

European Court of Human Rights
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Council of Europe
F-67075 Strasbourg Cedex
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Re: Third-party intervention Kurt v. Austria, Application No 62903/15

D.i.Re is a network of over 80 Italian women's NGO running women's specialized services to combat and prevent violence against women and domestic violence in Italy. The informal network has a long experience, as it was founded in 1990, the formal NGO D.i.Re was constituted in 2008 with office in Rome. Every year D.i.Re's members serve thousands of victims of violence against women and domestic violence. In their daily work, D.i.Re experts have experienced that the dangerous nature of violence against women and domestic violence is not duly recognised by authorities responsible for protecting victims and preventing violence, and that victims, even if they have been victimised repeatedly, do not receive adequate protection.

The most dangerous time for women and children to be killed or badly injured is when the woman separates/divorces and domestic violence is often misunderstood or underestimated by authorities responsible for protecting victims and preventing violence. According to the EU-wide survey of the Fundamental Rights Agency only one in three victims of partner violence report their most recent serious incident to the police or some other service¹. It is especially difficult for women victims of violence to report violence if the perpetrator threatens to kill not only them but also the children. In presence of children the life danger can persist (and even increase) for years due to custody regulations which do not take in serious consideration that the father was a violent partner/father and might not only not have stopped his violent behaviour, but even increase it. These are well-known facts that need to be regarded by state authorities and all authorities intervening in cases of violence against women and their children in order to prevent such tragic outcomes like the present case.

This intervention comprises 4 sections:

- 1. Balance between visits rights and right to life and security of the victim and her children**
- 2. Judicial stereotyping and victim blaming**
- 3. The "Osman test" should be informed by a gendered understanding of domestic violence against women**
- 4. Due diligence in the light of the particular condition of vulnerability of the victim of domestic and gender based violence**

¹ European Union Agency for Fundamental Rights (2014a): Violence against Women: an EU-wide survey. Results at a glance, Vienna, p.10.
<http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-results-glance> 4 March 2016.

1. Balance between visits rights and right to life and security of the victim and her children

1. D.i.Re, fully endorse the third-party submission of GREVIO in the present case² and recalls the joint declaration of The Platform of United Nations and regional independent mechanisms on violence against women and women's rights on child custody determination³.

2. Fair and non-discriminatory proceedings in cases of domestic violence should be premised on the correct understanding of the dynamics of violence and its implications in ensuing events. Data available demonstrates that the risk of continuing violence following a separation not only remains high but in all likelihood increases⁴. Ongoing contacts between the father and the child even after the violence has been reported are often a means to maintain control over and coerce the behaviour of the abused woman.

Law enforcement authorities should be mindful of the grave consequences that children might incur in these situations, and should be able to rely on this knowledge in order to truthfully establish whether the visits effectively ensure the fulfilment of a genuine desire to exercise one's parental duty or are, on the other hand, an instrument for perpetuating the cycle of violence rather than hindering its cessation.

3. The importance of the well-being of the child in the determination of the right to visits is underlined by Article 31(2) of the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereafter: Istanbul Convention), requiring that *"parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children"*.⁵ On a similar note, CEDAW Recommendation 35 requires that *"protection measures should avoid imposing an undue [...] personal burden on women victims/survivors. Perpetrators or alleged perpetrators' rights or claims during and after judicial proceedings [...] should be determined in the light of woman's and children's human rights to life and physical, sexual and psychological integrity, and guided by the principle of the best interests of the child"*.⁶

4. The CEDAW Committee clearly relied on this interpretation in the *Angela Gonzales v Spain* case and condemned the authorities for having failed to adequately investigate and **take into account the particular condition of the daughter as an indirect victim of violence**. Their leniency resulted in an unjustified prioritization of the interests of the father over the consequences of his abusive behaviour⁷. The Committee maintained, in particular, that their pattern of action *"responded to a stereotyped conception of visiting rights based on formal equality which, in the present case, gave clear advantages to the father despite his abusive conduct and minimized the situation of mother and daughter as victims of violence, placing them in a*

² <https://rm.coe.int/grevio-inf-2020-3-third-party-intervention-kurt-v-austria/pdfa/16809987e9>

³ <https://rm.coe.int/final-statement-vaw-and-custody/168094d880>

⁴ Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns, Daniel G. Saunders; https://vawnet.org/sites/default/files/materials/files/2016-09/AR_CustodyREVISED.pdf

⁵ Art 31(2) Istanbul Convention

⁶ CEDAW General Recommendation n. 35 and its references: *Fatma Yildirim v. Austria*, No. 6/2005, *Sahide Goekce v. Austria*, No. 5/2005; *Angela González Carreño v. Spain*, No. 47/2012; *M.W. v. Denmark* No. 46/2012; *Isatou Jallow v. Bulgaria* (case No. 32/2011).

⁷ *Angela González Carreño v Spain*, Communication No. 47/2012

*vulnerable position.*⁸ Any interpretation dismissive of this factor in the balancing of interests to grant adequate judicial remedies would fall short of truly protecting the mother and the child's right to life and security and result in a sheer frustration of the rationale of the provision.

2. Judicial stereotyping and victim blaming

5. Judicial stereotyping is a cross-cutting issue in cases of violence against women. As a consequence, their right to a fair and just trial is disproportionately affected⁹. Two very common attitudes can bear relevant consequences in the adjudication of these cases. First, there is an extensive misunderstanding surrounding the expectation of a woman's behaviour, which implicitly allows the idea that victims bear partial responsibility for the violence. Second, on point of procedure, this has the ultimate effect of overturning the burden of proof, making victims responsible for the correct evaluation of the risk they face.

6. Authorities dealing with situations of violence against women risk, especially in cases of domestic violence or sexual violence, a propensity to blame women victims of domestic violence for not having adequately protected themselves and their children, thereby exposing them to secondary victimisation. This risk has been outlined by some Grevio Reports (i.e. Turkey¹⁰, Italy¹¹) where it was noted that the risk is greater with professionals (police, Courts, social services) whose competence and knowledge is inadequate when confronted with the issue and dynamics of domestic violence and violence against women and children in intimate partnerships.

7. Due to a lack of training on the issue of violence against women, and inherent prejudices and stereotyped interpretations of the role of men and women in intimate relationships (and as parents), the behaviour of the women in these situations is often seen as "ambivalent", incoherent or even contradictory. The dynamics of violence against women (with its known "cycle of violence") are often not taken into account, and women feel insecure and disoriented by the different messages they receive from authorities: whatever they do in reaction to male violence is perceived as wrong and their credibility is continuously questioned.

8. Authorities often fail to understand the specifics of a given situation and the seriousness of the danger to which a woman is exposed is underestimated and questioned together with her credibility. Meaning is often attached to conduct that is, *per se*, neutral, and there is the expectation of a "reasonable", "rational" reaction required from the victim to satisfy an ideal threshold of credibility.¹²

⁸ CEDAW Committee Communication No. 47/2012 *Angela Gonzalez v Spain*

⁹ Eliminating judicial stereotyping Equal access to justice for women in gender-based violence cases. Final paper submitted to the Office of the High Commissioner for Human Rights on 9 June 2014, Author Simone Cusack <https://rm.coe.int/1680597b20><https://rm.coe.int/1680597b20>

¹⁰ "GREVIO is also concerned about discretionary mitigation in court cases of violence against women as possibly mirroring sexist prejudice and victim blaming" https://insanhaklarimerkezi.bilgi.edu.tr/en/news/none-grevio_turkiye_raporunu_acikladi/

¹¹ "In its report, GREVIO expresses its concern about the tendency of the system in place to expose to secondary victimisation mothers who seek to protect their children by reporting the violence". <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>

¹² *Karen Tayag Vertido v The Philippines*, Communication No. 18/2008. An exhaustive reference of the risk of judicial stereotypes can be found at <https://rm.coe.int/1680597b20>

According to this improper standard, for instance, a woman will not be considered “threatened enough” when she does not attempt to escape from her abusive partner as soon as possible. As perfectly illustrated and explained in *Vertido v Philippines*: “the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence”.¹³

9. In the case at hand, the Court attributed relevance to the fact that the applicant only denounced her husband three days after the rape occurred, during which time she stayed at home with him, and did not limit his contacts to the children. The Court subsequently considered this as evidence of a low – if any – level of risk. At a closer look, the applicant did not have any reasonable instrument to impede the contacts between the violent father and the children, besides repeatedly informing the authorities that the father of the children had threatened several times to kill them in front of her.

10. As already described, long term domestic violence, accompanied by repeated death threats (towards the children as well) is not only paralyzing (which is a typical reaction in traumatic situations and motivates fear), but also forces the woman to look constantly for a balance between the affirmation of her rights and safety with her children and the reality which confronts her often with what are frustrating obstacles to get real help and protection.

11. These obstacles include inappropriate times of protective measures, inadequate procedures imposed by the Police and courts, forced contact between perpetrators and children, which inevitably involves the women themselves, the application of custody laws which ignore or underestimate the dynamic of domestic abuse and violence, protection orders which consider the danger only “at home” and not out of the home and in relation to the children who continue to be at risk from violence. By the same token, it is extremely concerning how often the violent conduct of the father (before and after the separation) is given so little relevance, a situation that is clearly symptomatic of his propensity to repeat the crime.

12. Civil rights procedures and instruments against domestic violence in most European countries are not as quick and effective as some criminal law instruments. Maintaining free and unsupervised visits rights, for instance, is very common in cases of domestic abuse¹⁴. This creates the paradox, for the mother, that she cannot refuse the father’s contacts and visits to the children even in cases where she recognises his danger and attempts to express her concerns. Therefore, while her perceived restraint will likely drive authorities to underestimate the risk, her refusal to allow visit rights to protect her children will, on the other hand, make it appear that she is an alienating mother, and one who tries to subject her children to the care of their father with the risk of being severely judged by Courts and social services on her parental competence and right of custody.

13. This paradox can only be solved at its roots, that is by ensuring a correct understanding of the dynamics of domestic violence in the judicial handling of cases. The State cannot shift the responsibility to act on the victims. A woman cannot be blamed for not asking immediately for civil court barring orders to protect her children, as these instruments cannot replace criminal law obligations and provide no effective protection against the threats of a perpetrator. Rather, it should

¹³ *Ibid*

¹⁴ <https://rm.coe.int/final-statement-vaw-and-custody/168094d88>

be the due diligence of law enforcement authorities, and of the State, to adequately train them to this end, and in particular to be considerate of the specific nature and context of domestic violence.

3. The “Osman test” should be informed by a gendered understanding of domestic violence against women

14. Over the past decade, the European Court of Human Rights has progressively developed and clarified States positive obligations to prevent domestic violence, protect its victims and prosecute the perpetrators¹⁵. With regard to positive obligations of the State to prevent risks to life (Art. 2 ECHR) posed by non-state actors, the ECtHR developed the so-called “Osman test”. It provides that, in order to avoid an excessive burden on the authorities, the positive obligation to protect the right to life requires 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*».¹⁶

15. While the obligation is one of means and not results, it requires States to take reasonable measures that have a real prospect of altering the outcome or mitigating the harm. Therefore, while it does not require perfect deterrence in fact in each case, **the obligation requires States to act in a way to reasonably deter violence.**

16. Although the principle of reasonableness referred to in the “Osman test” is a commonly employed legal concept, **it could not be interpreted and applied in a vacuum, but within a specific social and cultural context. Furthermore,** context against which cases of domestic violence are to be assessed by the European Court of Human Rights is the one in which 1 in every 3 women experienced either physical and/or sexual violence in their lifetime.¹⁷ Partner violence accounts for a significant number of deaths by murder¹⁸; inequalities and discrimination against women endure in the fields of work, health, money, power, knowledge and time¹⁹ and these inequalities contribute to the social and cultural environment that enables, condones and perpetuates male violence against women. Trends towards a more context-informed and gender sensitive understanding of States positive obligations with regard to cases of intimate partner violence have gradually developed within international human rights law²⁰.

¹⁵ A. Edwards, *Violence against Women under International Human Rights Law*, Oxford, 2010; R.J.A. McQuigg, *International Human Rights Law and Domestic Violence: the Effectiveness of International Human Rights Law*, 2011, Abingdone; S. De Vido, *States' Due Diligence Obligations to Protect Women from Violence: A European Perspective in Light of the 2011 CoE Istanbul Convention*, in “European Yearbook on Human Rights”, 2014.

¹⁶ Osman v UK No. 23452/94.

¹⁷ FRA, *Violence against women: an EU-wide survey*.

¹⁸ World Health Organisation, “Violence by intimate partners”, World Report on violence and health.

¹⁹ EIGE’s Gender Equality Index 2019

²⁰ The United Nations Special Rapporteur on Violence against Women has stressed that one of the primary problems of the due diligence standard was that it “*focused primarily on violence against women as an isolated act and failed to take into consideration the connections between violence and the violation of other human rights, including general principles of gender equality and non-discrimination*”. According to the United Nations mandate holder, the current due diligence discussions “*have remained blind to structural inequalities and the complex and intersecting relations of power in the public and private spheres of life that lie at the heart of sex discrimination*.” Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/23/49, 14 May 2013.

Indeed, in recent years, several international and regional human rights bodies have set forth stricter standards with regard to obligations States must comply with in such cases²¹.

17. The European Court of Human Rights itself has already recognised that **special diligence** is required when dealing with domestic violence cases and has considered that the **specific nature of domestic violence** as well as **the particular vulnerability of victims** must be taken into account:

- in *M.G. v. Turkey* the Court recognised “*la diligence particulière que requiert le traitement des plaintes pour violences domestiques et estime que les spécificités des faits de violences domestiques telles que reconnues dans le Préambule de la Convention d’Istanbul (...) doivent être prises en compte dans le cadre des procédures internes*” (para 93).
- in *T.M. and C.M. v. Moldova*, the Court stated that “*considering the particular vulnerability of victims of domestic violence, who often fail to report incidents, it was for the authorities to verify whether the situation warranted a more robust reaction of the State and to at least inform the first applicant of the existing protective measures*” (para. 60);
- in the case of *Volodina v. Russia*, application no. 41261/17, the Court held that “*the risk of a real and immediate threat must be assessed, taking due account of the particular context of domestic violence. In such a situation, it is not only a question of an obligation to afford general protection to society, but above all to take account of the recurrence of successive episodes of violence within a family*”, para 86;
- in the case *Talpis v. Italy*, application no. 41237/14, the Court reaffirmed that “*the risk of a real and immediate threat (...) must be assessed taking due account of the particular context of domestic violence. In such a situation it is not only a question of an obligation to afford general protection to society (...), but above all to take account of the recurrence of successive episodes of violence within the family unit*” (para. 122) and that “*special diligence is required in dealing with domestic violence cases and considers that the specific nature of domestic violence as recognised in the Preamble to the Istanbul Convention (...) must be taken into account in the context of domestic proceedings*” (para. 129);

18. The “special diligence” invoked by the European Court of Human Rights implies not only situating intimate partner violence against women on a continuum that spans interpersonal and structural violence and accounting for the discriminatory content and forms of violence, but most importantly **taking into account women experiences of abuse and injustice**. These experiences all too often include fear, intimidation, control, threats, isolation, shame, minimization, blaming, disbelief, economic dependency, social pressure, lack of support services, re-victimisation by social institutions and judicial authorities.

19. In this respect, an application of the “Osman test” informed by a gendered understanding of intimate partner violence will not impose an unrealistic or unreasonable burden on domestic authorities. Rather, it would be unrealistic and unreasonable not to hold States accountable for their failure to adequately respond to a phenomenon whose root causes, gendered nature, prevalence, dynamics, risk factors and effects on women and children are in these times common knowledge.

20. In order not to fail the principle of universality and ensure that the fulfilment of human rights is meaningful for both men and women, existing human rights should be interpreted so that the experiences of women are accounted. Unless and until a nuanced and gendered understanding of

²¹ The CEDAW Committee took the view that “*gender-based violence constituting discrimination within the meaning of article 2, read in conjunction with article 1, of the [CEDAW] Convention and general recommendation No. 19, does not require a direct and immediate threat to the life or health of the victim*”; In *González et al. v. Mexico*, the Inter-American Court on Human Rights affirmed that “*where a specific incident of violence takes place in the context of a general pattern of violence against women, there is a wider scope required to comply with the due diligence obligation*”.

intimate partner violence orients the interpretation of the ECHR provisions, the human rights framework and related machinery will remain elusive of women needs and claims for justice.

4. Due diligence in the light of the particular condition of vulnerability of the victim of domestic and gender based violence

21. As noted above, by consistent jurisprudence of this Court, the first sentence of Article 2(1) ECHR is interpreted as requiring States not only to refrain from voluntarily causing the death of people under its jurisdiction, but also to take positive measures for their protection.²² In particular, the obligation upon the State goes beyond its fundamental duty to ensure the right to life. It requires the implementation of criminal legislation specifically aimed at preventing crimes against the person, whose enforcement mechanisms ensure the prevention, repression and sanction of the violations thereof.²³ Under certain circumstances Article 2 imposes on authorities the positive obligation to take preventive measures to ensure the protection of individuals against criminal acts by third parties.²⁴

22. Although it is not possible to demand from a State that any possible threat is averted, when authorities know or ought to have known that a real threat to the life of one or more individuals exists, there is no doubt that the State is under the positive obligation to adopt all possible measures to “reasonably” prevent any threat to the fundamental right to life, as repeatedly held by this Court.²⁵ These “reasonable” measures include ensuring that law enforcement agencies exercise their power to prevent and suppress criminality.

23. A stringent interpretation of the due diligence standard derives from the **particular condition of vulnerability of the victim of this kind of violence**. In *Talpis v Italy*, the Court upheld its own jurisprudence by stating “*the applicant [could] be regarded as belonging to the category of “vulnerable persons” entitled to State protection*” (§ 126). It further emphasized that “*special diligence is required in dealing with domestic violence cases*”, considering that “*the specific nature of domestic violence as recognized in the Preamble to the Istanbul Convention must be taken into account in the context of domestic proceedings*”. The special condition of victims justifies that the threshold of risk required for triggering State intervention is lowered from “immediate” to “present”. As stressed above, previous section, it has been stated that “*the ‘Osman test’ with regard to Article 2 of the Convention and the due diligence requirement must be read in light of the Istanbul Convention in the sense that national authorities must consider the specific conditions of vulnerability of the victim, and adopt preventive measures even in the absence of the strict requirement of immediacy*”. Consequently, “*the immediacy requirement should be satisfied given a ‘present’ risk of violence*”.²⁶

24. In his concurring opinion to the *Valiuliené* case, Judge Pinto de Albuquerque stated that “*if a State knows or ought to know that a segment of its population, such as women, is subject to repeated violence and fails to prevent harm from befalling the members of that group of people*

²² *Maiorano and others v Italy*, 12 December 2009, § 103; among others, *L.C.B. v UK*, 9 June 1998 § 36; *Osman v UK*, 28 October 1998, § 115; *Kontrova v Slovakia*, 31 May 2007, §§ 49-53; *Branko Tomašić and others v Croatia*, 15 January 2009, §§ 49-51; *Opuz v Turkey*, 9 June 2009, §§ 128-130

²³ *Natchova and others v Bulgaria [GC]*, No. 435777/98 and 43579/98, § 160, CEDH 2005-VIII

²⁴ *Maiorano and others v Italy*, 12 December 2009, § 103

²⁵ *Branko Tomašić and others v Croatia*, No. 46598/06, 15 January 2009, § 50-51; *Mastromatteo v Italy*, 24 October 2000, No. 37703/97, § 78; *Paul and Audrey Edwards v UK*, No. 46477/99, 14 March 2002, § 55, CEDH 2002-III; *Bromiley v UK*, No. 33747/96, 23 November 1999

²⁶ S. DE VIDO, States’ Positive Obligations to Eradicate Domestic Violence, p. 7-8

when they face a present (but not yet imminent) risk, the State can be found responsible by omission for the resulting human rights violations".²⁷

25. All the above-mentioned judgements share a common ground, namely being grounded on the notion of "**category of vulnerability**". Reference to it leads to two major consequences. First, it intensifies the notion of protection as enshrined in the Convention. The condition of vulnerability acts as an expanding factor to the extent of positive obligations, requiring States to put in place a stronger protection for certain categories of individuals, both by means of an adequate legislative framework and of stronger practical measures – including law enforcement measures.²⁸ Second, it reduces the States' margin of appreciation when balancing the interests at stake. Both these consequences can be found in the reasoning of the Court in the *Talpis* decision.

26. On the one hand, the Court observed "*the national authorities had a duty to take account of the unusual psychological, physical and material situation in which the applicant found herself and to assess the situation accordingly, providing her with appropriate support*".²⁹ Further definition of this duty was provided by requiring that "*in judicial cases involving disputes relating to violence against women, the national authorities have a duty to examine the victim's situation of extreme psychological, physical and material insecurity and vulnerability and, with the utmost expedition, to assess the situation accordingly*".³⁰

27. On the other hand, the Court rejected the Government's submission claiming that a different behavior would imply an unjustified impairment of the interests protected by the Convention, among which Art 8, enshrining the right to private and personal life of the aggressor.³¹ In addition, the jurisprudence of this Court – including *Talpis v Italy* – consistently reads vulnerability in connection to the prohibition of discrimination under Art 14 of the Convention, according to which "*emphasis on group vulnerability [...] represents a crucial step towards an enhanced anti-discrimination case law and a more robust idea of equality*".³²

28. In fact, the peculiar condition of fragility of an individual often results from discrimination against a determined social group, as remarked by the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). The Court has espoused the position of the Committee for the Elimination of Discrimination against Women (CEDAW), according to which violence against women, including domestic violence, is a form of gender discrimination, because addressed to women *as such*.³³

29. As stated by Judge Pinto de Albuquerque in his dissenting opinion³⁴ the interpretation of the Convention should be gender-sensitive, taking into account the *de facto* inequalities between sexes: "*Hence, the full effet utile of the European Convention on Human Rights (the Convention) can only be achieved with a gender-sensitive interpretation and application of its provisions which takes in*

²⁷ *Valiulienė v Lithuania*, Concurring Opinion of Judge Pinto de Albuquerque, 26 March 2013, p. 30

²⁸ L. PERONI, A. TIMMER, *Vulnerable groups*, cit., p. 1080; N. ZIMMERMANN, *Legislating for the Vulnerable?*, p. 550-551

²⁹ *Talpis v Italy*, § 115

³⁰ *Ibid*, § 130

³¹ *Talpis v Italy*. See, against this position, Judge Spano's Dissenting Opinion

³² *Ibid*

³³ *Opuz v Turkey*, §§ 72-79, 183-191

³⁴ *Valiulienė v Lithuania*, No. 33234/07, Judgement of 26 March 2013, become final on 26 June 2013

*account the factual inequalities between women and men and the way they impact on women's lives".*³⁵

30. It has already been recalled that, with regard to victims of domestic violence, women account for the primary and most affected victims, as is also supported by all data. Therefore, States need to be held responsible wherever they know that a part of the population is victim of domestic violence and they do not take the measures necessary to the protection of their human rights. In the case *T.M. and C.M. v Moldavia* of 28 January 2014, the Court condemned the respondent State for the violation of its positive obligations of prevention of domestic abuse against a woman, criticizing, in particular, *"the authorities' knowledge of the risk of further domestic violence by M.M. [ex-husband of the victim] and their failure to take effective measures against him during several months"* (§ 49). It further censured a violation of Art 3 ECHR, as read in conjunction with the prohibition of discrimination under Art 14 ECHR, insofar as *"the authorities' actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to condoning such violence and reflected a discriminatory attitude towards her as a woman"* (§ 62).

31. The condition of particular vulnerability of victims of domestic violence and the consistent recognition of its legal implications by this Court should compel that a duty arises upon the State to adopt specific, positive actions in order to ensure the equality of victims before the law on the basis of the understanding of their special needs.

D.i.Re respectful requests the Grand Chambre to take the above observations into account in its deliberation in Kurt v. Austria.

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³⁵ *ibidem* p. 28