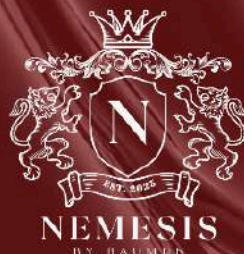


*The Tradition*  
**NEMESIS**  
**COURT SIMULATIONS**

**ECTHR**  
**STUDY GUIDE**



## TABLE OF CONTENT

<b>TABLE OF CONTENT</b>	<b>1</b>
<b>LETTER FROM SECRETARY GENERAL</b>	<b>3</b>
<b>LETTER FROM UNDER SECRETARY GENERAL</b>	<b>4</b>
<b>LIST OF ABBREVIATIONS</b>	<b>6</b>
<b>1. INTRODUCTION TO THE COURT</b>	<b>7</b>
1.1. Introduction to the European Court of Human Rights	7
1.2. History of the European Court of Human Rights	8
1.3. Structure of the European Court of Human Rights	9
<b>2. THE CASE OF J.S. v. SLOVAKIA</b>	<b>10</b>
2.1. Introduction to the Case	10
2.2. Factual Background of the Case	10
2.2.1. Initial Complaints and Early Police Intervention	10
2.2.2. Details of Alleged Abuse and the Respondent's Defense	11
2.2.3. The Police Investigation and Referral to the Court	11
2.2.4. The First Instance Proceedings and First Acquittal	12
2.2.5. Prolonged Re-trial and the Second Acquittal	12
2.2.6. Regional Court Intervention and the Third Acquittal	13
2.2.7. Judicial Findings on Domestic Abuse Allegations	13
2.2.8. First Constitutional Challenge	14
2.2.9. The Incident of 6 August 2023	14
2.2.10. The Trial for Premeditated Homicide	15
2.2.11. Sentencing and Lack of Mitigation	16
2.2.12. Appeals and Cassation Proceedings	16
2.2.13. Final Domestic Decision and Application to the ECtHR	17
2.3. Relevant Legal Framework and International Material	18
2.3.1. Domestic Law	18

2.3.2. International Material	20
2.3.2.1. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	20
2.3.2.2. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	21
2.4. Relevant Violations to the Case	22
Right to Life (Article 2)	22
Prohibition of Torture, Inhuman or Degrading Treatment (Article 3)	22
Right to a Fair Trial (Article 6)	23
Right to Respect for Private and Family Life (Article 8)	23
Right to an Effective Remedy (Article 13)	24
Prohibition of Discrimination (Article 14)	25
2.5. Relevant Persons to the Case	25
J.S. (The Applicant)	25
Slovakia (The Respondent)	26
T. (The Deceased)	26
The Children (Daughter and Son)	26
The Applicant's Psychiatrist	27
The Applicant's Mother and Sister	27
L.O. (Neighbor)	27
The Children's Teachers	27
<b>3. STATEMENT OF THE FACTS</b>	<b>28</b>
<b>4. APPLICABLE LAW</b>	<b>29</b>
European Convention on Human Rights	29
<b>5. MERITS OF THE CASE</b>	<b>30</b>
<b>6. BIBLIOGRAPHY</b>	<b>31</b>

## LETTER FROM SECRETARY GENERAL

Dear Participants,

As the secretary general of the conference, it is my pleasure to greet you. We are proud to already feel the excitement of hosting one of Turkey's most sought-after legal conferences. Alongside our experienced team, who have been striving to create privileged events for law students in interactive settings for years, we eagerly await your presence.

The main aim of our conference is to create a shared and broad vision with law students and to provide them with the opportunity to experience professional activities within the context of the legal field during their academic lives. In our courtroom simulation, which is designed to prepare you for the profession by providing educational and instructive experiences in competition with many others interested in the field, you will find a rewarding experience.

Furthermore, I would like to emphasize that both the academic and organisational teams of the conference are working in harmony to provide you with a wonderful experience. On this occasion, I extend my thanks to my esteemed colleague and our esteemed Director General Eylül Çamyurdu, and our Deputy Director Generals Duygu Aka and Elif Atay for their incredible efforts and commitment to perfection with the organization, and I also extend the love and greetings of our valuable Deputy Secretary General Safvet Yusuf Tıǒlı for his outstanding efforts and work he put into helping me guide and build the academic team.

Finally, on behalf of the conference, I would like to thank you for joining us in Nemesis Court Simulations The Tradition. We are proud to be with curious and distinguished law students who are passionate about their profession.

Best Regards,

DEFNE TANRIVERDİ

Secretary General of Nemesis The Tradition 2026

## LETTER FROM UNDER SECRETARY GENERAL

Dear Members of the Court,

As the Under Secretary General of the European Court of Human Rights, I am delighted to welcome you all to Nemesis: The Tradition. It is a distinct honor to oversee a committee that demands such a high level of legal analysis, empathy, and procedural discipline.

The case we have selected is far from being just a theoretical exercise. It addresses domestic violence, state responsibility, and the complex role of mental health - issues that remain critically relevant in our world today. In an era where human rights are increasingly under pressure, understanding the positive obligations of a state to protect its citizens is more vital than ever. I believe our debates here will reflect the importance of these real-world struggles.

Behind this conference lies the tireless work of many individuals. I would like to extend my deepest gratitude to our Secretary General, Defne Tanriverdi, for her visionary leadership and dedication to academic excellence. My thanks also go to our Director General, Eylül Çamyurdu, and the entire Organization Team for creating an environment where justice can be debated so effectively.

I also owe a huge thank you to Hakkı Atanur Duman, who has taught me so much about the nature and procedural discipline of courts; his guidance has been invaluable to my growth. A special thank you goes to our Deputy Secretary General, Safvet Yusuf Tıgılı, who never minded my constant questions. Last but not least, I must thank my Academic Assistant, Ece Cansın Arslan. Her invaluable contributions to the research and drafting of these materials have been the backbone of this committee.

As you prepare for the sessions ahead, remember that the pursuit of justice requires both a sharp mind and a compassionate heart. I encourage you to use this guide as your reference point, but do not hesitate to reach out if you have questions regarding the case. I look forward to witnessing your arguments and seeing how you uphold the tradition of excellence at Nemesis. I wish you all a challenging, rewarding, and unforgettable experience.

Sincerely,

Özge Zorlu

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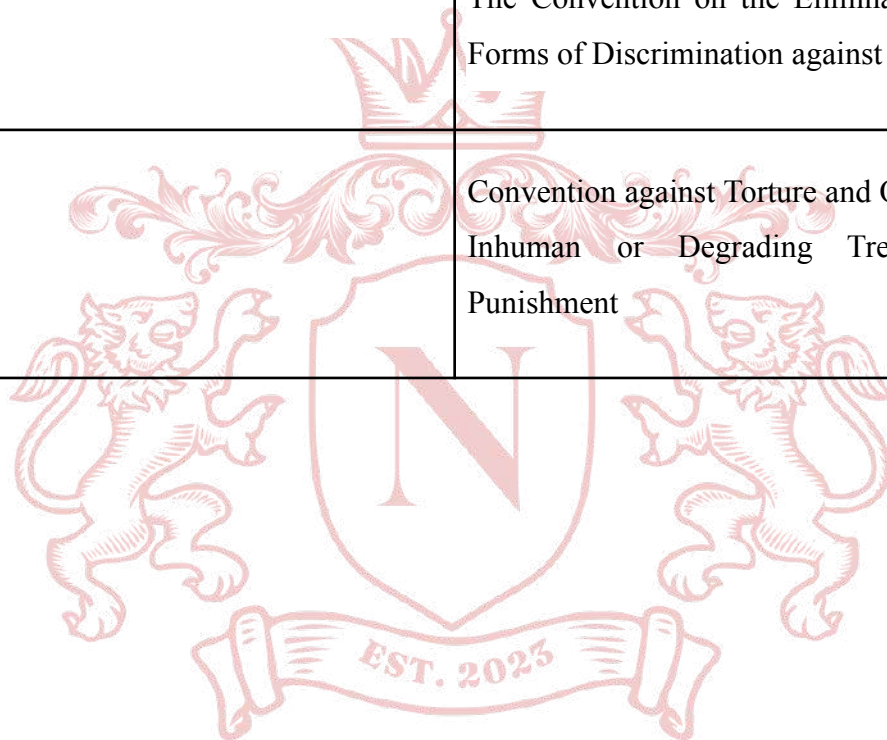


**NEMESIS**

BY BAUMUN

## LIST OF ABBREVIATIONS

ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



**NEMESIS**  
BY BAUMUN

# 1. INTRODUCTION TO THE COURT

## 1.1. Introduction to the European Court of Human Rights

The European Court of Human Rights is an international court based in Strasbourg in France. The Court is the oldest, best established, and most influential of the three regional human rights systems in existence today. Its judgments are binding in the Member States of the Council of Europe.

It has 46 judges – one from each Member State of the Council of Europe which has ratified the European Court of Human Rights. The Court adjudicates on complaints against States under the European Convention on Human Rights. Significantly, individuals can make a complaint or application to the Court if they feel their rights have been breached. States can also make complaints against other States. The Court decides whether ECHR rights have been violated in individual cases. It issues written judgments setting out its decisions. Judgments of the Court are binding on the Member States. This means that States are under a duty to comply with the judgments of the Court.

Failure to abide by the judgments of the Court can, in theory, have significant political consequences for the concerned Member State, including exclusion from the Council of Europe. In reality, such sanctions have never been applied (with the exception of recent developments regarding the Russian Federation) because Contracting Parties generally have a good record of compliance with the Court's judgments.



## 1.2. History of the European Court of Human Rights

In 1949, only a few years after the end of the Second World War, when Europe still strongly felt the effects of the War, ten Western European states created the Council of Europe. These ten countries were: Belgium, France, Luxembourg, the Netherlands, the United Kingdom, Ireland, Italy, Denmark, Norway, and Sweden. These were all Western European countries, with common or civil law traditions. The founding states wanted to take steps towards European unity.

The two main influences pushing towards the creation of the Council of Europe were the experiences of the Second World War and the beginning of the Cold War. The founding fathers of the Council of Europe took up the fight against Nazism and Fascism and wanted to make it impossible for the horrors and brutality to return. The French delegate Teitgen stressed in his speech during the first meeting of the preparatory commission of the Council of Europe his private experiences of having been a victim of the Nazis. He pointed out not only the threat of fascism but also the threat of Communism. Freedom meant to him “political freedom and economic liberalism, freedom of competition, profit and money”.

“We should need years of mutual understanding, study, and collective experiments, even to attempt after many years, with any hope of success, to formulate a complete and general definition of all the freedoms and all the rights which Europe should confer on the Europeans. Let us, therefore, discard for the moment this desirable maximum. Failing this, however, let us be content with the minimum which we can achieve in a very short period, and which consists in defining the seven, eight, or ten fundamental freedoms that are essential for a democratic way of life and which our countries should guarantee to all their people. It should be possible to achieve a common definition of these.”

The Council of Europe created the legal text and the institutions for monitoring human rights in Europe. The legal basis for European human rights protection is the Convention. Based on this Convention, supervisory machinery was built, which today is the Court. The Court is embedded in the institutional structure of the Council of Europe. The function of the Court is to monitor the implementation of the Convention.

### 1.3. Structure of the European Court of Human Rights

The European Court of Human Rights' (ECtHR) structure is designed to process applications efficiently and ensure the binding nature of the judgments interpreting the European Convention on Human Rights. The structure is based on the judges and the various formations, supported by the Registry.

The Judiciary involves a number of Judges equal to that of the High Contracting Parties (currently 46), who are elected by the Parliamentary Assembly of the Council of Europe. These judges are then organized into different judicial formations to carry out the Court's mandate, which is primarily to examine individual or inter-state applications alleging violations of the Convention.

The Formations (Chambers) are the main operational organs of the Court, defining its judicial capacity. These formations include: Single-Judge committees (dealing with admissibility only), Committees (three judges, ruling on admissibility and merits in straightforward cases), Chambers (seven judges, ruling on admissibility and merits in more complex cases), and the Grand Chamber (seventeen judges, hearing exceptional cases, including referrals from Chambers and requests for advisory opinions).

The Plenary Court is composed of all elected judges and focuses on administrative matters, election of the President and Vice-Presidents, and the adoption of the Court's Rules of Procedure. While not a judicial formation for case handling, it ensures the overall institutional management and strategic direction of the Court.

The Registry provides legal, technical, and administrative assistance to the Judges and the formations of the Court. Led by the Registrar, its primary duty is to ensure the smooth, effective, and impartial operation of the Court. This includes managing the immense volume of applications, communicating with applicants, organizing hearings, and ensuring the official publication and translation of the Court's judgments and decisions.

## **2. THE CASE OF J.S. v. SLOVAKIA**

### **2.1. Introduction to the Case**

The case concerns a long-standing and highly complex dispute arising out of allegations of domestic violence within a marriage that lasted for more than a decade. Beginning in 2014, J.S. repeatedly reported her husband, T., to the authorities for alleged threats, physical assaults, and controlling behaviour said to have taken place over several years. The allegations triggered criminal investigations and court proceedings which extended for many years and involved numerous witness statements, expert opinions and repeated judicial reviews. Ultimately, the domestic courts acquitted T., concluding that the evidence did not establish the alleged offences beyond reasonable doubt.

Several months later, on 6 August 2023, after years of alleged violence and while suffering severe psychological distress, J.S. killed T. while he was asleep. Less than a year later, she was convicted of premeditated intentional homicide and sentenced to twenty-five years' imprisonment without the possibility of parole. And when she exhausted all domestic remedies regarding her conviction, on 10 February 2026 she submitted an application to the ECtHR.

### **2.2. Factual Background of the Case**

#### **2.2.1. Initial Complaints and Early Police Intervention**

The applicant (J.S.) was born in 1980 and lives in Prešov. She had been married to T. since 2001, and they have 2 children, aged 20 and 22.

On 6 July 2014 J.S. filed a complaint against the applicant's then husband, T., of behaving in a dangerous and threatening manner, purportedly committed on 5 July 2014 and consisting of his verbally and physically attacking the applicant, threatening her with death and causing her injuries with a recovery time less than seven days. But she withdrew her complaint by the following day.

On 12 September 2014 J.S. filed a complaint again with the same charges. T. got arrested and his statement was taken by the police but despite the applicant's detailed report of violence,

the perpetrator was released from custody because the allegations were not deemed sufficiently serious by the local police.

### 2.2.2. Details of Alleged Abuse and the Respondent's Defense

The applicant's complaint detailed a series of events in which the perpetrator repeatedly, over a long period of time (since September 2012) and while under the influence of alcohol, verbally and physically attacked the applicant (by slapping her on the face and arms, strangling her and kicking her), insulting and humiliating her, threatening her with death, provoking fear and anguish by controlling her and checking her clothes and mobile phone, requiring her to remain at home and forcing her to have sexual intercourse, which had led to the applicant developing **battered woman syndrome** and had caused their children (aged 8 and 10 at the time) to experience **post-traumatic stress disorder**. In response to a question by the police regarding the reasons why she had never sought medical assistance, she responded that it had probably been on account of fear.

According to T.'s statement, while denying his guilt, T. admitted that he had occasionally slapped the applicant and told her that she was a "bitch" when he had discovered that she had been unfaithful; he further stated that she tended to bruise easily and suffered frequently from jaw dislocation, for which she had repeatedly consulted a doctor and had been hospitalised. Also, he stated that J.S. has been treated for **Borderline Personality Disorder** since 2010 and tends to overreact and exaggerate incidents.

A psychiatrist, who also gave a statement and who had been treating the applicant for Borderline Personality Disorder since 2010, stated that the applicant had regularly received phone calls from T. checking on her whereabouts.

### 2.2.3. BY BAUMUN The Police Investigation and Referral to the Court

The police initiated an investigation involving people in the applicant's immediate environment, based on her complaint. Several witnesses, including the applicant's relatives and neighbours, stated that they had heard quarrels or seen bruises on the applicant and her daughter or that the applicant had confided in them about T.'s violent behaviour. Witness L.O. (a neighbour) stated that the applicant's daughter had mentioned a fight between her parents

during which T. had hit the applicant in the jaw. The children's teachers stated that they had not noticed any signs of violence or abuse on the children.

Subsequently, in light of these statements and the findings of the investigation, the case was referred to the court on 26 March 2015.

#### **2.2.4. The First Instance Proceedings and First Acquittal**

By a judgment of the District Court dated 15 April 2016, T. was acquitted. After summarising the content of the evidence taken, the court considered that none of the witnesses, not even the closest relatives of the couple who had frequently been in contact with them, had confirmed that T. had behaved in the manner described in the indictment. In the court's view, the applicant's statement to the effect that T.'s aggressiveness had escalated in spring 2013, when he had learned about her infidelity, contrasted with the certificate of her psychiatrist according to which she had been consulting the latter as of November 2010 for long-standing problems with her husband; furthermore, the medical certificates relating to her jaw dislocation in May 2014 did not attest that the injury was due to any violence.

On 27 October 2016, on an appeal by the prosecutor, the above-mentioned judgment was quashed and the case was remitted to a different chamber of the first-instance court.

#### **2.2.5. Prolonged Re-trial and the Second Acquittal**

Between 9 August 2017 and 8 September 2021 the District Court held eight hearings in which the taking of evidence was repeated, including the hearing of the applicant. Several adjournments or cancellations were necessary because of the absence of T. or the applicant's lawyer, defective summonses and witnesses' failure to appear or on account of the COVID-19 pandemic.

By a judgment of 8 September 2021 the District Court acquitted T. again, considering that it had not been proved beyond any doubt that his actions had displayed the constituent elements of the criminal offence of domestic abuse.

### **2.2.6. Regional Court Intervention and the Third Acquittal**

Following an appeal by the prosecutor, the Košice Regional Court decided, on 28 January 2022, to quash the judgment and to send the case back to the District Court, being of the view that the latter's conclusions were unconvincing and inexact and had been based on incomplete findings of fact. It further instructed the District Court to supplement evidence concerning the period of the applicant's extramarital affair, to which T. had allegedly reacted with threats and physical attacks, *inter alia*, by holding a new hearing of the applicant's mother and of the psychological expert. In the Regional Court's view, T.'s acquittal was untenable since his conduct amounted at least to the offence of behaving in a dangerous and threatening manner.

On 18 May 2022 the District Court acquitted T. for a third time. Given that the applicant's mother and the psychological expert had failed to appear for the new hearing, the court relied on their previous statements, considered together with the oral, expert and documentary evidence taken previously. It noted, *inter alia*, that the applicant's daughter had stated that T. had not let them sleep, had poured cold water over them, had beaten her and had slapped the applicant in the face; the applicant's son had also stated that T., when drunk, had shouted at the applicant and had beaten her. The applicant's mother had reported that T. had threatened to kill the applicant and that she had seen the applicant's injuries (bruises and injured jaw); while she herself had never witnessed any violence, she had been told by the applicant that those injuries had been caused by T. The applicant's sister had stated that the applicant had told her that T., who had suspected her of infidelity, had awoken her at night, beaten her and slapped her in the face or on her head; she had not personally witnessed any assaults but had seen bruises on the applicant; as regards her injured jaw, the applicant had told her that it had dislocated by itself.

### **2.2.7. Judicial Findings on Domestic Abuse Allegations**

The court found that none of the witnesses, including relatives who were in close contact with the couple, had confirmed that T. had behaved in the manner described in the indictment or had witnessed such incidents. The court expressed doubts in respect of the findings of the psychological expert, according to whom the applicant suffered from post-traumatic stress

disorder and battered woman syndrome, pointing out that the applicant had been receiving psychiatric treatment for psychiatric disorders since at least 2010, which had refuted the expert's statement that her issues were linked to her conflicts with T. after September 2012. Moreover, the findings of the expert contradicted the statements of the children's teachers, who had not noticed any signs of violence or abuse. Lastly, the court considered it established that quarrels and physical and verbal attacks had occurred between the former spouses but, given their reciprocal character, it did not find that T. had committed the offence of behaving in a dangerous and threatening manner.

A subsequent appeal by the prosecutor was dismissed by the Košice Regional Court at a public hearing of 15 November 2022. The court found that the first-instance judgment had been duly and convincingly reasoned, which left no room for it to intervene. It pointed out that the applicant had admitted that her relationship with T. had worsened after she had been unfaithful to him, that she had not confided in her parents and that the children's teachers had not noticed any change in their behaviour.

#### **2.2.8. First Constitutional Challenge**

The applicant lodged a constitutional complaint relying on Articles 3, 8, 13 and 14 of the Convention and complaining that the investigation had neither been diligent and effective nor prompt, that the State had not protected her against gender-based violence and that she had suffered discrimination based on her gender.

By decision no. II. ÚS 212/2023 of 26 April 2023, the Constitutional Court dismissed the applicant's constitutional complaint mainly as being manifestly ill-founded. Considering that the applicant had essentially complained of an incorrect assessment of evidence, not the extent of the evidence taken, and about the length of the proceedings, it found that the appellate court's findings were sound and duly reasoned. As regards the length of the proceedings, the Constitutional Court referred to its case-law, according to which it could only entertain such complaints as long as the proceedings complained of were still pending, which was not the situation at hand.

### **2.2.9. The Incident of 6 August 2023**

According to the applicant's statements, the final acquittal of T. in November 2022 acted as a turning point. J.S. reported that T. used the court's decision to further intimidate her, frequently reminding her that the authorities did not believe her and that he was "untouchable." Throughout the summer of 2023, the verbal insults and physical domestic labor coercion escalated into more frequent physical assaults. J.S. described this period as a state of constant fear, believing that the legal system had completely abandoned her and that T.'s violence would eventually result in her death.

On the evening of 5 August 2023, a severe argument broke out between the couple. The applicant stated that T. was under the influence of alcohol and physically attacked her in the kitchen, threatening that "this would be the end of her." After T. went to the bedroom and fell asleep, J.S. remained in the kitchen for several hours in a state of severe psychological distress and dissociation.

Around 03:00 AM on 6 August 2023, the applicant took a large kitchen knife from the drawer and entered the bedroom where T. was sleeping. She stabbed T. multiple times in the chest and neck area while he was lying in bed. The forensic report later confirmed that the victim was attacked while asleep and had no opportunity to defend himself.

Immediately following the act, the applicant did not attempt to flee the scene or dispose of the weapon. Instead, she sat in the living room and called the emergency services herself. When the police arrived, J.S. was found in a catatonic state, still holding the phone. She admitted to the killing immediately, stating that she "had to do it to survive." T. was pronounced dead at the scene due to internal hemorrhaging caused by the stab wounds.

### **2.2.10. The Trial for Premeditated Homicide**

The criminal proceedings against J.S. commenced shortly after the incident. The prosecution focused strictly on the "premeditated" nature of the act, arguing that because the victim was asleep and posed no *immediate* physical threat at the exact moment of the killing, the applicant's actions could not be classified as self-defense under domestic law. The defense, however, argued that the act was a reactive consequence of the state's repeated failure to

intervene, and that J.S.'s psychological state -shattered by a decade of abuse- prevented her from seeing any other means of survival.

### **2.2.11. Sentencing and Lack of Mitigation**

On 13 March 2024, the District Court rendered its judgment, finding J.S. guilty of premeditated intentional homicide. Despite the documented history of domestic violence and the psychiatric evidence regarding the applicant's mental health, the court refused to grant any mitigation of the sentence. The judiciary concluded that the "sleeping victim" element established a high degree of social danger and criminal intent. Consequently, J.S. was sentenced to the maximum penalty of twenty-five years' imprisonment. Crucially, the court ruled that the sentence be served without the possibility of parole, granting no reduction or recognition of the "prolonged provocation" or "psychological vulnerability" as mitigating factors.

### **2.2.12. Appeals and Cassation Proceedings**

Following the District Court's judgment, the applicant lodged an appeal with the Regional Court on 23 March 2024. The defense argued that the first-instance court had failed to account for the "prolonged provocation" and the systemic nature of the abuse J.S. had endured. They requested that the charge be downgraded from premeditated murder to a lesser offense, such as "manslaughter committed in a state of extreme distress," and sought a significant reduction in the 25-year sentence.

However, on 1 November 2024, the Regional Court dismissed the appeal. The court held that the factual findings of the District Court were accurate. In its reasoning, the Regional Court emphasized that because the applicant had several hours to reflect while the victim was asleep, the "emotional distress" did not negate the premeditated nature of the crime. The court found no legal or procedural violations and upheld the original conviction and the 25-year sentence without the possibility of parole.

On 15 November 2024, the applicant filed a cassation appeal before the Supreme Court, alleging a "misapplication of substantive law." The defense claimed that the lower courts had interpreted the concept of "self-defense" and "premeditation" too narrowly, ignoring

international legal standards regarding victims of domestic violence. They argued that the law should recognize "cumulative provocation" in cases of long-term abuse.

The Supreme Court reviewed the case and delivered its decision on 31 May 2025. The Court rejected the applicant's claims, stating that the domestic law regarding intentional homicide was applied correctly. The Supreme Court noted that "self-defense" requires an immediate and ongoing attack, which was absent since the victim was sleeping at the time of the incident. The Court concluded that the trial process was conducted in full compliance with the law and that the severity of the sentence was within the statutory limits for premeditated murder.

### **2.2.13. Final Domestic Decision and Application to the ECtHR**

On 10 June 2025, following the Supreme Court's decision, J.S. filed a comprehensive constitutional complaint. The applicant alleged that her right to a fair trial and her right to protection from inhuman and degrading treatment had been violated.

Her legal team argued that the domestic courts had displayed a systemic bias by using her Borderline Personality Disorder (BPD) diagnosis to discredit her previous reports of abuse while simultaneously refusing to consider her Post-Traumatic Stress Disorder (PTSD) and Battered Woman Syndrome as mitigating factors in the homicide trial. The complaint specifically highlighted that the state's repeated failure to penalize T. over the previous decade had created a "cycle of impunity" that forced the applicant into a desperate situation, which the courts then failed to evaluate from a gender-sensitive perspective.

The Constitutional Court delivered its final judgment on 31 January 2026. The Court dismissed the applicant's claims, finding them to be "manifestly ill-founded." In its reasoning, the Court stated that its role was not to act as a "fourth-instance" body by re-evaluating the evidence or the facts of the case.

The Court ruled that the lower courts had provided sufficient and logical reasoning for the 25-year sentence. It further noted that the applicant's right to a fair trial was respected because she was given the opportunity to present her defense and cross-examine witnesses. Regarding the claims of discrimination and failure to protect, the Court held that the prior

acquittals of T. were final legal decisions and could not be used to justify the subsequent killing or to claim a constitutional deficiency in the homicide proceedings.

Having exhausted all domestic remedies, the applicant submitted an application to the European Court of Human Rights (ECtHR) on 10 February 2026. Following the communication of the case to the Government, the oral hearing before the Court commenced on 8 May 2026.

## **2.3. Relevant Legal Framework and International Material**

### **2.3.1. Domestic Law**

#### **Article 208 - Abuse of a Close or Entrusted Person**

The offence of abuse by a person close to the victim or of a person in respect of whom the offender held a position of trust was defined in Article 208 of the Criminal Code (Law no. 300/2005), as in force at the material time.

Under paragraph 1 (a), that offence could be considered to have been committed if the perpetrator had caused a person, who was close to him or her or was in his or her care or education, physical or mental suffering by way of any of the following actions: beating, kicking, punching, causing wounds of various kinds, bullying, contemptuous treatment, continuous stalking, threatening, causing fear or stress, forced isolation, emotional extortion or any other behaviour endangering physical or mental health or putting the victim's safety at risk. A person guilty of the offence under paragraph 1 (a) could be sentenced to imprisonment for a term ranging from between three and eight years.

Paragraph 2 (d) provided that the perpetrator could be sentenced to imprisonment of a term ranging from between 7 and 15 years if he or she had committed the offence in a more serious manner.

#### **Article 360 - Dangerous and Threatening Behaviour**

The offence of behaving in a dangerous and threatening manner was defined in Article 360 § 1 of the Criminal Code, as in force at the material time, in accordance with which a person who threatened another person with death, serious bodily harm or other serious harm, thereby

raising justified fears, could be sentenced to prison for a term of up to one year. Under Article 360 § 2 (b), the perpetrator could be sentenced to prison for a term ranging from six months to three years if he or she had committed that offence against a person under his or her care.

#### **Article 144 - Premeditated Murder**

The offence of premeditated murder (*úkladná vražda*) was defined in Article 144 of the Criminal Code. Under paragraph 1, anyone who intentionally kills another with premeditation shall be punished by imprisonment for a term ranging from twenty to twenty-five years or by a life sentence. Paragraph 2 (a) further provided that the perpetrator shall be sentenced to imprisonment for a term of twenty-five years or by a life sentence if the offence was committed against a "protected person," which includes a spouse or a person living in the same household.

#### **Article 25 - Necessary Self-Defense**

The grounds for excluding criminal liability through necessary self-defense (*nutná obrana*) were regulated under Article 25. Paragraph 1 provides that an act otherwise punishable, by which a person averts an imminent or ongoing attack on an interest protected by the Criminal Code, is not a criminal offence. However, under paragraph 2, an act is not considered to be in necessary self-defense if the defense was clearly disproportionate to the nature and intensity of the attack.

#### **Article 36 - Mitigating Circumstances**

Article 36 prescribes the mitigating circumstances that the court is required to consider when determining the type and duration of the penalty. Under the relevant sub-paragraphs, the court shall take into account if the offender: (a) committed the offence under the influence of extreme distress or psychological pressure; (b) committed the offence as a result of previous provocative or illegal conduct by the victim; (c) has led an orderly life prior to the commission of the offence.

#### **Article 37 - Aggravating Circumstances**

The aggravating circumstances to be considered in sentencing are set forth in Article 37. According to the relevant provisions, the court shall take into account whether the offender: (a) committed the offence in a brutal or insidious manner; (b) committed the offence against a person who was unable to defend themselves, including cases where the victim was attacked while asleep or in a vulnerable state.

## **2.3.2. International Material**

### **2.3.2.1. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the United Nations General Assembly. In 1992, the Committee on the Elimination of Discrimination against Women (“the CEDAW Committee”) adopted General Recommendation No. 19 on violence against women. Slovakia ratified CEDAW on 28 May 1993.

On 31 May 2023 the CEDAW Committee published its “Concluding observations on the seventh periodic report of Slovakia” (CEDAW/C/SVK/CO/7). In relation to “Gender-based violence against women”, it noted and recommended the following:

*“22. The Committee is concerned about:*

*(a) The lack of a specific definition of domestic violence as a crime in the Criminal Code, as well as the insufficient punishment of perpetrators of intimate partner violence and femicide;*

*(b) The reported cases of failure to remove the abuser from the household, with incidents downplayed as minor offences rather than crimes or the perpetrators of violence given only a verbal warning;*

*(c) The unequal distribution of shelters across the national territory, especially in rural areas, the lack of affordable public housing or rent-controlled housing, which forces victims of domestic violence to return to abusive households, and the lack of affordable*

*and accessible health services and rehabilitation programmes for surviving victims of physical and sexual violence;*

*(d) The exposure of women who are victims of domestic violence to further violence and secondary victimization in child custody and visitation rights proceedings by requesting their engagement to achieve reconciliatory solutions and to improve communication with the ex-partner.*

*23. Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee urges the State party:*

*(a) To expedite the enactment of comprehensive legislation on the prevention and elimination of violence against women and the amendment of the Criminal Code to include domestic violence as a category of violent crime and raise the punishment for intimate partner violence and femicide;*

*(b) To ensure, through mandatory and continuous capacity-building for judges, prosecutors, police officers and other law enforcement officials, that gender-based violence, including sexual violence against women, is effectively investigated and prosecuted, that perpetrators are adequately punished and that victim protection orders are adequately enforced;*

*(c) To ensure the availability and adequate funding of shelters for women and girls who are victims of gender-based violence throughout the territory of the State party, to unify the registration procedure for shelters and to provide legal, medical and psychological assistance to all victims of physical and sexual violence, as well as skills training and education;*

*(d) To ensure that domestic violence is adequately taken into account in child custody and visitation rights proceedings in order to prevent further exposure of the victims.”*

### **2.3.2.2. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment of Punishment was adopted in 1984 by the United Nations General Assembly and entered into force on 26 June 1987. Slovakia ratified it on 17 March 1995.

On 7 June 2023 the United Nations Committee against Torture publish its “Concluding observations on the fourth periodic report of Slovakia” (CAT/C/SVK/CO/4) and, concerning gender-based violence, recommended the following:

*“22. The State party should ensure that all acts of gender-based and domestic violence, especially those involving actions and omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately, and that the victims or their families receive redress, including adequate compensation and rehabilitation, and have access to legal assistance, safe shelters and the necessary medical care and psychosocial support. (...).”*

## **2.4. Relevant Violations to the Case**

### **Right to Life (Article 2)**

Article 2 of the Convention protects the right to life and imposes both negative and positive obligations on States. In addition to refraining from the intentional and unlawful taking of life, States must take appropriate preventive operational measures to protect individuals whose lives are at risk where the authorities know or ought to know of a real and immediate threat.

In the present case, the applicant repeatedly informed the authorities of the violent behaviour of her husband, T., including threats to her life and several instances of physical violence. Despite these complaints, the authorities did not adopt effective protective measures. Criminal proceedings were initiated against T., but he was repeatedly acquitted despite the applicant’s detailed allegations and witness statements indicating ongoing domestic violence.

These circumstances raise questions as to whether the authorities fulfilled their positive obligation under Article 2 to protect the applicant's life from a known risk arising from domestic violence.

### **Prohibition of Torture, Inhuman or Degrading Treatment (Article 3)**

Article 3 of the Convention prohibits torture and inhuman or degrading treatment or punishment. According to the Court's well-established case-law, severe domestic violence may reach the threshold of treatment prohibited by Article 3, and States have a positive obligation to ensure effective protection against such abuse.

In the present case, the applicant repeatedly complained to the authorities about the violent behaviour of her husband, T. Her complaints described a prolonged pattern of physical and psychological abuse occurring over several years, including slapping, strangling, kicking, death threats, coercive control, and forced sexual intercourse. The applicant further alleged that these acts resulted in severe psychological consequences, including battered woman syndrome.

Despite the applicant's complaints and the testimonies of several witnesses referring to bruises and violent quarrels within the household, the domestic courts acquitted T. on three separate occasions. Questions therefore arise as to whether the authorities conducted an effective investigation and whether the State fulfilled its positive obligation under Article 3 to protect the applicant from ill-treatment.

### **Right to a Fair Trial (Article 6)**

Article 6 §1 guarantees the right to a fair and public hearing in the determination of criminal charges. This includes the requirement that courts assess evidence in a reasoned manner and ensure that all relevant circumstances of a case are properly examined.

Following the events of 6 August 2023, the applicant was convicted of premeditated murder and sentenced to twenty-five years' imprisonment without the possibility of parole. The applicant argued that the domestic courts failed to adequately consider the broader context of prolonged domestic violence and the psychological impact of the abuse she had allegedly endured.

In particular, questions arise as to whether the domestic courts sufficiently assessed expert findings relating to battered woman syndrome and whether the applicant's defence based on prolonged abuse and psychological distress was properly evaluated during the proceedings. Accordingly, issues arise as to whether the applicant's criminal trial complied with the guarantees of fairness required under Article 6 §1 of the Convention.

### **Right to Respect for Private and Family Life (Article 8)**

Article 8 of the Convention protects the right to respect for private and family life, encompassing the physical and psychological integrity of individuals as well as the effective enjoyment of family relationships. It also entails positive obligations for the State to take appropriate measures to secure these interests where they are at risk, including in situations arising within the domestic sphere.

In the present case, it is observed that the applicant alleged that she had been subjected, over a prolonged period, to various forms of controlling and abusive behaviour by her husband. These allegations include monitoring of her movements, restrictions on her autonomy, and exposure to threats and humiliation, which, according to the applicant, affected the conditions within the family home. At the same time, the domestic courts, following multiple sets of proceedings, concluded that the available evidence did not establish the alleged conduct to the required standard of proof.

It further appears that the situation within the household had implications for the couple's children, who were reportedly exposed to ongoing conflict between their parents. While certain witness statements referred to tensions and signs consistent with distress, other elements of the evidence, including observations by third parties, did not indicate clear manifestations of abuse.

Against this background, the case raises the question whether the authorities took adequate and effective measures to secure respect for family life, in particular with regard to the physical and psychological integrity of the applicant and her children, and whether the response of the domestic system was sufficient in light of the competing elements of the evidence.

### **Right to an Effective Remedy (Article 13)**

Article 13 guarantees the availability of an effective domestic remedy for arguable claims of violations of Convention rights.

The applicant contended that the domestic legal system failed to provide her with an effective remedy for the violence she reported. Although criminal proceedings were initiated against T., the case was marked by repeated acquittals, delays in the proceedings, and the eventual dismissal of the applicant's constitutional complaint. The Constitutional Court also declined to examine the length of the proceedings on procedural grounds.

These circumstances raise issues as to whether the applicant had access to an effective remedy capable of addressing her complaints concerning domestic violence and the alleged failures of the authorities.

### **Prohibition of Discrimination (Article 14)**

Article 14 prohibits discrimination in the enjoyment of the rights guaranteed by the Convention.

The applicant argued that the authorities failed to respond effectively to her complaints of domestic violence and that this failure reflected broader structural shortcomings in the protection of women against gender-based violence. She further alleged that the domestic courts' approach to the evidence, including their reliance on her mental health history and personal circumstances, resulted in discriminatory treatment.

Accordingly, the case raises issues as to whether the alleged shortcomings in the authorities' response to the applicant's complaints amounted to discrimination on the basis of gender contrary to Article 14 of the Convention taken together with Articles 3 and 8.

## **2.5. Relevant Persons to the Case**

### **J.S. (The Applicant)**

J.S., born in 1980 and residing in Prešov, is the applicant in the present case. She had been married to T. since 2001 and they had two children together. Over several years, she reported being subjected to repeated physical and psychological violence by her husband, including

threats, physical assaults and controlling behaviour. She filed multiple complaints with the police concerning domestic abuse. Following T.'s acquittal in the domestic criminal proceedings, the applicant later killed T. on 6 August 2023 while he was asleep. She was subsequently convicted of premeditated murder and sentenced to twenty-five years' imprisonment without the possibility of parole. After exhausting all domestic remedies, she lodged an application before the European Court of Human Rights.

### **Slovakia (The Respondent)**

The Slovak Republic is the respondent State in the present proceedings. The applicant alleges that the authorities failed to effectively investigate her complaints of domestic violence and did not provide adequate protection against the abuse she had reported. The applicant further argues that the domestic judicial proceedings concerning both the allegations against T. and her own criminal conviction did not comply with the requirements of the Convention.

### **T. (The Deceased)**

T. was the applicant's husband, to whom she had been married since 2001. The applicant accused him of engaging in prolonged domestic violence, including physical assaults, threats, coercive behaviour and psychological abuse. Criminal proceedings were initiated against him following the applicant's complaints; however, he was acquitted by the domestic courts on several occasions due to insufficient evidence. According to the applicant, the violence escalated after his acquittal. On 6 August 2023, the applicant killed T. while he was asleep.

### **The Children (Daughter and Son)**

The applicant and T. have two children, a daughter and a son, who were minors at the time of the events forming the subject matter of the domestic proceedings. Both children were heard during the investigation and provided statements concerning the situation within the family home.

According to the daughter's statement, there had been incidents during which T. had prevented the family members from sleeping, had poured cold water over them, and had slapped the applicant. The son stated that, particularly when under the influence of alcohol, T. had shouted at the applicant and had beaten her. These statements suggested the existence of

tension and conflict within the household and referred to instances of alleged aggressive behaviour directed at the applicant.

The domestic courts took the children's statements into account in the course of the criminal proceedings. However, in their overall assessment of the evidence, the courts noted that no witness, including individuals in close contact with the family, had directly confirmed the conduct described in the indictment, and they ultimately concluded that the evidentiary threshold required for a criminal conviction had not been met.

The children's accounts thus formed part of the evidentiary framework before the domestic authorities and are relevant in assessing both the conditions within the family environment and the adequacy of the authorities' response to the allegations of domestic violence.

### **The Applicant's Psychiatrist**

The applicant had been receiving psychiatric treatment from a psychiatrist since 2010 for Borderline Personality Disorder. During the investigation, the psychiatrist provided a statement confirming that the applicant had been under regular treatment. The psychiatrist also indicated that the applicant had reported receiving frequent phone calls from T. checking on her whereabouts. The psychiatrist's statement formed part of the evidence considered by the domestic courts during the proceedings.

### **The Applicant's Mother and Sister**

The applicant's mother and sister provided witness statements during the investigation. The applicant's mother reported that T. had threatened to kill the applicant and that she had observed injuries such as bruises and a dislocated jaw, although she had not personally witnessed the violence. The applicant's sister stated that the applicant had told her about repeated physical assaults by T., and she had also noticed bruises on the applicant's body.

### **L.O. (Neighbor)**

L.O., a neighbour of the applicant, provided testimony during the investigation. According to L.O., the applicant's daughter had mentioned a fight between her parents during which T. had struck the applicant in the jaw. The neighbour's testimony contributed to the evidence concerning the alleged domestic conflicts within the household.

## The Children's Teachers

The teachers of the applicant's children were questioned during the investigation. They stated that they had not noticed any visible signs of violence or abuse affecting the children. Their statements were relied upon by the domestic courts when assessing the credibility of the allegations and the overall circumstances within the family environment.

### 3. STATEMENT OF THE FACTS

**12 March 2001** J.S. and T. got married.

**6 July 2014** J.S. filed a complaint against the applicant's then husband, T., of behaving in a dangerous and threatening manner, purportedly committed on 5 July 2014.

**7 July 2014** J.S. withdrew her complaint.

**12 September 2014** J.S. filed a complaint again with the same charges. T. got arrested and his statement was taken by the police.

**26 March 2015** The case was referred to the court.

**15 April 2016** By a judgment of the District Court, T. was acquitted.

**27 October 2016** On an appeal by the prosecutor, the District Court's judgment was quashed and the case was remitted to a different chamber of the first-instance court.

**9 August 2017 - 8 September 2021** The District Court held eight hearings in which the taking of evidence was repeated, including the hearing of the applicant.

**8 September 2021** The District Court acquitted T. again.

**28 January 2022** Following an appeal by the prosecutor, the Košice Regional Court decided to quash the judgment and to send the case back to the District Court.

**18 May 2022** The District Court acquitted T. for a third time.

**15 November 2022** A subsequent appeal by the prosecutor was dismissed by the Košice Regional Court at a public hearing.

**26 April 2023** The Constitutional Court dismissed the applicant’s constitutional complaint mainly as being manifestly ill-founded.

**6 August 2023** J.S. perpetrated the fatal act against T. while he was asleep.

**13 March 2024** The trial concerning the incident of 6 August concluded, resulting in J.S. being convicted of premeditated murder.

**23 March 2024** The applicant lodged an appeal with the Regional Court.

**1 November 2024** The appeal process was finalized, upholding the original conviction and sentence.

**15 November 2024** The applicant filed a cassation appeal before the Supreme Court.

**31 May 2025** The Supreme Court rendered its decision, finding no violations of the trial process or misapplication of the law.

**10 June 2025** The applicant lodged a constitutional complaint with the Constitutional Court.

**31 January 2026** The Constitutional Court delivered its final judgment, dismissing the applicant’s claims of fundamental rights violations.

**10 February 2026** The applicant submitted an application to the European Court of Human Rights.

**8 May 2026** The oral hearing before the Court commenced.

#### **4. APPLICABLE LAW**

NEMESIS

#### **European Convention on Human Rights**

##### **ARTICLE 1 – Obligation to Respect Human Rights**

*“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.”*

##### **ARTICLE 2 – Right to Life**

*“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life*

*intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*

*2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:*

*(a) in defence of any person from unlawful violence;*

*(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*

*(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”*

### **ARTICLE 3 – Prohibition of Torture**

*“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”*

### **ARTICLE 6 – Right to a Fair Trial**

*“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (...)”*

### **ARTICLE 8 – Right to Respect for Private and Family Life**

*“1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

### **ARTICLE 13 – Right to an Effective Remedy**

*“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”*

### **ARTICLE 14 – Prohibition of Discrimination**

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political*

*or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

## **5. MERITS OF THE CASE**

- Can the absence of evidence sufficient to secure a criminal conviction absolve the State from its obligation to take preventive and protective measures?
- Does the overall handling of the case by the domestic authorities, including the conduct of the investigation and the repeated acquittals, satisfy the requirement of an effective response to allegations of domestic violence under the Convention?
- Has there been gender-based discrimination against the applicant as a woman, and does the judicial reliance on her mental health status constitute a violation of the prohibition of discrimination?
- Do the repeated allegations of systemic domestic violence disclose a 'real and immediate risk' to the applicant's life and integrity, and did the authorities fail to fulfill their positive obligations to prevent the foreseeable escalation of this risk?
- To what extent did the alleged domestic environment interfere with the effective enjoyment of private and family life, and were the authorities required to take further measures to protect the children?
- In assessing the applicant's criminal responsibility, were the domestic courts required to weigh the context of alleged abuse and psychological state in assessing liability, and did its evaluation affect the overall fairness of the trial?

## **6. BIBLIOGRAPHY** BY BAUMUN

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