



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 105/2016^{*,**,*}

<i>Communication submitted by:</i>	Promo-LEX
<i>Alleged victim:</i>	V.C. (deceased)
<i>State party:</i>	Republic of Moldova
<i>Date of communication:</i>	20 July 2016 (initial submission)
<i>References:</i>	Transmitted to the State party on 24 February 2016 (not issued in document form)
<i>Date of adoption of views:</i>	9 July 2020
<i>Subject matter:</i>	Gender-based violence and failure to provide redress
<i>Procedural issues:</i>	Consent of the author
<i>Substantive issues:</i>	Violent death of the author at the hands of her husband and unavailability of effective remedy
<i>Articles of the Convention:</i>	1 and 2 (a), (c), (e) and (f)
<i>Article of the Optional Protocol:</i>	2

* Adopted by the Committee at its seventy-sixth session (29 June–9 July 2020).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva and Franceline Toé-Bouda.

*** A joint opinion (dissenting), signed by Hiroko Akizuki, Gunnar Bergby, Marion Bethel, Lia Nadaraia, Aruna Devi Narain, Bandana Rana and Wenyan Song, is annexed to the present document.



Background

1. The author of the communication is the association Promo-LEX acting with the consent of P., the executor of the will of V.C.¹ It claims that the Republic of Moldova has violated the rights of V.C., a deceased Moldovan national born in 1961, under article 2 (a), (c), (e) and (f), read in conjunction with article 1, of the Convention. The Convention and the Optional Protocol thereto entered into force for the Republic of Moldova on 31 July 1994 and 28 May 2006, respectively.

Facts as submitted by the author

2.1 In 2008, V.C. married C. They had no children and lived in Chisinau, in a small apartment belonging to V.C., who had no close family or relatives² and, as woman with a disability,³ was highly dependent on her husband.

2.2 V.C.'s relationship with her husband deteriorated in 2013 and, during that period, she was regularly subjected to domestic violence and isolation. Her husband hit and beat her, pulled her hair and threw objects at her. He regularly prevented her from leaving the apartment and from speaking with her neighbours. She was also subjected to verbal and emotional abuse. His behaviour was often linked with excessive alcohol consumption and "triggered" by her reluctance to purchase alcohol for him.

2.3 Between December 2013 and January 2014, V.C. made five calls to the police emergency services and to the individual police officer responsible for her area, D.P., to report her husband's abuse. Her neighbours also called the police on her behalf.

2.4 D.P. regularly visited the couple's apartment to discuss C.'s violence. On those occasions, C. was given only oral warnings regarding his "unacceptable behaviour". At no point in 2013 did the police take the available protective measures in favour of V.C. They neither offered her protection, nor informed her of her right to initiate proceedings to obtain a protection order.

2.5 On 9 January 2014, V.C. called the police to report the physical and psychological violence inflicted by her husband, combined with his continued alcohol abuse. Officers were sent to the apartment, and C. was charged with disorderly conduct under article 354 of the Contravention Code of the Republic of Moldova. He pleaded guilty and received a fine of 200 lei (equivalent to around \$15).⁴ However, the charge did not capture the full gravity of the complaint or the abuse that V.C. suffered.⁵ No consideration appears to have been given to whether C. could or should have been prosecuted under the provisions of the Criminal Code dealing specifically with offences of domestic violence. Following the attack of 9 January 2014, V.C. moved in with a neighbour, P., because she was afraid to stay in her own apartment, owing to threats made by her husband.

2.6 On 10 January 2014, C. was given a written warning and registered as a "family aggressor" in Chisinau, and an "individual plan for the prevention of domestic

¹ Promo-LEX is a non-governmental organization whose objective is to advance democracy in the Republic of Moldova by promoting and defending human rights and monitoring democratic processes.

² V.C. was adopted and did not know her birth parents; her adoptive parents were deceased, and she had no siblings or other close relatives.

³ No further information is provided.

⁴ The police report stated that C. had committed the offence after consuming excessive amounts of alcohol.

⁵ The author refers to European Court of Human Rights, *C.N. v. United Kingdom*, application No. 4239/08, judgment of 13 November 2012, paras. 70 and 76–77, and *M.C. v. Bulgaria*, application No. 39272/98, judgment of 4 December 2003, para. 179.

violence” was drawn up, with the purpose of preventing further violence against V.C. The plan contained six action points. There is no evidence, however, that practical measures were taken for those action points to be implemented or followed up on; nor was V.C. provided with protective or support services.

2.7 On 14 January 2014, V.C. initiated divorce proceedings.

2.8 On 19 January 2014, V.C. returned to the couple’s apartment and told her husband that she intended to divorce him and asked him to move out. That same day, following an argument, C. attacked V.C. with a kitchen axe, hitting her many times in the head. She lost consciousness immediately. After hearing loud noises coming from the apartment, P. called the police. Upon their arrival, they found the door open and V.C. lying on the ground in a pool of blood. Because of the attack, V.C. became paralysed and had difficulty speaking. On 20 January 2014, C. was detained. On 16 September 2014, V.C. died from complications stemming from her injuries.⁶

2.9 On 30 December 2015, C. was convicted of his wife’s murder by the Court of the Centru sector of Chisinau. He is currently serving an eight-year sentence of imprisonment. That sentence was upheld by the Chisinau Court of Appeal. The author claims that C.’s conviction is not sufficient to preclude liability on the part of the State party for acts or omissions occurring before V.C.’s death, including the infliction of repeated and serious gender-based violence in a domestic setting.⁷

Legal standing of Promo-LEX

2.10 The author notes that, under article 2 of the Optional Protocol, communications may be submitted by or on behalf of individuals claiming to be victims of a violation of any of the rights set forth in the Convention. The author submits that it is justified and appropriate for Promo-LEX to submit the present communication on behalf of V.C., who cannot give her consent because she is deceased. V.C. was represented in her divorce by S., a lawyer working with Promo LEX. As V.C. was an orphan with no surviving natural or adoptive family and no children, there is no next of kin from whom the author could appropriately seek consent. Promo-LEX has, however, obtained written consent from P., V.C.’s neighbour, who was one of her closest friends and whom she appointed as the executor of her will and in whose home, on 9 January 2014, she found shelter against the violence inflicted upon her by her husband.

2.11 The author considers that the conditions of article 2 of the Optional Protocol are thus satisfied. According to the author, requiring the victim’s consent in all cases would be contrary to both the spirit and the express wording of article 2 of the Optional Protocol, pursuant to which individual communications can be submitted even on behalf of those who, for one reason or another, lack the capacity to consent in cases in which such action is justified. Such cases must include those in which reputable, rights-focused organizations such as Promo-LEX seek to act on behalf of a victim who is deceased or is otherwise unable to give consent and whose rights cannot otherwise be protected and vindicated. That reading, in the author’s opinion, maximizes the Committee’s ability to provide access to justice for those who cannot pursue it themselves.

2.12 Furthermore, the author argues that “representative standing” of this kind following the death of a victim of gender-based violence as a result of that violence

⁶ The author provides the death certificate.

⁷ The author refers to *Vienna Intervention Centre against Domestic Violence and Association for Women’s Access to Justice on behalf of Goekce et al. v. Austria* (CEDAW/C/39/D/5/2005), para. 12.1.6, and *Vienna Intervention Centre against Domestic Violence and Association for Women’s Access to Justice on behalf of Akbak et al. v. Austria* (CEDAW/C/39/D/6/2005), para. 12.1.6.

is important to ensure universal protection of the rights of women under the Convention and ensure the rights of women to be free from violence and to live free from fear and violence on the basis of equality.

Exhaustion of domestic remedies

2.13 The author states that V.C. did not apply for a “victim protection order” under the law⁸ because she was not aware, and was never informed by the authorities, of the availability of that measure. Although she had made numerous complaints to the police regarding her husband’s violent behaviour, she never received effective protection. As she is now deceased, there are no further remedies available that could afford effective relief.

2.14 Accordingly, the author claims that requiring a victim to exhaust domestic remedies of which she was unaware owing to failures of the authorities of the State party, in particular in circumstances in which those failures form part of the victim’s complaint, would undermine the purposes of the Optional Protocol. In that respect, the author points out that cases of domestic violence have particular characteristics and that perpetrators often exercise physical and psychological coercive power over victims.⁹ As a result, it is often the case that remedies that are dependent upon action to be taken by victims cannot be relied upon to provide effective relief.¹⁰

Complaint

3.1 The author claims that, by failing to exercise due diligence¹¹ in protecting V.C. from a known threat of domestic violence, the State party has violated her rights under article 2 (a), (c), (e) and (f), read in conjunction with article 1, of the Convention.

Failure to implement

3.2 The author submits that, in the present case, the breaches of the Convention result primarily from deficiencies in the State party’s implementation of its existing legal framework.¹² Those deficiencies were apparent both in relation to the ongoing violence suffered by V.C. in 2013 and in relation to the authorities’ response to the incident of 9 January 2014.

3.3 The author claims that the situation in the Republic of Moldova reflects the following: (a) a consistent failure by the authorities to treat domestic violence as a serious criminal matter;¹³ and (b) a lack of awareness on the part of the State authorities, in particular police officers, of their obligations in situations of domestic violence. In particular, the author refers to *Eremia and others v. Republic of Moldova*, in which the European Court of Human Rights decided that the authorities’ actions in response to the repeated acts of domestic violence against the applicant “were not a

⁸ Act No. 45-XVI of 1 March 2007 on preventing and combating domestic violence (the Domestic Violence Act).

⁹ The author refers to European Court of Human Rights, *T.M. and C.M. v. Republic of Moldova*, application No. 26608/11, judgment of 28 January 2014.

¹⁰ The author refers to *Vienna Intervention Centre against Domestic Violence and Association for Women’s Access to Justice on behalf of Goekce et al. v. Austria* and *Vienna Intervention Centre against Domestic Violence and Association for Women’s Access to Justice on behalf of Akbak et al. v. Austria*.

¹¹ The author refers to *Vienna Intervention Centre against Domestic Violence and Association for Women’s Access to Justice on behalf of Goekce et al. v. Austria*, paras. 12.1.4 and 12.1.6, and *Vienna Intervention Centre against Domestic Violence and Association for Women’s Access to Justice on behalf of Akbak et al. v. Austria*, paras. 12.1.5 and 12.1.6.

¹² The author refers, inter alia, to *V.K. v. Bulgaria* (CEDAW/C/49/D/20/2008), para. 9.4.

¹³ The author refers to the fact that this situation was pointed out in documents [A/HRC/11/6/Add.4](#) and [CEDAW/C/MDA/CO/4-5](#).

simple failure”, but “amounted to repeatedly condoning such violence and reflected a discriminatory attitude” towards the applicant as a woman.¹⁴

Failure to investigate

3.4 The author claims that none of the complaints made by V.C. and her neighbours were followed by a formal investigation¹⁵ and that the only action taken by the authorities was limited to informal “warnings” and to “discussions” with C., despite the complete absence of change in his behaviour. The author adds that that failure to investigate occurred notwithstanding the following provisions of national law: (a) article 28 of the Criminal Procedure Code of the Republic of Moldova;¹⁶ and (b) article 8 (6) of Act No. 45-XVI of 1 March 2007 on preventing and combating domestic violence (the Domestic Violence Act).¹⁷ Drawing upon the case law of the European Court of Human Rights, the author claims that, in the present case, as the authorities were aware of V.C.’s allegations of domestic violence, they had an obligation to investigate of their own motion the need for action in order to prevent such violence.¹⁸ The author claims in particular that failure to follow up on the allegations with a timely and suitable investigation amounts to a violation of article 2, read in conjunction with article 1, of the Convention.¹⁹

Failure to provide information on protection and support services and/or make the arrangements necessary to have such services provided

3.5 In 2013, and even following the very serious incident of 9 January 2014, the police failed to inform V.C. of the possibility of obtaining a victim protection order or to institute proceedings for such an order on their own initiative. Furthermore, neither V.C. nor C. were informed about, or put in contact with, organizations that provided counselling or rehabilitation services and that might have assisted C. with his alcohol abuse problem and his associated violent behaviour or provided accommodation to V.C. in a temporary shelter. The State party therefore failed to comply with its obligations under articles 8, 10 and 11 of the Domestic Violence Act.

3.6 The author claims that the failure to inform V.C. about the possibility of obtaining a protection order, the failure to apply for such an order on her behalf and the lack of clarity on the part of the police to do so are all contrary to the Committee’s general recommendation No. 19 (1992) on violence against women (para. 24 (b) and (t)).

3.7 The author submits that the Domestic Violence Act fails to make effective provision for the immediate protection of victims of domestic violence and does not clearly indicate who is entitled to submit applications for protection orders. The author further claims that the Act does not contain an express explanation of the procedure for obtaining protection orders upon a victim’s request or upon the

¹⁴ Application No. 3564/11, judgment of 28 May 2013, para. 89.

¹⁵ The author refers to document [A/HRC/11/6/Add.4](#), para. 21, in which it was noted that, unless it resulted in serious injury, domestic violence in the Republic of Moldova was not perceived as a problem warranting legal intervention. As a result, it was experienced in silence and received little recognition among officials.

¹⁶ The author explains that, under article 28, State authorities are obliged to take positive action, including criminal investigations, in any case where there is a reasonable suspicion that a crime, including in the context of domestic violence, has been committed.

¹⁷ The author explains that, under article 8 (6), the administrative bodies of the interior, including the regional and local police, are required to record and report cases of domestic violence, examine notifications submitted by citizens in relation to conflicts within families and acts of violence and perform activities aimed at preventing repeated acts of domestic violence.

¹⁸ European Court of Human Rights, *T.M. and C.M. v. Republic of Moldova*, para. 46.

¹⁹ The author refers to *Jallow v. Bulgaria* (CEDAW/C/52/D/32/2011), para. 8.4.

initiative of the police, social workers or prosecutors. The Act also does not provide information about the specific mechanisms and obligations related to the enforcement of such orders. The author claims that those failures amount to a violation by the State party of its obligation to ensure that laws against gender-based violence grant adequate protection to all women and respect their integrity and dignity and its obligation to take all legal and other measures necessary to provide effective protection of women against gender-based violence.

Proposed remedies

3.8 As to possible remedies, the author recommends that the State party: (a) take the measures necessary to ensure that women who are victims of domestic violence have effective access to appropriate protective and support services; (b) strengthen the implementation and monitoring of existing laws by acting with due diligence to prevent and respond to violence against women; and (c) provide mandatory training for law enforcement personnel, including police officers, on the application of existing laws, with a focus on ensuring that women are informed of the remedies and protection available to them.

State party's observations on the merits

4.1 The State party submitted its observations on admissibility and the merits by a note verbale dated 6 April 2017. It submits that, during the period 2012–2014, the police intervened in resolving three complaints from V.C. regarding acts of domestic violence. Those acts were registered in the “records of other information regarding offences and incidents” of the Central Police Inspectorate of the Police Department of Chisinau and examined within the limits of police competence, and V.C. was informed about the results of those examinations. One of the cases was examined under article 274 of the Criminal Procedure Code,²⁰ leading to the opening of a criminal case against C., which was brought to court on 31 March 2014.

4.2 The State party further submits that, on 10 January 2014, in order to preclude violent actions from C. and to monitor his behaviour, he was registered and individual preventive measures were taken in accordance with paragraphs 90 and 91 of the methodical instructions for interventions by internal affairs divisions in the prevention and combating of cases of domestic violence, approved by the Ministry of Internal Affairs in its order No. 275 of 14 August 2012.

4.3 The State party submits that, on 3 April 2014, the Department for Social Assistance of the Centru sector was informed by telephone about the severe condition of V.C. As a result, an onsite examination was carried out. It was found that V.C. had been discharged from hospital in a serious condition, paralysed, with difficulties speaking and unable to express herself. She was being cared for by P., who had reported the argument between V.C. and C. that had escalated to the use of force, as a result of which V.C. had been transported by ambulance to an emergency hospital with serious injuries and C. had been arrested.

4.4 The State party explains that, during the investigation, P., who was taking care of V.C., was informed about the need to obtain a legal representation, and about the services and social benefits provided by the Department for Social Assistance and the right to apply for medical assistance. At the same time, the Territorial Medical

²⁰ Article 274 (1) of the Criminal Procedure Code of the Republic of Moldova reads as follows: A criminal investigative body notified in the manner provided for in articles 262 and 273 shall decide, in an order, to initiate the criminal investigation, provided that a reasonable suspicion that a crime has been committed, and an absence of circumstances excluding the criminal investigation, result from the notification or from the establishing acts. The person who made the notification or the respective body shall be informed thereof.

Association had been notified in order to provide the necessary medical services, and on 4 April 2014, V.C. was hospitalized. After her discharge, V.C. continued to be looked after by P.

4.5 Furthermore, on 31 January 2014, the Court of the Centru sector of Chisinau issued a protection order²¹ for the victim, V.C., applying certain restrictions provided by law to her aggressor, C. In accordance with the Domestic Violence Act, police officers executed the order, informing C. about the restrictions applied to him by the Court and warning him, under signature, about the legal liability for non-compliance with the order. At the same time, a police officer initiated the procedure for supervising the enforcement of the restrictions imposed by the Court. The State party adds that, during the period for which the order was enacted, the officer did not report any violations of the measures. It also states that the Central Police Inspectorate reported that it was taking all measures necessary to prevent conflict situations and acts of domestic violence from occurring.

4.6 Lastly, the State party highlights that the sentence of eight years of imprisonment imposed on C. was upheld by the Court of Appeal on 22 April 2016.

Legislative changes

4.7 The State party informs the Committee that, on 28 July 2018, it adopted Act No. 196, amending and supplementing various matters related to preventing and combating domestic violence, in an effort to harmonize the national legal framework with international standards. Under the new law, some definitions given in the Domestic Violence Act were revised and a new “emergency restraining order” was created within the mechanism for the protection of victims, as a provisional measure for victim protection, to be applied by the police for a period of up to 10 days, through which the aggressor is to be immediately removed from the family home and a set of bans imposed to prevent violent acts. The State party also informs the Committee that, on 6 February 2017, it signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

Author’s comments on the State party’s observations on the merits

5.1 In comments dated 22 August 2017, the author highlights that the State party does not contest the admissibility of the communication; neither does it contest the author’s legal standing, nor the exhaustion of domestic remedies.

5.2 The author claims that the State party does not answer the core complaints made in relation to the violation of article 2 (a), (c), (e) and (f), read in conjunction with article 1, of the Convention.

5.3 Regarding the steps taken by the State party before the attack on V.C. of 19 January 2014 that led to her death, the author claims that they were insufficient to discharge the State party from its obligation to exercise due diligence in protecting V.C. from a known threat of domestic violence. In particular, the author claims that the State party had not taken all measures necessary to prevent domestic violence. The State party’s observations confirm that the police were fully aware that V.C. was a victim of serial domestic violence, yet never informed the relevant social services about that fact, confirming the existence of serious flaws in the national mechanisms for monitoring and offering support in cases of violence. Furthermore, although the State party states that the police had examined V.C.’s complaints within the limits of its competence, it provided no information or evidence to contradict the assertion that the action taken by the police had been limited to mere informal warnings and discussions with C., reinforcing the fact that such action did nothing to effectively

²¹ The State party does not provide a copy of the protection order.

protect V.C. from the recurrence of serious violence. The author also considers that the State party confirms that it failed to provide access to counselling and rehabilitation services for C. and to protection and support services for V.C. In addition, the author highlights that the State party did not specify or provide evidence on how the individual preventive measures of 10 January 2014 were implemented, monitored or enforced, nor was information provided as to the existence of any protection order in favour of V.C. after the serious domestic violence incident of 9 January 2014.

5.4 Regarding the steps taken by the State party after the attack of 19 January 2014, the author claims that they do not answer the allegations related to the failure with regard to protection. Informing V.C. and P. about the available assistance and social services only after V.C. had suffered what was, ultimately, a fatal attack at the hands of her husband, served merely to highlight the glaring failure to do so earlier. The author further claims that the State party does not provide a copy of the protection order allegedly issued in favour of V.C. on 31 January 2014, that there is no proof of the existence of such an order in the file of the criminal proceedings against C. and that the Central Police Inspectorate has not provided a copy of it pursuant to the author's request. Critically, even if such an order had been issued, it would not have served any practical purpose, given that C. was arrested on 20 January 2014 and has remained in detention since that date.

5.5 As to the criminal proceedings against C., they began on 20 January 2014, which was after the fatal attack. The author therefore claims that the only relevant criminal proceedings against C. began only in relation to the very attack that the State party had failed to take adequate steps to prevent and that ultimately resulted in V.C.'s death. The author concludes that, had more been done in relation to the earlier attacks, the attack that took her life might have never occurred. The author reiterates that subsequent prosecution does not preclude liability on the part of the State party.

5.6 Regarding the information provided by the State party on the legal developments, the author claims that they do not answer the allegations made and would not have been sufficient to discharge the State party's obligations. The author welcomes the State party's commitment to preventing and combating domestic violence and to harmonizing its legislation with international standards. The author highlights, however, that those legal developments occurred years after V.C.'s death and are therefore entirely irrelevant to the question of whether the State party complied with its obligations towards her during her lifetime. Lastly, the author claims that those developments do not address such critical issues as the demonstrable gap between the technical provisions of applicable laws and the capacity and willingness of the relevant authorities to enforce them.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

6.2 The Committee notes that the present communication was submitted without the specific consent of the alleged victim to act on her behalf. It notes that the State party has raised no objection on this ground.

6.3 In this connection, the Committee observes on a preliminary basis that the wording of the second sentence of article 2 of the Optional Protocol to the Convention explicitly foresees the possibility of having communications submitted without the victim's consent, provided that the author can justify acting on her behalf without

such consent. In the Committee's opinion, refusing to register cases such as the present one based on the lack of explicit consent would prevent the Committee from assessing the grounds for the communication and, in the light of their gravity, would possibly amount to granting impunity. The Committee considers that communications may be submitted without the victim's consent when (a) it is impossible for the victim to submit a communication or to designate a representative, such as in the case of a deceased person; or (b) when the author can justify the action on behalf of the victim, without express consent having been granted. In the latter case, the author must justify in writing the reasons for acting without consent.

6.4 The Committee is aware of the approach taken in similar cases by the European Court of Human Rights. For instance, in the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*,²² the application was lodged by a non-governmental organization on behalf of the deceased complainant more than four years after his death. In its judgment, the Court referred, inter alia, to the case law of the United Nations Human Rights Committee established pursuant to the International Covenant on Civil and Political Rights, according to which, in exceptional cases, a third party may submit a communication on behalf of a victim. Such a communication may be examined only if the third party can justify acting on the victim's behalf. The victim may authorize a representative to submit a communication on her or his behalf. According to the Committee's rules of procedure, a communication submitted on behalf of a victim may also be accepted when it appears that the individual in question is unable to submit the communication personally. The Court noted that typical examples of such situations include cases of enforced disappearance, when it is alleged that the victim has been abducted, when the victim has disappeared, when it is impossible to know the victim's whereabouts or when the victim is in detention or in a psychiatric facility. A third party (usually a close relative) may submit a communication on behalf of a deceased person.²³

6.5 The Court has also noted that the inter-American system for the protection of human rights has adopted a similar approach, accepting cases submitted by third parties, for example in cases of enforced disappearance or detained persons.

6.6 The Court concluded that, in the light of the exceptional circumstances of the case and the gravity of the allegations, the non-governmental organization must be recognized as having the right to act as Mr. Câmpeanu's representative, despite the fact that it had not received explicit authorization to act on his behalf and that he had died before the application under the Convention was lodged. The Court observed that concluding to the contrary would amount to preventing such serious allegations of a violation of the Convention from being examined at the international level, with the risk that the respondent State might escape its responsibility under the Convention as a result of its failure to designate, notwithstanding its obligations under domestic law, a legal representative to act on behalf of the victim. According to the Court, permitting to the State to escape thus its accountability would have been inconsistent with the general spirit of the Convention and the obligation under its article 34, pursuant to which the High Contracting Parties may not hinder in any way the effective exercise of the right to lodge a petition before the Court.

6.7 In the present case, the Committee observes that the author could not have obtained V.C.'s consent, owing to her death, and that, as she was an orphan with no surviving natural or adoptive family and no children, there was no next of kin from whom the author could have appropriately sought consent. The Committee notes that

²² Application No. 47848/08, judgment of 17 July 2014.

²³ See, for example, *Bazarov and Bazarov v. Uzbekistan* (CCPR/C/87/D/959/2000); *Celal v. Greece* (CCPR/C/82/D/1235/2003); *Telitsina v. Russian Federation* (CCPR/C/80/D/888/1999); *Coronel et al. v. Colombia* (CCPR/C/76/D/778/1997); and *Miango v. Zaire* (CCPR/C/31/D/194/1985).

a lawyer working for the author represented V.C. in the proceedings before the domestic authorities. In addition, in the absence of close relatives, the author obtained the consent of V.C.'s closest friend and the executor of her will, P., in support of the present communication, and has thus made reasonable efforts to ensure that it has sufficient standing to act. The Committee accordingly considers that, in the particular circumstances of the present case, the author has appropriately justified acting on behalf of V.C. without her express consent. The Committee considers that, in the light of the facts of the case, the alleged victim's vulnerability, in particular after the attack on her by her husband on 19 January 2014, which paralysed her and caused her death, and the gravity of the allegations, it was objectively impossible for the victim to give consent to act on her behalf, and that it is in the interest of justice and the prevention of impunity to accept that the non-governmental organization Promo-LEX can act as the author of the present communication. In the light of the above considerations, the Committee concludes that it is not precluded by article 2 of the Optional Protocol from considering the communication.

6.8 Regarding article 4 (1) of the Optional Protocol, the Committee notes that the State party does not contest the admissibility of the communication as to the lack of exhaustion of domestic remedies. It also notes that, as V.C. is now deceased, there are no further remedies available that could afford effective relief. The Committee therefore considers that it is not precluded by article 4 (1) from considering the merits of the communication.

6.9 With regard to article 4 (2) (a) of the Optional Protocol, the Committee has ascertained that the matter has not been and is not being examined under another procedure of international investigation or settlement.

6.10 The Committee has no reason to find the communication inadmissible on any other grounds and therefore declares it admissible and proceeds with its examination on the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the author and the State party, as provided for in article 7 (1) of the Optional Protocol.

7.2 The author asserts that the State party has violated V.C.'s rights under article 2 (a), (c), (e) and (f), read in conjunction with article 1, of the Convention. The issue before the Committee is, therefore, to determine whether the State party, through its entire structure, including its authorities, officials, institutions, practices and legislation, exercised due diligence, adequately addressed and investigated V.C.'s repeated complaints of domestic violence and provided her with effective legal protection, counselling and rehabilitation services. The Committee must determine whether the State party met its positive obligations under the Convention to protect V.C. from discrimination, understanding domestic violence as a flagrant and clear manifestation of discrimination against women.²⁴

7.3 The Committee recalls that, under article 2 (a), (c), (e) and (f) of the Convention, the State party has an obligation to respect the principle of the equality of men and women, to effectively and legally protect women and to take all appropriate measures to eliminate discrimination against them, including by modifying or abolishing, not only existing laws and regulations, but also customs and practices that constitute

²⁴ See the Committee's general recommendations No. 19 (1992) on violence against women and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.

discrimination against women. The Committee reaffirms that those obligations fall on all State organs,²⁵ including law enforcement officials.

7.4 The Committee notes that the State party has taken measures to provide protection against domestic violence under the Domestic Violence Act, which includes the possibility of issuing protection orders, but these measures were taken only after the death of V.C.

7.5 In the present case, however, the Committee notes that, notwithstanding the existence of the above-mentioned Act, V.C.'s repeated calls to the police during the course of 2013 to report her husband's physical and psychological abuse led only to the police giving oral warnings to C. and holding informal discussions with him about his "unacceptable behaviour" (see paras. 2.3 and 2.4 above). The Committee notes in this connection that none of those facts were disputed by the State party.

7.6 The Committee also notes that, on 9 January 2014, after V.C.'s call reporting her husband's abuse, police officers were sent to her home. As a result, her husband was fined for disorderly conduct, and V.C. decided to move to her neighbour's home owing to fear of her husband's violence. The Committee observes that the State party has not contested that point, nor has it indicated why, at that point, the police: (a) did not assess the seriousness of the situation together with V.C.'s previous complaints, which were already registered in the "records of other information regarding offences and incidents" of the Central Police Inspectorate of the Police Department of Chisinau (see para. 4.1 above), in a timely manner, in order to effectively protect V.C. under the relevant legislation; and (b) did not consider requesting an investigation into the allegations against C. under the provisions of the Criminal Code of the Republic of Moldova that deal specifically with domestic violence offences, given the recurrence of the violence committed against V.C.

7.7 The Committee further notes that the State party has also not explained why, by that time, V.C. had not been offered counselling, rehabilitation services or shelter or accommodation for her immediate protection, or why C. had not been provided with support and rehabilitation services for his alcohol abuse problem, pursuant to the State party's legislation against domestic violence. The Committee notes also the author's allegation that the police had not taken protective measures in favour of V.C., nor informed her of her right to initiate proceedings to obtain a protection order herself under the Domestic Violence Act. It further notes the author's claim that the Act does not contain an express explanation of the procedure for obtaining protection orders upon a victim's request or upon the initiative of the police, social workers or prosecutors.

7.8 The Committee takes note of the State party's assertion that, on 10 January 2014, in order to preclude the violent actions by C. and to monitor his behaviour, he was registered and individual preventive measures were taken (see para. 4.2 above). The Committee notes, however, that the author points out that the State party did not specify or provide evidence on how those individual measures were implemented in practice, nor on how were they monitored or enforced (see para. 5.3 above).

7.9 The Committee also notes that, on 19 January 2014, C. violently attacked V.C., hitting her many times in the head. As a result, she became paralysed and had difficulty speaking and, on 16 September 2014, died from complications stemming from her injuries. On 20 January 2014, C. was detained and, on 30 December 2015, he was convicted of his wife's murder and sentenced to eight years of imprisonment. The Committee notes the State party's statement that, on 31 January 2014, the Court of the Centru sector of Chisinau issued a protection order for V.C., applying certain restrictions to C. Nevertheless, the Committee also notes the author's claim that there

²⁵ See, for example, *L.R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013), para. 13.6.

is no proof of the existence of such an order, that no copy of the order was included in the criminal case file of C., that the author was unable to obtain a copy in spite of requests to that effect and that, even if the order had been issued, it would not have served any practical purpose, given that C. had already been arrested and remained in detention since the date of his arrest, on 20 January 2014.

7.10 In the present case, the State party's compliance with its obligations under article 2 (a), (c), (e) and (f) of the Convention must be assessed in the light of the level of due diligence and gender sensitivity applied in the handling of V.C.'s case by the police and of the preventive and protection measures applied.

7.11 The Committee considers that the police should have already recognized the risk of continued violence against V.C., a woman with a disability, after she had reported repeated incidents of domestic violence, in particular after the incident of 9 January 2014. In its submission, the State party itself refers to those incidents as "acts of domestic violence" (see para. 4.1). The Committee considers that such recognition required the police to understand what domestic violence entailed and what their responsibilities were under the Domestic Violence Act with regard to a risk of further violence occurring and that they be trained on how to respond adequately and holistically to incidents of domestic violence.

7.12 The Committee further considers that the fact that C. was merely punished for disorderly conduct after the incident of 9 January 2014 and that the incident was not examined under the existing relevant legislation for preventing and combating domestic violence reveals that the police lacked the capacity to understand the scope and gravity of domestic violence against women and to act accordingly, by providing V.C. with support and rehabilitation services and information on the possibility of obtaining a protection order. The Committee recalls that the unavailability of immediate protection, in particular in the form of temporary shelters, can constitute a violation of the State party's obligations under article 2 (c) and (e) of the Convention.²⁶

7.13 The Committee notes that almost no information was provided on the effective enforcement of the preventive measure taken on 10 January 2014, and even less on the existence and effectiveness of the only protection order allegedly issued in favour of V.C., on 31 January 2014. The Committee considers that, in any event, such an order would have not served any purpose, as C., the individual creating the threat of further violence against V.C., had already been deprived of his liberty when that order was issued, whereas V.C. had already been fatally injured at that moment.

7.14 Lastly, the Committee agrees with the author's assessment that the only relevant criminal proceedings against C. began only in relation to the attack of 19 January 2014 that the State party had failed to take adequate steps to prevent and that ultimately resulted in V.C.'s death, and that C.'s subsequent prosecution and imprisonment did not preclude liability on the part of the State party.

7.15 The Committee recalls that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.²⁷ Under the obligation of due diligence, States parties must adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies, which

²⁶ *V.K. v. Bulgaria*, para. 9.13.

²⁷ General recommendations No. 19 and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.

diligently enforce the laws. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims and survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.²⁸

7.16 While appreciating the adoption of a new law by the State party against domestic violence in 2018 and the efforts made to address the problem of domestic violence, the Committee considers that those measures had not been sufficiently put into practice in the circumstances of the present case.²⁹ The reaction of the police throughout the handling of V.C.'s case was not conducive to preventing, or protecting her from, domestic violence. Moreover, the Committee considers that the State party's specific legislation should have been implemented by all State actors, including law enforcement officials, who are bound by the obligations of the State party.

7.17 In the light of the foregoing, the Committee concludes that the facts as submitted reveal that the manner in which V.C.'s case was addressed by the State party's authorities constitutes a violation of her rights under article 2 (a), (c), (e) and (f), read in conjunction with article 1, of the Convention.

8. Acting under article 7 (3) of the Optional Protocol, and in the light of the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated V.C.'s rights under article 2 (a), (c), (e) and (f), read in conjunction with article 1, of the Convention.

9. The Committee makes the following recommendations to the State party:

(a) Individual: provide V.C. in a notable and proper manner with post-mortem acknowledgement of her status as a victim of domestic violence;

(b) General:

(i) Promptly, thoroughly, impartially and seriously investigate all allegations of gender-based violence against women, ensure that criminal proceedings are initiated in all such cases, bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and impose appropriate penalties;

(ii) Provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure that they have access to effective and sufficient remedies and rehabilitation, in line with the guidance provided in the Committee's general recommendation No. 33 (2015) on women's access to justice, and ensure that victims of domestic violence and their children are provided with prompt and adequate support, including shelter and psychological support;

(iii) Provide mandatory training for law enforcement officials, including the police, on the application of the legal framework with regard to preventing and combating domestic violence, including training on the definition of domestic violence and on gender stereotypes, as well as training with regard to the Convention, the Optional Protocol thereto and the Committee's jurisprudence and general recommendations, in particular its general recommendations

²⁸ General recommendation No. 35, para. 24 (2) (b).

²⁹ See Inter-American Commission on Human Rights, *Maria Da Penha Maia Fernandes v. Brazil*, case No. 12.051, report No. 54/01, 16 April 2001, para. 57, and *Jessica Lenahan (Gonzales) et al. v. United States*, case No. 12.626, report No. 80/11, 21 July 2011, para. 161.

No. 19, No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, No. 33 and No. 35.

10. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is also requested to publish the present views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.

Annex

Joint opinion of Committee members Hiroko Akizuki, Gunnar Bergby, Marion Bethel, Lia Nadaraia, Aruna Devi Narain, Bandana Rana and Wenyan Song (dissenting)

1. We regret that we are not able to share the conclusion, reached by the majority of the Committee, that communication No. 105/2016 is admissible.
2. The fact that a State Party has not challenged admissibility, as in this case, does not absolve the Committee of its duty to declare a communication inadmissible if any of the conditions laid down in article 4 of the Optional Protocol is satisfied.
3. Our finding should not be interpreted as a reluctance, or failure, on our part to recognize the important contribution of non-governmental organizations to upholding the rights of women under the Convention, generally, and, more particularly, to the formulation of communications under the Optional Protocol. Furthermore, the vulnerability of women accounts for the provision in article 2 of the Optional Protocol and rule 68 of the Committee's rules of procedure for the possibility of communications being submitted by third parties or persons other than the victim under the Convention, which is not the case under various other human rights instruments. We have also borne in mind the Committee's general recommendation No. 33 on women's access to justice, in which it recommends that States Parties ensure that rules on standing allow groups and civil society organizations with an interest in a given case to lodge petitions and participate in the proceedings ([CEDAW/C/GC/33](#), para. 16 (c)).
4. We are of the view, however, that the submission of a communication by a third party should remain an exception to the general rule under article 2 of the Optional Protocol, that is, that the communication should be submitted by the victim herself. A communication without the victim's consent can only be made exceptionally, and the discretion to allow a third party to submit a communication on behalf of a victim should, therefore, be exercised by the Committee only in exceptional and justifiable circumstances. We recommend caution, in particular, in allowing *actio popularis* in the guise of a communication on behalf of a victim under the Optional Protocol.
5. In the present case, the communication purports to have been made by Promo-LEX, a non-governmental organization ("the author"), on behalf of V.C., a deceased person ("the victim"). The victim is not survived by any next of kin or heir who could have submitted the communication on her behalf under article 4 of the Optional Protocol or authorized the author to act on behalf of the victim.
6. The author has no locus standi nor the legal power to act on behalf of the victim. It does not have sufficient interest to justify bringing an action on behalf of the victim without her consent. It did not receive instructions to act on behalf of the victim before her death. One of the lawyers working with the author, and not the author itself, represented the victim in her divorce case. It is probable that the issue of gender-based violence came up in the divorce case, but there is no evidence to that effect.
7. The executor of the will also lacks the power to act on behalf of the victim in this regard or to give power to the author to submit a communication on behalf of the victim. We cannot surmise that the victim would have agreed to this communication being lodged.
8. We have also considered the judgment of the European Court of Human Rights in the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (application No. 47848/08), which contains interesting observations on standing. Apart from the different provisions on standing in article 25 of the European

Convention for the Protection of Human Rights and Fundamental Freedoms, the case can be distinguished from the present communication as it concerned a victim with mental disabilities, raising particular issues as to capacity. In the present case, the victim had a disability, but there is no information as to whether that disability was physical or mental and whether capacity was at issue. More importantly, in the case of Mr. Câmpeanu, the European Court stressed that the standing of the Centre for Legal Resources to act on behalf of the victim was not challenged in domestic proceedings. The exceptional features invoked by the European Court to justify standing are therefore not present here.

9. The Human Rights Committee has established through a number of decisions on admissibility that a communication submitted by a third party on behalf of an alleged victim can be considered only if the author justifies her or his authority to submit the communication.

10. We conclude that the author in this case did not have sufficient interest to justify bringing an action on behalf of the victim without her consent, for the purposes of article 2 of the Optional Protocol.

11. Furthermore, the communication is inadmissible under article 4 (1) of the Optional Protocol because all available domestic remedies were not exhausted, either while the victim was alive or after her death. The State Party was, therefore, not given the opportunity to address and respond to the present allegations before domestic courts, nor has it been established that such a course of action would have brought no effective relief.

12. Lastly, we find the communication inadmissible under article 4 (2) (d) of the Optional Protocol as an abuse of the process to submit a communication. The victim did not express any wish to be the author of a communication, nor is there any credible individual remedy that is being recommended by the Committee in her regard. We believe that the State party would not escape accountability for any violation of the Convention on its part as the general recommendations being made by the majority under paragraph 9 (b) could be made in concluding observations (see, for example, [CEDAW/C/MDA/CO/6](#), para. 23) following a constructive dialogue with the State Party under articles 2 and 5 of the Convention, and their implementation could be monitored through a robust use of the follow-up mechanism. Alternatively, the author could have proceeded under article 8 of the Optional Protocol, arguing that the victim's death and those of other victims in similar circumstances amounted to a grave or systematic violation of women's rights in the State Party.

13. Since the author, being neither a direct nor an indirect victim, has not been able to justify that it has the right or capacity to act on the victim's behalf without her consent, the communication amounts to an abuse of the process to submit a communication and is inadmissible.

14. We would therefore conclude that the communication is, for all the above reasons, inadmissible.