



## Violations in authorities' failure to respond to domestic violence cases; urgent legal changes required

In today's **Chamber judgment**<sup>1</sup> in the case of [Tunikova and Others v. Russia](#) (application nos. 55974/16, 53118/17, 27484/18, and 28011/19) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition on inhuman and degrading treatment) of the European Convention on Human Rights, and**

**a violation of Article 14 (prohibition on discrimination) in conjunction with Article 3.**

The case concerned acts of domestic violence, including death threats, bodily injuries and one case of severe mutilation, which the applicants sustained at the hands of their former partners or husbands, and the domestic authorities' alleged failure to establish a legal framework for combating acts of domestic violence and bringing the perpetrators to account.

The Court found, in particular, that the Russian authorities had failed to establish a legal framework to combat domestic violence effectively; they had not assessed the risks of recurrent violence; and they had not carried out an effective investigation into the domestic violence the applicants had suffered.

It found it established that as regards protection against the risk of domestic violence, women in Russia are in a situation of de facto discrimination.

The Court recommended under **Article 46 (binding force and execution of judgments)** that urgent changes to domestic law and practice to prevent similar violations from occurring be made.

### Principal facts

The applicants, Natalya Tunikova (born 1972), Yelena Gershman (born 1978), Irina Petrakova (born 1980) and Margarita Gracheva (born 1992), are Russian nationals who live in Moscow or the Moscow Region. They are all alleged victims of domestic violence.

Following several incidents of domestic violence, **Ms Tunikova** stabbed her partner as he was pushing her to the edge of a balcony. She was prosecuted and convicted for causing bodily harm to her partner, but her own complaint against him failed. The police refused to investigate the partner's threats. A justice of the peace discontinued the proceedings, holding that her appearance 15 minutes late at the hearing amounted to a withdrawal of her complaints.

**Ms Gershman** married in 2012 and had a daughter two years later. Beginning in 2015 she was attacked by her husband several times, including in front of her daughter. She suffered severe bruising and cuts. The police refused to investigate, stating that her injuries were not sufficiently serious to warrant public prosecution. Her private-prosecution complaints were also unsuccessful, in particular because the offence of battery had been removed from criminal law. Regarding an

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](http://www.coe.int/t/dghl/monitoring/execution).

incident where she alleged her former husband had punched her, causing her to fall down the stairs, the court held that there was no proof she had not injured herself at a later point.

In 2006 **Ms Petrakova** married (they divorced in 2015) and lived in her husband's flat with their two children. According to her she was attacked some 20 times over the next eight years. The police refused to prosecute, stating that the threat to her was not "real" and that battery was subject to private prosecution only. A private prosecution initiated by her was discontinued following an amnesty.

After many reversals, an investigation into her ex-husband's acts of violence was initiated. Most charges were dropped for formal reasons; he was found guilty of two counts of battery; that sentence was later quashed for incorrect legal characterisation of the acts. The remaining part of the prosecution became time-barred in 2018 following suspensions and resumptions of the investigation.

In 2012 **Ms Gracheva** married a man with whom she had two children. In October 2017, when she announced she would divorce him, he became violent, ripped her passport, threatened her with death, locked her in the car, followed her around town and insisted on driving her to work and back. She sought refuge at the mother's place.

After she complained to the police, a police inspector told her that she should withdraw the complaint, as the husband's actions had only been a "manifestation of love". A police inspector advised her to "limit her communication with him".

On 11 December 2017 the husband kidnapped Ms Gracheva, tied her up and hacked off her hands with an axe. She suffered a permanent loss of her right hand; her left hand was reattached but only regained limited function. He was eventually charged with causing grievous bodily injury and sentenced to 14 years' imprisonment.

Ms Gracheva tried to have the police inspector prosecuted for professional negligence. The prosecutor found no causal link between the inspector's actions and the assault on her. The supervising prosecutor did not restart the investigation, claiming that he had been unable to contact the inspector.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition on inhuman and degrading treatment), Article 13 (right to an effective remedy) and Article 14 (prohibition on discrimination), the applicants complained, in particular, of a failure on the part of the State to protect them from domestic violence, of a lack of remedies in that regard, and that the general failure to combat gender violence had amounted to discrimination against women.

The application was lodged with the European Court of Human Rights on 12 September 2016.

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

Georges **Ravarani** (Luxembourg), *President*,  
Georgios A. **Serghides** (Cyprus),  
Dmitry **Dedov** (Russia),  
Darian **Pavli** (Albania),  
Peeter **Roosma** (Estonia),  
Andreas **Zünd** (Switzerland),  
Frédéric **Krenc** (Belgium),

and also Milan **Blaško**, *Section Registrar*.

## Decision of the Court

### Article 3

#### **Obligation to establish a legal framework**

The Court noted that the Russian legal system lacked a definition of “domestic violence”, adequate substantive and procedural provisions to prosecute its various forms, and any form of restraining or protection order. Overall, it considered that the framework for combatting domestic violence did not meet the State’s Convention obligations, leading to a violation of this aspect of Article 3.

#### **Obligation to prevent the known risk of ill-treatment**

The Court held firstly that the authorities had failed to conduct an autonomous, proactive and comprehensive risk assessment of the applicants’ cases, noting that the police officers had had no special training to deal with such matters. It secondly stated that there had been actions that the authorities could have taken – such as, for example, opening a criminal investigation into the death threats – which might have given the abusive partners pause. They had not taken such actions.

Overall, the applicants’ cases demonstrated that the authorities had not considered domestic violence as warranting intervention. They had been passive in dealing with a known risk, allowing the abuse of the applicants to continue.

There had been a violation of Article 3 for failure to prevent ill-treatment in these cases.

#### **Obligation to carry out an effective investigation**

The Court found it established that the authorities had been aware of the domestic violence that the applicants had been suffering. However, the State had effectively relinquished its obligation to investigate all instances of ill-treatment, with the authorities having employed all manner of devices, including reference to domestic law – which set out a quite high threshold for injuries to be considered prosecutable, and which did not make certain types of domestic violence publicly prosecutable – not to open criminal investigations.

Even when confronted with strong evidence of publicly prosecutable offences, such as recorded injuries or death threats, the authorities had eschewed instituting criminal proceedings and had ended their enquiries on the basis of hasty or ill-founded conclusions.

The State had failed to effectively investigate the ill-treatment the applicants had suffered, in violation of this aspect of Article 3.

### Article 13

The Court considered that given its findings under Article 3, there was no need to examine the questions raised under Article 13.

### Article 14

Referring to the [Volodina](#) case, the Court reiterated the staggering scale of domestic violence against women in Russia, and the systematic problems in securing prosecutions and convictions. The failure of the Government to pass legislation to address this problem had led to a continuing climate that was conducive to domestic violence. As a structural bias had been shown to exist, the applicants did not need to prove any individual prejudice.

There was a violation of Article 14 of the Convention taken in conjunction with Article 3.

### Article 46 (binding force and execution of judgments)

The Court reiterated that a breach of the Convention imposed on the respondent State a legal obligation not just to pay those concerned the sums awarded, but also to choose, subject to

supervision by the Committee of Ministers of the Council of Europe, general measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible its effects.

In the light of this, it invited the Government to, among other things, introduce legislative and other changes without further delay; to develop a comprehensive and targeted response to gender violence encompassing all State actors; to introduce a legal definition of domestic violence which covered violence in various forms, including physical, sexual, psychological or economic violence, manifestations of controlling and coercive behaviour, stalking and harassment, whether they took place physically or in cyberspace; to ensure domestic law criminalised and made punishable by appropriate penalties all acts of domestic violence; to ensure the authorities were legally able to investigate domestic-violence cases of their own motion as a matter of public interest and to punish those responsible; to draw up a protocol for handling domestic violence complaints; to provide easy access to restraining and protection orders; and to put in place an action plan for changing the public perception of gender-based violence against women.

Pending the implementation of the above measures, the Court stated it would continue to deal with similar cases in a simplified and accelerated form.

### Just satisfaction (Article 41)

The Court held that Russia was to pay Ms Gracheva 330,660 euros (EUR) in respect of medical expenses, both past and future, and the loss of income, and also EUR 40,000 in respect of non-pecuniary damage; EUR 20,000 each to Ms Tunikova, Ms Gershman and Ms Petrakova, in respect of non-pecuniary damage; and EUR 5,000 to each applicant 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.