



# Convention on the Elimination of All Forms of Discrimination against Women

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## Committee on the Elimination of Discrimination against Women

### Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 135/2018\*,\*\*

<i>Communication submitted by:</i>	D.B. (represented by counsel, Vanda Durbáková)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Slovakia
<i>Date of communication:</i>	4 December 2017 (initial submission)
<i>References:</i>	Decision taken pursuant to rule 69 of the Committee's rules of procedure, transmitted to the State party on 11 October 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	6 July 2020
<i>Subject matter:</i>	Gender-based discrimination by courts in divorce proceedings and division of joint marital property
<i>Procedural issue:</i>	Lack of substantiation
<i>Articles of the Convention:</i>	2 (c) and (e), in conjunction with 1 and 16 (1) (h)
<i>Article of the Optional Protocol:</i>	4 (2) (c)

\* Adopted by the Committee at its seventy-sixth session (29 June–9 July 2020).

\*\* The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva and Franceline Toé-Bouda.



**Background**

1. The author of the communication is D.B., a national of Slovakia born in 1964. She claims to be a victim of a violation by Slovakia of her rights under article 2 (c) and (e), read in conjunction with articles 1 and 16 (1) (h), of the Convention. The Convention and the Optional Protocol thereto entered into force for the State party on 27 June 1993 and 17 February 2001, respectively. The author is represented by counsel, Vanda Durbáková.

**Facts as submitted by the author**

2.1 The author married Š.B. in 1987. Four children were born from their marriage, one of whom, M., has a disability. The author currently cares for M. by herself. She is unemployed and her only income is from social benefits, in the amount of approximately €220 monthly, including €26 for child maintenance paid by Š.B. The income does not cover her needs. Her eldest son supports her financially.

2.2 As a member of a housing cooperative, the author was allocated an apartment in Košice. She had to pay the housing cooperative a membership share of approximately €707, for which she was granted an interest-free loan. While sharing the household, the author suffered from long-term abuse by Š.B., who repeatedly physically and verbally abused her, humiliated her and threatened to kill her. She was thus repeatedly forced to leave the household together with the children and stay elsewhere, including from July 2004 to February 2005. Š.B. was convicted of spousal abuse on 4 April 2007 and 1 August 2008. The author's health remains affected by the stress to which she was exposed. She suffers from severe backache, arthritis, gastrointestinal problems, anxiety and depressive disorder and is in long-term psychiatric care.

2.3 The District Court of Košice I pronounced the author's divorce from Š.B. on 23 May 2006. On 25 March 2008, the District Court ordered him temporarily not to enter the apartment. By reason of Š.B.'s abusive behaviour, the District Court on 10 March 2010 terminated his tenancy of the apartment and decided that the author was to remain as the sole tenant and member of the housing cooperative share. The Court also ruled that Š.B. was not entitled to substitute accommodation.

2.4 In the absence of an agreement with the author on the division of joint marital property, Š.B. requested a division by way of judicial decision. The District Court of Košice I considered the request based on the value of the membership share in the housing cooperative. After deducting the cost of reconstruction works, the value of the apartment was estimated at €53,200. The District Court found that the author had contributed to the acquisition of the apartment, as it had been allocated to her and she was paying off the loan granted to her to pay for the membership share. The District Court recognized that she had received an inheritance of €5,158.74 and that she had covered the household expenses and the maintenance of the children alone and, since 2003, with the help of friends and family. It also took into consideration that Š.B. had secured his own housing situation. The Court also considered the violence that Š.B. had committed against the author. It decided to allocate 65 per cent of the marital property to the author and 35 per cent to Š.B. On 2 June 2015, the District Court ordered the author to pay €16,814.44 to Š.B. in compensation for the loss of his membership share in the housing cooperative.

2.5 The author appealed against the decision, affirming that the District Court had erred in fact and in law. She argued that it had violated her right to a fair trial by unconvincingly justifying its decision on the marital property division. The advantage allocated to her was only 15 per cent. The Court had not explained its refusal to apply jurisprudence that should have led it to order the former spouses to settle without the

obligation to do so financially.<sup>1</sup> The Regional Court of Košice rejected the appeal on 8 June 2016, reaffirming the reasoning of the District Court.

2.6 The author then submitted a complaint to the Constitutional Court, arguing that the lower courts had both arrived at arbitrary conclusions because they had not fully addressed her arguments and had not reasoned persuasively, and that their legal interpretation caused injustice. She claimed a violation of her rights to be free from discrimination *inter alia* on the ground of her sex and from interference in the peaceful enjoyment of possessions, as well as of her rights to a fair trial, equality of arms, ownership of property, equality of the rights of spouses and the right to non-discrimination in conjunction with the aforementioned rights. She also claimed a violation of articles 2 (c) and (e) and 16 (1) (h) of the Convention.

2.7 By its decision of 12 October 2016, the Constitutional Court dismissed her appeal, holding that the lower courts had interpreted and applied the relevant legislation correctly and that their decisions were neither arbitrary nor otherwise in violation of the right to a fair trial or other rights. It found that the lower courts had implemented legal principles on marital property division in line with national legislation.

### **Complaint**

3.1 The author claims that the State party has violated article 2 (c) and (e), read in conjunction with articles 1 and 16 (1) (h), of the Convention by failing to protect her against gender-based discrimination by the courts. The State party has failed to take all appropriate measures to eliminate discrimination against women concerning the division of joint marital property. The application by the lower courts of article 150 of the Civil Code, on the basic principles of property division, including fairness, renders it devoid of meaning and purpose. The decisions of the national courts cannot be considered just, given that the division concerned the value of a membership share in a housing cooperative, not an apartment in personal possession, and the fact that Š.B. has abused her, has not participated in the upbringing of their children, has not contributed to the acquisition or retention of the membership, consumed alcohol excessively and consequently lost his job. The decisions are discriminatory on the grounds of her sex in connection with her right to property and equal standing after the dissolution of the marriage.

3.2 The author further claims that all conditions were met for allocating the membership share to her without obliging her to settle with Š.B. financially. The lower courts did not specify the reasons for their refusal to do so despite the availability of that legal option and her request to that effect. The reasoning of the courts thus does not cover all legal and factual issues. The proceedings, moreover, lasted eight years, causing a long-term state of legal insecurity.

3.3 The author argues that the decisions do not sufficiently reflect her status as a woman in society nor her personal and economic situation. First, the courts failed to consider general gender inequalities relating to the division of marital property. Second, they failed to recognize the specific consequences of the gender-based violence to which she had been subjected. Third, they ignored disparities between men and women upon the dissolution of marriage and gave preference to Š.B.'s right to a financial settlement despite the circumstances of the case.

3.4 The author also argues that national legislation inadequately regulates marital property division in cases of spousal violence, which is left to the discretion of the courts rather than based on rules specific to such cases. Moreover, neither the discrimination facing women in the labour market in the State party nor the pay gap

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<sup>1</sup> The author refers to the Constitutional Court's ruling of 13 March 2013, file no. I.ÚS 537/2012-37.

between men and women, which was 22.1 per cent in the author's age group in 2015, was taken into consideration by the law. Slovakia scored 52.4 on the Gender Equality Index of the European Institute for Gender Equality in 2015, meaning that the conditions for realizing one's potential are almost 50 per cent worse for women than men in Slovakia. The violations of the author's rights must therefore be seen in the light of the economic consequences of divorce for women, particularly those who have suffered from gender-based spousal violence. The Committee expressed its concern in that regard in its concluding observations on the State party's combined second, third and fourth periodic reports ([CEDAW/C/SVK/CO/4](#)).

3.5 The author affirms that it was inequitable to oblige her to pay €16,814.44 to the man who had abused her and did not contribute to the raising of their children or the acquisition and maintenance of the property. She is only the tenant, not the owner, of the apartment. Furthermore, the amount jeopardizes her livelihood; her health has suffered to such an extent as a result of the abuse that she is unable to take a permanent job. She depends on financial assistance from her adult children and relatives, without which she would be unable to cover even her basic needs. She thus lacks an income from which to pay the amount ordered.

3.6 The author also affirms that, in her case, the State party ignored the recommendations made by the Committee in its general recommendations No. 19 (1992) on violence against women ([HRI/GEN/1/Rev.8](#), p. 302) and No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution ([CEDAW/C/GC/29](#)) and in its concluding observations on the combined fifth and sixth periodic reports of Slovakia ([CEDAW/C/SVK/CO/5-6](#)).

3.7 The author requests that the State party be instructed to grant her appropriate reparations, including adequate compensation for the violation of her rights under the Convention. She also requests that it be recommended that the State party ensure the application of legislation on the division of marital property in line with the Convention and in such a way that women are protected against gender-based discrimination. Furthermore, she requests that it be recommended to the State party that it adopt specific legislation ensuring that wage-earning potential and economic and other consequences of gender-based violence are taken into account in the division of marital property. Finally, she asks that it be recommended to the State party that it ensure that its courts and judicial bodies provide specific, in-depth and continuous training on the Convention, its Optional Protocol and the Committee's general recommendations on gender-based violence and its economic consequences, and give wide publicity to the Committee's views.

#### **State party's observations on admissibility**

4. On 7 December 2018, the State party submitted its observations on admissibility, arguing that its legislative framework is adequate and appropriate and enshrines equal rights for women and men in accordance with the State party's obligations under the Convention. The principle of non-discrimination has been implemented in line with article 2 of the Convention and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention ([CEDAW/C/GC/28](#)). Equality between men and women in all matters relating to marriage and family relations is enshrined in the law, in line with article 16 of the Convention and general recommendation No. 29. Both spouses are guaranteed the same rights relating to marriage, divorce and the distribution of joint marital property, and spousal violence may be taken into account by the judiciary. The courts of the State party confirmed the author's advantageous position concerning the property division. The State party concurs with the decision of the Constitutional Court of 12 March 2016 and concludes that, based on the foregoing, the communication should be found inadmissible. It does not contest that the author has exhausted all available domestic remedies.

**Author's comments on the State party's observations on admissibility**

5. On 7 February 2019, the author submitted her comments on the State party's observations, affirming that it has not presented any grounds for inadmissibility, as set forth in articles 2 to 4 of the Optional Protocol. She argues that her counsel submitted a signed communication on her behalf, that Slovakia is a State party to the Convention and that it is not contested that she has exhausted all available domestic remedies. She furthermore considers the communication to be compatible with the Convention and not manifestly ill-founded.

**State party's observations on the merits**

6.1 On 22 August 2019, the State party provided its observations on the merits, asking the Committee to dismiss the communication as no violation of the author's rights has occurred.

6.2 Referring to its national legislation, including articles 143 to 151 of the Civil Code, the State party rejects the author's claim that the law is inadequate and discriminatory. The equal rights of both spouses relating to the sharing of marital property are guaranteed under the Civil Code and the Family Act. Under the Civil Code, joint marital property is the basic parameter for establishing property relations between spouses. Its division is regulated by article 151, which provides that the joint marital property shall be divided equally between the spouses (principle of parity of shares). At the same time, in the determination of the division, courts may consider the extent to which each of the divorced spouses has taken care of the household and the family, in particular with regard to the needs of their children, has contributed to the satisfaction of common needs and the share of their individual property employed in the acquisition and maintenance of common items. It must also be taken into account that a woman may be unable to demonstrate that her income from employment was comparable to that of her husband in contributing to the acquisition and maintenance of marital property, given that women in Slovakia usually remain out of the labour market for several years after childbirth. The courts may thus depart from the principle of parity while preserving fairness for the other spouse, who was a joint property holder during the marriage and in most cases contributed something to the acquisition and maintenance of property. With regard to the division of marital property, the care of children and running of the household by the woman are, by law, accorded the same value as the paid work of her spouse, thereby guaranteeing them *de facto* equal status in property rights.

6.3 Moreover, under article 705 (1) of the Civil Code, if the divorced spouses do not agree on the leasing of an apartment, the court shall decide, based on the proposal of both spouses, to abolish the common lease and to determine who will use the apartment. If one of the spouses acquires the right to conclude a contract for the lease of a shared apartment before the marriage, the common lease right expires with the divorce and the right to use the apartment remains with the spouse who acquired the right initially (art. 705 (2) and (3)). In other cases of a common lease, if the divorced spouses do not agree, the court must decide, in terminating the common membership, on a proposal by one of the parties on the revocation of the lease right and who will become the sole tenant. Under article 712a (8), a court may decide that the former spouse is entitled only to alternative accommodation, not to housing compensation, including in cases of spousal violence. That provision responds to the need to protect and support women who are victims of domestic violence so that they can continue their lease and not be burdened with the obligation of providing housing to the former spouse.

6.4 Moreover, there is a social assistance system in Slovakia for those with no or low income. Assistance in terms of material needs is provided in the form of

allowances. Under article 6 of the Labour Code, women and men have a right to equal treatment with regard to access to employment, remuneration and promotion, vocational training and working conditions. The employment rate of women in Slovakia is in line with the European Union average. The Ministry of Labour, Social Affairs and Family responds to the problems faced by mothers in the labour market with specific support, including for mothers with young children. In short, the State party's legislation and the measures taken by its institutions are in line with its obligations under the Convention.

6.5 The State party reiterates that the communication is inadmissible on the ground that the courts ruled disproportionately in favour of the author, and that they thus did not discriminate against her. The communication should be found inadmissible under article 4 (2) (c) of the Optional Protocol.

6.6 Concerning the author's claim under article 16 (1) (h) of the Convention, the State party argues that the laws governing the division of joint marital property following divorce are in line with paragraphs 45 to 47 of general recommendation No. 29. The aim of the legislation is to take into account the former spouses' respective incomes and their non-material contribution to the household and common property when dividing property. That constitutes a certain compensation for women who make career decisions based on their family plans. The present case is atypical in that the author brought a higher property share to the marriage. Therefore, the courts' approach could seem disadvantageous to her. However, by attributing 65 per cent of the property to her, their ruling went beyond the principle of parity. The State party submits that questioning the principle of the equal participation of spouses in property division in individual cases would set a dangerous precedent that would be detrimental to most women and contravene article 13 of the Convention and general recommendation No. 29.

6.7 As to the author's argument that, in her case, the courts did not take the issue of gender inequality into account, the State party observes that the ruling of the District Court of Košice I was based on the principle of the parity of the spouses' shares, which allows for the consideration of exceptions based on factors such as unemployment, alcoholism, common property management, domestic violence and imprisonment. While the acquisition and maintenance of property are important, the mere fact that one of the spouses acquired and maintained a higher income does not justify an unequal division. The State party argues that, in the author's case, the division results from the consideration by the courts of the specific aspects of her case, including financial contributions to the family and Š.B.'s alcoholism, domestic violence and imprisonment. Contrary to the author's claim that the courts did not decide in accordance with the rules, they departed from the principle of parity because of factors caused by Š.B. The State party also notes that the author worked for a period of only one year during the marriage and that, had the District Court not acknowledged her care of the children and the household as an equivalent contribution to that of Š.B., who worked during most of the marriage and provided income to her for the maintenance of the household, it would have had to establish a disparity of the shares in favour of Š.B. Contrary to the author's claim that the courts did not take into account gender inequality, the State party concludes that they applied the relevant legal framework in her favour.

6.8 As to the author's claim under article 2 (c) and (e), read in conjunction with article 1, of the Convention that the courts did not take into account the consequences of the domestic violence to which she was subjected by virtue of her sex, the State party notes that, on 25 March 2008, the District Court of Košice I issued an interim measure against Š.B., ordering him temporarily not to enter the apartment on the ground that the author and the children were at risk of immediate harm owing to his violence. By its decision of 10 March 2010, the District Court cancelled the common

lease and designated the author as the sole tenant of the apartment and member of the housing cooperative. Applying legislation, the aim of which is to protect the interests of women subject to domestic violence, the Court also decided that Š.B. would not receive housing compensation. He was prosecuted and convicted for his conduct. The State party concludes that the author was protected against the gender-based violence committed by Š.B.

6.9 The State party rejects the author's claim that the decision that she must pay Š.B. €16,814.44 is inequitable and amounts to discrimination on the ground of sex. According to the law and as confirmed by the Constitutional Court, a conflict with good morals does not arise owing merely to her unfavourable social and economic situation, which itself does not constitute gender-based discrimination.

6.10 The State party also rejects the author's argument concerning the insufficient protection of women against poverty. The author worked for not more one year during her 22-year marriage, opting to secure her economic existence by other means than employment. The State party underlines that engaging in gainful activities is the best form of protection against poverty.

#### **Author's comments on the State party's observations on the merits**

7.1 On 27 November 2019, the author submitted her comments on the State party's observations. Referring to her prior submissions, she disputes the State party's argument on admissibility, reiterating that she suffered from discrimination as the State party failed to take all appropriate measures to ensure that its legislation on joint marital property division protects women experiencing gender-based violence by specifically obliging courts to consider such violence and its consequences, including with regard to earning potential. Despite appearances, the decisions of the courts cannot be considered as mathematically in her favour. Legislation in Slovakia provides inadequate protection to women experiencing gender-based violence. Articles 705 (1) and 712a (8) of the Civil Code are irrelevant to her case as they do not concern the division of joint marital property; article 150 does not explicitly include gender-based violence or its consequences as circumstances that courts are obliged to consider. Furthermore, the negative impact of the courts' decisions results from the fact that she is not even the owner of the apartment, only its tenant, which the State party does not address in its observations.

7.2 The author rejects the State party's submission that it was her choice to work for only one year during her marriage and that this resulted in her inability to financially compensate Š.B. The State party's claim shows a lack of understanding of the impact of the gender-based violence on her economic situation, a disregard for the unpaid work that women do as mothers and a lack of recognition of the discrimination that women face in the labour market. She was raising four children, including one with a disability, while experiencing severe physical and psychological abuse, including economic abuse, isolation and control. Her health deteriorated because of the abuse. She thus had limited opportunities to secure earnings.

7.3 Finally, in reaction to the State party's reference to the measures that it has adopted to protect women from gender-based violence, discrimination and poverty, the author submits that her case illustrates that those measures are not effectively implemented in practice.

#### **Issues and proceedings before the Committee**

8.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

8.2 With regard to article 4 (1) of the Optional Protocol, the Committee notes that the State party does not contest that the author has exhausted all available and effective domestic remedies. It also notes that she claimed a violation of the Convention before the Constitutional Court. The Committee therefore considers that it is not precluded by virtue of article 4 (1) of the Optional Protocol from considering the present communication.

8.3 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.4 The Committee notes the author's claim of a violation of article 2 (c) and (e), read in conjunction with articles 1 and 16 (1) (h), of the Convention. According to her, the courts' decisions, particularly the order that she settle financially with Š.B., constitute discrimination on the ground of her sex because the courts inadequately recognized her status as a woman in society and the consequences of the abuse to which she was subjected. The Committee observes that the author also argues that the judicial decisions are not just, given that the division concerned the value of a membership share rather than an apartment in personal possession, and that Š.B. abused her, did not contribute to the upbringing of the children or the acquisition and retention of the membership and lost his job. The Committee also observes that the author submits that the State party failed to take all appropriate measures to ensure that its legislation on joint marital property division protects women experiencing gender-based violence by obliging courts to specifically consider gender-based violence and its consequences, including with regard to earning potential.

8.5 Furthermore, the Committee notes the State party's submissions, according to which the communication is inadmissible under article 4 (2) (c) of the Optional Protocol as manifestly ill-founded. The Committee also notes that the State party argues that, by law, women and men have equal rights in matters of marriage and family relations, including the division of joint marital property. Moreover, according to the State party, its laws allow the judiciary to consider spousal violence when adjudicating the division of joint marital property, and the courts did so in the present case, allocating for that reason 65 per cent of the joint marital property to the author and 35 per cent to her former spouse.

8.6 The Committee notes that, in substance, the author's claim challenges the way in which the courts assessed the circumstances of her case and applied national law. The Committee recalls that it does not replace the national authorities in the assessment of facts.<sup>2</sup> The Committee considers that it is generally for the courts of the States parties to the Convention to evaluate the facts and evidence and the application of national law in a particular case, unless it can be established that such evaluation was biased or based on harmful gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice. In that regard, the Committee considers that nothing suggests that the examination of the author's case by the courts of the State party suffered from any such defect. The Committee notes that the courts' decision to allocate 65 per cent of the joint marital property to the author and 35 per cent to Š.B. was explicitly based on the fact that Š.B. had abused her, had not contributed sufficiently to the family and had lost his job. The Committee also notes that the Regional Court of Košice took note of the author's argument that Š.B. should not receive any financial compensation, but that it determined that the District Court's departure from the principle of parity in her favour sufficed for the purpose of taking into account Š.B.'s abuse, the author's care for the children and her financial situation. In the light of the foregoing, and in the absence of any other pertinent information on file, the Committee considers that the communication is

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<sup>2</sup> *K.K. v. Russian Federation* (CEDAW/C/72/D/98/2016), para. 8.6.



insufficiently substantiated for the purposes of admissibility and that it is therefore inadmissible under article 4 (2) (c) of the Optional Protocol.

9. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (2) (c) of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

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