

E.S. and Others v. Slovakia - 8227/04

Judgment 15.9.2009 [Section IV]

Article 3

Positive obligations

Failure to provide adequate protection against domestic violence: *violation*

Facts – In March 2001 the first applicant left her husband and petitioned for divorce. The following month she lodged a criminal complaint against her husband alleging that he had ill-treated her and the children (the second, third and fourth applicants) and sexually abused one of the daughters. In May 2001 she sought an interim injunction requiring her husband to move out of their jointly rented council flat. However, the district court dismissed that application on the grounds that it had no power to restrict the husband's right to use the property. The applicants were therefore forced to move away from their home, family and friends and two of the children had to change school. The district court's decision was upheld on appeal, after the regional court had noted that the first applicant would be entitled to terminate the joint tenancy after a final decision in the divorce proceedings and, in the meantime, could apply for an order requiring her husband to "refrain from inappropriate behaviour". The first applicant was granted a divorce in May 2002 and later obtained custody of the three children. In June 2003 the husband was convicted of ill-treatment, violence and sexual abuse and given a four-year prison sentence. Following a constitutional complaint by the applicants that they had not received proper protection, the Constitutional Court ruled that there had been no violation of the first applicant's constitutional rights (as she could have applied for an order requiring her husband to refrain from inappropriate behaviour), but that the lower courts had failed to take appropriate action to protect the children. It made no award of compensation as it considered that the finding of a violation provided sufficient just satisfaction. In July 2003, following the introduction of new legislation in January 2003, the first applicant obtained an order excluding her husband from the flat.

Law – Articles 3 and 8: (a) *Admissibility* – The Government had argued that, by not applying for an order restraining the husband from inappropriate behaviour, the first applicant had failed to exhaust domestic remedies. In the Court's view, however, such an order would not have constituted an effective remedy. The husband stood accused of physical assault and sexual abuse. An order restraining the husband from inappropriate behaviour would only have required him to refrain from acts already prohibited by the criminal law, which had not proved an adequate deterrent in the past. It would also have afforded substantially less protection than an exclusion order.

Nor did the Court accept the Government's submission that the children had received adequate redress through the Constitutional Court's decision. They had not been awarded any financial compensation. Nor was there much force in the Government's submission that, by not applying for the correct form of order, the first applicant was partly responsible for the situation, as the Constitutional Court itself had found that the courts below should have granted the application for an

exclusion order of their own initiative in order to protect the children. Neither the husband's conviction more than two years later nor the subsequent amendment to the Code of Criminal Procedure had afforded adequate redress to three minors who had been forced to leave the family home because of the State's protracted failure to protect them from an abusive parent.

Conclusion: admissible (unanimously).

(b) *Merits* – Given the nature and severity of the allegations, the first applicant and the children had required protection immediately, not one or two years later. The first applicant had been unable to apply to sever the tenancy until her divorce was finalised in May 2002, or to apply for an order excluding her former husband from the matrimonial home until after the law was amended in January 2003. She had been without effective protection for herself and the children during the interim. The respondent State had therefore failed to discharge its positive obligations towards them.

Conclusion: violation (unanimously).

Article 41: EUR 8,000 in respect of non-pecuniary damage.

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