



WRITTEN OBSERVATIONS

*Submitted to the European Court of Human Rights
in the case*

G.M. and others v. Moldova

(Application no. 44394/15)

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Introduction

1. In its written observations, which the ECLJ has the honour to submit to the Court, we will show that the abuse suffered by the applicants are not at all provided for by Moldovan law and constitute a serious and unequivocal violation of Articles 3 and 8 of the European Convention on Human Rights (hereinafter the Convention). Rape, forced abortion, forced sterilisation and sterility resulting from non-consensual operations are explicitly established forms of torture under international law. In addition to the clear sources of international law condemning such practices, the ECLJ will also show that the ill-treatment suffered by the applicants also violates the rights guaranteed in Articles 2 and 12 of the Convention. Indeed, despite their living conditions and the circumstances of the conception of the foetuses, the applicants wished to carry their pregnancies to term. By forcing them to have an abortion, the doctors infringed their right to found a family and challenged the interest of the foetuses in remaining alive, which was in line with the interest of the mothers in continuing their pregnancy.

I. Abuse not provided for by Moldovan law

2. In order to protect the applicants' privacy, the summary of the present case published by the Court is deliberately concise and does not include any elements regarding the domestic proceedings. For the purposes of these written submissions, the ECLJ will rely on the legal characterisations adopted by the Court, even though they may have been argued before the Moldovan courts. Moreover, not all applicants have suffered the exact same damage. We will therefore analyse this case in such a way as to encompass all the violations suffered by the three applicants, taking as established facts that a doctor raped patients; that a commission forced pregnant women to have abortions despite their opposition and even though they were not deprived of their legal capacity; that forced contraception was practised and that they were sterilised more or less voluntarily by the medical staff.

3. The three applicants are unfortunately not just three isolated cases. Several Moldovan associations have had occasions to denounce the widespread abuse of persons with disabilities in Moldova, including rape, forced abortion and forced sterilisation. For example, the Reproductive Health Training Center of Moldova, in an alternative report, stated: "Because of the national legislation, women with disabilities are subjects of the forced sterilization and forced abortion, particularly the women with psychosocial and/or intellectual disabilities, especially those who are still in residential institutions."¹

4. According to these associations, the problem is due to the incorrect application of the Health Protection Act No. 411 of 28 March 1995, which provides that the consent of a "the patient unable to discern is given by his legal representative, and in his absence the closest relative."² The fact that sterilisation can be decided by a third party who is not even a legal

¹ Reproductive Health Training Center of Moldova, [Alternative Report](#) submitted to the Committee on Economic, Social and Cultural Rights for the consideration of the Republic of Moldova report during the 62nd Session, 18 September – 6 October 2017, 25 July 2017, p. 3.

² *Ibid.*, p. 8.

representative of a disabled person is unacceptable and contrary to the recommendations of the Committee on the Rights of Persons with Disabilities.³

5. Moreover, it appears that people with disabilities would to be placed almost automatically in these specialised institutions, regardless of the severity of the disability and as if it were necessarily an absolute obstacle to an integrated life in society. According to Oliver Lewis, Executive Director of the Mental Disability Advocacy Center in Budapest, these automatic placements in institutions for people with disabilities are a legacy of a communist tradition.⁴ These numerous placements without sufficient medical reasons and justifications give rise to various abuses, such as those complained of by the applicants in this case.

6. Forced abortions on persons placed in institutions are denounced by other human rights associations in Moldova. An alternative report on the application of the UN Convention against Torture, co-signed by the Resource Center for Human Rights, the Moldovan Institute for Human Rights and the Roma National Center, denounces this practice by relating the case of a forced abortion in the 7th month of pregnancy.⁵

7. According to the Court's opening summary of the case: "The applicants are affected by medium-level mental development issues, but have not been officially deprived of their legal capacity." Such information potentially highlights numerous shortcomings in the applicants' medical treatment which it would be for the Court to consider: does a medium-level mental problem justify placement in a psychiatric institution? If the applicants had not been formally deprived of their legal capacity, how could the institution's medical committee have overruled their refusal to consent to an abortion? Assuming that they were factually deprived of their legal capacity, how was it that a third party did not represent them and assert the opposition they were clearly capable of expressing? These questions indicate that there is probably a structural problem behind such practices.

8. Articles 23, 31 and 32 of the above-mentioned Moldovan law provide that the patient's consent is required for any medical procedure, that sterilisation can only be carried out with the written consent of the person concerned, and that the woman has the right to decide personally on the outcome of her pregnancy at least before 12 weeks.⁶ The exceptions to overriding the patient's consent are limited by law:

- consent may be presumed when the intervention is without significant risk and is not likely to infringe on the patient's privacy (Article 23, § 2);
- the patient is incapable of discernment, consent is then expressed by the legal representative or, in his or her absence, by a close relative (Article 23, § 3);
- consent is presumed in the event of imminent danger to the patient's life or very serious harm to his or her health (Article 23, § 4).

³ [Concluding Observations](#) in relation to the initial report of the Republic of Moldova.

⁴ Olivier Lewis, « Fetele și femeile cu dizabilități au și ele drepturi », *Ziarul de Garda*, 1st November 2013.

⁵ Resource Center for Human Rights (CReDO), Moldovan Institute for Human Rights (IDOM), Roma National Center (CNR), *Alternative Report to the 2nd Report of the Republic of Moldova on the Stage of Implementation of the United Nations Convention Against Torture (UNCAT)*, Final draft, p. 70.

⁶ Republic of Moldova, Parliament, Law on Health Protection No. 411 of 28 March 1995, published in the Official Gazette on 22 June 1995 and amended by Law No. 1001 of 19 April 2002, Articles 23.1, 31 and 32 (free translation).

9. None of these circumstances can be invoked in the present case, as it cannot be argued that abortion and sterilisation do not infringe a patient's privacy or protect their life from imminent danger.⁷ It therefore appears that the doctors' collegial decisions to terminate the applicants' pregnancies and subject them to forced contraception were not even provided for by the law, which requires, on the contrary, a written consent or refusal by the patient or their representative countersigned by the doctor or medical panel proposing a medical operation (Article 23 § 7).

10. In addition, Article 42 of the Health Act requires doctors to comply with several principles and a Code of Medical Ethics: "The provision of specialised health care to persons with mental disorders is based on the principles of legality, humanism and charity, on the basis of the presumption of legal capacity, which provides for the right of every person to control his or her own health, and on the fundamental duty of the doctor to provide health care to the patient, in accordance with the Code of Medical Ethics."⁸

11. The Code of Medical Ethics⁹ prohibits, *inter alia*, psychological pressure on the patient¹⁰ and has the same obligations as regards receiving the patient's consent to care as the above-mentioned law.¹¹ By performing abortions on the applicants despite their opposition, the medical staff not only acted illegally, but also failed in their duty of humanism and charity. The State does have a positive obligation to protect the health of its citizens, to protect their privacy and to ensure their free and informed consent to medical treatment. In this case, the Medical Commission of the Moldovan institution clearly acted unlawfully.

II. Forced abortions and sterilisations are contrary to Articles 3 and 8 of the Convention

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12. There is a remarkable consistency in international law in the condemnation of forced abortion and sterilisation from the Second World War to the present day.

13. Following the war, doctors of the Nazi regime were tried and convicted of crimes against humanity for, among other things, experiments carried out without the consent of patients.¹² The Nuremberg 'code', consisting of the ten criteria used by the American Military Tribunal to judge the legality or illegality of human experimentation, has over time become autonomous, serving as a general ethical standard. It is, however, an "international jurisprudence"¹³ that condemned Nazi officials for medical experiments without patient consent, including forced sterilisation and forced abortion.¹⁴ Thus the protection of voluntary,

⁷ Except for a "high-risk pregnancy," which is not the case here, according to the information provided by the Court.

⁸ Republic of Moldova, Parliament, Law on Health Protection, cit. above, Article 42, § 1 (free translation).

⁹ Ministerul Sănătății al Republicii Moldova *CODUL CADRU DE ETICĂ (DEONTOLOGIC) al lucrătorului medical și farmaceutic*, available: <http://89.32.227.76/files/1471-Cod%2520etica-brosura.pdf>

¹⁰ *Ibid*, Chapter 5, § 36.

¹¹ *Ibid*, Chapter 7, § 48.

¹² B. Halioua, « *Le procès des médecins de Nuremberg* », *La Revue du Praticien*, 20 mai 2010, p. 734-737.

¹³ M. Bélanger, *Droit international de la santé*, Paris, Economica, 1983, p. 44.

¹⁴ George J. Annas and Michael A. Grodin, *The Nazi Doctors and the Nuremberg Code— Human Rights in Human Experimentation*, Oxford University Press, Oxford, 1992; J. Hunt, St Joseph University, Philadelphia, "Abortion and the Nuremberg Prosecutors, a Deeper Analysis" in: Koterski, Joseph W., ed. *Life and Learning VII: Proceedings of the Seventh University Faculty for Life Conference*. Washington, DC: University Faculty for Life, 1998: 198-209.

free and informed consent of the person to a medical act which should only aim at the good of society was vividly recalled in this trial and has since been taken up in international and national standards.

14. Article 10 of the 1966 International Covenant on Social and Economic Rights provides that “Special protection should be accorded to mothers during a reasonable period before and after childbirth.”¹⁵ Clearly, forced abortion followed by forced contraception and permanent sterilisation is no special protection for the mother.

15. The 1995 Beijing Conference states in its Platform for Action that: “Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.”¹⁶

16. The 1998 Rome Statute of the International Criminal Court provides in Article 7(g) that rape, forced pregnancy and forced sterilisation constitute crimes against humanity when “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”¹⁷ It would be difficult to qualify as a crime against humanity in the present case, but the presence of these three acts in the list of crimes against humanity in the Statute is indicative of their severity.

17. The Committee of Ministers of the Council of Europe recommended in 2002 member states “prohibit enforced sterilisation or abortion, contraception imposed by coercion or force, and pre-natal selection by sex, and take all necessary measures to this end.”¹⁸

18. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence clearly condemns forced abortion and forced sterilisation in the same article (hereinafter, Istanbul Convention):

Article 39 – Forced abortion and forced sterilisation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a performing an abortion on a woman without her prior and informed consent;
- b performing surgery which has the purpose or effect of terminating a woman’s capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.¹⁹

19. The applicants’ case corresponds exactly to the two subparagraphs of this Article, since abortions were intentionally performed on them without their consent and had the effect of making them sterile. There is some uncertainty as to whether the doctors intended to sterilise all the applicants, but as the Court made clear in the summary of the case, the various medical interventions carried out against the applicants’ will had the effect of terminating their natural

¹⁵ UN, International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966.

¹⁶ Beijing Platform for Action, Fourth World Conference on Women, 4-15 September 1995, § 115.

¹⁷ Rome Statute of the International Criminal Court, A/CONF.183/9, 17 July 1998.

¹⁸ Committee of Ministers, Recommendation Rec(2002)5 to member states on the protection of women against violence, 30 April 2002, Appendix, § 79.

¹⁹ Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series No. 210, Istanbul, 11 May 2011, Article 39.

reproductive capacity, which is what the second paragraph is indeed about. It may also be noted that the Convention describes an abortion as “forced” if there is no prior informed consent. Given that the applicants had been forced to undergo an abortion, it was reasonable to assume that the doctors had not taken the trouble to “inform” them of the medical risks inherent to the abortion procedure. In any case, as the applicants suffered from medium-level mental problems, they ought to have been treated with special care. Moldova signed the Istanbul Convention on 6 February 2017 but has not ratified it since.

20. Quoting the Istanbul Convention, the Parliamentary Assembly of the Council of Europe in its Resolution 1829 of 2011 stated that: “the practice of forced abortions is to be criminalised.”²⁰ In relation to forced sterilisations, PACE also strongly condemned this practice and broadened the notion of coercion. Indeed, it is possible to distinguish between forced sterilisation, where violence is used against the person who opposes the medical procedure; and “coerced” sterilisation, where there is, for example, fraud, and the person’s consent is not free or not really informed. The difference between these two types of sterilisations is only a difference in the degree of violence, as the final result obtained is the same. Only the means are different. The PACE therefore logically asserted that the notion of coercion must include the absence of free and informed consent: “it can be invalid if the victim has been misinformed, intimidated or manipulated with financial or other incentives.”²¹ The Assembly rightly calls on states to review their legislation to ensure that “no one can be coerced into sterilisation or castration in any way for any reason;” that compensation be provided for victims and that medical personnel genuinely respect the free and informed consent of vulnerable persons.²²

21. The European Parliament has condemned forced sterilisation and abortion practices in a number of contexts. Whether in the context of China’s one-child policy for its entire population,²³ for a Chinese minority²⁴ or in the context of violence against women.²⁵

22. The Convention on Human Rights and Biomedicine (hereinafter Oviedo Convention)²⁶ also enshrined in its Article 5 the rule of free and informed consent regarding any intervention in the health field. As explained in the presentation of the present case, these women suffer from mental developmental delays but have not been legally deprived of their legal capacity. Doctors were therefore not entitled to consent to a treatment on their behalf, as is possible under Article 6 of the Oviedo Convention, when the person on whom a medical intervention is to be performed lacks the capacity to consent to the treatment. Exceptions based on the urgency of the situation or on risks seriously prejudicial to health cannot be invoked here to override the consent of women. Continuing a pregnancy without a medical condition is not a situation that in itself causes serious harm to the health of the pregnant woman.

²⁰ PACE, Resolution 1829(2001), Prenatal sex selection, 3 October 2011, § 5.

²¹ PACE, Resolution 1945(2013), Putting an end to coerced sterilisations and castrations, 26 June 2013, § 2.

²² *Ibid.*, §§ 7.1, 7.2 et 7.4.

²³ European Parliament, Resolution on the Forced abortion scandal in China (2012/2712(RSP)), 5 July 2012, § 4.

²⁴ European Parliament, Resolution on Forced labour and the situation of the Uyghurs in the Xinjiang Uyghur Autonomous Region (2020/2913(RSP)), 17 December 2020, § 7.

²⁵ European Parliament, Resolution on The EU Strategy for Gender Equality (2019/2169(INI)), 21 January 2021, § 17.

²⁶ Council of Europe – Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164), Oviedo, 4 April 1997.

23. The Special Rapporteur on the rights of persons with disabilities confirmed in a 2017 report that: “The forced sterilization of girls and young women with disabilities represents a widespread human rights violation across the globe.”²⁷ The Rapporteur continued in the following paragraph a reasoning entirely relevant to the case at hand:

30. While United Nations human rights instruments, mechanisms and agencies have recognized that the forced sterilization of persons with disabilities constitutes discrimination, a form of violence, torture and other cruel, inhuman or degrading treatment, the practice is still legal and applied in many countries. Across the globe, many legal systems allow judges, health-care professionals, family members and guardians to consent to sterilization procedures on behalf of persons with disabilities as being in their “best interest”, particularly for girls with disabilities who are under the legal authority of their parents. The practices are often conducted on a purported precautionary basis because of the vulnerability of girls and young women with disabilities to sexual abuse, and under the fallacy that sterilization would enable girls and young women with disabilities who are “deemed unfit for parenthood” to improve their quality of life without the “burden” of a pregnancy. However, sterilization neither protects them against sexual violence or abuse nor removes the State’s obligation to protect them from such abuse. Forced sterilization is an unacceptable practice with lifelong consequences on the physical and mental integrity of girls and young women with disabilities that must be immediately eradicated and criminalized.²⁸

24. The UN Committee on the Elimination of Discrimination against Women clearly defined such practices as torture. “Violations of women’s sexual and reproductive health and rights, such as forced sterilization, forced abortion, [...] abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”²⁹

25. This Committee also considered that “enforced sterilization or any other form of sexual violence of comparable gravity, according to articles 7 (1) (g), 8 (2) (b) (xxii) and 8 (2) (e) (vi) of the Rome Statute of the International Criminal Court,” can constitute “international crimes.”³⁰

26. According to the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Forced sterilization is an act of violence and a form of social control, and violates a person’s right to be free from torture and ill-treatment.”³¹

27. In light of this body of conventional and doctrinal texts, one can legitimately conclude that the facts set out by the Court are such as to violate the applicants’ right to privacy and constitute inhuman and degrading treatment.

²⁷ UN, General Assembly, Sexual and reproductive health and rights of girls and young women with disabilities, Report of the Special Rapporteur on the rights of persons with disabilities, A/72/133, issued 14 July 2017, § 29.

²⁸ *Ibid.*, § 30.

²⁹ UN, Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, CEDAW/C/GC/35, issued 26 July 2017, § 18.

³⁰ *Ibid.*, § 16, note 22.

³¹ UN, General Assembly, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, issued 5 January 2016, § 45.

28. The decision whether or not to become a parent, the abortion procedure and the conditions under which a woman gives birth have all been considered by the Court to fall within the scope of private life and thus of Article 8 of the Convention.³² Therefore, forced abortion and forced sterilisation are clear violations of the right to private life.

29. In the case of *Csoma v. Romania*, which concerned a nurse who wished to have an abortion because of a malformation of the foetus and who suffered serious complications because of the risks inherent in the procedure, the Court rightly concluded that: “by not involving the applicant in the choice of medical treatment and by not informing her properly of the risks involved in the medical procedure, the applicant suffered an infringement of her right to private life.”³³

30. Regarding sterilisation, the Court has already recognised that the sterilisation of a woman whose consent was obtained while she was in the process of giving birth by caesarean section violated the prohibition of torture and ill-treatment.³⁴ *A fortiori*, forced sterilisation and forced abortion carried out when women have expressed their opposition to the medical procedures constitute inhuman and degrading treatment.

31. The Court could condemn Moldova on these two articles of the Convention alone, as invoked by the applicants. However, the ECLJ considers that two other articles of the Convention were violated by the defendant State and that the Court would be well justified in raising them of its own motion in order to do full justice to all the victims in this case.

III. Forced abortions and sterilisations are contrary to Articles 2 and 12 of the Convention

A. On the basis of Article 2

32. The Court has never held that - in the context of the Convention - the unborn child be not a person. Cautiously, it has always refused, since the cases of *Brüggemann and Scheuten v. RFA*³⁵ and *H. v. Norway*,³⁶ to exclude the unborn child from the scope of the Convention as a matter of principle and to declare that the child be not a person within the meaning of Article 2 of the Convention, considering that “Article 2 of the Convention is silent as to the temporal limitations of the right to life.”³⁷ Judge Jean-Paul Costa explains: “Had Article 2 been considered to be entirely inapplicable, there would have been no point – and this applies to the present case also – in examining the question of foetal protection and the possible violation of Article 2, or in using this reasoning to find that there had been no violation of that provision.”³⁸ It must be noted that the Court examines violations of the lives of unborn

³² *A, B and C v. Ireland*, GC, no. 25579/05, 16 December 2010; *P. and S. v. Poland*, no. 57375/08, 30 October 2012 and *Ternovszky v. Hungary*, no. 67545/09, 14 December 2010.

³³ *Csoma v. Romania*, no. 8759/05, 15 January 2013, § 68.

³⁴ *V. C. v. Slovakia*, no. 18968/07, 8 November 2011.

³⁵ *Brüggemann and Scheuten v. Federal Republic of Germany*, no. 6959/75, 19 May 1976, § 60.

³⁶ *H. v. Norway* (dec.), no. 17004/90, 19 May 1992, p. 167.

³⁷ *Vo v. France*, [GC], No. 53924/00, 8 July 2004, (hereinafter *Vo v. France*) § 75.

³⁸ Jean-Paul Costa, Separate opinion under *Vo v. France*, § 13.

children in light of Article 2³⁹ and that it has noted the existence of a European consensus recognising that the foetus “belongs to the human species.”⁴⁰

33. Furthermore, in *Brüggemann and Scheuten*, the European Commission of Human Rights recognised that “pregnancy cannot be said to pertain uniquely to the sphere of private life. Whenever a woman is pregnant her private life becomes closely connected with the developing foetus” (p. 18, § 59).⁴¹ The Court thus indicated that in the context of pregnancy there were potentially other infringements than that of Article 8.

34. Subsequently, in its decision in *X v. the United Kingdom*, the Commission recognised that “the ‘life’ of the foetus is intimately connected with, and cannot be regarded in isolation of, the life of the pregnant woman.”⁴²

35. In 2002, when the Court ruled on an Italian law guaranteeing access to abortion, it verified that the State had ensured “a fair balance between, on the one hand, the need to ensure protection of the foetus and, on the other, the woman’s interests.”⁴³ The Court thus recognised a certain need to ensure the protection of the foetus.

36. Both cases, *X v. the United Kingdom* and *Boso v. Italy*, make it possible to draw a twofold conclusion: on the one hand, the Court has recognised the need to ensure the protection of the foetus and, on the other, the Court has recognised that the life of the foetus is intimately linked to the life of the woman who carries them. In the present case, however, there is no competition between the rights of the applicants and those of the foetuses. The applicants did not invoke a freedom to abort that would conflict with the right to life of the foetus. On the contrary, the applicants invoked their freedom to continue their pregnancies, a freedom which was fully consistent with the interest of the foetus to remain alive. In fact, the applicants were claiming protection for their children, and supporting the right to life of the unborn children. They wished to bring their foetus under the protection of Article 2. The Court could therefore conclude that the right to life guaranteed by Article 2 of the Convention could be applied to the foetus, as long as this is in accordance with the rights and interests of the mothers.

37. The Court itself made it clear that such a conclusion would be possible in *Vo v. France*: “The Convention institutions have not, however, ruled out the possibility that in certain circumstances safeguards may be extended to the unborn child.”⁴⁴ Specifically, forced abortion is an exceptional circumstance which, in order to be prevented and its practice deterred, should provide safeguards for the benefit of the unborn child. As the international law texts cited above indicate, States are encouraged to penalise forced abortions and sterilisations. However, if the Court were to recognise that the unborn child may benefit from the right to life in certain circumstances, such as that of a forced abortion, an appropriate criminal response could be required of the State party. Indeed, “the Court has stated on a number of occasions that an effective judicial system, as required by Article 2, may, and under certain circumstances must, include recourse to the criminal law.”⁴⁵

³⁹ See for example *Şentürk*, no. 13423/09, 9 April 2013, § 107.

⁴⁰ *Vo v. France*, GC, no. 53924/00, 8 July 2004, § 84.

⁴¹ *Ibid.*, § 76.

⁴² *X v. The United Kingdom*, no. 8416/79, dec. 13 May 1980, DR 19, p. 261 § 19.

⁴³ *Boso v. Italy*, no. 50490/99, 5 September 2002, § 1.

⁴⁴ *Vo v. France*, *op. cit.*, § 80.

⁴⁵ *Ibid.*, § 90.

38. In *Vo v. France*, the facts concerned an abortion against the mother's will, but involuntary on the part of the medical profession. In the present case, it is not a question of medical error, but of a will, manifested in a decision taken by a committee of doctors to abort several women against their will. In such circumstances, it would be fair to provide a criminal remedy to the injured parties.

39. Moreover, according to the Court's case-law, the State has a greater responsibility to protect the lives of individuals in the case of vulnerable persons who are under the State's responsibility.⁴⁶ In the present case, the applicants were placed in a psychiatric institution, under the supervision of doctors because of cognitive delay.

40. The Court has also identified a procedural obligation under Article 2 regarding a form of gender-based violence.⁴⁷ The authorities must respond with particular diligence. As the Committee on the Elimination of Discrimination against Women has stated above,⁴⁸ and as is in fact the case, a forced abortion is gender-based violence. Here too, it would be in the interest of the mothers to apply Article 2 so that they would obtain better procedural safeguards, and this interest would be consistent with the interests of the foetus.

41. It may be noted that in the case ruled in the Grand Chamber, *Legal Resources Centre on behalf of Valentin Câmpeanu v. Romania*, the Court held that it was admissible for an association to represent *de facto* a deceased person and to invoke a violation of Article 2 on their behalf. In its reasoning, the Court recalled its case law and in particular the case where "the direct victim dies *before* the application is lodged with the Court. In such cases the Court has, with reference to an autonomous interpretation of the concept of "victim", been prepared to recognise the standing of a relative either when the complaints raised an issue of general interest pertaining to "respect for human rights" [...], or on the basis of the direct effect on the applicant's own rights."⁴⁹ In the current case, the Court could consider that the applicants and their fetuses are direct victims. While the notion of victim is autonomous, it is not necessarily subject to the notion of person and could therefore be applied and recognised to a human being such as a foetus. In such a case, the mother of a foetus killed against her will would necessarily have standing to sue because of the direct effects on her rights resulting from the death of the victim, i.e. the foetus.

42. In order not to reach such conclusions, the Court has on several occasions stated it was "convinced that it is neither desirable, nor even possible as matters stand, to answer in the abstract the question whether the unborn child is a person for the purposes of Article 2 of the Convention."⁵⁰ The present case once again highlights the absurdity of such a belief. This is not an abstract reflection, but rather a very concrete one: real pregnant women have been forcibly aborted, have lost their unborn children and will never be able to have children again. Is this not a concrete attack on the life of an unborn child? Is it not desirable, in order to do justice to these women, to recognise that their children have been taken away from them and that they have not simply suffered a general and abstract infringement of their "privacy"? Is it

⁴⁶ *Tekin and Arslan v. Belgium*, no. 37795/13, 5 September 2017, § 83.

⁴⁷ *Tërshana v. Albania*, no. 48756/14, 4 August 2020, § 160.

⁴⁸ UN, Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, CEDAW/C/GC/35, issued 26 July 2017, § 18.

⁴⁹ *Legal Resource Centre on behalf of Valentin Câmpeanu v. Romania*, GC, no. 47848/08, 17 July 2014, § 98.

⁵⁰ *Vo v. France*, *op. cit.*, § 85.

really not possible, in 2021, with medical imaging, to answer the question of whether the unborn child is a separate person from its mother? When the need to ensure the protection of the foetus merges with the interests of the woman, as in the case of a forced abortion, it is desirable and possible to recognise that a person's life is terminated in violation of Article 2.

B. On the basis of Article 12

43. Women who have been subjected to a forced abortion suffer against their will not only the purpose of the procedure, namely the loss of the chance to give birth and have a child, but also the risks inherent in the medical abortion procedure, in particular that of sterility.

44. The ECLJ considers that the facts in this case may also entail a violation of Article 12 of the Convention, which guarantees “the right to found a family in accordance with the national laws governing the exercise of that right,” *i.e.*, the *lex specialis* for founding family life, respect for which is guaranteed in Article 8.

45. In 1975, the Commission considered in a case against Belgium and the Netherlands⁵¹ that Article 12 did not guarantee the right to have children outside marriage. The Commission considered the right to found a family and to marry as one and the same right and regarded the existence of a couple as fundamental to the application of Article 12. However, today, national laws largely allow for the establishment of a family outside the legal framework of marriage. The Court itself has recognised this development and has adapted its interpretation of family life to extend it to persons not living in wedlock.⁵²

46. Moreover, according to the Court's case-law, Article 8 does not guarantee the right to found a family,⁵³ but presupposes its existence. In the present case, the applicants expressed a desire to continue their pregnancies and thus give birth and become mothers. The fact that a woman carries a child and wishes to carry them to term is a constitutive and manifest act of her desire to found a family. By forcing these women to have an abortion and rendering them sterile, their right to found a family has been infringed on two counts: during the abortion, which put an end to the life of their unborn children, and during the sterilisation, which continuously prevented them from having a child, even though they *used to be able to* have children.

47. They were in the process of starting a family when they were aborted and as such suffer a violation of Article 12 of the Convention. By becoming infertile, they are now deprived of the right to found a family. They will be able to marry, but they will no longer be able to bear and give birth to their own children, even though it is clear that they were able to, that they had the capacity to exercise the right to found a family, guaranteed in Article 12.

⁵¹ *X. v. Belgium and the Netherlands*, no. 6482/74, 10 July 1975, DR 7, p. 77, § 2: “the adoption of an adolescent by an unmarried person cannot lead to the existence of a family life in the meaning of the Convention.”

⁵² See, *inter alia*, *Moretti and Benedetti v. Italy*, no. 16318/07, 27 April 2010.

⁵³ *E.B. v. France*, GC, no. 43546/02, 22 January 2008, § 41.