures for Protection from Domestic Violence were not respected; (ii) the responsible authorities did not sufficiently assess the potential risk of the case even though the victim had declared the continuation of L.S. actions and had given indications of mental health problems; (iii) there was a lack of coordination of actions between the authorities; (iv) the police officers at the Police Station in Gracanica did not notify the victim's advocate and did not compile any safety plan for the victim; and (v) despite the large number of legal acts that refer to protection from domestic violence, the international instruments that are applicable in our country, as well as a multitude of other acts and continuous statements of government officials to combat domestic violence, it seems that the legitimate expectations have not been met in this case.
91. In his report, the Ombudsperson issued the following Recommendations:
 1. *To Kosovo Police he recommended:*
 - (i) *To establish a professional commission (ad hoc) to assess actions of responsible police officers regarding the case of domestic violence filed on 3 March 2021, at Gracanica Police Station, if the same had acted pursuant to Standard Operating Procedures for Protection from Domestic Violence, as well as Law no. 03 / L-182 on Protection against Domestic Violence.;*
 - (ii) *To request from all responsible officials in Police Stations to act in accordance with standard operating procedures, when dealing with reporting of domestic violence case.;*
 - (iii) *To require from all police stations that in cases of reporting domestic violence, responsible officials act in accordance with Article 24, paragraph 4, of Law no. 03 / L-182 on Protection against Domestic Violence.*
 2. *Kosovo Judicial Council and Kosovo Prosecutorail Council recommended to:*
 - (i) *"To organize special training modules with assistance of Academy of Justice for judges and prosecutors in order to assess the risk of such cases and measures to be taken to prevent domestic violence.."*
 - (ii) *Judicial Council to requests from all judges that in all cases when taking decision for issuing protection order, to act in accordance with Article 17, paragraph 2, of Law no. 03 / L-182 on Protection against Domestic Violence."*
 3. *To Victim Protection and Assistance Office: (VPAO) recommended that "To increase professional capacity of victims' Protectors through adequate trainings, so that in the course of accomplishment of their duties be positioned to understand needs of victims of domestic violence and treatment of responsible parties, so that situations of domestic violence do not recur."*

92. At the end of the Ombudsperson's Report, the latter based on paragraph 3 of Article 132 of the Constitution and Article 28 of the Law on the Ombudsperson, informed the aforementioned institutions regarding their obligation to submit answers and relevant information in relation to the actions undertaken arising from the recommendations of this Report.

Relevant constitutional and legal provisions

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 22

[Direct Applicability of International Agreements and Instruments]

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- (1) Universal Declaration of Human Rights;*
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;*
- (3) International Covenant on Civil and Political Rights and its Protocols;*
- (4) Council of Europe Framework Convention for the Protection of National Minorities;*
- (5) Convention on the Elimination of All Forms of Racial Discrimination;*
- (6) Convention on the Elimination of All Forms of Discrimination Against Women;*
- (7) Convention on the Rights of the Child;*
- (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.*

Amendment no. 26 [approved by the Assembly of the Republic of Kosovo on 25 September 2020, published in the Official Gazette of the Republic of Kosovo on 30 September 2020].

In article 22, after paragraph (8) the paragraph (9) shall be added , as follows:

- (9)) Council of Europe Convention on preventing and combating violence against women and domestic violence.*

Article 25

[Right to Life]

- 1. Every individual enjoys the right to life.*
- 2. Capital punishment is forbidden.*

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 2

(Right to life)

- 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
[...]

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

[adopted in 1979 by the United Nations Assembly]

**Article 1
(no title)**

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

**Article 2
(no title)**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

[...]

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination [...]

COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

[adopted on 7 April 2011 by the Council of Europe and included in the list of Conventions and international legal instruments in Article 22 of the Constitution through Amendment no. 26, of 28 September 2020]

**Chapter IV
Protection and support**

**Article 18
General obligations**

1 Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.

2 Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.

3 Parties shall ensure that measures taken pursuant to this chapter shall:: – be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim; – be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment; –

aim at avoiding secondary victimisation; – aim at the empowerment and economic independence of women victims of violence; – allow, where appropriate, for a range of protection and support services to be located on the same premises; – address the specific needs of vulnerable persons, including child victims, and be made available to them.

4 The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.

5 Parties shall take the appropriate measures to provide consular and other protection and support to their nationals and other victims entitled to such protection in accordance with their obligations under international law.

[...]

Article 29 **Civil lawsuits and remedies**

1. Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.

2 Parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.

Article 30 **Compensation**

1. Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.

2 Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.

3 Measures taken pursuant to paragraph 2 shall ensure the granting of compensation within a reasonable time.

Article 50 **(Immediate response, prevention and protection)**

1. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.

2 Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

Article 51 **Risk assessment and risk management**

1. Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide coordinated safety and support.

2 Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.

Article 55

Ex parte and ex officio proceedings

1. Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.

2 Parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and nongovernmental organisations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention.

Article 56

Measures of protection

1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

a providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;

b ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;

c informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;

d enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;

e providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;

f ensuring that measures may be adopted to protect the privacy and the image of the victim;

g ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;

h providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;

i enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of

the alleged perpetrator, notably through the use of appropriate communication technologies, where available.

2. A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.

Chapter IX – Monitoring mechanism

Article 66

Group of experts on action against violence against women and domestic violence

1 The Group of experts on action against violence against women and domestic violence (hereinafter referred to as “GREVIO”) shall monitor the implementation of this Convention by the Parties.

2 GREVIO shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as multidisciplinary expertise. Its members shall be elected by the Committee of the Parties from among candidates nominated by the Parties for a term of office of four years, renewable once, and chosen from among nationals of the Parties.

[...]

CRIMINAL CODE 06/L-074 OF THE REPUBLIC OF KOSOVO [PUBLISHED IN THE OFFICIAL GAZETTE ON 14 JANUARY 2019]

Article 248

Domestic Violence

1. Whoever commits physical, psychological or economic violence or mistreatment with the intent to violate the dignity of another person within a domestic relationship shall be punished by fine and imprisonment of up to three (3) years.

2. When any act in the Criminal Code is committed within a domestic relationship, it will be considered an aggravating circumstance.

3. . Every member of the family who exerts physical, psychological, sexual or economic violence or mistreatment against another member of his/her family, shall be punished by a fine and imprisonment of up to three (3) years.

3.1. ““Domestic relationship” for the purpose of this provision is in accordance with the definition in Article 113 of this Code.

3.2. domestic violence, physical, psychological, sexual or economic violence, for purposes of this Code shall be the same as defined in provision of Article 2 subparagraph 1.2. of the Law no. 03/L-182 Law on Protection against Domestic Violence.

LAW NO. 03/L-182 ON PROTECTION AGAINST DOMESTIC VIOLENCE [PUBLISHED IN THE OFFICIAL GAZETTE ON 10 AUGUST 2010]

Article 1

Purpose of the Law

1. This Law aims to prevent domestic violence, in all its forms, through appropriate legal measures, of the family members, that are victims of the

domestic violence, by paying special attention to the children, elders and disabled persons.

2. This Law, also aims, treatment for perpetrators of domestic violence and mitigation of consequences.

Article 2

Definitions

1.2. Domestic Violence - one or more intentional acts or omissions when committed by a person against another person with whom he or she is or has been in a domestic relationship, but not limited to:

[...]

1.3. Protected Party - a person subjected to domestic violence and his/her subordinate for whose benefit a protection order, an emergency protection order or temporary emergency order is sought.

[...]

1.5. Perpetrator - a person who is has committed an act or acts of domestic violence and against whom a protection order, an emergency protection or temporary protection order is sought.

1.6. Victim - a person who was subjected to domestic violence.

[...]

1.8. Protection of victims - the official authorized person, who directly protects the damaged party since the first contact with competent protection authorities, advises, initiates procedures for imposing protection measures, is obliged to participate in all judicial sessions, to monitor the progress of the judicial process.

1.9. Protection order - an order issued by a court decision providing protection measures for the victim.

[...]

Article 4

Protection Measure of Psycho-Social Treatment

1. The protection measure for psycho-social treatment may be issued to a perpetrator of domestic violence in combination with any other preventing measure with the aim of eluding violent behaviors of the perpetrator or if there is a risk to repeat the domestic violence .

2. The measure from paragraph 1 of this Article continues until the causes on basis of which it was issued, but may not continue more than six months.

3. Ministry responsible for Labor and Social Welfare in cooperation with the Ministry responsible for Health and relevant institutions prepare and propose for approval to the Government the issuance of a sub-legal act with which the way and location of implementation of psycho-social treatment is determined.

Article 13

Petitions for Protection Orders or Emergency Protection Orders

1. A petition for protection order may be submitted by:

1.1. the protected party;

1.2. an authorized representative of the protected party;

1.3. a victim advocate, upon consent of the protected party;

1.4. representative social welfare centre in the municipality where the protected party permanently or temporary resides in cases where the victim is minor.

[...]

Article 17

Issuance of Protection Order and Emergency Protection Order

1. *The competent court shall issue a protection order or emergency protection order, where it suspects that the perpetrator shall unavoidably risk the health, safety or wellbeing of the protected party and the person who has a domestic relationship with the protected party and who is to be protected by the protection order or emergency protection order.*
2. *A protection order or emergency protection order is executed immediately with a respective decision, issued by the competent court and shall be sent immediately to the domestic violence perpetrator, Kosovo Police, social welfare centers, as well as other parties in procedure.*
3. *Upon expiry of a protection order or emergency protection order, all imposed limitations shall cease to be effective.*

Article 18

Contents of a Protection Order and Emergency Protection Order

1. *In the protection order shall be stated:*
 - 1.1. *the protection measure ordered by the court;*
 - 1.2. *non-enforcement of the protective order constitute criminal offence;*
 - 1.3. *a notification on the right to appeal;*
 - 1.4. *a notification that the perpetrator may be assisted by authorized representative.*
- [...]

Article 20

Modification, Termination and Extension of Protection Order

1. *When the circumstances have changed, the protected party or the perpetrator may submit a petition to the court for the modification or termination of a protection order, where the court may decide that the protection order:*
 - 1.1. *to remain in force;*
 - 1.2. *to be modified;*
 - 1.3. *to be terminated, where the Court assesses that all causes on basis of which the protection order was issued have ceased to exist.*
2. *The submission of a petition for the modification or termination of a protection order shall not suspend the execution of the protection order.*
3. *Within fifteen (15) days prior to the expiration of a protection order, the protected party or his/her authorized representative may submit a petition for the extension of the protection order. If no petition for extension is submitted, the protection order will terminate immediately on the day of expiration.*
4. *Upon receipt of a petition for the extension of a protection order, the court may:*
 - 4.1. *terminate the protection order on its date of expiration; or*
 - 4.2. *order the extension of the protection order, where the causes on basis of which the protection order was issued have ceased to exist.*

Article 22

Temporary Emergency Protection Order

1. *Outside working hours of courts, a petition for a temporary emergency protection order may be submitted to Kosovo Police by:*
 - 1.1 *the protected party;*

- 1.2. *the authorized representative or victims advocate;*
- 1.3. *a person with whom the protector party has a domestic relationship;*
- 1.4. *a representative from the Center for Social Work where the protected party permanently or temporarily resides;*
- 1.5. *a person with direct knowledge of an act or more acts of domestic violence against the petitioner.*
2. *The duration of the temporary emergency protection shall expire on the end of the next day that the court is in operation.*
3. *The Head of the Regional Kosovo Police Unit against Domestic Violence, may issue a temporary emergency protection order and order one or more of the measures referred to Articles 5, 6, 7 and 10 of this Law, if he or she determines that:*
 - 3.1. *there are grounds to believe that the perpetrator has committed or threatened to commit an act of domestic violence;*
 - 3.2. *the perpetrator poses an immediate or imminent threat to the safety, health or well-being of the protected party or a person who has a domestic relationship with the protected party and who is to be protected by the protection order; and*
 - 3.3. *the issuance of a temporary emergency protection order is necessary to protect the safety, health or well-being of the protected party or a person who has a domestic relationship with the protected party and who is to be protected by the protection order.*
4. *A petition for temporary emergency protection order may be submitted to the Kosovo Police by the NGOs that have reliable information for domestic violence and are familiar with the victim.*

Article 24 **Responsibilities of the Kosovo Police**

1. *Kosovo Police shall respond to any report for acts or threats to commit acts of domestic violence or a violation of a protection order or emergency protection order, regardless of who reports.*
2. *Where there are grounds for suspicion that a crime involving domestic violence was committed, Kosovo Police shall arrest the alleged perpetrator according to the law.*
3. *Kosovo Police shall use reasonable means to protect the victim and prevent further violence, including, but not limited to:*
 - 3.1. *assuring the special telephonic line for reporting domestic violence;*
 - 3.2. *informing the victim or the legal representative or the protector of the victim for his rights pursuant to this Law, including the right to request a temporary emergency protection order pursuant to Article 22 of the present Law;*
 - 3.3. *informing the victim about legal, psychological, and other assistance services available from governmental institutions as well as from the authorized network of non-governmental organizations providing services for the victims;*
 - 3.4. *informing the relevant service providers referred to in paragraph 3.2 of this Article regarding the incident of domestic violence and facilitating contact between the service provider and the victim, upon the request of the victim;*
 - 3.5. *providing transport for the victim and the victim's dependants to an appropriate medical facility for treatment or a medical examination;*
 - 3.6. *providing transport for the victim and when necessary also the victim's dependants to a shelter or other suitable safe haven, upon the request of the victim;*
 - 3.7. *if it is need , providing protection to the reporter of violence in accordance with relevant legal obligations regarding protection of witnesses;*

3.8. removing the perpetrator from the temporary or permanent residence of the protected party or a portion thereof, where the envisaged measure is imposed by means of a protection order or emergency protection order as per Article 7 of this Law;

3.9. providing the victim or the legal representative of the victim an official contact for an investigating officer within the Kosovo Police should further assistance be required. In case of the absence of the investigating officer, any other officer within the Kosovo Police will assist the victim.

4. The law enforcement authorities shall complete an incident report whether or not a crime was committed or an arrest was made and provide a copy of the incident report to the victim or the legal representative of the victim.

5. Where the victim is a person under the age of eighteen (18) years or a person who does not have capacity to act, or where the acts of domestic violence are so grave as to impact the safety or security of a person under the age of eighteen (18), or a person who does not have the full capacity to act living in the same residence, the law enforcement authorities shall immediately report the incident to the Center for Social Work of the Municipality where that person permanently or temporarily resides.

6. Where there are grounds for suspicion that a crime involving domestic violence was committed, whether or not the suspected perpetrator has been arrested or his whereabouts ascertained, the Kosovo Police shall regularly provide the victim or the legal representative of the victim with an update on the status of the investigation, including any information on the whereabouts of the suspected perpetrator or his or her release from custody.

Article 27

Kosovo Program against Domestic Violence

Ministry for Labor and Social Welfare, in cooperation with: Ministry of Health, Ministry of Justice, Ministry of Internal Affairs, Ministry of Culture, Youth and Sports and Ministry of Education is responsible for support and raise ancillary structures and necessary infrastructure, which serves to support and meet the needs of persons against whom domestic violence is exercised, including social assistance and medical services, in accordance with applicable law.

LAW NO. 05/L-036 ON CRIME VICTIM COMPENSATION [published in the Official Gazette on 30 June 2015]

Article 2

Scope

This Law regulates the right to financial compensation for victims of violent crimes and their dependants, the decision making authorities and the procedures on the right to compensation in national and cross-border situations.

Article 6

Violent compensable crimes

1. *The following violent crimes are compensable crimes according to this Law:*

[...]

1.5. *criminal offences which fall within the definition of domestic violence under the Law on Protection Against Domestic Violence.*

[...]

Article 7 Formal conditions

1. *Formal conditions for the right to compensation are fulfilled if the applicant:*
 - 1.1. *is a citizen or permanent resident of the Republic of Kosovo;*
 - 1.2. *is a citizen of any country with which the Republic of Kosovo has reciprocity; or*
 - 1.3. *is a citizen of a Member State of the European Union.*

Article 8 Material conditions

1. *Material conditions to be eligible for the right to compensation in national and national cross border situations, are met if the crime:*
 - 1.1. *is punishable with minimum one year of imprisonment;*
 - 1.2. *was committed within the territory of the Republic of Kosovo;*
 - 1.3. *was detected and reported to the competent authority and dealt with as a criminal offence;*
 - 1.4. *was not committed negligently;*
 - 1.5. *resulted in death of the victim, serious bodily injury, serious impairment of health or serious disturbance to mental health of the victim;*
 - 1.6. *the victim incurred damage recognized by this law as a consequence of the crime; and 1.7. the applicant is unable to obtain compensation through health insurance or other resources.*
2. *If the crime invoked under this Law results in victim's death, the rights hereunder may be enforced by the victim's dependants.*

Article 12 Types of recognized damages

1. *The following damages can be compensated under this law:*
 - 1.1. *serious physical injuries or impairment of health;*
 - 1.2. *serious disturbance to mental health;*
 - 1.3. *loss of capacity to work and loss of maintenance;*
 - 1.4. *medical and hospitalization expenses;*
 - 1.5. *funeral expenses;*
 - 1.6. *damages for destroyed medical devices;*
 - 1.7. *procedural expenses for filing an application.*
 2. *The injury inflicted by the criminal offence must be of a serious nature, with serious consequences. That applies both to physical injury and mental distress.*
- [...]

STANDARD OPERATION PROCEDURES FOR PROTECTION FROM FAMILY VIOLENCE IN KOSOVO

**[adopted by Decision no. 78/2013 of 15 July 2013 of the National Coordinator against Domestic Violence within the Ministry of Justice
[published and accessible on the website of the Agency for Gender Equality within the Office of the Prime Minister]**

Measures for the Implementation of Standard Operation Procedures Institutional and support actors, with duties and competencies in fighting domestic violence, are obliged to act in conformity with activities described in their own SOPs', which are integrated into these Procedures. SOPs' are drafted on the basis of legal provisions in force and in case the relevant laws and secondary legislation are amended, the Agency for Gender Equality and other

actors are obliged to prepare amendments to these procedures within 30 days, from the day laws, secondary legislation, memoranda of understanding and institution SOPs' are amended. All institutions with emergency duties assigned, which may not be postponed in line with these SOPs', shall assign 24 hours duty shifts, seven days a week, for respective line officers dealing with domestic violence. Institutional and support actors shall deposit the date to the management information system for the purpose of data collection. With the approval of SOPs', institutional and support actors are obliged to undertake all actions envisaged for their implementation.

[...]

Instrument 1: Checklist for official identification (Annex 7)

Identification Interview Institution making the first contact with a victim of domestic violence shall conduct the identification interview. The purpose of this interview is to make the official identification of a case of domestic violence, as described above. Interview aims at confirming the victim's condition or to falsify it. The interviewer's assumes that a case of domestic violence exists, and the interview is a tool to make observations and to collect facts supporting the official identification of the domestic violence case. Actors shall conduct the interview in a room that provides the feeling of security and comfort for the victim, the same as with identification and other stages of the procedure. The identification interview is a critical stage in the process to build victim's trust in the actors' ability to provide security and assistance to the victim. The engagement of actors in tactics and behaviour that would re-victimize the interviewed person for identification shall be considered a violation of victim's human rights. For the purpose of ensuring victim's human rights, the victim shall be given the opportunity to contact his/her family members and relatives, who he/she fully trusts to provide the appropriate assistance and support. Victim shall be given the opportunity of direct communication in his/her native language or in the language that he/she understands, starting with the initial identification interview up to other stages. Service providers shall inform each victim in relation to their access to services, to get their consent or refusal for the provision of these services prior the intervention. In cases of domestic violence, where the victim is a child, the custody body and service providers shall be informed in line with the abovementioned forms and their legal mandate. Providing advice to victims for their rights is a critical step to avoid the violation of human rights.

Annex 7. Checklist for official identification

Checklist for the Official Identification Interview

Actors shall start the interview with the assumption that a domestic violence offence was committed.

Communicate with the victim in a language that the victim understands

Explain potential services for the victim and ask for his/her consent.

Allow the victim to contact someone he/she trusts in order to provide assistance and support during the process

Interview room is comfortable and safe for the victim.

Perpetrator is neither present nor visible

Unnecessary persons are not present

Persons that the victim wants are present Flow of the interview is a conversation, and not judgmental.

Custody body contacted (Centre for Social Affairs) in case there are children.

Appropriate actors are contacted, including:

Kosovo Police

Victims' Advocates/Victims Advocacy and Assistance Office

Centre for Social Affairs

Health institutions: primary, secondary, tertiary and mental health centres

Shelters

Annex 8. Risk Assessment Checklist

The purpose of the risk assessment is to assess the level of risk of potential or continuous violence for the victim of domestic violence.

All emergency measures to ensure the protection of the victim and others are taken Victims Advocate is present with the victim

Custody body is present when the victim has children

Basic form for victims' assistance is completed in the presence of the Victims' Advocate

Original of the basic form is placed in the case file, including the risk assessment Copies of the basic form of actors' involved are included

It has been ensured that police assists the victim in developing a security plan for the victim.

Annex no. 9 Checklist for Police

Response in cases of domestic violence

Protect victims, children and other witnesses

Perpetrator of domestic violence is taken away

Basic form completed, needs and risk assessments' conducted

Victim informed on his/her rights Victim informed on existing services

Provide contacts of the police officer for the victim or legal representative

Inform the Centre for Social Affairs and Victims' Advocates or victim's legal representative

Victim, perpetrator, children and witnesses interviewed

Victims under the age of 18 interviewed in the presence of the custody body/Centre for Social Affairs

Copy of the form submitted/information sharing with other actors involved in the process

Transportation provided or ensured for the victim and his/her carriers to the health institution

Transportation provided or ensured for the victim and his/her carriers to the shelter or any other safe location as requested by the victim

Temporary emergency protection order issued outside court working hours, if that is requested by the victim, CSA, Victims' Advocate or shelter Protected orders issued by the court executed and monitored

Victim accompanied to take personal belongings

Report compiled for the case and a copy of the report given to the victim, CSA and Victims' Advocate

The domestic violence case investigated

If there are elements of a criminal offence, a criminal charge shall be initiated and case referred to the competent prosecutor

Transport for the victim during court proceedings provided

Victim informed if the perpetrator of domestic violence is arrested or in relation to his/her whereabouts

Victim, Victims' Advocate, Centre for Social Welfare and shelter informed on the changes made to the detention or arrest status of the perpetrator.

The institutions of the Republic of Kosovo and other actors involved in the protection of victims of domestic violence

(i) National Coordinator against Domestic Violence

Based on Decision no. 04/83, of [11 July 2012](#), of the Government of the Republic of Kosovo, the Deputy Minister of Justice holds the position of National

Coordinator against Domestic Violence (Office of the National Coordinator), while the Agency for Gender Equality holds the position of Vice-Chairman.

According to the aforementioned Decision, the Office of the National Coordinator oversees the implementation of the National Strategy for Protection from Domestic Violence at the national level; coordinates measures and policies related to domestic violence; oversee the database on cases of domestic violence; and leads the Interministerial Coordinating Group for Domestic Violence composed of: the Prime Minister's Office (Agency for Gender Equality), deputy chair, Ministry of Justice, Ministry of Labor and Social Welfare, Ministry of Health, Ministry of Education and Science, Ministry of Finance, Kosovo Police and Statistics Agency.

The Office of the National Coordinator also prepares monitoring and evaluation reports for the National Strategy for Protection from Domestic Violence.

(ii) Agency for Gender Equality

Agency for Gender Equality in the Office of the Prime Minister (hereinafter: AGE):

[The mandate, duties, and responsibilities of the AGE are defined in Law No. 05/L-020 on Gender Equality]. AGE based on the aforementioned Decision no. 04/83 of 11 July 2012 serves as vice-chair of the Interministerial Coordinating Group against Domestic Violence.

(iii) *Municipal response to domestic violence and violence against women (Coordinating Mechanisms)*

At the municipal level, Coordinating Mechanisms have been established which must cooperate to address domestic violence as well as violence against women and to manage specific cases, according to the legal framework. Members of the Coordinating Mechanisms include Gender Equality Officers, Kosovo Police, Judges, Centers for Social Work, Victim Advocates, Municipal Directorates of Education, Employment Offices, Civil Society Organizations including shelters and, in some municipalities, women members of Municipal Assembly. The establishment of Coordinating Mechanisms in all municipalities of Kosovo has not yet been implemented.

(iv) Kosovo Police [See above Article 24 of the Law on Protection from Domestic Violence] and Standard Operation Procedures for Protection from Domestic Violence in Kosovo

(v) Kosovo Inspectorate

(vi) Office for Victim Protection and Assistance (OVPA)

(vii) Victim Advocate

According to the Law on Protection against Domestic Violence, the Victim's Advocate is the official authorized person, who directly protects the damaged party since the first contact with competent protection authorities, advises, initiates procedures for imposing protection measures, is obliged to participate in all judicial sessions, to monitor the progress of the judicial process.

Victim Advocates work closely with other institutions such as law enforcement agencies, PSCs, the Forensic Institute, governmental and non-governmental

organizations to ensure the provision of professional services to all victims of crime.

Victim Advocates implement the strategy and decisions of the OVPA and the Chief State Prosecutor by reporting on the work done within the time limits.

According to the standard Operation Procedures for Protection from Domestic Violence: *“Victims’ Advocates usually meet the victims immediately after the police response following a reported case of domestic violence. This initial contact with the victim allows for the Victims’ Advocate to build a relationship with the victim that will continue throughout victims’ meetings with other institutional representatives. The responsibility of Victims’ Advocates is to ensure that the victim understands services that the state provides and ways to get to them.”*

(viii) State Prosecutor

According to the standard Operation Procedures for Protection from Domestic Violence: *Interaction between the Prosecutor and the victim of domestic violence usually comes later in the reporting process. Prosecutors have the obligation to take the necessary measures depending on the assessment of the risk of the specific case of domestic violence. Prosecutors assess cases of domestic violence and violations of protection orders to define whether there is sufficient proof to prosecute perpetrators of domestic violence. A victim of domestic violence is a party in the procedure and simultaneously the main witness presented in the court by the prosecutor. Above all, the prosecutor has the obligation to secure the evidence and proceed with the criminal prosecution based on that evidence, regardless of the victim's will to proceed further or not with the criminal prosecution. The prosecutor also has an obligation to cooperate with the victim's advocate, who helps the prosecutor throughout the procedure, serving as a bridge between the prosecutor and the victim. The prosecutor has the obligation to inform the victim about the rights of the victim in the procedure, the right to compensation as well as the status of his/her case.*

(ix) Courts

According to the standard Operation Procedures for Protection from Domestic Violence: *“Courts review cases of domestic violence as a matter of priority. These cases are addressed by courts in the civil or criminal procedure depending from the nature of the case. Very rarely are the courts the first providers of services for victims of domestic violence. Even though courts do not initiate procedures in relation to cases of domestic violence, courts are not passive in their obligations for cases of domestic violence. Courts are responsible to treat parties and individuals impartially, with dignity and respect by ensuring a proper representation of all parties involved in the procedure. During the civil procedure, courts review the request for protection order or emergency protection order and decide on protection measures provided for by the law. During the criminal procedure, investigation bodies are competent to decide for the prosecution of perpetrators of domestic violence, those who have violated the protection order or persons that have committed a criminal offence in family relationship. Courts are obliged to inform all parties in the procedure on the rights belonging to them and the consequences of their actions.”*

Explanatory Report on the “Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” (11 May 2011)

**Article 18
General obligations**

111. This article sets out a number of general principles to be respected in the provision of protective and supportive services.

112. Paragraph 1 contains the general obligation of taking legislative or other measures for the protection of all victims within their territory from any further acts of violence covered by this Convention.

113. In line with the general multi-agency and comprehensive approach promoted by the Convention, paragraph 2 requires Parties to the Convention to ensure that, in accordance with internal law, there are appropriate mechanisms in place that provide for effective co-operation among the following agencies which the drafters have identified as relevant: the judiciary, public prosecutors, law enforcement agencies, local and regional authorities and NGOs. By adding “other relevant organisations” the drafters have ensured that this list is non-exhaustive to allow for co-operation with any other organisation a Party may deem relevant. The term “mechanism” refers to any formal or informal structure such as agreed protocols, round-tables or any other method that enables a number of professionals to co-operate in a standardised manner. It does not require the setting up of an official body or institution.

114. The emphasis placed on co-operation among these actors stems from the conviction that the forms of violence covered by the Convention are best addressed in a concerted and coordinated manner by a number of agencies. Law enforcement agencies who are often the first to be in contact with victims when called to a crime scene need to be able to refer a victim to specialist support services, for example a shelter or a rape crisis centre often run by NGOs. These support services will then support the victim by providing medical care, the collection of forensic evidence if required, psychological and legal counselling. They will also help the victim in taking the next step, which often requires dealing with the judiciary. It is important to note that this obligation is not limited to victims but extends to witnesses as well, bearing particularly in mind child witnesses.

115. Paragraph 3 lists a number of aims and criteria which protective and support services should pursue or be based on. First, all measures taken shall be based on a gendered understanding of violence against women and domestic violence. This means that services offered need to demonstrate an approach, relevant to their users, which recognises the gendered dynamics, impact and consequences of these forms of violence and which operates within a gender equality and human rights framework.

116. Secondly, this paragraph requires any such measures to take into account the relationship between victims, perpetrators, children and their wider environment to avoid the risk of addressing their needs in isolation or without acknowledging their social reality. The drafters considered it important to ensure that the needs of victims are assessed in light of all relevant circumstances to allow professionals to take informed and suitable decisions. The term “integrated approach” refers to the integrated human rights based approach addressed as the “three P approach”, aiming to integrated prevention, protection and prosecution. 117. Thirdly, measures and services that mean well but do not adequately take into consideration the devastating

effects of violence and the length of the recovery process or that treat victims insensitively run the risk of re-victimising service users.

118. Furthermore, paragraph 3 requires all measures to aim at the empowerment and economic independence of women victims of such violence. This means ensuring that victims or service users are familiar with their rights and entitlements and can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. At the same time, services need to instil in victims a sense of control of their lives, which in many cases includes working towards financial security, in particular economic independence from the perpetrator.

119. Some examples in which services, including branches of law enforcement agencies, are located in the same building or in close proximity to one another and co-operate have shown to significantly increase levels of satisfaction with services and have, in some cases, increased the willingness of victims to press charges or go through with a case. These examples are known as “One-stop-shops” and have been tried and tested for domestic violence services but can easily be adapted to other forms of violence. For this reason, paragraph 3 calls on Parties to strive to locate services in the same building.

120. Lastly, paragraph 3 requires Parties to the Convention to ensure that the available support services are made available to vulnerable persons and address their specific needs. The term “vulnerable persons” refers to the same list of persons as explained in the comments under Article 12. Parties should make these services available to victims independently of their socioeconomic status and provide them free of charge, where appropriate.

121. The purpose of paragraph 4 is to point to a serious grievance which victims often encounter in seeking help and support. Many services, public and private, make their support dependent on the willingness of the victim to press charges or testify against the perpetrator. If, for reasons of fear or emotional turmoil and attachment the victim is unwilling to press charges or refuses to testify in court, he or she will not receive counselling or accommodation. This goes against the principle of empowerment and a human rights-based approach and must be avoided. It is important to note that this provision refers first and foremost to general and specialist support services referred to in Articles 20 and 22 of the Convention – with the exception of legal aid services.

122. Some of the forms of violence covered by the scope of this Convention may have an international dimension. Victims of violence such as forced marriages or domestic violence, but also women or girls threatened with being genitally mutilated and who are outside of their country of nationality require consular protection and, possibly, medical and financial assistance. Paragraph 5 requires Parties to take appropriate measures to provide the necessary consular assistance and if appropriate other protection and assistance, which includes assistance to victims of violent crime, assistance in the event of arrest or detention, relief and repatriation of distressed nationals, issuance of new identity documentation and other consular support.

123. This obligation is not limited to nationals of a Party to the Convention but extends to all other victims who, in accordance with their obligations under international law, are entitled to national protection by that Party, for example nationals of a member state of the European Union which does not itself offer protection through a permanent representation (embassy, general consulate or consulate) as provided for by Article 20 (2) lit. c of the Treaty on the Functioning of the European Union.

Article 50

Immediate response, prevention and protection

257. Paragraph 1 requires law enforcement agencies to promptly and appropriately react by offering adequate and immediate protection to victims, while paragraph 2 calls for their prompt and appropriate engagement in the prevention of and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

258. Compliance with this obligation includes, for example, the following:

- the right of the responsible law enforcement agencies to enter the place where a person at risk is present;
- the treatment and giving advice to victims by the responsible law enforcement agencies in an appropriate manner;
- hearing victims without delay by specially-trained, where appropriate female, staff in premises that are designed to establish a relationship of trust between the victim and the law enforcement personnel; and
- provide for an adequate number of female law enforcement officers, including at high levels of responsibility.

259. Effective measures should be taken to prevent the most blatant forms of violence which are murder or attempted murder. Each such case should be carefully analysed in order to identify any possible failure of protection in view of improving and developing further preventive measures.

Article 51 **Risk assessment and risk management**

260. Concerns for the victim's safety must lie at the heart of any intervention in cases of all forms of violence covered by the scope of this Convention. This article therefore establishes the obligation to ensure that all relevant authorities, not limited to the police, effectively assess and devise a plan to manage the safety risks a particular victim faces on a case-by-case basis, according to standardised procedure and in co-operation and co-ordination with each other. Many perpetrators threaten their victims with serious violence, including death, and have subjected their victims to serious violence in the past. It is therefore essential that any risk assessment and risk management consider the probability of repeated violence, notably deadly violence, and adequately assess the seriousness of the situation.

261. The purpose of this provision is to ensure that an effective multi-agency network of professionals is set up to protect high-risk victims. The risk assessment must therefore be carried out with a view to managing the identified risk by devising a safety plan for the victim in question in order to provide co-ordinated safety and support if necessary.

262. However, it is important to ensure that any measures taken to assess and manage the risk of further violence allow for the rights of the accused to be respected at all times. At the same time, it is of paramount importance that such measures do not aggravate any harm experienced by victims and that investigations and judicial proceedings do not lead to secondary victimisation.

263. Paragraph 2 extends the obligation to ensure that the risk assessment referred to in the first paragraph of this article duly takes into account reliable information on the possession of firearms by perpetrators. The possession of firearms by perpetrators not only constitutes a powerful means to exert control over victims, but also increases the risk of homicide. This is particularly the case in post-conflict situations or in countries with a tradition of firearms ownership, which can provide perpetrators with greater access to these weapons. However, very serious cases of violence against women and domestic violence are committed with the use of firearms in all other countries as well. For this reason, the drafters felt it essential to place on Parties the obligation to

ensure that any assessment of the risks faced by a victim should systematically take into consideration, at all stages of the investigation and application of protective measures, whether the perpetrator legally or illegally possesses or has access to firearms in order to guarantee the safety of victims. For example, in issuing emergency barring orders, restraining or protection orders, and when sentencing following criminal convictions for any of the forms of violence covered by the scope of this Convention, Parties may adopt, within their domestic legal systems, such measures as may be necessary to enable immediate confiscation of firearms and ammunition. Additionally, in order to cover all weapons that could be used in serious cases of violence, notably combat-type knives, Parties are encouraged to take into account, as far as possible, the possession of or access to such weapons.

Recommendations/opinions of international institutions and comparative analysis of the legislations of the member states of the Council of Europe

(i) Committee on the Elimination of Discrimination against Women [CEDAW]

The Committee on the Elimination and Discrimination against Women (hereinafter: the CEDAW Committee) is an independent body of experts that monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, which consists of 23 experts from around the world.

Recommendation no. 35 regarding gender-based violence against women, which updates recommendation no. 19 [adopted by the Committee on the Elimination of Discrimination against Women [Convention on the Elimination of All Forms of Discrimination against Women], adopted on 26 July 2017]

A. Responsibility for acts or omissions of State actors

22. Under the Convention and general international law, a State party is responsible for acts or omissions of its organs and agents that constitute genderbased violence against women,³⁰ which include the acts or omissions of officials in its executive, legislative and judicial branches. Article 2 (d) of the Convention provides that States parties, and their organs and agents, are to refrain from engaging in any act or practice of direct or indirect discrimination against women and ensure that public authorities and institutions act in conformity with that obligation. Besides ensuring that laws, policies, programmes and procedures do not discriminate against women, in accordance with articles 2 (c) and (g), States parties must have an effective and accessible legal and legal services framework in place to address all forms of gender-based violence against women committed by State agents, whether on their territory or extraterritorially.

23. States parties are responsible for preventing such acts or omissions by their own organs and agents, including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct, and for investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those constituting international crimes, and in cases of failure, negligence or omission on the part of public authorities. ³¹ In so doing, the diversity of women and the risks of intersecting forms of discrimination should be taken into consideration.

[...]

Prosecution and punishment

32. Ensure effective access for victims to courts and tribunals and that the authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and, as appropriate, ex officio prosecution to bring alleged perpetrators to trial in a fair, impartial, timely

and expeditious manner and imposing adequate penalties.⁷⁴ Fees or court charges should not be imposed on victims/survivors;⁷⁵ (b) Ensure that gender-based violence against women is not mandatorily referred to alternative dispute resolution procedures, including mediation and conciliation.⁷⁶ The use of those procedures should be strictly regulated and allowed only when a previous evaluation by a specialized team ensures the free and informed consent of victims/survivors and that there are no indicators of further risks to the victims/survivors or their family members. Procedures should empower the victims/survivors and be provided by professionals specially trained to understand and adequately intervene in cases of gender-based violence against women, ensuring adequate protection of the rights of women and children and that interventions are conducted with no stereotyping or revictimization of women. Alternative dispute resolution procedures should not constitute an obstacle to women's access to formal justice.

Committee of Ministers of the Council of Europe

[Recommendation [Rec (2002)5] of the Committee of Ministers to member states of the Council of Europe on the Protection of Women against Violence, adopted on 30 April 2002, as well as the Explanatory Memorandum]

Admissibility of the Referral

93. The Court first examines whether the admissibility requirements established in the Constitution, and as further specified in the Law and foreseen in the Rules of Procedure have been met.
94. The Court first points out that the Applicant submitted her Referral to the Court as an individual referral based on paragraph 7 of Article 113 of the Constitution and that by this referral she does not challenge any specific act of a public authority, but alleges that by (in) actions of public authorities, namely (i) of the Basic Court in Gjilan; (ii) the Basic Prosecutor's Office of Gjilan; (iii) the Basic Prosecutor's Office of Prishtina; and (iv) the Police Station in Gračanica, the deceased, namely to her mother S.M., the right to life guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR has been violated.
95. The Court, referring to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which establishes the obligation that human rights and fundamental freedoms guaranteed by the Constitution be interpreted in harmony with case law of the ECtHR, assesses that the findings of the latter, which are related to the admissibility of the referral in cases where the violation of Article 2 of the ECHR is alleged, should also be applied to the circumstances of the Applicant's case when examining the admissibility criteria.
96. In this respect, the Court emphasizes paragraph 1 of Article 25 of the Constitution, which establishes that: *“Every individual enjoys the right to life”* as well as in paragraph 1 of Article 2 of the ECHR, which determines that: *“Everyone's right to life shall be protected by law. [...]”*
97. In this line, the ECtHR through its case law had emphasized that: *“the approach [of the ECtHR] to the interpretation of Article 2 (art. 2) must be guided by the fact that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective”* (see the ECtHR case *McCann and Others v. the United Kingdom*, [no. 18984/91](#), Judgment of 27 September 1995, paragraph 146).

98. The Court points out that the ECtHR ranks the right to life as one of the most fundamental provisions (see, see in this regard, the ECtHR case, *McCann and Others v. the United Kingdom*, cited above, paragraph 147).
99. Following this, the ECtHR concluded that Article 2 contains two fundamental elements: (i) the general obligation to protect by law the right to life, and (ii) the prohibition of intentional deprivation of life (see the ECtHR case, [Boso v. Italy, no. 50490/99](#), Decision of 5 September 2002, paragraph 1).
100. In addition, the Court recalls that the Applicant in her referral expressly requests the Court to assess whether the (in)actions of the aforementioned public authorities violated the right to life of her mother guaranteed by the Constitution and the ECHR, and at the same time alleges that the actions and inactions of the state authorities have resulted in violations of Articles 18, 50 and 51 of the Istanbul Convention.
101. Based on the above, in assessing the admissibility criteria of the respective referral, the Court will place emphasis on the case law of the ECtHR and the Court itself in terms of examining the allegation of violation of the right to life guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR, which are related to the positive obligation of states to protect the right to life by law.
- (i) As to the authorized party*
102. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:
- “1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
[...]
7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.”*
103. The Court also refers to point (a) of paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure which stipulates:
- (1) The Court may consider a referral as admissible if:*
- (a) the referral is filed by an authorized party.*
104. In examining and assessing this criterion, the Court refers to the case law of the Court and that of the ECtHR.
105. In this context, the Court, recalling its case law, in particular [case KI41/12 Applicant Gëzim and Makfire Kastrati](#), Judgment, of 26 February 2013, states that in the present case, it had recognized the status of the authorized party of the Applicants, who were the parents of the deceased D.K.
106. In the following, the Court recalls the case law of the ECHR, namely the cases of this court that are related to allegations of violation of Article 2 of the ECHR. The Court notes that the latter in the respective cases, has accepted individual requests from individuals who are considered indirect or indirect victims, when there is a personal and specific relationship between the victim and the Applicant (see ECtHR cases,

Van Colle v United Kingdom, cited above, paragraph 86; *Yasa v. Turkey*, cited above, paragraph 66).

107. In such cases, the ECtHR has accepted that the close family members, such as parents, of a person whose death is alleged to engage the responsibility of the State can themselves claim to be indirect victims of the alleged violation of Article 2, the question of whether they were legal heirs of the deceased not being relevant (see ECtHR cases, *Van Colle v United Kingdom*, cited above, paragraph 86; *Tsalikidis and Others v. Greece*, cited above, paragraph 64, *Kotilainen and Others v. Finland*, [no. 62439/12](#), Judgment of 17 September 2020, paras. 51-52).
108. More specifically, in the context of domestic violence, the Court in its cases related to the allegation of violation of Article 2 of the ECHR, had accepted as authorized parties the family members of the victims, who had been deprived of their lives (see for example the ECtHR case *Branko Tomasic and Others v. Croatia*, No. 46598/06, Judgment of 15 January 2009). In this case, the Applicants were relatives of a woman and her baby, the husband/father of whom had killed both and then himself.
109. The Court, applying the above-mentioned findings through the case law of the Court and that of the ECtHR, in the circumstances of the present case, namely the Applicant, who is the daughter of the deceased S.M., considers that there is a direct connection between the victim and the Applicant, and therefore finds that the latter is an authorized party as established in paragraph 7 of Article 113 of the Constitution and Rule 39 (1) (a) of the Rules of Procedure.

(ii) Regarding exhaustion of legal remedies

110. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 of the Constitution, cited above; paragraph 2 of Article 47 (Individual requests) of the Law; and point (b), paragraph (1), of Rule 39 (Admissibility Criteria) of the Rules of Procedure, which stipulate:

Article 47
(Individual Requests)

(...)

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.

Rule 39
(Admissibility Criteria)

1. The Court may consider a referral as admissible if:

(...)

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.

111. The Court notes that paragraph 7 of Article 113 of the Constitution establishes the obligation to exhaust “*all legal remedies provided by law*” against the decisions of public authorities. This constitutional obligation is also provided by Article 47 of the Law and point (b) of paragraph (1) of Rule 39 of the Rules of Procedure.
112. In terms of this criterion, the Court reiterates that the Applicant in her referral does not challenge any act of a public authority, but she challenges that the (in)actions of

the aforementioned state authorities have resulted in the violation of the right to life of the deceased S.M.

113. The Court recalls that the Applicant in terms of the exhaustion of legal remedies in her referral emphasized that after the death of her mother there was no effective legal remedy available. In this respect, the Applicant specified that: *“In principle, the possibility of compensation for the death of a person as a result of the state’s failure to protect the right to life represents an adequate and sufficient legal remedy [...] However, in the Kosovo legal order, such an opportunity does not exist. Even if it existed, the fact that the state authorities have not conducted any criminal, disciplinary, or other procedure against the responsible officials, means that this legal remedy would have no chance of success, so it would not be effective [...]. In any case, the problems with the (in)action of the authorities that are addressed in this referral are related to chain and institutional problems in the case in question that could not be addressed by any other legal remedies in Kosovo [...].”*
114. Secondly, the Applicant also noted that: *“the filing of criminal reports or initiation of other procedures by the victim’s relatives is not an adequate legal remedy either.”* In this respect, she specified that: *“In cases that may invoke the responsibility of the state for the death of individuals, the authorities must act in this direction according to their official duties, without waiting for actions from the relatives of the victim [...]”.*
115. The Court, based on the case file, also notes that the Applicant, based on articles 4 and 12 of the Law on Access to Public Documents, submitted requests for access to public documents, to: (i) the Basic Prosecutor’s Office in Prishtina; (ii) the Basic Court in Gjilan; (iii) the OVPA; and (iv) the Correctional Service of the Republic of Kosovo. The Court notes that apart from the Correctional Service, none of the other public authorities had responded to her request for access to the documents.
116. As mentioned above, the Court refers to its only case where it found a violation of the right to life guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR, namely the case [KI41/12](#). In this case, in examining the criterion of exhaustion of legal remedies, the Court in paragraphs 48 to 52 of its Judgment assessed and concluded as follows:

“48. The Constitutional Court notes that, on 26 April 2010, the deceased D.K. has submitted to the Municipal Court in Prishtina in a request for issuance of an emergency an protection order.

49. The deceased did not have any other legal remedy, since she has ot received any decision from the uicipal Court in Prishtina, accepting or rejecting the request.

50. On the other hand, the Applicants insist that they did not have available and effective remedies they may have used either.

51. In this respect, the Court notes that according to the legislation in force and the written response by KJC, where the disciplinary procedure conducted is described regarding this case, all what Applicants could do is to complain to the Office of Disciplinary Counsel, while in further stages in the KJC, respective committee they could not be a party in the procedure.

52. Therefore, the Court considers that the Applicants did not have any legal remedy at their disposal to safeguard their rights.”
117. In assessing the criterion of exhaustion of legal remedies, the Court will also refer to the case law of the ECtHR, namely the case law where the latter had provided its findings regarding the exhaustion of legal remedies in the sense of handling the

request by which a violation of Article 2 of the ECHR is alleged and which are specifically related to the inaction of the state authorities in guaranteeing these rights, in the sense of positive obligations.

118. In this respect, the Court refers to the ECtHR case *Branko Tomašić and Others v. Croatia*, the circumstances of which case were related to the fact that their daughter, respectively their sister M.T. and her child, V.T., were killed by M. M [the father of V.T.]. The Applicants before the ECtHR alleged a violation of Articles 2 and 13 of the ECHR because, according to them, the Croatian authorities had failed to take adequate measures to protect M.T. and V.T. from the murder and had not conducted effective investigations into the state's responsibility for their deaths.
119. The ECtHR, in examining the admissibility criteria, namely the examination of the criterion of exhaustion of legal remedies, emphasized that: “[...] *the rule for the exhaustion of legal remedies as defined by Article 35 [of the ECHR] requires that the applicant has legal remedies that are related to the alleged violations and that at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied* [paragraph 35 of the Judgment, and references used in this case, such as *Selmouni v. France*, [no. 25803/94](#), Judgment of 28 July 1999, paragraphs 74 and 75]. According to the ECtHR in this case, Article 35 of the ECHR foresees the distribution of the burden of proof, namely it is the duty of the Government which claims non-exhaustion to prove to the Court that the legal remedy was effective and accessible both in theory and in practice in the relevant time, which implies that it was accessible, and which foresees a relevant remedy to the claim raised and offers a reasonable prospect of success [paragraph 36 of the Judgment, and the references used therein, as the case *Akdivar and Others v. Turkey*, cited above, paragraph 67]. Subsequently, the ECtHR, by its Judgment in this case, emphasized that one of its rules must be applied within the context or specific circumstances of the case [paragraph 37 of the Judgment in case *Branko Tomašić and Others v. Croatia*].
120. Finally, the ECtHR in its case *Branko Tomašić and Others v. Croatia* case concluded that: “[...]reaching this conclusion, the [ECtHR] has taken into consideration the specific circumstances of the present case and also the fact that in question in this case is a fundamental right such as the right to life” and that [ECHR] is intended to guarantee rights that are not theoretical or illusory, but rights that are practical and effective [...]” [paragraph 44 of the Judgment in the case *Branko Tomašić and Others v. Croatia*]. Consequently, the ECtHR concluded that the request of the applicants in this case was admissible and proceeded with the examination of the merits of the case.
121. Consequently, and in the context of the clarifications as above, based on the specific context of the circumstances of the case and its case law in case KI41/12 and the case law of the ECtHR, the Court finds that the Applicant did not have any effective legal remedy available to raise her claims for failure to act by the state authorities in terms of their positive obligation to prevent the death of the deceased S.M.

(iii) *Regarding the accuracy of the referral*

122. In the following, the Court also examines whether the Applicant has fulfilled the other admissibility criteria, established in Article 48 (Accuracy of the Referral) of the Law and point (d) of paragraph 1 of Rule 39 of the Rules of Procedure, which

determine the specification and clarification of the rights and freedoms guaranteed by the Constitution, which allegedly have been violated.

123. Regarding the fulfillment of this criterion, the Court notes that the Applicant has accurately clarified what rights guaranteed by the Constitution, the ECHR and the Istanbul Convention she claims to have been violated.

(iv) Regarding the time limit

124. The Court recalls that Article 49 (Deadlines) of the Law and point (c) of paragraph 1 of Rule 39 of the Rules of Procedure, stipulates that the referral must be submitted within a period of four (4) months from the date of issuing the decision or the day when the decision of the last effective legal remedy was served on him personally.

125. The Court applying its aforementioned conclusion that in assessing the fulfillment of the admissibility criteria of the referral, it will apply the positions and findings of the case law of the ECtHR in cases where a violation of Article 2 or 3 of the ECHR is claimed, refers to the ECHR case, *Opuz v. Turkey*, to which the Applicant also referred in her Referral.

126. Court first recalls in the case of the ECtHR *Opuz v. Turkey*, the ECtHR, among other things, emphasized that “referring to its well-established case law in the case where there are no legal remedies available, the six-month period begins to run from the date when the action is challenged.” [paragraph 110, of Judgment]. The ECHR specifically assessed that “while there were intervals between the impugned events, the Court considers that the overall violence to which the applicant and her mother were subjected over a long period of time cannot be seen as individual and separate episodes and must therefore be considered together as a chain of connected events”. [paragraph 111 of the Judgment]. Finally, the ECtHR found that: “This being so, [the ECtHR] notes that the applicant has submitted her application within six months of the killing of her mother by H.O., which event may be considered as the time that she became aware of the ineffectiveness of the remedies in domestic law, as a result of the authorities’ failure to stop H.O. committing further violence.” [paragraph 112, of Judgment case *Opuz v. Turkey*].

127. The Court, applying this conclusion of the ECtHR in the case *Opuz v. Turkey* in the circumstances of the Applicant, notes that the deceased S.M. was killed by L.S. on 14 March 2021, while the Applicant had submitted her referral to the Court on 13 July 2021.

128. Therefore, the Court finds that the Applicant submitted her Referral to the Court within the deadline set by the Law and the Rules of Procedure.

(v) Regarding other admissibility requirements

129. In the end, the Court considers that the Referral cannot be considered manifestly ill-founded within the Rule 39 (2) of the Rules of Procedure and there is no other ground to declare it inadmissible, since none of the requirements defined by Rule 39 (3) of the Rules of Procedure are applicable in this case.

(vi) Conclusion regarding the admissibility of the referral

130. After assessing each criterion of admissibility established in the Constitution and further specified by the Law and the Rules of Procedure, the Court comes to the conclusion that the Applicant in terms of the request for the assessment of the (in)actions of (i) the Basic Court in Gjilan; (ii) the Basic Prosecutor’s Office in Gjilan;

(iii) Police Station in Gracanica ; and (iv) the Basic Prosecutor's Office in Prishtina, in the context of the positive obligation of state authorities to protect the right to life of victims of domestic violence guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR and Articles 18, 50 and 51 of the Istanbul Convention, is (i) an authorized party; (ii) based on the specific context of the circumstances of the case, the Applicant did not have an effective legal remedy at her disposal; (iii) specified the rights and freedoms guaranteed by the Constitution, the ECHR and the Istanbul Convention, which she claims to have been violated; (iv) that the deadline criterion has been met; (v) the referral is not manifestly ill-founded on a constitutional basis; and that (vi) there is no other admissibility requirements that has not been met.

131. Finally, the Court finds that in terms of fulfilling the admissibility criteria, the Applicant's referral is admissible and will further examine the merits of her referral.

Merits of the case

132. The Court first recalls that the subject of the constitutional review in this case is whether the (in)actions of public authorities, namely those of the Basic Court, the Basic Prosecutor's Office in Gjilan, the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina, have: (i) violated the right to life of the Applicant's mother, the deceased S.M., guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR, as a result of her murder by L.S.; and (ii) if at the same time the same actions or (in)actions have also resulted in violations of Articles 18, 50 and 51 of the Istanbul Convention.
133. In this context and initially, the Court recalls that on 14 March 2021, the Applicant's mother deprived of life by firearm by L.S, namely the Applicant's father, who then committed suicide at the scene.
134. The Court recalls that before her deprivation of life, on 10 November 2019, the deceased S.M., at the Police Station in Gjilan, had reported the case of assault and continuous domestic violence by the deceased L.S., and as a result, the latter in the Basic Court in Gjilan, on 12 November 2019, submitted a request for a Protection Order. The Basic Court, on 26 November 2019, issued the protective order [C. no. 1002/2019] to S.M. and her brother, for a duration of twelve (12) months, with the possibility of extension, but not more than twenty-four (24) months. The protective order had expired on 26 November 2020. As reflected in the chronology of the facts of the case and based on the case file, from the expiration date of the Protection Order until 3 March 2021, when at the police station in Gracanica, domestic violence was reported again by the daughter of the deceased S.M., there is no information about whether there were other developments or other reports of domestic violence by the deceased S.M. or her children.
135. In the following, based on the fact that the Basic Prosecutor's Office in Gjilan and the Basic Court in Gjilan conducted the proceedings established by law, which have resulted in the indictment being filed and his finding guilty of committing the criminal offense of domestic violence, the Court in examining the allegations of the Applicant if the relevant authorities by their actions or inactions have not prevented or taken the relevant measures for the protection of the deceased S.M. and her children, will focus on (i) the actions of the Police Station in Gracanica; and (ii) to the Basic Prosecutor's Office in Prishtina, after reporting domestic violence, on 3 March until 14 March 2021 the day S.M. was deprived of life by L.S., always in the context of the chronology of events since the first report for domestic violence based on the case file, namely 10 November 2019.

136. In this context, the Court recalls that the circumstances of the present case are related to domestic violence, therefore, in this regard, the Court will examine and assess: (i) the allegations related to the violation of the right to life of S.M. guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR; and (ii) allegations of violations of articles 18, 50 and 51 of the Istanbul Convention, applying in this assessment all the general principles elaborated in this Judgment.

I. Regarding the allegation of violation of the right to life

137. The Court recalls that the Applicant alleges that the inaction of the state authorities violated the right to life of her mother S.M., guaranteed by Article 25 of the Constitution and Article 2 of the ECHR.

138. Paragraph 1 of Article 25 of the Constitution stipulates that: *“Every individual enjoys the right to life”*.

139. While paragraph 1 of Article 2 of the ECHR stipulates that: *“Everyone’s right to life shall be protected by law. [...]”*

140. The Court, by the Judgment in case KI41/12, among other things, emphasized that: *“[...] the right to life is the most important right of human beings. It is the right from were all other rights derive.”*

141. The Court recalls that, in accordance with Article 53 of the Constitution, it is its constitutional obligation to conduct an interpretation of human rights and fundamental freedoms in accordance with the case-law of ECtHR. Based on the nature of the Applicant’s allegations, it considers that the issues raised in his referral before the Court should be examined from the perspective of the substantive aspect of paragraph 1 of Article 25 of the Constitution in conjunction with paragraph 1 of Article 2 of the ECHR.

A. General principles for the right to life guaranteed by Article 25 of the Constitution and Article 2 of the ECHR

1. Positive obligations within the meaning of Article 25, in conjunction with Article 2 of the ECHR in the context of domestic violence

(a) Case law of the Constitutional Court

142. The Court first recalls that the general principles regarding the right to life established through the case law of the ECtHR have been applied in case KI41/12 with Applicants *Gëzim and Makfire Kastrati*, Judgment of 25 January 2013. The elaborated principles and applied in this case, were mainly based on the criteria or test of the ECtHR case *Osman v. United Kingdom* ([no. 23452/94](#), Judgment, 28 October 1998).

143. In this respect, the Court affirming the principles established through the case law of the ECtHR, emphasized that: *“[...] it is the duty of state authorities not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of individuals [...]”* (paragraph 59 of Judgment in case KI41/12). In the following the Court also emphasized that: *“it is the duty of state authorities to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person*

backed up by lawenforcement machinery for the prevention, suppression and punishment of breaches of such provisions.” (see paragraph 59 of Judgment in case KI41/12).

144. Furthermore, the Court also underlined that the the positive obligation of the state to protect the right to life appears when it is proven that the authorities, who knew or ought to have known at the time of existence of a real and immediate risk to the life of an identified individual, failed to take measures within the scope of its competence, which judged reasonably, might have been expected to avoid this risk (see, the abovementioned case, KI41/12 Applicant *Gëzim and Makfire Kastrati*, paragraph 60).
145. However, the case law of the ECtHR regarding the right to life in the specific context of domestic violence has evolved over the last few years. The Court, following the elaboration of positive obligations within the meaning of Article 25 of the Constitution in conjunction with Article 2 of the ECHR, will refer to the relevant and most current case law of the ECtHR related to domestic violence.

(b)The ECtHR relevant case law in the context of domestic violence

146. The Court initially points out that the ECtHR through its case law emphasized that: “[...] *the issue of domestic violence, which can take various forms ranging from physical to psychological violence or verbal abuse, cannot be confined to the circumstances of the present case. [...] The Court acknowledges that men may also be the victims of domestic violence and, indeed, that children, too, are often casualties of the phenomenon, whether directly or indirectly.*” (see, case *Opuz v. Turkey*, cited above, paragraph 132).
147. The Court further notes that the criteria related to positive obligations in the context of domestic violence are established in the case of *Opuz v. Turkey* and *Kurt v. Austria*, as one of the main cases of this court. However, the ECtHR case law includes, but is not limited to, the cases of *Kontrova v. Slovakia*, *Branko Tomasic and Others v. Croatia*, *Halime Kilic v. Turkey*, *Talpis v. Italy*, *Tkheldize v. Georgia*, *Y and Others v. Bulgaria* (no. 9077/18, Judgment of 22 March 2022) and *Landi v. Italy* (no. 10929/19, Judgment of 7 April 2022). In order to proceed with the elaboration of the criteria developed through the relevant case law of the ECtHR in the context of domestic violence over the years, in the following, the Court will summarize the circumstances of the ECtHR cases as follows:
148. In case *Kontrova v. Slovakia* (no. 7510/04, Judgment of 31 May 2007), the ECtHR found a violation of Article 2 of the ECHR due to the failure of the authorities to protect the lives of the Applicant’s children. Furthermore, it was found that one of the officers involved had assisted the Applicant and her husband in modifying her criminal complaint of 2002 November so that it could be treated as a minor offence which would not require any further action. In conclusion, as the domestic courts held and the Slovak government had accepted that the police had failed in their obligations and the direct consequence of these failures was the death of the Applicant’s children.
149. In case *Branko Tomašić and others v. Croatia*, the ECtHR first recalled that in accordance with Article 2 of the Convention the state must take appropriate steps to protect the lives of the Applicants’ relatives within its jurisdiction. According to the ECtHR, this includes a primary duty of the state to ensure the right to life by (i) establishing effective provisions of criminal legislation to prevent the commission of offenses against persons supported by the law enforcement machinery for

prevention, suppression and punishment of such violations; and (ii) the positive obligation of the authorities to take preventive operational measures to protect an individual whose life is in danger from the criminal actions of another individual.

150. Case *Opuz v. Turkey* (application no. 33401/02, Judgment of 9 June 2009) relates that the Applicant and her mother were assaulted and threatened for many years by the Applicant's husband, on various occasions leaving both women with life-threatening injuries. Finally, when the two women were trying to leave, the Applicant's husband shot dead his mother-in-law [the Applicant's mother] on the grounds that his honor had been threatened. The Applicant's husband was sentenced to life imprisonment for murder, but was released pending his appeal, after which the Applicant alleged that he continued to threaten her. According to the comparative analysis developed by the ECyHR in the case of *Opuz v. Turkey*, it results that in the 11 member states of the Council of Europe, such as in Albania, Austria, Bosnia and Herzegovina, Estonia, Greece, Italy, Poland, Portugal, San Marino, Spain and Switzerland, the authorities are obliged to continue with the criminal procedure despite the withdrawal of the victim from his/her domestic violence complaint (paragraph 87 of the Judgment). The ECtHR found a violation of the right to life under Article 2 of the ECHR for the murder of the Applicant's mother and a violation of Article 3 (Prohibition of inhuman or degrading treatment) of the ECHR regarding the state's failure to protect the Applicant. The ECtHR found that the state failed to establish and implement a system for punishing domestic violence and protecting victims. The authorities even failed to use available safeguards and interrupted the proceedings as "family matters" ignoring why the complaints had been withdrawn.
151. In case *Talpis v. Italy* (Judgment, of 2 March 2017), the ECtHR, applying the criteria developed in the case of *Opuz v. Turkey*, found a violation of Article 2 of the ECHR due to the murder of the Applicant's son and her attempted murder by her husband. The ECtHR, in particular, assessed that the state authorities by not taking emergency measures on the complaint submitted by the Applicant, the Italian authorities had deprived that complaint of any effect, creating a situation of impunity favorable to the repetition of acts of violence, which after it resulted in the attempted murder of the Applicant and the death of her son.
152. The circumstances of case *Kurt v. Austria* (ECtHR Judgment (Grand Chamber) of 15 June 2021), are related to the fact that in June 2010, the applicant complained to the police about being beaten by her husband E., against whom a restraining and protection order was issued forcing him to stay away from their apartment, as well as from the apartment of the parents of the Applicant as well as the surrounding areas for 14 days. Then, in January 2011, E. was convicted of bodily harm to her and dangerous threat to relatives. After that, the Applicant did not report any incident to the police until 22 May 2012, when she filed for divorce and reported E. to the police for domestic violence on a daily basis in the previous two months. She also stated that sometimes he had hit their two children, which was confirmed by the latter during the interview. On the same date, a new restraining and protection order was issued against E., prohibiting him from returning to their apartment, the Applicant's parents' apartment and the surrounding areas. He was questioned, his keys were seized and the Public Prosecution initiated criminal proceedings against him. Three days later, he shot their son at school and killed himself by shooting himself. The boy later died from his injuries. The Applicant unsuccessfully launched a procedure for official responsibility claiming that E. should be detained. The Applicant before the ECtHR claimed that the Austrian authorities failed to fulfill their positive obligation under Article 2 of the ECHR to protect her son's right to life. According to the Applicant, the Austrian authorities did not take the necessary measures to avoid

this risk, namely that E. should be taken into custody as there was an immediate risk of committing a criminal offense. The Applicant also claimed that the legal framework for the protection of children in terms of domestic violence had been insufficient, as restraining and protection orders could not be enforced in childcare facilities, leaving her children unprotected. in their school. In this Judgment, the Grand Chamber of the ECtHR extended the general principles in the context of domestic violence on the basis of the “Osman test” (the case of *Osman v. United Kingdom*, cited above). The ECtHR reiterated that the authorities had to provide an immediate response to allegations of domestic violence and that special care was required of them in handling such cases. The authorities had to determine (i) whether there was a real and immediate danger to the life of one or more identified victims; for this purpose they had the duty to carry out a risk assessment that was autonomous, proactive and comprehensive and had to assess the reality and immediacy of the risk taking into account the particular context of cases of domestic violence; (ii) if the result of the risk assessment was that there was a real and immediate danger to life, the obligation of the authorities to take operational preventive measures; and (iii) such measures had to be appropriate and proportionate to the level of risk assessed.

153. In the context of this case, the ECtHR assessed that there was no delay or inaction on the part of the authorities in responding to the Applicant's allegations of domestic violence. Consequently, the ECtHR found that in relation to the Applicant, the risk assessment by the Austrian authorities was autonomous, proactive and comprehensive. Regarding the issue of whether the Austrian authorities were or should have been aware of the danger to the Applicant's son, the ECtHR emphasized that the police officers with relevant experience and training were involved in the risk assessment and that even though it is true that a special risk assessment was not made explicitly in relation to children, the ECtHR assessed that based on the information available at the relevant time this would not have changed the situation. Therefore, the ECtHR concluded that there had been no violation of Article 2 of the ECHR in the present case. The ECtHR found that the Austrian authorities had shown the special diligence required to respond quickly to the Applicant's allegations of domestic violence. Consequently, the ECtHR found that no real and immediate risk of an attack on the children's lives was noticeable. Therefore, in the circumstances of the case in question, according to the ECtHR, there was no obligation on the part of the authorities to take further preventive operational measures, especially in relation to the applicant's children, whether in private or public spaces, such as issuing a restraining order in relation to children's schools.
154. The ECtHR had applied the criteria developed in case *Kurt v. Austria* in *Tkheldze v. Georgia* (no. 33056/17, Judgment of 8 July 2021), *Y and Others v. Bulgaria* (no. 9077/18, Judgment of 22 March 2022) and *Landi v. Italy* (nr. 10929/19, Judgment, of 7 April 2022).

The principles and criteria developed through the case law of the ECtHR in the context of domestic violence

155. The ECtHR in the aforementioned cases *Opuz v. Turkey* and *Kurt v. Austria* emphasized, among other things, that the issue of domestic violence, which can take different forms ranging from physical to psychological violence or verbal abuse, exceeds the circumstances of an individual case (see *Opuz v. Turkey*, paragraph 132 and *Kurt v. Austria*, paragraph 161).
156. Based on the latter, the Court recalls that in the cases of *Opuz v. Turkey* and *Kurt v. Austria*, the criteria defined in the case of *Osman v. Turkey* were affirmed and

further developed. In this case, the ECtHR had specified, among other things, that: “It is common ground that the State’s obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the Court that Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. [...]” (paragraph 115 of the Judgment in the case of *Osman v. the United Kingdom*).

157. In the case of *Opuz v. Turkey*, moreover, it was determined as follows: “In the opinion of the Court, where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Furthermore, having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case (*ibid.*.)” (paragraph 130, of Judgment in case *Opuz v. Turkey*).
158. The assessment of the risk of a real and immediate threat in cases of domestic violence in particular, according to the ECtHR, is done taking into account the special context of domestic violence, since it is not only a question of an obligation to provide general protection to society, but above all to take account of the recurrence of successive episodes of violence within a family (see ECtHR case, *Tkheldize v. Georgia*, cited above, paragraph 49). Whenever there are doubts about the existence of domestic violence, namely violence against women, an immediate response and further special care is required by the authorities to deal with the specific nature of the violence (see ECtHR cases, *Tkheldize v. Georgia*, cited above, paragraph 48; *Kurt v. Austria*, cited above, paragraphs 165-166).
159. While, in one of the most current cases of the ECtHR, namely case *Kurt v. Austria*, the latter, in terms of domestic violence, emphasized that: “[...] general legal and other measures are necessary to provide victims of domestic violence with effective protection and safeguards.” (see paragraphs 162 of case of *Kurt v. Austria* Judgment, as well as the references used in this case). In the same case, the ECtHR further emphasized that: “The existence of a real and immediate risk to the life (see paragraphs 158-160 above) must be assessed taking into account the particular context of domestic violence. In such a situation, it is above all a matter of taking into account the repetition of successive episodes of violence within the family unit. The [ECtHR] therefore considers it necessary to clarify what it means to take into account the specific context and dynamics of domestic violence according to the *Osman test*” (see paragraph 162, *Kurt v. Austria*, as well as references used such as case *Talpis v. Italy*, cited above, paragraph 122, and *Volodina v. Russia* no. 41261/17, Judgment, of 9 July, paragraph 86 and *Munteanu v. Moldova*, no. 34168/11, Judgment, of 26 May 2020, paragraph 70).

160. In this Judgment, the Grand Chamber reiterated that the authorities must provide (i) an immediate response to allegations of domestic violence and that special care was required of them in handling such cases; and the authorities must determine (ii) whether there was a real and immediate danger to the lives of one or more identified victims; for this purpose they have the duty to carry out a risk assessment that is autonomous, proactive and comprehensive; (iii) if the risk is real and immediate, taking into account the special context of cases of domestic violence, then this results in the obligation of the authorities to take operational preventive measures, which must be appropriate and proportional to the level of risk assessed. All these principles have been addressed and specified further, through the case of the ECtHR.

(i) Obligation to immediately respond to allegations of domestic violence

161. The ECtHR in the case of *Kurt v. Austria* specified that “*The authorities are required to respond immediately to allegations of domestic violence [...] in those case [the ECtHR] it has found that the authorities failed to act promptly after receiving a complaint of domestic violence, it has held that this failure to act deprived such complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of acts of violence*” (see paragraph 165 of Judgment in the case of *Kurt v. Austria*, and the references used, the cases of *Halime Kılıç v. Turkey*, no. 63034/11, § 99, Judgment of 28 June 2016, and *Talpis v. Italy*, cited above, paragraph 117).
162. The ECtHR further emphasized that the interpretation of Article 2 of the ECHR is not done in such a way as to impose an impossible or disproportionate burden on the state authorities, and not every alleged risk to life represents an obligation for the state, which according to the ECHR take operational measures to prevent the materialization of the risk (see ECtHR cases, *Branko Tomašić and others v. Croatia*, cited above, paragraph 50; *Tkheldize v. Georgia*, cited above, paragraph 49; *Talpis v. Italy*, No. 41237/14, cited above, paragraph 101). According to the ECtHR, “*another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice*” (see ECtHR case, *Talpis v. Italy*, cited above, paragraph 101). Moreover, the ECtHR reiterated that special care is required from the authorities when dealing with cases of domestic violence (see *Kurt v. Austria*, paragraph 166, and references therein).

(ii) Obligation relating to risk assessment

163. The Court further notes that in the case of *Kurt v. Austria*, the obligation for risk assessment was also added. According to the comparative analysis developed by the ECtHR, the latter concluded “*all member states conduct a risk assessment in order to determine whether a victim of domestic violence is at risk of further violence*”. In its Judgment, the ECtHR also refers to Article 51 of the Istanbul Convention, by which it is determined that the seriousness of the situation and the risk of repeated violence are crucial elements of prevention in cases of domestic violence (paragraph 167 of the Judgment, see also references used in this paragraph). Moreover, the ECtHR in this case also referred to GREVIO [Secretariat of the Istanbul Convention] which, in the capacity of the mediating party before the ECtHR in this case, had emphasized that the competent authorities should carry out such a risk assessment for victims as of receipt of a complaint, ideally using standardised, internationally recognised and research-based tools with pre-established questions that the

authorities should systematically ask and answer (see paragraph 167 of Judgment in case *Kurt v. Austria*).

164. The ECHR, in principle, emphasized that the assessment of the risk of a real and immediate threat, in cases of domestic violence in particular, is carried out taking into account the special context of domestic violence, since it is not only a question of obligation to provide general protection to society, but above all to take into account the recurrence of successive episodes of domestic violence (see ECtHR case, *Tkheldize v. Georgia*, cited above, paragraph 49 and case *Talpis v. Italy*, cited above, paragraph 122). In relation to the latter, the ECtHR specified that whenever there are any doubts about the occurrence of domestic violence or violence against women, an immediate response and further special diligence is required of the authorities to deal with the specific nature of the violence (see ECtHR cases, *Tkheldize v. Georgia*, cited above, paragraph 48; *Kurt v. Austria*, cited above, paragraphs 165-166).
165. Furthermore, the ECtHR has reiterated that under Article 2 of the ECHR, the obligation to protect the right to life requires some form of effective official investigation in cases where individuals have been killed as a result of the use of force, either by state officials or by private individuals. The effective official investigation is aimed at the effective implementation of domestic legislation that protects the right to life, and the state authorities must act on their own initiative immediately after being informed about the case (see, ECtHR cases, *Branko Tomasic and others v. Croatia*, cited above, paragraph 62; *Tkheldize v. Georgia*, cited above, paragraph 50; *Armani Da Silva v. the United Kingdom*, cited above, paragraph 230).
166. The ECtHR, also emphasized that “[...] considers this approach to be relevant for the member States’ positive obligations under Article 2 in the context of domestic violence. The Court notes that in order to be in a position to know whether there is a real and immediate risk to the life of a victim of domestic violence (compare the *Osman test* in paragraph 158 above), the authorities are under a duty to carry out a lethality risk assessment which is autonomous, proactive and comprehensive” (see paragraph 168 in case *Kurt v. Austria*).
167. According to the ECtHR “the terms “autonomous” and “proactive” refer to the requirement for the authorities to not rely solely on the victim’s perception of the risk, but to complement it by their own assessment. Indeed, owing to the exceptional psychological situation in which victims of domestic violence find themselves, there is a duty on the part of the authorities examining the case to ask relevant questions in order to obtain all the relevant information, including from other State agencies, rather than relying on the victim to give all the relevant details.” (see, paragraph 169 of Judgment in case *Kurt v. Austria*).
168. Furthermore, the ECtHR has specified that the risk assessment must also be comprehensive. The comprehensive term according to the ECtHR in the sense of risk assessment can constitute elements of the official investigation that are equally relevant in cases of domestic violence. The ECtHR in case *Kurt v. Austria* emphasized that a comprehensive assessment can include: (i) standardized *checklists*, which mention specific risk factors and which have been developed on the basis of sound criminological research and best practices in cases of domestic violence, which can contribute to a comprehensive risk assessment by the authorities; (ii) regular training and awareness raising, specifically regarding risk assessment tools, in order to understand the dynamics of domestic violence, which enable them to better assess the existing risk, respond appropriately and ensure

prompt protection (iii) law enforcement authorities must share information about the risks and coordinate support with any other relevant parties who are in contact with the platforms at risk (see paragraphs 171-173 of the Judgment of the ECtHR in case *Kurt v. Austria*; in this Judgment, the ECtHR also refers to Article 18 of the Istanbul Convention and the comments given by the GREVIO Secretariat, as mediating parties in the proceedings before the Grand Chamber of the ECtHR).

(iii) *Obligations relating to operational measures*

169. In the following, the ECtHR determined that if the authorities have established that there is a real and immediate risk to the life of one or more identified individuals, their positive obligation to take operational measures is triggered. Sipas GJEDNJ-së: “Such operational preventive and protective measures are intended to avoid a dangerous situation as quickly as possible [...]” (see paragraph 178 in case *Kurt v. Austria*).
170. Furthermore, the Court points out that the criteria of the case of *Kurt v. Austria* were also applied in more recent cases of the ECtHR in the context of domestic violence, namely in the case of *Y and Others v. Bulgaria*, (cited above, paragraph 89), in which case it was assessed whether: (i) the authorities must respond immediately to allegations of domestic violence; (ii) when such allegations come to their attention, the authorities must check whether a real and immediate risk to the life of one or more identified victims of domestic violence exists by carrying out an autonomous, proactive and comprehensive risk assessment. The authorities must take due account of the special context of domestic violence when evaluating the risk’s reality and immediacy; (iii) If the risk assessment reveals that a real and immediate risk to life exists, the authorities must take preventive operational measures to avert that risk. Those measures must be adequate and proportionate to the assessed level of the risk. As a result of the application of these criteria, the ECtHR in the case of *Y and Others v. Bulgaria* in terms of the positive obligations of the state concluded that the failure of the authorities to protect the life of a woman killed by her husband, despite her various complaints about domestic violence in the last 9 months as well as the undertaking of inadequate preventive measures, namely the failure of the authorities to assess the risk to life in every case of reporting by the victim, had resulted in the violation of the right to life, guaranteed by Article 2 of the ECHR.
171. While in the case of *Landi v. Italy* of the ECtHR, the latter also concluded that: (i) the Italian authorities had not shown due diligence and therefore failed in their positive obligations to protect the life of the applicant and of her son; (ii) the authorities had failed in their obligation to make a proactive assessment of the immediate risk of repetition of acts of violence committed against the applicant and her children; (iii) in particular, according to the ECtHR, the authorities had been passive in the face of the serious risk of ill-treatment of the applicant, and their inaction had enabled her partner to continue with threats, ill-treatment and the risk of repeated violence, as unimpeded and unpunished for it; (iv) the authorities should have assessed the risk of recurrence of violence and taken adequate measures, which were defined by Italian legislation, regardless of whether there was any report or change in the perception of the risk on the part of the applicant.
172. Based on the case law of the ECtHR and explained above, in the circumstances of the present case, the Court will apply the criteria established by the ECtHR, with emphasis on case *Kurt v. Austria*, and also affirmed through its case law in the cases *Y and Others v. Bulgaria* and *Landi v. Italy*, respectively it will review if:

- (i) the authorities, when notified about violence, reacted immediately:
- (ii) upon notification, the state authorities made a risk assessment, namely they have assessed whether there is an immediate and real risk to the life of the deceased S.M., and whether this assessment was autonomous, proactive and comprehensive;
- (iii) the state authorities were aware or ought to have been aware that there was a real and immediate danger; and
- (iv) as the result of the risk assessment shows that there is an immediate and real risk, then the obligation arises to undertake preventive operational measures, which must be adequate and proportionate to the assessed risk.

B. General principles for the right to life according to international instruments, recommendations and opinions of international organizations in the context of domestic violence

173. In terms of the general principles for the prevention of violence against women and domestic violence, the Court will also refer to international instruments, recommendations and opinions of international organizations, which will serve as a source during the review of the Applicant's allegations, they will serve as a source of the interpretation of the constitutional provisions and of the ECHR regarding the right to life. In terms of the latter, the Court will (i) refer to international instruments, recommendations and opinions approved by the mechanisms of the Council of Europe, such as: the recommendation of the Council of Europe, which recommendation has served as a standard for the drafting and approval of Istanbul Convention; general principles and obligations defined by the Istanbul Convention, which principles will be further elaborated in relation to the Applicant's allegation of violation of its articles 18, 50 and 51; to proceed with (ii) the Convention on the Elimination of All Forms of Discrimination against Women, and in relation to the latter, the Recommendation of the Committee on the Elimination of All Forms of Discrimination against Women (hereinafter: the CEDAW Committee) and the relevant practice of this Committee.

1. Council of Europe

a. Recommendation Rec (2002) 5 on the protection of women against violence

174. On 30 April 2002, the Committee of Ministers of the Council of Europe approved "Recommendation Rec (2002) 5 on the protection of women against violence", which in principle determines that it is in the responsibility and interest of the states to protect women from any kind form of violence and by any person.
175. Further, this Recommendation establishes that the states should introduce, develop and/or improve where necessary, national policies against violence based on maximum safety and protection of victims, empowerment of victimised women, adjustment of the criminal and civil law including the judicial procedure, raising of public awareness and education of children and young persons, special training for professionals confronted with violence against women as well as prevention in all respective fields. In the specific context of domestic violence, the Committee of Ministers recommends that member states classify all forms of violence within the family as criminal offenses and determine the possibility of taking measures, in order, *inter alia*, to enable the judiciary to approve temporary measures in order to protect the victims, to prohibit the perpetrator of violence from contacting, communicating with or approaching the victim, or from residing or entering defined areas. Also, this Recommendation specifies the prosecution of the violation of these

certain measures against perpetrators of violence and establishes a mandatory protocol so that the police, medical and social services respect the same procedure.

b. Istanbul Convention

176. The Court recalls that on 11 May 2011, the Committee of Ministers of the Council of Europe approved the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention, and the latter on 11 May 2011 was open for signature at the 121st session of the Committee of Ministers of the Council of Europe in Istanbul. As a result of its tenth ratification by Andorra on 22 April 2014, the Convention entered into force on 1 August 2014. The Istanbul Convention includes the standard established by the above-mentioned Recommendation of the Council of Ministers Rec (2002)5 for the protection of women against domestic violence.
177. The Court reiterates that the relevant provisions of the Istanbul Convention regarding violence against women were also used as a means of interpreting the ECHR by the ECtHR in case *Kurt v. Austria*. In this case, the ECtHR, referring to Article 51 of the Istanbul Convention, emphasized that the assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence are the crucial elements of prevention in domestic violence cases (see, the case of the ECtHR- (see *Kurt v. Austria*, cited above, paragraph 167).
178. Following this, the Court points out that the issue of the application of the Istanbul Convention in the legal system of the Republic of Kosovo and the obligations arising from this Convention, will be elaborated in the part of this Judgment that is related to the Applicant;s allegations of violation of articles 18, 50 and 51 thereof.

2. Convention on the Elimination of All Forms of Discrimination against Women

179. The Convention on the Elimination of All Forms of Discrimination is one of the nine international instruments directly applicable in the legal system of the Republic of Kosovo as established by Article 22 of the Constitution. The Court points out that the Applicant has not raised or submitted a request for the assessment of the violation of one of the provisions of this Convention.
180. However, in order to deal with the Applicant;s allegations of the failure of public authorities to protect the right to life guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR, the Court during the review and elaboration of the obligations of public authorities in dealing with the case of violence against the deceased S.M., and the measures taken by them, will also refer to the Convention, Recommendation no. 35; and the cases reviewed by the expert group of the CEDAW Committee. Accordingly, the latter will serve as a source of interpretation of the relevant constitutional provisions related to the positive obligation of public authorities to protect the right to life of victims of domestic violence, namely in the present case, the positive obligation of public authorities to protect the life of the deceased S.M.
181. The Court recalls that Article 2 of this Convention, among other things, stipulates that: “*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: [...]*”

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination [...]”

182. Within this Convention, in 2017, the Committee for the Elimination of Discrimination against Women (hereinafter: CEDAW), adopted Recommendation no. 35 on violence against women which was updated. As noted above through this document, among other things, it is recommended that “*States parties are responsible for preventing such acts or omissions by their own organs and agents, including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct, and for investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those constituting international crimes, and in cases of failure, negligence or omission on the part of public authorities*”.

(i) Cases examined before the CEDAW Committee

183. Some of the cases examined before the CEDAW Committee in the context of domestic violence are: *A.T v. Hungary* (Communique no. 2/2003, CEDAW/C/36/D/2/2003); *V.K v Bulgaria* (Communique no. 20/2008, CEDAW/C/49/D/20/2008; *Karen Tayag Vertido v. Philippines* (no. 18/2008 (United Nations Document CEDAW/C/46/D/18/2008); *Yildirim v. Austria*, no. 6/2005 (United Nations Document CEDAW/C/39/D/6/2005) and *Goekce v. Austria* (no. 5/2005, CEDAW/C/39/D/5/2005).
184. In the case of *Şahide Goekce v. Austria*, the circumstances of which are related to the murder of Mrs. Goekce by her husband in front of their two daughters, the CEDAW Committee found that the State Party, in this case Austria, had violated the obligation (due diligence) to protect the deceased Şahide Goekce, since the police had failed to immediately respond to her emergency call a few hours before she was deprived of life. In conclusion, the CEDAW Committee concluded that Austria violated Şahide Goekce's right to life and physical and mental integrity guaranteed by Article 2 (a) and (c) to (f) and Article 3 of the Convention on the Elimination of All Forms of Discrimination against Women in relation to Article 1 of this Convention and Recommendation no. 19 of the CEDAW Committee. Following this, the CEDAW Committee offered observations as to why the public prosecutor should not have refused police requests to arrest her husband.: “*12.1.15 Although the State party rightly asserts that it is necessary in each case to determine whether the arrest may result in a disproportionate interference with the fundamental rights and freedoms of the perpetrator of an offense of domestic violence, such as freedom of movement and fair trial, however the Committee notes that the rights of the perpetrator cannot prevail over the right to life of the woman and the right to physical and mental integrity [...]*”.

C. Application of the aforementioned principles in the circumstances of the present case

185. The Court points out as of the beginning that during the examination of the Applicant's allegations of violation of her mother's right to life, it will apply: (i) the Court's own case law, namely case KI41/12; (ii) the principles and criteria developed through the case law of the ECtHR; and (iii) international instruments, directly applicable in the legal system of Kosovo, namely the Convention on the Elimination of All Forms of Discrimination and the Istanbul Convention.

186. Following this, the Court when examining the Applicant's allegations of violation of the right to life guaranteed by Article 25 of the Constitution and Article 2 of the ECHR, will also apply the test developed and applied through the most recent case law of the ECHR, as elaborated above, in the context of domestic violence.
187. The Court, recalling the factual chronology from 10 November 2019, from the day the domestic violence was reported, until 14 March 2021, when the deceased S.M. was deprived of life, notes once again that:
- (i) on 10 November 2019, S.M. at the Police Station in Gjilan had reported the case of assault and continuous domestic violence by the deceased L.S. whereas on 12 November 2019, submitted a request for a Protection Order to the Basic Court in Gjilan;
 - (ii) on 12 November 2019, L.S., a spouse of the deceased S.M. was interviewed by the Basic Prosecutor's Office in Gjilan, in a capacity of the suspect;
 - (iii) on the same day, by order of the pre-trial judge of the Basic Court in Gjilan, the latter was released in regular proceedings, however, by order of the prosecutor of the case, he was detained for forty-eight (48) hours;
 - (iv) on the same day, by verbal order of the pre-trial judge in the Basic Court, the house of L.S was also searched;
 - (v) On 13 November 2019, the Kosovo Police submitted the criminal report to the Basic Prosecutor's Office in Gjilan, and as a result, the latter's decision was issued to start the investigation against L.S. on the grounds of suspicion of committing criminal offenses, provided for in paragraph 1 of Article 248 (Domestic Violence) and under paragraph 3.1 of Article 184 (Assault) of the CCRK, also requesting the imposition of detention on remand on L.S.; regarding the criminal report, the OVPA in Gjilan was also notified;
 - (vi) On 12 December 2019, the Basic Court in Gjilan by the Decision [P. no. 1042/19] approved the request of the Basic Prosecutor's Office in Gjilan and extended the measure of detention of L.S. for a duration of two (2) months, namely until 20 January 2020;
 - (vii) On 25 December 2019, the Basic Prosecutor's Office in Gjilan filed the Indictment [PP. II. 1835/19] against L.S. on the grounds of the suspicion that the latter had committed the criminal offenses of domestic violence and assault against S.M.;
 - (viii) On 27 January 2020, the Basic Court in Gjilan by the Judgment [P. no. 1042/19], L.S. was found guilty for committing the criminal offense "Domestic Violence" and the criminal offense "Assault; sentencing the latter for commission of criminal offence "Domestic Violence" to ninety (90) days of imprisonment and a fine of two hundred (200) euro, while for the commission of the criminal offense of "Assault" he was sentenced to thirty (30) days of imprisonment; however, this court decided to replace the prison sentence with a fine in the amount of one thousand three hundred (1300) euro and confiscated the razor. It follows from this that after the Judgment of the Basic Court in Gjilan, L.S., was released while S.M., ., in the capacity of the victim, was instructed in a civil dispute for compensation of damage.
188. The Court recalls that the Protection Order [C. No. 1002/2019] of 26 November 2019 determined that L.S. was prohibited from disturbing S.M., *"respectively, the prohibition of disturbing, insulting, humiliating or disrespecting her, not to attack her or threaten to attack her either physically or mentally, follow her or to block the movement, or not to contact directly or indirectly in any form with the protected party and the protective measure of approaching in the vicinity of 100 m from the residence of the protected party"* and it he was forbidden to approach S.M. and her children and brother of S.M., both in the children's school and in different parts of the city in the vicinity of 20 m wherever the protected party is located.

189. The Court also recalls that the protection order issued on 26 November 2019 by the Basic Court in Gjilan had a term of twelve (12) months, with the possibility of extension. However, according to the case file, with the justification of the lack of request for its extension, this protection order had expired after twelve (12) months, namely on 26 November 2020.
190. After the expiration of the protection order, the Court notes that:
- (i) For the developments after the expiration of the protection order and until 3 March 2021, there are no data in the case file;
 - (ii) On 3 March 2021, a case of domestic violence was reported again at the Gracanica Police Station in relation to S.M.;
 - (iii) On the same date, the Police checked the scene, took the relevant statements and informed the relevant prosecutor's office;
 - (iv) The next day, on 4 March 2021, the statement of L.S. was also received; in the relevant report of the officer, among other things, it is emphasized that after contacting the deceased S.M., the latter emphasized that *"she is not interested in proceeding with the case against [L.S.] since it was momentarily"*;
 - (v) For the concrete actions undertaken from 4 March to 14 March, there is no data in the case file;
 - (vi) on 14 March 2021, S.M., was shot dead by her husband L.S., who then committed suicide.
191. In the context of the development of the chronology as above, the Court notes that the reporting of domestic violence on 10 November 2019 at the Police Station in Gjilan, resulted in (i) a protection order; (ii) criminal report; (iii) indictment; and (iv) decision of the Basic Court in Gjilan for domestic violence of 27 January 2020. Whereas, the reporting of domestic violence at the Police Station in Gracanica on 3 March 2021, resulted in the receipt of initial statements.
192. In relation to the development of the first category of proceedings and which ended with the conviction of L.S. for domestic violence by the Basic Court in Gjilan, the Court recalls that the Applicant claims that the Basic Prosecutor's Office in Gjilan and the Basic Court in Gjilan, did not take into consideration the problems of the psychic nature of L.S., even though they were informed by the deceased S.M. More precisely, according to the allegations, (i) the Basic Prosecutor's Office in Gjilan has never requested a psychiatric examination of L.S., despite all the indications of mental health problems, which were the source of his violent behavior; (ii) The Basic Court in Gjilan failed to establish the measure of "psychosocial" treatment in the context of the proceedings for issuing a protection order and finding him guilty and replacing his sentence with a fine. In context, the Court points out that in relation to this allegation, from the relevant authorities and from the Applicant it did not receive specific and relevant information in order for this Court to proceed with the examination of this specific allegation, of the Applicant..
193. Having said this, the Court points out that both the Basic Prosecutor's Office in Gjilan and the Basic Court in Gjilan had undertaken a number of relevant actions and conducted criminal proceedings against L.S., which resulted in being found guilty of a criminal offense. However, the Court cannot fail to emphasize the fact that the Basic Court in Gjilan, in terms of imposing the sentence for the commission of two criminal offenses for domestic violence, namely that of domestic violence and assault, had imposed a fine penalty.
194. The Court further notes that after reporting domestic violence on 3 March 2021, the relevant proceedings were developed between the Kosovo Police, namely the police station in Gracanica and the Basic Prosecutor's Office in Pristina, and their "actions

or inactions” resulted in the murder of the deceased on 14 March 2021 by her husband. Therefore, in assessing whether the “*actions or inactions*”, the relevant state institutions have not prevented or taken the relevant measures for the protection of the deceased S.M. and her children, the Court will focus on (i) the actions of the Police; and (ii) to the Basic Prosecutor's Office in Pristina after reporting domestic violence, on 3 March 2021 to 14 March the day S.M was deprived of life by L.S., of course and always in the context of the proceedings followed from 10 November 2019, when, according to the case file, domestic violence was reported for the first time and 27 January 2020, when the Basic Court in Gjilan found the deceased L.S. guilty of the criminal offense of domestic violence.

195. The Court reiterates that the subject of the assessment of the Applicant's allegations will be the substantive aspect of Article 25 of the Constitution in conjunction with Article 2 of the ECHR, namely the review and assessment of whether competent public authorities have failed in their positive obligations to protect the right to life of the deceased S.M., namely, the Applicant's mother.
196. As elaborated above in the part of this Judgment regarding the principles and criteria developed through the case law of the ECtHR over the years, the Court will apply the test resulting from the case law of the ECtHR namely the case *Kurt v. Austria*, and will assess whether (i) the competent authorities in their obligation to protect or prevent the violation of the right to life of the deceased S.M., have reacted immediately; (ii) the competent authorities have acted in accordance with the procedures in force, to assess whether there is an immediate and real danger to the life of the Applicant's mother, this assessment must be autonomous, proactive and comprehensive; (iii) the competent authorities were aware or should have been aware that there was a real and immediate danger to the deceased S.M.; and (iv) as a result of the risk assessment, it is determined that there is an immediate and real risk, preventive operational measures have been taken, which must be appropriate and in proportion to the assessed risk. In the following, the Court will apply the principles stemming from the aforementioned criteria, in the circumstances and present case.

(i) If the competent authorities have reacted immediately

197. The Court emphasizes that, M.S., the daughter of the deceased S.M., respectively the Applicant's sister, on 3 March 2021, reported the case of “*domestic violence*” at the Police Station in Gracanica. According to the report of the Gracanica Police Officer, around 20.15 the police patrol came to the scene, namely to the residence where S.M. was located, and after contacting the investigation department, they also took the statements of her daughter M.S. and S.M. According to the information submitted to the Court, it turns out that on the same day, the Police Station had informed the prosecutor on duty about the case initiated as “*domestic violence*” and also informed the latter about the actions taken by this police station.
198. Based on the above, the Court notes that the competent authorities, namely the police officers of the Police Station in Gracanica, reacted immediately to the report of the daughter of the deceased S.M. about domestic violence by L.S.
199. The Court recalls that the police officers had also reacted by inviting L.S., in the capacity of a suspect, to take the statement regarding the report made by his daughter about violence against S.M. The Court also noted that on the same day, the police officers of the Police Station in Gracanica had also contacted the deceased S.M. by phone, who, according to the police report submitted to the Court, (i) stated that she was unable to appear at the Police Station; and (ii) the police officers of this

station were asked that the deceased L.S. be released from detention. Finally, the Court also recalls the Officer's Report [2021-AT-086] of 4 March 2021, where it is emphasized that: "*on 03.03.2021, the suspect [L.S.] was interviewed in the capacity of a suspect, then the prosecutor on duty of domestic violence [H.K] was notified, who instructed that the suspect be released and the case continue in regular procedure.*"

200. The Court will further refer to the information and explanations provided by (i) the Kosovo Police; (ii) Basic Prosecutor's Office in Prishtina; and (iii) the findings of the *Ex Officio* Report of the Ombudsperson of 27 April 2021, which are related to the actions of the Police and of the Basic Prosecutor's Office in Prishtina about the measures taken from the day L.S. was released from the police station on 4 March 2021 until the moment of depriving the life of the deceased S.M. by L.S.
201. Firstly, based on the comments of the Kosovo Police to the Applicant's allegations and the documents submitted to the Court, the Court notes that after the report on 3 March 2021 for violence against the deceased L.S., this case was not handled by the domestic violence investigator because according to the Police "*the responsible official was on annual leave*" and consequently, the case was handled by another investigator, who "*did not notify the other institutions, namely, the Center for Social Work and the Victims' Advocate*".
202. Secondly, the Basic Prosecutor's Office in Prishtina, in the response submitted to the Court, stated that on the day S.M. was deprived of her life, the case of the deceased "*was being handled by the justice bodies and on the day of reporting the case, the Prosecutor's Office was in the phase of gathering the necessary evidence and information for the clarification of factual circumstances that were not known to the relevant bodies*".
203. Thirdly, the Court also recalls the findings evidenced in the *Ex Officio* Report of the Ombudsperson of 27 April 2021, where the latter concluded that after S.M.'s daughter reported the case to the Gracanica Police Station, the police officers of this station immediately went to the scene. In this same report, it is established that on 4 March 2021, the police officials interviewed L.S., in the capacity of a suspect, and also invited S.M. for an interview, who according to the Police reply submitted to the Office of Ombudsperson, "*stated that she was unable to report to the police and requested that L.S. not to be imprisoned, but if possible to be released.*" In the response submitted to the Office of the Ombudsperson, the Police confirmed that the Prosecutor on duty "*was informed in detail about the case and that the latter had instructed the police that the suspect L.S should be released and the case should continue in regular procedure.*" The Ombudsperson later concluded that the Police did not respect the procedures of the Action for Protection from Domestic Violence, "*they did not notify the CSW, the victim's advocate or the victim's legal representative and did not compile the report.*"
204. Based on the above, the Court emphasizes the fact that (i) the police officers of the Police in Gracanica, had reacted immediately by going to the scene and interviewing the suspect L.S. However, after accepting the instruction of the Prosecutor on duty, they released L.S. and submitted the report to the Prosecutor's Office, not notifying the Victims' Advocate and the Center for Social Work, respectively not acting in accordance with the relevant obligations defined by law and standard operation procedures for notifying the CSW and the OVPA; and (ii) the Basic Prosecutor's Office in Prishtina, after receiving the report from the police, in the case of the deceased S.M., did not take immediate procedural actions.

205. The Court also points out that (i) the references of the Kosovo Police, in the fact that “*the responsible official was on annual leave*” and consequently, the case was handled by another investigator, who “*did not notify the other institutions, namely, the Center for Social Work and the Victims’ Advocate*”, is not relevant because the positive obligations of the state within the framework of Article 25 of the Constitution and Article 2 of the ECHR cannot depend on internal organizational issues of an institution, which at any time must take all measures to ensure that applicable laws and regulations are strictly implemented; (ii) the fact that the deceased S. M., may have stated that “*she was unable to report to the police and requested that L.S. not be imprisoned, but if possible to be released*”, based on the positive obligations of the state guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR, as well as Articles 18 and 55 of the Istanbul Convention, does not exempt any state institution from the obligation to undertake all necessary measures determined by applicable laws and regulations for the protection of the victim; and (iii) The Basic Prosecutor's Office in Prishtina, during a period of ten (10) days “*was being handled by the justice bodies and on the day of reporting the case, the “Prosecutor's Office was in the phase of gathering the necessary evidence and information for the clarification of factual circumstances that were not known to the relevant bodies*”, despite the fact that the competent authorities had accurate information regarding L.S., because he was already convicted of the criminal offense of domestic violence as a result of reporting the violence of November 2019.
206. Therefore, and based on the clarifications above, the Court finds that the reaction of the competent authorities, namely the Police Station in Gracanica and the Basic Prosecutor’s Office in Pristina, was not immediate..

(ii) Quality of risk assessment by competent authorities

207. The Court points out once again that the ECtHR has determined that the relevant state authorities must view or examine the facts in the strict manner as they were known to the authorities at the time the event occurred, and not with the benefit of hindsight known after the occurrence of the event (see, in this regard, *Kurt v. Austria*, paragraph 195 of the Judgment). In this context, and based on the test elaborated and defined by the case law of the ECtHR, the Court will assess whether the risk assessment of the competent authorities was an autonomous, proactive and comprehensive.
208. The Court recalls that in relation to risk assessment, the Standard Operation Procedures (approved by Decision no. 78/2013 of 15 July 2013 of the National Coordinator against Domestic Violence within the Ministry of Justice), determine the measures and actions of the relevant authorities while dealing with cases of domestic violence. In addition, at the time when the case was reported to the Police by S.M’s daughter on 3 March 2021, the Istanbul Convention was also in force, which also defines standard procedures related to the quality of risk assessment in cases of notification of victims or family members for domestic violence (in this regard, see also the elaboration regarding the Applicant’s allegation of violation of articles 18, 50 and 51 of the Istanbul Convention).
209. According to the Standard Operation Procedures (pages 33 and 34 of the Procedures), among other things, it is determined that: “*The purpose of the risk assessment is to support actors in assessing the potential continuing suffering or violence exercised against a victim by the perpetrator of domestic violence and to provide the appropriate services and protection. Police shall conduct a risk assessment as an initial response. This assessment shall be performed after all*

needed emergency measures have been taken to provide security to the victim and others. Once the initial information is received, the Police conducts the risk assessment for the victim of domestic violence. Risk assessment shall be made in the presence of Victims' Advocate and when a child is a victim, in the presence of the custody body. As part of risk assessment, the Police shall prepare the basic data form, including: (i) Victim's emergency needs; (ii) Identity (personal data); (iii) Assessment of the condition and health needs of the victim; (iv) Assessment of security circumstances; (v) Brief description of the case; and (vi) Need for shelter: Yes or No. Even though it is envisaged that Police would likely be the primary responsible institution for filling in the Basic Form while conducting the risk assessment, however in cases when the victim initially contacts other actors in the procedure, this Basic Form shall be the same and based on information that the institution possesses."

210. Following this, the Court recalls that in Annex 3 (Basic Data Form for Victim of Domestic Violence) of the Standard Operation Procedures, risk indicators are also defined. The risk indicators in this appendix are divided into indicators of low risk, medium risk and high risk, respectively.
211. According to this annex, indicators of medium risk, among others, can be defined when: *"Perpetrator possesses a weapon; hecks the victim and expresses dissatisfaction for victims' friends; Perpetrator threatens the victim to injure him/her if he/she leaves the house; Perpetrator has mental problems. His/her behaviour do not appear to be normal. He is aggressive and violent with other. While indicators of high risk, among others, can be considered when: "Perpetrator had threatened the victim with a weapon - Perpetrator was arrested few times - Perpetrator is not afraid of the police and attacks the victim in their presence too - Perpetrator check every daily activity of the victim and knows every detail on the victim; Perpetrator harmed the victim when he/she left home and attacked the persons with whom the victim was staying; Perpetrator speaks about his/her plans for suicide - Perpetrators made suicide attempts - Perpetrators has a mental disorder and does not use medication."*
212. The Court further notes that according to Annex 9 (Checklist for Police) of the Standard Operation Procedures, the Police is obliged to complete this risk checklist, which, among other things, includes various actions and measures, among others that after the reaction to the case of violence, the risk assessment should also be done; that the victim is informed about his rights; notification to the Center for Social Work and the victim's advocate or the victim's legal representative; interviewing the victim, perpetrator, children and witnesses; submitting a copy of the form/sharing information with other actors involved in the process; compilation of the report related to the case and submission of a copy of the report to the victim, the CSW, and the Victims' Advocate (OVPA).
213. The Court recalls that in the Police letter submitted to the Court it was stated that:
- "On 07.05.2021, the professional committee (ad-hoc) was established to evaluate the actions of responsible police officers regarding the case of domestic violence, filed on 3 March 2021 at the Gracanica Police Station. The professional committee (ad-hoc) on 11.05.2021 visited the police station in Gracanica to analyze all the case file and the actions of the police officers. The professional committee in the report compiled on 12.05.2021 has found some actions that were not taken by the responsible police officers of the Graqanica police station as follows:*

- *The case was not handled by the domestic violence investigator (the official handling these cases was on annual leave), but the case was handled by another investigator;*
- *The investigator has not notified other institutions such as the center for social work and the advocate of victims;*
- *The basic forms have not been completed, the completion of these forms is an obligation of the Kosovo Police, according to the Standard Operation Procedures for protection from domestic violence. This basic form of data must be confidential, it must be in service only for the actors in the procedure, that is, when the victim is sent to a shelter or is sent to other institutions for any service, while in cases where the victim does not need shelter or other services, the original form is kept in the case file;*
- *The risk assessment for the case has not been carried out and the risk assessment form has not been completed;*
- *The checklist has not been completed, which is required according to the standard procedure of the national action and which helps the Kosovo Police not to make any possible mistakes during the handling of cases of domestic violence;*
- *It has not been recorded whether the victim was advised about the safety plan, which is very important for the victim of domestic violence.”*

214. Therefore, based on the information and documentation submitted to the Court by the Kosovo Police: (i) it does not appear that the risk assessment was carried out; (ii) the above lists have not been completed according to the Standard Operation Procedures; and (iii) the Center for Social Work and the Advocate of Victims have not been notified. The Court also recalls that the failure to take necessary actions for risk assessment by the Police was also established by the *Ex Officio* Report of the Ombudsperson.

215. In the report of the Ombudsperson, among other things, it was specified that:

“19. On 15 April 2021, the representative of the Ombudsperson through a letter, requested information from the Manager of the VPAO in Prishtina, if they had been informed, regarding the domestic violence reported to the PS in Gracanica on 3 March 2021. On the same day, the Ombudsperson's representative received a response stating that the victim's Protector had not been notified of the matter.

[...]

20. On 20 April 2021, Ombudsperson's representative received a response from the Basic Prosecution in Prishtina jointly with an official note on the case (2021-AT-0086, of 15 April 2021), as well as the case file, which according to the Prosecution, the Police had sent to them up to 19 April 2021. From case files sent it can be seen that the same had to do exclusively with the actions conducted by the police of Gracanica PS on 3 and 4 March 2021. Further information on the progress after this date or other clarifications about the event of 14 March 2021 has not been provided.

The Ombudsperson finds that the responsible authorities did not sufficiently assess the potential risk of the case, even though the victim had pointed out L.S.'s ongoing actions and had given indications of mental health problems.

58. The Ombudsperson finds that coordination of actions between authorities was missing, which raises the need of improving the quality and security of services in cases of domestic violence as well as strengthening of control mechanisms of each institution, from the moment the case of violence in the family is reported until it is completed.

59. *The Ombudsperson finds that the police officers in the Gracanica Police Station did not act in accordance with the provisions of the Standard Operating Procedures for Protection from Domestic Violence, since they did not notify the victim Protector that he/she should be present with the victim as well as no victim safety plan had been drafted.*

60. *The Ombudsperson recalls that, as an integral part of the principle of legal certainty, the principle of legitimate expectation is also guaranteed. Legitimate expectations can be established by public policies, public statements and enforcement of regular practices. A legitimate expectation can be violated even when public officials fail to implement a policy or abide with the procedure. Despite a large number of legal acts which refer to protection from domestic violence, international instruments that are applicable in our country, the Law on Protection against Domestic Violence, the Law on Protection from Discrimination, the Law on Gender Equality, the Criminal Code, Procedures as well as a number of other acts and ongoing statements of government officials to combat domestic violence, it seems that the legitimate expectations in this case have not been met.*

216. Also, the Court notes that the lack of autonomous, proactive and comprehensive risk assessment by the police was also not corrected by the Basic Prosecutor's Office in Prishtina, after the acceptance of the Police Report on the reporting of violence. Moreover, all the facts about L.S. should have been known to the state authorities, based on the fact that L.S. had a record of arrest, an emergency protection order issued by the Court and a criminal conviction in 2019. In light of this, the Court notes that none of the inactions or failures of the police officers to assess the risk were corrected by the Prosecution. In this regard, the Court recalls that the Basic Prosecutor's Office in Prishtina in its comments to the Applicant's allegations emphasized that despite the fact that the deceased S.M. stated that "*she is not interested in proceeding with the criminal prosecution*", this has not prohibited the Prosecution from undertaking other investigative actions in order to prove the criminal offense and the factual situation, and in the absence of information and the refusal of the injured party for further cooperation, requested additional information to verify the reason for the refusal of the deceased to continue with the case. In the end, the Basic Prosecutor's Office in Prishtina concludes its comments by emphasizing that: "*the prosecutor of the case, who deals only with cases of domestic violence, has taken, according to his powers and authorizations, all the necessary investigative and legal actions to handle this case and, as always, he is in defense and at the service of ensuring the life and rights of any kind of constitutional category of society, in particular the most sensitive cases of domestic violence, which are the most difficult and sensitive cases to handle with because they affect the foundations of the family and society every time*". In this regard, the Court notes that the Basic Prosecutor's Office in Prishtina did not provide any clarification on what concrete and specific measures it had taken in relation to the risk assessment. As a result, it results that the Basic Prosecutor's Office in Prishtina had not taken adequate measures for the conduct of an autonomous, proactive and comprehensive assessment as established in the legislation in force and the standard operation procedures, but also the constitutional guarantees of the Republic of Kosovo.
217. Based on the above, the Court emphasizes that the Kosovo Police, namely the police station in Gracanica, has not carried out an autonomous, proactive and comprehensive risk assessment. This is because, according to the Kosovo Police own documents as well as the findings of the Ombudsperson, the Standard Operation Procedures of the National Coordinator against Domestic Violence have not been followed and implemented, respectively and among others, (i) the procedural steps

established through Standard Operation Procedures have not been followed; (ii) the standard forms, including the respective checklist, of the risk assessment have not been completed; (iii) the Center for Social Work has not been notified; (iv) the Victims' Advocate has not been notified. All these criteria, which were not applied in the circumstances of this present case, stem from the obligations of the Istanbul Convention, which also defines standard procedures related to the quality of risk assessment in cases of notification of victims or family members of domestic violence.

218. Regarding the State Prosecutor, namely the Basic Prosecutor's Office in Prishtina, the Court notes that according to the relevant Prosecutor's Office the latter "*was in the phase of gathering the necessary evidence and information for the clarification of factual circumstances that were not known to the relevant bodies*", and "*the prosecutor of the case, who deals only with cases of domestic violence, has taken, according to his powers and authorizations, all the necessary investigative and legal actions to handle this case and, as always, he is in defense and at the service of ensuring the life and rights of any kind of constitutional category of society*". The Court emphasizes that none of the answers of the Prosecution have specified a single measure that was taken from the dates of reporting the violence, namely 3 March 2021, until the murder of the deceased, on 14 March 2021. The Court emphasizes that the competent authority had correct data, regarding L.S., because the latter was already convicted for the criminal offense of domestic violence as a result of reporting the violence in November 2019. In the context of the chronology of the factual circumstances of the domestic violence, the case of S.M., the time period of ten (10) days in which the relevant Prosecutor's Office was "*in the phase of gathering the necessary evidence and information*", directly supports the Court's finding that this Prosecutor's Office, under the circumstances of the present case, had not assessed risk autonomously, proactively and comprehensively.
219. As a result, and based on the clarifications above, the Court finds that the competent authorities, namely the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina, did not assess the risk autonomously, proactively and comprehensively, contrary to the constitutional guarantees that stem from Article 25 of the Constitution in conjunction with Article 2 of the ECHR, established in Article 18 and 51 of the Istanbul Convention and Standard Operation Procedures.

(iii) If the competent authorities were aware or should have been aware that there has been a real and immediate danger to the deceased S.M.

220. The Court will further examine and assess whether the relevant authority, in this case the Police at the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina, were aware or should have been aware that there was a real and immediate danger to the deceased S.M., namely the Applicant's mother.
221. The Court notes that this criterion is related to whether the competent authorities, namely the Kosovo Police and the Basic Prosecutor's Office, based on the information and documentation they possessed at the time have carried out a genuine risk assessment. As it has been elaborated and assessed above, the Court considers that the Kosovo Police, namely the police officers of the Police Station in Gracanica, should have been aware of the criminal past of L.S., namely the commission of the criminal offense of domestic violence and assault for which he was found guilty by the Basic Court in Gjilan, which also issued a protection order valid for twelve (12) months.

222. Based on the above, the Court assesses that the Kosovo Police should have been aware of a real and immediate danger to the deceased S.M. The Court further notes that the Law on Protection against Domestic Violence and the Standard Operation Procedures foresee, among other things, the Police as the first point of contact for a victim of domestic violence. Paragraph 4 of Article 24 of the Law on Protection against Domestic Violence states that: “4. *The law enforcement authorities shall complete an incident report whether or not a crime was committed or an arrest was made and provide a copy of the incident report to the victim or the legal representative of the victim.*”
223. Based on the elaboration as above, the Court emphasizes that the state authorities, namely the Police Station in Gračanica and the Basic Prosecutor’s Office in Prishtina, should have been aware of or possessed the relevant information that there was a real and immediate danger to the deceased S.M. The Court emphasizes the fact that while the Police Station in Gračanica and the Basic Prosecutor’s Office were handling the domestic violence report dated 3 March 2021, and that from this date until the murder of the deceased S.M., the relevant Prosecutor’s Office was “*in the stage of gathering the necessary evidence and information*”, both the Police and the Basic Prosecutor’s Office, should have immediately taken into account the fact that, based on the report of violence on 10 November 2019, (i) a temporary protection order had been issued of twelve (12) months; and (ii) he was convicted for the criminal offense of domestic violence and assault by the Basic Court in Gjiilan.
224. Consequently, and based on the clarifications as above, the Court finds that the competent authorities, namely the Police Station in Gračanica and the Basic Prosecutor’s Office in Prishtina, were aware or should have been aware that there has been a real and immediate danger to the deceased S.M., and despite this fact, have not taken the necessary measures as specified, among others, in the Standard Operation Procedures, contrary to the constitutional guarantees that originate from Article 25 of the Constitution in conjunction with Article 2 of the ECHR, the guarantees established Articles 18, 50 and 51 of the Istanbul Convention and Standard Operation Procedures.

(iv) Whether the relevant authorities have taken preventive and adequate measures in the circumstances of the present case

225. The Court recalls that the obligation to undertake preventive measures, among others, is established in articles 50 and 51 of the Istanbul Convention, provisions of the Law on Protection against Domestic Violence, relevant provisions of the Code of Criminal Procedure, Standard Operation Procedures, which will be summarized as follows:
226. Article 50 (Immediate response, prevention and protection), paragraph 1 of Istanbul Convention establishes that: “*Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.*”
227. In addition, Article 55 (Ex parte and ex officio proceedings) of the same Convention establishes that: “*Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.*”

228. First, and based on these two provisions of the Istanbul Convention, the Court notes that the obligation to take preventive and immediate measures exists for the competent state authorities even if the victim has withdrawn the report or complaint for domestic violence.
229. Secondly, the Court points out that based on Article 13 (Petitions for Protection Orders or Emergency Protection Orders) of the Law on Protection from Violence, it is determined by whom and in which cases a request for a protection order can be submitted. In addition to the victim, request for protection order can also be submitted by the victim's advocate or the representative of the social center. However, the Court emphasizes that in the circumstances of the present case, and as explained above, in failure to fulfill the obligation to implement the Standard Operation Procedures, the victim's advocate and the representative of the Center for Social Work, were not notified by the police officers regarding the reporting of 3 March 2021.
230. Thirdly, the Court also notes that based on Article 22 (Temporary Emergency Protection Order) of the Law on Protection against Domestic Violence, outside the working hours of the courts, the request for an emergency temporary protection order can be submitted to the Kosovo Police by the protected party; the authorized representative, or the advocate of the victims; the person with whom the protected party has a family relationship; the representative of the center for social work where the protected party resides; the person who is directly aware of an act or more acts of domestic violence against the applicant whose term of order expires at the end of the next day during which the court works. According to this provision, the head of the regional unit of the Kosovo Police against domestic violence: *"may issue a temporary emergency protection order and order one or more of the measures referred to Articles 5, 6, 7 and 10 of this Law."* These measures, among others, can be (i) the protection measure of prohibiting approaching the victim (Article 5 of the aforementioned law); and (ii) the protection measure of preventing harassment to exposed persons (Article 6 of the aforementioned law).
231. Fourth, the Court notes that based on paragraph 2 of Article 24 of the Law on Protection against Domestic Violence: *"Where there are grounds for suspicion that a crime involving domestic violence was committed, Kosovo Police shall arrest the alleged perpetrator according to the law."* Based on this, the Court notes that the Police had the authority to detain L.S. and subsequently follow the relevant procedures of detention measures in accordance with the provisions of the Criminal Procedure Code.
232. Fifth, the Standard Operation Procedures (page 37), determine that: *"Kosovo Police shall undertake all measures to monitor and execute immediately all protection orders. In cases when the police, while investigating domestic violence, finds that there are elements of criminal offence or a violation of protection orders, the police shall communicate with a prosecutor, inform him/her on the case and, depending on instructions received, take action; afterwards the police shall compile the criminal charge and refer the case to a competent prosecutor."*
233. In the end, the Court highlights the Applicant's allegation, who emphasizes that: *"the fact that the deceased [S.M.], as stated in the press release of the Prosecutor's Office, "does not want to continue with the case" should not be used as a justification for the prosecution's refusal to pursue the criminal offense. The criminal offense "domestic violence" provided by Article 248 of the Criminal Code 06/L-074 of the Republic of Kosovo, is a criminal offense that is prosecuted ex officio and the prosecutor of the case did not dare to rely on the victim's statements."*

This is even foreseen by what is considered as “one of the most important links in the legal infrastructure for protection from violence in the family”. In this regard, the Applicant refers to the “Standard Operation Procedures for Protection from Domestic Violence in Kosovo”, namely refers to the content of this Document, citing that, “the prosecution of criminal offenses is important for the security of Kosovo. The prosecution of criminal offenses is a matter between the state and the perpetrator/defendant. The victim is a witness of criminal offense.”

234. Based on the aforementioned clarifications, the Court emphasizes that if the Standard Operation Procedures had been implemented, which means, among other things, the timely information of the Center for Social Work and the Victims' Advocate, about the report of 3 March 2021 on domestic violence, based on the applicable laws of the Republic of Kosovo, among other things, the following measures would be possible (i) based on Article 13 of the Law on Protection against Domestic Violence, the request for a protection order can also be submitted by the advocate of the victim or the representative of the social center; (ii) based on Article 22 of the Law on Protection against Domestic Violence, the temporary emergency protection order could be issued by the Police itself, namely the head of the regional unit of the Kosovo Police, upon request of the parties authorized in this Article, including but not limited to the advocate of the victims or the representative of the center for social work where the protected party resides; and (iii) based on paragraph 2 of Article 24 of the Law on Protection against Domestic Violence, the Police had the authority to detain L.S. and subsequently follow the relevant procedures of detention measures in accordance with the provisions of the Criminal Procedure Code. Beyond the applicable laws and Standard Operation Procedures, the Court also highlights the obligations arising from articles 50, 51 and 55 of the Istanbul Convention, and which (i) emphasize the state's obligation to implement the applicable laws, namely the Law on Protection against Domestic Violence, relevant provisions of the Criminal Procedure Code, Standard Operation Procedures; and consequently (ii) the obligation to take prevention and immediate measures for all competent state authorities, even if the victim has withdrawn the report or complaint for domestic violence. Whereas, with regard to the Basic Prosecutor's Office in Prishtina, it is not disputable that in the circumstances of the present case, not a single measure was taken.
235. As a result, and based on the clarifications as above, the Court finds that the competent authorities, namely the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina, contrary to the constitutional guarantees stemming from Article 25 of the Constitution in conjunction with Article 2 of the ECHR, the guarantees established by Article 18, 50, 51 and 55 of the Istanbul Convention, and the applicable laws, including the Standard Operation Procedures, have not taken prevention and adequate measures in the circumstances of the present case.

(v) General conclusion

236. The Court emphasizes that in the circumstances of the present case, the state authorities, namely the Kosovo Police, respectively the Police Station in Gracanica and the State Prosecutor's Office, namely the Basic Prosecutor's Office in Prishtina (i) have failed in their positive obligation to protect the life of S.M., guaranteed by paragraph 1 of Article 25 [Right to Life] of the Constitution and paragraph 1 of Article 2 (Right to life) of the European Convention on Human Rights; and (ii) have failed to fulfill the obligations set out in paragraph 4 of Article 18 (General Obligations), paragraph 1 of Article 50 (Immediate response, prevention and protection), paragraph 1 of article 51 (Risk assessment and risk management) and

paragraph 1 of Article 55 (*Ex parte* and *ex officio* proceedings) of the Istanbul Convention.

237. This is because, contrary to the aforementioned guarantees, but also the laws applicable in the Republic of Kosovo, including the Law against Domestic Violence and Standard Operation Procedures, but also the case law of the ECtHR, and in harmony with which, all public authorities are obliged to interpret fundamental rights and freedoms, the competent authorities, (i) did not react immediately; (ii) have not made a genuine and immediate risk assessment, and which must be autonomous, proactive and immediate; (iii) in the circumstances of the present case, and taking into account that L.S., has already been previously convicted for the criminal offense of domestic violence, were aware or should have been aware of the immediate and real danger to the life of S.M., after reporting domestic violence on 3 March 2021; and (iv) had not taken prevention measures to protect or prevent the deprivation of life of S.M..

238. More specifically, the Court reiterates that:

(i) The police officers reacted immediately by going to the scene and interviewing the suspect L.S., however, apart from submitting the relevant report to the Prosecutor's Office, they did not follow the Standard Operation Procedures, among other things, by not notifying the Advocate of Victims and the Center for Social Work and after accepting the instructions of the Prosecutor on duty released L.S.;

(ii) Police officers at Gracanica Police Station failed to carry out the risk control and safety plan for S.M. according to Standard Operation Procedures, which had resulted in not notifying the Victim's Advocate and the Center for Social Work. This inaction of the police officers was not corrected either by the Basic Prosecutor's Office in Prishtina after the submission of the police report;

(iii) The police officers at the Gracanica Police Station and the Basic Prosecutor's Office in Prishtina were aware of the real and immediate danger to S.M. life, at least from the date of the reporting of domestic violence by the daughter of S.M. and L.S., namely on 3 March 2021;

(iv) Police officers and the Basic Prosecutor's Office in Prishtina, as a result of the lack of risk assessment, failed to take preventive measures to protect the life of S.M., which measures were available to them based on the legislation in force of the Republic of Kosovo.

239. Finally, in the light of the elaboration and assessment of the aforementioned general principles, determined by the case law of the ECtHR and the aforementioned international mechanisms in the context of domestic violence and the assessment of each of the aforementioned criteria, established through case law of the ECtHR, the Court finds that in the circumstances of the present case, the state authorities, namely the Kosovo Police, respectively the Police Station in Gracanica and the State Prosecutor, namely the Basic Prosecutor's Office in Prishtina, failed in their positive obligation to protect the life of S.M., guaranteed by Article 25 of the Constitution and Article 2 of the ECHR.

II. Regarding the allegation of violation of Articles 18, 50 and 51 of the Istanbul Convention

A. The application of the Istanbul Convention in the legal system of Kosovo

240. On 24 October 2018, the President of the Assembly of the Republic of Kosovo, based on paragraph 9 of Article 113 of the Constitution, submitted to the Court the proposed amendment no. 25 with the request to assess whether this amendment diminishes any of the rights and freedoms guaranteed by Chapter II of the Constitution. Eighty (80) deputies of the Assembly of the Republic of Kosovo proposed that *“In Article 22 after paragraph (8) the following paragraph (9) is added: (9) Council of Europe Convention on preventing and combating violence against women and domestic violence”* (see case KO162/18, Applicant the President of the Assembly of the Republic of Kosovo, Judgment, of 19 December 2018).
241. Based on the referral submitted to the Court, the deputies who proposed the approval of the amendment emphasized that: *“The state as such should have the responsibility if it does not respond to the violation of human rights envisaged by this Convention”*. In the following, the latter also considered that: *“The state as such should have the responsibility if it does not respond to the violation of human rights envisaged by this Convention”. [...]«the offences such as: genital mutilation, forced marriage, persecution, abortion and forced sterilization. This means that our state for the first time will include these criminal offenses in our legal system and that it will support other offenses that are part of the criminal code. Through this Convention, we will try to change the behavior of society, gender roles and stereotypes that make violence against women acceptable, training of professionals working with victims [...]”* (see paragraphs 31, 32 and 34 of the Judgment in case KO162/18).
242. The Court also recalls that as a result of the consideration of the draft amendment no. 25 of the Constitution referred to the Court, the latter by its Judgment KO162/18 held that *“In light of the foregoing, the Court considers that the wording of the proposed amendment does not diminish any of the rights and freedoms set forth in Chapter II of the Constitution. Moreover, it only advances and develops these rights”* (paragraph 51 of the Judgment).
243. The Court in this regard recalls that Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution lists international agreements and instruments that have direct application in the Republic of Kosovo. In accordance with Article 22 of the Constitution, the listed agreements and instruments apply directly in the Republic of Kosovo and have priority, in case of conflict, over the provisions of laws and other acts of public institutions.
244. On 25 September 2020, the Assembly of the Republic of Kosovo approved Amendment No. 25 of the Constitution of the Republic of Kosovo through which the Istanbul Convention was added to the list of agreements in Article 22 of the Constitution, which are directly applicable in the Republic of Kosovo. As a result of the approval of this amendment by the Assembly of the Republic of Kosovo, the Istanbul Convention in the Republic of Kosovo is now directly applicable in the legal system of the Republic of Kosovo.
245. As elaborated above, the Court recalls that as a result of the adoption of the Constitutional Amendment by the Assembly on 25 September 2020, the latter gave direct effect to the Istanbul Convention in the legal system of the Republic of Kosovo. In the circumstances of the present case, the Court finds that the Istanbul Convention was in force at the time of reporting the violence on 3 March 2021 and when the deceased S.M. was deprived of life and as such is applicable in the circumstances of the present case.

246. Therefore, in relation to the applicability of the Istanbul Convention, the Court will focus on the “*actions or inactions*” of the state authorities that precede the deprivation of life of S.M. from the moment of reporting the violence by her daughter on 3 March 2021.

B. General principles under the Istanbul Convention

247. The Court recalls the purpose of the Istanbul Convention, which, among other things, provides: (i) *protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence*; (ii) *contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women*; (iii) *design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence*; (iv) *provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence*” (see paragraph 39 of the Judgment in case KO162/18).
248. In the following, the Court reiterates that the Applicant alleged a violation of Articles 18, 50 and 51 of the Convention, however the Court assesses that her allegations in essence also raise issues related to obligations of state authorities that are also established in Article 55 (*Ex parte* and *ex officio* proceedings) of the Convention. As a result of this, in the following the Court, during the assessment of the Applicant’s allegations, will elaborate the principles and obligations defined by articles 18, 50, 51 and 55 of the Convention, and will apply them in the circumstances of the present case.
249. The Court clarified above, that in relation to the obligations of the state parties arising from the provisions of the Istanbul Convention in cases of domestic violence under review before the ECtHR, namely case *Kurt v. Austria*, these obligations or actions established in this Convention had served in the development of the test or criteria to determine whether the relevant authorities had respected their positive obligation for the protection of life guaranteed by Article 2 of the ECHR. Therefore, the relevant provisions of the Istanbul Convention and the contribution of GREVIO as a mediating party in this case had served as a source of interpretation of Article 2 of the ECHR in the circumstances of this case before the ECtHR.

(i) Obligations of the public authorities of the Republic of Kosovo according to the provisions of the Istanbul Convention

250. The Court further refers to Article 18 (General obligations) of the Istanbul Convention and its Explanatory Report.
251. Firstly, in relation to paragraph 1 of Article 18 of the Istanbul Convention, the Explanatory Report provides that this paragraph:

“[...] contains the general obligation of taking legislative or other measures for the protection of all victims within their territory from any further acts of violence covered by this Convention. 113. In line with the general multi-agency and comprehensive approach promoted by the Convention, paragraph 2 requires Parties to the Convention to ensure that, in accordance with internal law, there are appropriate mechanisms in place that provide for effective cooperation among the following agencies which the drafters have identified as relevant: the judiciary, public prosecutors, law enforcement agencies, local and

regional authorities and NGOs. By adding “other relevant organisations” the drafters have ensured that this list is nonexhaustive to allow for co-operation with any other organisation a Party may deem relevant. The term “mechanism” refers to any formal or informal structure such as agreed protocols, round-tables or any other method that enables a number of professionals to co-operate in a standardised manner. It does not require the setting up of an official body or institution.

114. The emphasis placed on co-operation among these actors stems from the conviction that the forms of violence covered by the Convention are best addressed in a concerted and co-ordinated manner by a number of agencies. [...]

252. In relation to paragraph 3 of Article 18, the Explanatory Report specifies that: *“116. [...] this paragraph requires any such measures to take into account the relationship between victims, perpetrators, children and their wider environment to avoid the risk of addressing their needs in isolation or without acknowledging their social reality. The drafters considered it important to ensure that the needs of victims are assessed in light of all relevant circumstances to allow professionals to take informed and suitable decisions. The term “integrated approach” refers to the integrated human rights based approach addressed as the “three P approach”, aiming to integrated prevention, protection and prosecution.”*
253. The Court further recalls that paragraph 4 of Article 18 establishes that: *“The provision of services shall not depend on the victim’s willingness to press charges or testify against any perpetrator.”*
254. The Explanatory Report of the Istanbul Convention regarding paragraph 4 of Article 18 of the Convention states: *“121. The purpose of paragraph 4 is to point to a serious grievance which victims often encounter in seeking help and support. Many services, public and private, make their support dependent on the willingness of the victim to press charges or testify against the perpetrator. If, for reasons of fear or emotional turmoil and attachment the victim is unwilling to press charges or refuses to testify in court, he or she will not receive counselling or accommodation. This goes against the principle of empowerment and a human rights-based approach and must be avoided. It is important to note that this provision refers first and foremost to general and specialist support services referred to in Articles 20 and 22 of the Convention – with the exception of legal aid services.*
255. In the following, the Court refers to the obligations set forth in Article 50 (Immediate response, prevention and protection) of the Convention, which stipulates that: (i) *Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims; and (ii) Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.*
256. The Explanatory Report of the Istanbul Convention regarding Article 50 of the Convention states, among other things, that the fulfillment of this obligation includes, for example:

- the right of the responsible law enforcement agencies to enter the place where a person at risk is present;
- the treatment and giving advice to victims by the responsible law enforcement agencies in an appropriate manner;
- hearing victims without delay by specially-trained, where appropriate female, staff in premises that are designed to establish a relationship of trust between the victim and the law enforcement personnel; and
- provide for an adequate number of female law enforcement officers, including at high levels of responsibility.

263. Moreover, the same Explanatory Report specifies that the state authorities should undertake “effective measures should be taken to prevent the most blatant forms of violence which are murder or attempted murder. Each such case should be carefully analysed in order to identify any possible failure of protection in view of improving and developing further preventive measures.”

264. Thirdly, Article 51 (Risk assessment and risk management) of the Convention stipulates that:

1. Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide coordinated safety and support.

2 Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.

265. The Explanatory Report of the Convention regarding this obligation defined by Article 51 of the Convention, among other things, clarifies that: (i) this article establishes the obligation to guarantee that all relevant authorities, not limited to the police, evaluate effectively and draft a plan to manage the security risks faced by a particular victim on a case-by-case basis, according to standardized procedure and in cooperation and coordination with each other; (ii) any risk assessment and risk management take into account the possibility of repeated violence, especially lethal violence, and adequately assess the seriousness of the situation; and (iii) the risk assessment must be carried out with a view to managing the identified risk by drawing up a safety plan for the victim in question, in order to provide co-ordinated safety and support if necessary; and the assessment of the risk mentioned in the first paragraph of this article properly takes into account reliable information about the possession of firearms by the perpetrators of acts of violence. Possession of firearms by perpetrators not only constitutes a powerful means of exerting control over victims, but also increases the risk of homicide.

266. Finally, the Court notes that paragraph 1 of Article 55 (*Ex parte and ex officio proceedings*) of the Convention stipulates that: “Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.”

267. The Explanatory Report in relation to paragraph 1 of Article 55 states that:

“Paragraph 1 places on Parties the obligation to ensure that investigations into a number of categories of offences shall not be “wholly dependant” upon the report or complaint filed by a victim and that any proceedings underway may continue even after the victim has withdrawn her or his statement or complaint. The drafters decided to use the terms “wholly dependant” in order to address procedural differences in each legal system, bearing in mind that ensuring the investigations or prosecution of the offences listed in this article is the responsibility of the state and its authorities. In particular, the drafters were of the opinion that acts resulting in severe bodily harm or deprivation of life must be addressed promptly and directly by competent authorities. The fact that many of the offences covered by this Convention are perpetrated by family members, intimate partners or persons in the immediate social environment of the victim and the resulting feelings of shame, fear and helplessness lead to low numbers of reporting and, subsequently, convictions. Therefore, law enforcement authorities should investigate in a proactive way in order to gather evidence such as substantial evidence, testimonies of witnesses, medical expertise, etc., in order to make sure that the proceedings may be carried out even if the victim withdraws her or his statement or complaint at least with regard to serious offences, such as physical violence resulting in death or bodily harm.”

268. Following this elaboration as above, the Court notes that the general obligations for state authorities defined by Article 18 of the Convention are further specified in Articles 50, 51 and paragraph 1 of Article 55 thereof.

269. In the following, the Court will also refer to the findings and recommendations of the Secretariat of the monitoring mechanism of the Istanbul Convention and the Division of the Council of Europe for Gender Equality, compiled in the Assessment of the alignment of laws, policies and other measures in place in Kosovo with the standards of the Istanbul Convention (*Report on Kosovo*).

(ii) Assessment of the alignment of laws, policies and other measures in place in Kosovo with the standards of the Istanbul Convention (Report on Kosovo)

270. The Court further notes that in November 2022, the Secretariat of the Monitoring Mechanism of the Istanbul Convention and the Council of Europe Division for Gender Equality (Capacity Building and Cooperation Projects Unit) published the assessment of the alignment, policies and other measures of Kosovo with the standards of the Istanbul Convention. In the introductory part of this Assessment or Report, this *“this initiative emerged from the commitment of Kosovo* to reinforce its action to end violence against women and domestic violence, through the adoption of a constitutional amendment, on 25 September 2020, which gave direct effect to the Istanbul Convention.”*

271. With regard to the obligation for immediate response, prevention and protection, the delegation, among other things, found that:

241. With the adoption of the Law on the Protection of Domestic Violence in 2010, a range of measures have been introduced to enhance the police’s response to domestic violence. The Kosovo Police have established Domestic Violence Investigation Units (DVIUs) in each municipality, staffed with both women and men police officers who are trained specifically to deal with domestic violence cases. Moreover, the Standard Operating Procedures (SOPs) on the Protection against Domestic Violence sets out standardised and harmonised methods of cross-sectoral co-ordination and intervention,

including for law enforcement and judicial institutions. The above SOPs foresee that all police officers should make use of proportionate measures to protect victims of domestic violence, detain the suspected perpetrator with the purpose of preventing further violence; and interview the victims in rooms that provide comfort and security for the victim. Thus, some police stations have created victim-friendly spaces within the police station designed to ensure privacy.

[...] also found that there was a need to foster training of all police on domestic violence, and not limit this to those officers from the DVIUs. First responding police officers who attend the scene of the crime are not necessarily from the DVUIs, and then cases are taken by police officers who are often insufficiently trained and lack knowledge of co-operation with other institutions, including the Centres of Social Work, Victims Advocacy and Assistance Office and shelters.

[...]

Positively, the delegation noted the foreseen measures to expand the scope of the Law on the Protection Against Domestic Violence and the associated SOPs as per the National Strategy on Protection against Domestic Violence and Violence against Women (2022-2026).

245. In 2021, according to the Kosovo Police, 2 456 cases of domestic violence were reported, while almost 80% of the victims were female. The lack of disaggregation of the data does not, however, allow the isolation of reported cases of intimate partner violence from other forms of domestic violence. [...] Victimblaming attitudes also lead some police officers to treat reported instances of domestic violence as mere disputes between couples and try to “reconcile” the couple [...] According to information received from civil society, beliefs in myths around sexual violence can contribute to both a negative experience for the victim (e.g. inappropriate questions and comments) and also a lack of case progression.

246. The delegation was informed of the strong reliance of police and prosecution services on the victim’s statement, in particular in domestic violence cases. Where victims withdraw their statements, the criminal proceedings frequently come to an end for lack of supporting evidence. There was little information as to police efforts to improve the comprehensive collection beyond the victim’s/witness’ statement. There is a need to step up measures aimed at ensuring effective investigations and case building in all instances of violence covered by the convention.

247. It is urgently recommended that the authorities:

a. enhance the capacity and knowledge of all law enforcement officers regarding strong case building for all forms of violence covered by the Istanbul Convention, including timely evidence collection and the prevention of secondary victimisation; and

b draw up standard reporting and investigative procedures in relation to all other forms of violence against women, in particular sexual violence and forced marriage.”

272. Regarding the obligation to assess the risk, among other things, it was emphasized and recommended that:

259 Under the Standard Operating Procedures (SOPs) for the Protection against Domestic Violence, a risk assessment is to be part of the immediate police intervention in domestic violence cases. After such risk assessment, the police have an obligation to protect victims and inform them of their rights, including informing them about various types of protection orders, liaising with other actors to provide psychological support, legal aid, shelter, and other assistance. Once the victim is brought to safety, the police must develop an

adequate protection plan. A checklist provided for the police on the risk assessment consists of several items in a Basic Data Form. The delegation was informed that while the first responding police may conduct an initial risk assessment, it is the obligation of the police investigators from the DVIUs to fill in the Basic Data Form for which they have had specific training. Prosecutors have an obligation to take the necessary measures depending on the risk assessment done in domestic violence cases.

260. While it is welcomed that risk assessments based on standardised forms are foreseen as a mandatory step under the Standard Operating Procedures for the Protection against Domestic Violence, this appears in practice to mainly concern the law enforcement agencies, whereas the objective of Article 51 is that all competent authorities that may come into contact with victims, effectively assess the risks to the victim's safety on a case-by-case basis.²³⁵ Moreover, risk assessments do not appear to be systematically carried out by the police, nor to always be done comprehensively to ensure proper victim protection. ²³⁶ In particular, the police often fail to conduct regular and repeated risk assessments at all relevant stages of the proceedings, including during and after the issuance of protection orders.

[...]

“264. It is urgently recommended that the authorities ensure the systematic use of a standardised, evidence-based risk assessment tool for all forms of violence covered by the Istanbul Convention, in order to enable all relevant risk factors for lethality and repeated violence to be timely identified and responded to, when first contact is made with victims and subsequently. It is also recommended that the authorities ensure that risk-assessment and management procedures are central to coordinated multi-agency responses to violence against women, while stepping up training for law enforcement agencies, judiciary and other relevant services.”

C.Application of obligations arising from articles 18, 50, 51 and 55 in the circumstances of the present case

273. The Court recalls that it has already established that the inactions of the Kosovo Police, namely the Police Station in Gracanica and the State Prosecutor, namely the Basic Prosecutor's Office in Prishtina, have resulted in the violation of the right to life of the Applicant's mother, namely S.M. , who was deprived of life by her husband on 14 March 2021.
274. The Court also recalls that the latter during this assessment applied the general principles and criteria developed through the case law of the ECtHR in the context of domestic violence, namely the criteria defined in case *Kurt v. Austria* and also applied in the case of *Y and Others v. Bulgaria* and *Landi v. Italy*. In this regard, the Court has also noted that in relation to the criterion of risk assessment and the undertaking of prevention measures, the ECtHR also referred to the obligations defined through the Istanbul Convention.
275. The Court also applied the test developed by the ECtHR in the case of *Kurt v. Austria* and in its two later cases, to the Applicant's circumstances, after which it found, among other things, that: (i) the failure to take actions by the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina to carry out an immediate autonomous, proactive and comprehensive risk assessment for the life of S.M.; (ii) the failure to notify the other actors, namely, the OVPA and the CSW, in this procedure and (iii) the lack of taking prevention measures, have resulted in the violation of the right to life of S.M. guaranteed by Article 25 of the Constitution in conjunction with Article 2 of the ECHR.

276. The Court, in the context of the specific obligations arising from the Istanbul Convention, which is directly applicable in the legal system of the Republic of Kosovo and has precedence over the laws of the Republic of Kosovo, considers it necessary to examine the allegation raised by the Applicant of violation of Articles 18, 50 and 51 of the Istanbul Convention. In the following, the Court, in the context of the Applicant's allegation of violation of Article 18 of the Istanbul Convention, considers it necessary to examine the obligation of the state authorities, which derive from Article 55 of the Istanbul Convention.

(a) In relation to Article 18 of the Istanbul Convention

277. The Court in the circumstances of the present case notes that paragraph 4 of Article 18 of the Convention, by which it is determined that the state's obligation does not depend on the victim's willingness to file charges or to testify against an author of the criminal offense, is also related to Article 55 of the Convention. More specifically, based on the circumstances of the present case, the Court assesses that the withdrawal of the deceased S.M to give a statement regarding the reporting of violence by her daughter, does not mean the release of the relevant authorities, namely the Kosovo Police and the Basic Prosecutor's Office that against the latter, the prevention measures be taken for the protection of her life and also of her children.

278. Therefore, following the above-mentioned finding, the Court will examine whether the lack of immediate risk assessment by the Kosovo Police; the non-notification of the Victims' Advocate and the Center for Social Work by the Police and the failure to take prevention measures by the Kosovo Police and the Basic Prosecutor's Office in Prishtina, have also resulted in the violation of the obligations arising from articles 50, 51 and 55 of the Istanbul Convention.

(a) In relation to Article 50 and Article 51 of the Convention

279. The Court recalls that the Kosovo Police failed to assess the risk established in the Standard Operation Procedures, the obligation defined by Articles 51 of the Convention. As a result, the Court finds that the lack of this action to assess the immediate risk has also resulted in the failure to take prevention measures, this obligation established in Article 50 of the Convention.

(c) In relation to Article 55 of the Convention

280. As elaborated in the part of the allegations related to the right to life guaranteed by Article 25 of the Constitution and Article 2 of the ECHR, the Court points out the obligations arising from Article 55 of the Convention, in cases where, among other things, is related to physical violence [Article 35 of the Istanbul Convention]. In this case, the Court recalls that Article 55 (*Ex parte* and *ex officio* proceedings) of the Convention states that "*that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.*"

281. Therefore, in the light of these circumstances, the Court assesses that the state authorities, namely the Police Station in Gracanica and the Basic Prosecutor's Office in Prishtina, did not act in accordance with paragraph 1 of Article 55 of the Istanbul Convention, because despite the withdrawal of the statement by S.M. on 4 March

2021, they had the obligation to continue with the investigation and prosecution of L.S.

Legal effects of the Judgment of the Constitutional Court

282. As established above by the Court, the “*actions and inactions*” of the Kosovo Police and the State Prosecutor have resulted in the violation of (i) the positive obligation to protect the right to life of S.M., guaranteed by Article 25 of Constitution in conjunction with Article 2 of the ECHR; and (ii) the obligations foreseen by Articles 18, 50, 51 and 55 of the Istanbul Convention.
283. In terms of this finding, the Court clarifies that, as it has already been clarified through its case law, including the cases (see, among others, the cases of the Court, KI10/18, Applicant *Fahri Deqani*, Judgment, of 8 October 2019, KI45/20 and KI46/20, Applicants: *Tinka Kurti and Drita Millaku*, Judgment, of 26 March 2021, KI113/21, Applicant *Bukurije Haxhimurati*, Judgment, of 20 December 2021) it does not have legal authorizations to assign any compensation for damages in cases where it finds a violation of the respective constitutional provisions. However, the Court, in this regard, clarifies that the effect that this Judgment enables, is related to the right that is created for the Applicant from the moment of entry into force of this Judgment, to use other legal remedies available for the further exercise of the rights for the respective compensation in accordance with the findings of this Judgment.
284. In the end, the Court emphasizes that the Istanbul Convention, which is directly applicable in the legal order of the Republic of Kosovo, provides for the state’s obligations regarding the effective legal remedy and the adequate compensation and within a reasonable period, for the victims of violations of the Convention. These obligations are established in Articles 29 and 30 of the Istanbul Convention. More precisely, with regard to legal remedies, Article 29 of the Convention foresees the obligation of the state to undertake all necessary legislative measures or other appropriate measures to enable (i) the respective victims to have a legal remedy against the perpetrator of violence; and (ii) in accordance with the general principles of international law, the adequate legal remedy against state authorities which have failed in their duty to undertake the necessary prevention and protection measures within their scope. Whereas, in relation to compensation, Article 30 of the Convention establishes the obligation of the state to undertake all the necessary legislative measures or other measures to ensure that the victims have the right to request appropriate compensation for all violations defined through the Convention. Moreover, the same article specifies that adequate compensation and within a reasonable time must be awarded to all victims of violations of the Convention, according to the specifications of this article.
285. The Court recalls that the Istanbul Convention is directly applicable in the Republic of Kosovo since the adoption of the constitutional amendments on 25 September 2020. The Court also recalls that the international instruments directly applicable in the Republic of Kosovo also impose obligations on the state as clarified in this Judgment. These obligations also include the creation of effective mechanisms for effective legal remedies and adequate compensation, according to the aforementioned provisions of the Istanbul Convention.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 47, 48 and 49 of the Law and Rule 59 (1) of the Rules of Procedure, in its session held on 7 March 2023, unanimously:

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that the Police of the Republic of Kosovo, namely the Police Station in Gracanica and the State Prosecutor, namely the Basic Prosecutor's Office in Prishtina, have failed in their positive obligation to protect the life of S.M., guaranteed by paragraph 1 of Article 25 [Right to Life] of the Constitution and paragraph 1 of Article 2 (Right to life) of the European Convention on Human Rights;
- III. TO HOLD that the Police of the Republic of Kosovo, namely the Police Station in Gracanica and the State Prosecutor, namely the Basic Prosecutor's Office in Prishtina, have failed to fulfill the obligations defined by paragraph 4 of Article 18 (General Obligations), paragraph 1 of Article 50 (Immediate response, prevention and protection), paragraph 1 of Article 51 (Risk assessment and risk management) and paragraph 1 of Article 55 (*Ex parte* and *ex officio* proceedings) of the Convention on Preventing and Combating Violence against Women and Domestic Violence;
- IV. TO NOTIFY this Judgment to the parties and, in accordance with Article 20.4 of the Law, to publish it in the Official Gazette;
- V. This Judgment is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Safet Hoxha

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.