



Failure to analyse a domestic violence case from a gender-based violence perspective breached the Convention, but discriminatory attitude not proven

In today's **Chamber judgment**¹ in the case of [J.S. v. Slovakia](#) (application no. 35767/23) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned the alleged failure of the national authorities to effectively investigate and prosecute acts of domestic violence that J.S. had allegedly suffered at the hands of her former husband, T. It also concerned the alleged discriminatory impact of gender-based violence on women in Slovakia.

The Court found in particular that the first-instance court had been overly formalistic in reaching its conclusions and had failed to analyse the circumstances of the case from a gender-based violence perspective and to make a context-sensitive assessment of the credibility of the various statements. It had not placed J.S.'s statements in a relevant context, specifically with regard to other witness evidence corroborating her version of events and the expert evidence. Elements, such as the history, the continuous pattern and the dynamics of T.'s violence against his wife had been disregarded entirely. That together with the slow pace of the criminal proceedings against T. amounted to a failure on the part of the authorities to fulfil their duty ("positive obligation") under Article 3 of the European Convention.

At the same time, concerning the complaint under Article 14 (prohibition of discrimination), the Court held that the deficiencies found in the case could not be considered in themselves to disclose a discriminatory attitude on the part of the authorities.

Principal facts

The applicant, J.S., is a Slovak national who was born in 1980 and lives in Presov (Slovakia).

On 6 July 2014 the police brought criminal charges against J.S.'s then husband, T., to whom she had been married since 2001, for having allegedly attacked his wife the previous day and having threatened to kill her. In November 2014, following a further criminal investigation opened by the police, T. was also charged with domestic violence towards J.S. from September 2012 onwards.

T. was convicted of the first offence in December 2014 and sentenced to eight months in prison. Upon his release, the court dismissed a request by the prosecutor to have him remanded in detention in the framework of the other ongoing criminal proceedings against him. However, a restraining order was issued prohibiting him from contacting or approaching his wife and children.

Both J.S. and T. and 17 other witnesses, including the couple's children (born in 2002 and 2005), were questioned during the pre-trial proceedings. Expert psychology and psychiatric reports were also obtained. In June 2015 T. was formally charged for repeatedly verbally and physically attacking his

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

wife while under the influence of alcohol. This included slapping, strangling, kicking, insulting, humiliating and threatening to kill her, exhibiting coercive control by checking her clothes and mobile phone, making her stay at home and forcing her to have sexual intercourse. According to the expert psychology report, this had led to J.S. developing battered woman syndrome and their children post-traumatic stress disorder.

The accusations against T. were confirmed by J.S.'s mother and her children. The children stated that, when drunk, their father had behaved very badly and that they had feared for their mother. The daughter reported that T. had not let them sleep, had poured cold water over them, had beaten her and had slapped J.S. across the face; their son stated that T. had shouted at and beaten his mother. J.S.'s sister and several other people, including the psychiatrist treating J.S., confirmed that they had noticed bruising and swelling on both her and her daughter. T.'s father stated that the couple argued and that on one occasion the children had called him to say that their father had beaten their mother.

Between September 2015 and mid-April 2016 six hearings were held before the Košice II District Court; While denying his guilt, T. admitted that he had occasionally slapped his wife and had called her a "bitch" when he had discovered that she had been unfaithful; he maintained that she tended to bruise easily and suffered frequently from jaw dislocation. J.S.'s psychiatrist, who had been treating her for anxiety since 2010, attested to often seeing her with bruises and to T. regularly phoning J.S. to check on her whereabouts. Several witnesses, including relatives and neighbours, stated that they had heard arguments or noticed bruises on J.S. and her daughter or that J.S. had confided in them about T.'s violent behaviour. One neighbour reported that the daughter had mentioned a fight between her parents during which T. had punched J.S. in the jaw. The court also heard the authors of the expert reports and noted the medical certificates stating that J.S. had been treated by a psychiatrist since 2010, that she had been hospitalised for jaw dislocation in May 2014 and that in August 2014 the children had been examined by a hospital psychologist who had concluded that they had been witness to domestic violence.

In April 2016, T. was acquitted by the District Court. In its view, J.S.'s allegation that T.'s aggressiveness had escalated in spring 2013, when he had learned about her infidelity, contrasted with the certificate from her psychiatrist stating that she had been consulting since November 2010 for long-standing problems with her husband; furthermore, the medical certificates relating to her jaw dislocation in May 2014 did not mention that it had been caused by violence.

In October 2016, that judgment was quashed on appeal, and the case was remitted to a different chamber. Between August 2017 and September 2021, eight hearings were held. Several delays occurred because of lawyer absences, defective summonses, witnesses' failure to appear, and the COVID-19 pandemic. On 8 September 2021 the District Court acquitted T. again for lack of proof.

Upon appeal, the Košice Regional Court decided to quash the judgment and to send the case back to the District Court, being of the view that its conclusions were unconvincing and inexact, that they had been based on incomplete findings and that T.'s full acquittal was untenable.

In May 2022 the District Court acquitted T. for a third time, noting that, apart from the children, none of the other witnesses had actually seen any violence. It again expressed doubts about the findings of the psychological expert and noted that the children's teachers had not noticed any signs of violence or abuse. It found that quarrels and physical and verbal attacks had happened but had been reciprocal.

A subsequent appeal was dismissed by the Košice Regional Court in November 2022. It held that, as the judgment had been duly and convincingly reasoned, there was no room for it to intervene.

J.S. lodged a constitutional complaint claiming that the investigation had not been diligent, effective or prompt, that the State had not protected her against gender-based violence and that she had suffered discrimination based on her gender. In April 2023, the Constitutional Court dismissed the complaint, finding that the appellate court's findings were sound and duly reasoned, and that its own case-law did not allow it to examine complaints about the length of concluded proceedings.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life), 13 (right to an effective remedy) and 14 (prohibition of discrimination) – the two latter taken in conjunction with the two former – of the European Convention, J.S. complained that she had been subjected to inhuman and degrading treatment by her former husband and that the national courts had failed to promptly and thoroughly investigate her allegations because, amongst other things, the courts had downplayed the violence, and their assessment of evidence had been laden with prejudice and stereotypes against women who had been ill-treated. J.S. complained that the State had failed to provide her with effective protection from that violence, that an acquittal could not be considered an effective remedy, and that gender-based violence against women and the lack of its investigation was a systemic problem in Slovakia.

The application was lodged with the European Court of Human Rights on 19 September 2023.

Judgment was given by a Chamber of seven judges, composed as follows:

Ivana Jelić (Montenegro), *President*,
Erik Wennerström (Sweden),
Frédéric Krenc (Belgium),
Davor Derenčinović (Croatia),
Alain Chablais (Liechtenstein),
Artūrs Kučs (Latvia) and,
Katarina Šmigová (Slovakia), *ad hoc Judge*,

and also Liv Tigerstedt, *Deputy Section Registrar*.

Decision of the Court

Article 3

The Court considered that while the District Court had described all the evidence in detail, it had been overly formalistic in reaching its conclusions and had shown no awareness of particular features of domestic violence cases, failing to analyse the circumstances of the case from a gender-based violence perspective and to make a context-sensitive assessment of the credibility of the various statements. In particular, it had not placed J.S.'s statements in a relevant context, specifically with regard to other witness evidence corroborating her version of events and the expert evidence. The context-based elements, such as the history, the continuous pattern and the dynamics of T.'s violence against J.S., determined in the criminal order of 8 December 2014, had been disregarded entirely. The Court considered that in domestic-violence cases, failure to address interrelated incidents that fell under the same pattern of aggressive behaviour amounted to a disregard of the State's duty under the Convention to submit those cases to the careful scrutiny required of the national courts.

In examining the effectiveness of the investigation, the Court observed that the police investigation had been sufficiently prompt, as T. had been formally charged nine months after the police had brought criminal proceedings against him. However, substantial delays had occurred once T. had been brought to trial. After the first acquittal, it had taken the District Court (sitting in a different chamber) almost five years to deliver a new judgment, in which it had simply repeated its previous reasoning. Taken as a whole, the proceedings before the national courts had lasted more than seven years, exposing J.S. to a prolonged state of uncertainty and to other negative implications. In particular, she had had to relive the painful events a number of times during three retrials, which must have caused her unnecessary suffering and frustration, and which might have been avoided had the criminal-law mechanisms which were aimed at deterrence of and punishment for criminal acts of abuse been applied in an effective and prompt manner.

In sum, the Court found that the manner in which the authorities had handled the matter – notably the failure to conduct a context-sensitive assessment of the case and the slow pace of the criminal proceedings against T. – disclosed a failure on their part to fulfil their duty (“positive obligation”) under Article 3 of the Convention.

Article 8 and Article 13

In the light of its findings of a violation of Article 3, the Court saw no need to examine the complaint under Article 8 and under Article 13 taken in conjunction with Articles 3 and 8 since the issues it raised were the same.

Article 14

J.S. had only referred to unspecified reports by the Committee on the Elimination of Discrimination against Women Committee and the UN Committee against Torture, without providing any statistical or other information disclosing an appearance of discriminatory treatment on the part of the Slovak authorities towards women victims of domestic violence. In the Court’s view, that was not sufficient to demonstrate institutional attitudes or systematic patterns of discrimination, and J.S. had not attempted to substantiate with other kinds of evidence her assertion that the Slovak authorities remained generally complacent in such cases. Moreover, she had not submitted any evidence demonstrating that the authorities dealing with her case had acted in a discriminatory manner or with discriminatory intent towards her, nor had she alleged that anyone had tried to dissuade her from testifying against T. or had hampered her efforts to seek protection from him.

The Court found that the deficiencies stemming from the courts’ failure to act promptly and to exercise careful scrutiny, while contrary to Article 3 of the Convention, could not be considered in themselves to disclose a discriminatory attitude on the part of the authorities. Therefore, this complaint was rejected as manifestly ill-founded.

Just satisfaction (Article 41)

The Court held that Slovakia was to pay the applicant 16,000 euros (EUR) in respect of non-pecuniary damage, and EUR 2,500 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.