



FIFTH SECTION

CASE OF A AND B v. GEORGIA

(Application no. 73975/16)

JUDGMENT

Art 2 (substantive and procedural) (+ Art 14) • Discrimination • Positive obligations • Failure to prevent gender-based violence culminating in murder by a police officer and to investigate the response of law-enforcement authorities • Passive and even accommodating attitudes of law-enforcement, conducive to proliferating violence against women

STRASBOURG

10 February 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A and B v. Georgia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O’Leary, *President*,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lətif Hüseyinov,
Lado Chanturia,
Arnfinn Bårdsen,
Mattias Guyomar, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 73975/16) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Georgian nationals, A (“the first applicant”) and B (“the second applicant”), on 16 September 2016;

the decision to give notice of the application to the Georgian Government (“the Government”);

the decision not to have the applicants’ names disclosed;

the parties’ observations;

Having deliberated in private on 18 January 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case mainly concerns complaints under Articles 2 and 14 of the Convention about the respondent State’s failure to protect the applicants’ next of kin from domestic violence and conduct an effective investigation into the matter.

THE FACTS

2. The first and second applicants were born in 1972 and 2013 respectively and live in Georgia. They were represented before the Court by five Georgian lawyers – Ms T. Dekanosidze, Ms T. Abazadze, Ms N. Jomarjidge, Ms A. Arganashvili and Ms A. Abashidze – and four British lawyers – Mr Ph. Leach, Ms K. Levin, Ms J. Evans and Ms J. Gavron.

3. The Government were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. CIRCUMSTANCES LEADING TO C'S KILLING

5. The first and second applicants are the mother and son of C, who was born on 24 November 1994 and killed by her partner, D, the second applicant's father, on 25 July 2014 (see paragraph 17 below).

6. In 2011 C, who was seventeen years old, was kidnapped for marriage by D, a twenty-two years' old police officer serving in the small city where she lived. As C was under constant threat from D, she began cohabiting with him. The couple never registered their marriage.

7. The couple's cohabitation, which was marked often by disputes fuelled by D's jealousy, lasted from December 2011 until June 2012, when C, exhausted by the physical and psychological harassment from her partner, returned to her parents' house. She was two months pregnant at the time.

8. From December 2011, C and her family became the target of regular verbal and physical abuse from D. He threatened to kill C and her parents, referring to his official status as a police officer and strong connections within the police. The family members were afraid to report the majority of the incidents to the police but still managed to report a number of the most violent ones.

9. On an unspecified date in July 2012 C called the police, complaining that D had threatened to kill her mother, the first applicant. She received no response to her complaint.

10. According to the materials available in the case file, on 31 August 2013 D, following an altercation over child support payments, beat up C in her parents' house. The police were called and three patrol officers, all of whom were D's acquaintances, interviewed C in his presence. As confirmed by several independent eyewitnesses, such as neighbours, D was on good terms with the officers, who were his immediate colleagues, during the interview. One of the officers told C that wife-beating was commonplace and that not much importance need be attached to it. When the officers were interviewing C and she, who was bearing signs of recent physical abuse, started reporting the above-mentioned details of her ill-treatment, D interfered in the process, mocking C's responses and shouting at her, but the officers did not attempt to stop him. Without interviewing the alleged abuser, the police officers drew up a report that did not accurately reflect the extent of the violence of the incident, referring to it as "a minor family altercation related to child support payments". C initially refused to sign the report, but D forced her to do so, making threats to kill her, which were overheard by the police officers. Prior to leaving the house, one of the police officers told C not to contact them in the future without a valid reason or face being fined for wasting police time as they were busy with other, more serious matters. D left C's house with the officers and they drove away in the same car.

11. On the same day, C filed a criminal complaint with a local public prosecutor's office. She complained about D, for physically abusing her, and

the three police officers, for failing to carry out their duties with due diligence. In her complaint, she also pointed out that her former partner had been constantly harassing her, resorting to threats to kill and physical violence. He had also threatened to abduct their child. She asked the prosecution authority to take all the measures necessary to put an end to D's violent behaviour. She also added that since her abuser was a police officer, she could not trust that the police would come to her assistance, hence she had addressed her complaint to the public prosecutor's office.

12. Following C's criminal complaint, on 4 September 2013 a public prosecutor interviewed C, D and one of the police officers regarding the incident of 31 August 2013, both of whom denied that C had been ill-treated in any way. D's version of events was that they had simply had an argument over child support payments. On 9 September 2013 D gave a written undertaking for the attention of the prosecution authority that he would never again verbally or physically abuse either C or her family members. The prosecution authority was satisfied with that undertaking and decided not to launch a criminal investigation.

13. On 5 July 2014 C complained to the General Inspectorate of the Ministry of the Interior ("the General Inspectorate"), the division in charge of conducting disciplinary inquiries against police officers, that D had physically assaulted her twice in public, on 3 and 5 July 2014.

14. According to the material available in the case file, numerous independent witnesses confirmed in their written statements that D had been using various attributes of his official position to commit abuse against C between April 2011 and July 2014. Notably, during that period, he had (i) intimidatingly flaunted his service pistol on at least seven occasions, (ii) regularly threatened to bring false charges against C's father and brother if she reported their altercations to the law-enforcement authorities and (iii) often said that he was not afraid of the law-enforcement machinery as he was part of it himself. All this information was made known to both the police and prosecution authority.

15. On 20 July 2014 D was promoted to the rank of senior police lieutenant.

16. On 25 July 2014 a representative of the General Inspectorate summoned C for an interview in relation to the two incidents referred to in her complaint of 5 July 2014 (see paragraph 13 above). During the interview she reiterated that D had been systematically subjecting her to physical and psychological harassment. Whilst she wanted the General Inspectorate to intervene and put an end to her former partner's violent behaviour, she asked it not to be too harsh with him because he was the father of her child.

17. Shortly after C had left the interview, D stalked her in the street. Eyewitnesses saw them having a tense and loud argument in a public park. All of a sudden, D pulled his service pistol out and fired five shots at C's chest and stomach at close range. She died instantly.

II. CRIMINAL PROCEEDINGS AGAINST D

18. On the same day, a criminal case was opened and D was charged with C's murder. When questioned the following day, he told the investigators that his relationship with C had been strained from the very beginning because she had always wanted to move to Tbilisi, the capital, to pursue a modelling career, to which he had strongly objected. He had become particularly jealous after their separation because he had started seeing her date other men. He also stated that what had served as a trigger for his rage, and what had made him use his gun on the day of the shooting, had been something C had said, in an intentionally provocative and vulgar way, namely that her private and sex life did not concern him at all. In his view, C had "humiliated him", and that was why he had used a gun on her.

19. By a judgment of 17 April 2015, the Kutaisi City Court found D guilty of premeditated murder of a family member and sentenced him to eleven years' imprisonment. D pleaded insanity, claiming that he had shot C because of an episodic mental disorder caused by pathological jealousy. That line of defence was however dismantled by the results of a court-ordered forensic examination of D's mental health. The decision became final on 15 February 2016. The conviction did not refer to the possible role of gender-based discrimination in the commission of the crime (see paragraph 29 below).

III. CRIMINAL COMPLAINTS AGAINST THE RELEVANT LAW-ENFORCEMENT AUTHORITIES

20. On 22 January 2015 the first applicant, acting on behalf of herself and the second applicant, filed a complaint with the Chief Public Prosecutor's Office, requesting that a criminal investigation be launched into the failure of the relevant police officers and public prosecutors to protect her daughter's life and give proper consideration to the repeated reports of domestic violence. The first applicant argued that the State agents' negligent conduct might have been influenced by gender-based discrimination.

21. On 19 February 2015 the prosecution authority opened a criminal case into the police officers' alleged failure to properly respond to C's allegations of domestic violence and interviewed the three patrol officers who had attended the incident of 31 August 2013 (see paragraphs 10 and 11 above). According to the officers, they did not think that the incident was of a violent nature. On 27 February 2015 the first applicant was interviewed and told the prosecution authority the entire history of the strained relationship between her daughter and D, including his repeated use of violence. As regards the incident of 31 August 2013, she confirmed the sequence of events as described above (see paragraph 10 above).

22. Between March and August 2015, the public prosecutor's office interviewed five witnesses to the incident of 31 August 2013, who were either

relatives of A and C or their neighbours. The majority of them gave evidence indicating that the incident was of a particularly violent nature.

23. On 2 March, 29 April and 23 June 2015 and 21 January 2016 the first applicant repeatedly enquired with the Chief Public Prosecutor's Office about the progress of the investigation, if any, and on 20 March 2015 it replied that a criminal investigation had been launched into the alleged negligence of the police officers. The first applicant received no response to her complaint directed against the public prosecutors (see paragraph 20 above).

24. By letters of 1 and 16 March 2016, a regional public prosecutor's office informed the first applicant that the criminal investigation into the alleged negligence of the police officers was pending, but that no charges had been pressed against anyone and it was not necessary to grant her victim status at that time. She received no response to her complaint directed against the public prosecutors.

25. On 17 March 2016 the first applicant again enquired with the Chief Public Prosecutor's Office whether a criminal investigation into the actions of the public prosecutors had been launched. She received no response.

IV. CIVIL ACTIONS AGAINST THE LAW-ENFORCEMENT AUTHORITIES

26. On 22 January 2015 the first applicant, acting on behalf of herself and the second applicant, sued the Ministry of the Interior and Chief Public Prosecutor's Office under Article 1005 of the Civil Code for failure to protect her daughter's life, claiming compensation in respect of non-pecuniary damage in the amount of 120,000 Georgian laris (GEL – approximately 34,000 euros (EUR)).

27. By a judgment of 24 July 2015, the Tbilisi City Court allowed the claim in part, awarding compensation in respect of non-pecuniary damage in the amount of GEL 20,000 (approximately EUR 7,000). The court found that there was a causal link between the inactivity of the relevant police officers and public prosecutors and C's killing. It emphasised, in that connection, that the public authorities were under an obligation to respond promptly and effectively to allegations of discrimination. That obligation had however been blatantly disregarded in the case in issue, in breach of Articles 3 and 8 of the Convention. The court observed, referring to the incident of 31 August 2013, that the police officers had not interviewed C or the witnesses to the incident, had not issued a restraining order against D and had not taken measures aimed at restricting the use of his service pistol. As regards the role of the public prosecutors, the court noted that they had failed in their obligation to conduct an adequate criminal investigation into the violent incidents in question. The court concluded that the respondent authorities, who ought to be considered liable together with the relevant individual officials, had failed to take

measures to put an end to the gender-based discrimination and protect C's life.

28. The judgment of 24 July 2015 became final on 29 June 2017, when the Supreme Court of Georgia finally terminated the proceedings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

29. On 27 March 2012 an amendment to Article 53 of the Criminal Code of Georgia was adopted whereby discrimination was recognised as a bias motivation and an aggravating circumstance in the commission of a criminal offence. The relevant provision reads as follows:

Article 53 § 3 (1)

“The commission of any offence listed in this Code on the grounds of any type of discrimination, such as, for instance and not exclusively, that linked to race, skin colour, language, sex, sexual orientation and gender identity, age, religion, political and other views, disabilities, citizenship, national, ethnic or social background, origin, economic status or societal position or place of residence shall be an aggravating circumstance.”

30. Other relevant domestic law, as well as international material concerning violence against women in Georgia, is comprehensively summarised in paragraphs 25-40 of the Court's judgment in the case of *Tkhelidze v. Georgia* (no. 33056/17, 8 July 2021).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 14 OF THE CONVENTION

31. Relying on Articles 2, 3 and 14 of the Convention, the applicants complained that the domestic authorities had failed to protect C from domestic violence and conduct an effective criminal investigation into the circumstances contributing to her death.

32. Having regard to its case-law and the nature of the applicant's complaints, the Court, being master of the characterisation to be given in law to the facts of a case, considers that the issues raised in the present case should be examined solely from the perspective of the substantive positive and procedural aspects of Article 2 of the Convention, taken in conjunction with Article 14 (compare *Kurt v. Austria* [GC], no. 62903/15, § 104, 15 June 2021). The relevant parts of these provisions read as follows:

Article 2

“1. Everyone's right to life shall be protected by law ...”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex ..., or other status.”

A. Admissibility

33. The Government submitted that the applicants had lost victim status for the purposes of Article 34 of the Convention given the outcome of the criminal proceedings initiated against D (see paragraphs 18-19 above) and civil proceedings initiated against the law-enforcement authorities (see paragraphs 26-28 above). In particular, they submitted that since the perpetrator of C’s killing had been promptly identified and sufficiently punished and the domestic civil courts had duly acknowledged the law-enforcement authorities’ wrongful conduct and even awarded the applicants compensation, the application should be declared inadmissible as incompatible *ratione personae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

34. The applicants disagreed with the Government’s objection, arguing that the various domestic remedies pursued by them had not resulted in either sufficient acknowledgment of the violation of their various rights under the Convention or sufficient redress. They specified in this connection that the crux of their application was the inaction of the law-enforcement authorities, which had significantly contributed to the domestic violence and death of C, their next of kin.

35. The Court observes that in the present case the question of possible loss by the applicants of their victim status on the basis of the outcome of the various sets of domestic proceedings is closely linked to the issue of the effectiveness of the investigation into the circumstances contributing to the death of their next of kin. The Court thus considers it appropriate to join this matter to the merits of the complaint made by the applicants under the procedural limb of Article 2 of the Convention, read together with Article 14 (compare, for instance, *Petrović v. Serbia*, no. 40485/08, §§ 64 and 65, 15 July 2014, and *Özcan and Others v. Turkey*, no. 18893/05, § 55, 20 April 2010).

36. The Court further notes that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

37. The applicants submitted that although they had been aware of the danger to C’s life from D’s violent behaviour, the police and prosecution authority had nevertheless failed to take the necessary preventive measures.

They complained that the law-enforcement authorities had inadequately and inaccurately gathered and recorded evidence when dealing with the allegations of domestic violence. The applicants further submitted that the inappropriate and discriminatory responses of the police and prosecution authority to the complaints made by C about her partner's abusive behaviour, coupled with their failure to investigate the circumstances contributing to her death and hold the implicated law-enforcement agents criminally responsible for their failure to protect her life, were at the heart of the breach by the respondent State of its substantive positive obligations under Articles 2 and 14 of the Convention.

38. Without disputing the facts of the case as submitted by the applicants, and without contesting their legal arguments submitted on the merits of the relevant complaints, the Government limited their comments to providing the Court with an overview of various legislative, budgetary and administrative measures taken by the respondent State to tackle domestic violence and, more generally, violence committed against women from 2014 onwards. In that connection, they submitted information about various training and awareness-raising courses provided, between 2015 and 2017, to the judicial, prosecutorial and law-enforcement authorities on the problem of violence against women.

2. *The Court's assessment*

39. Having regard to the applicants' allegations that the authorities' double failure – the lack of protection of their next of kin from domestic violence and the absence of an effective investigation into the law-enforcement authorities' inaction – stemmed from their insufficient acknowledgment of the phenomenon of discrimination against women, the Court finds, firstly, that the most appropriate way to proceed would be to subject the complaints to a simultaneous dual examination under Article 2 taken in conjunction with Article 14 of the Convention (see *Tkheldze v. Georgia*, no. 33056/17, § 47, 8 July 2021, with further references). Secondly, given that the issue of the applicants' victim status has been joined to the merits of their complaint under the procedural limb of Article 2 of the Convention, the Court considers it appropriate to start its examination of the merits of the application with the latter complaint. Thirdly, the Court emphasises that the present case is not directly about the violent actions of D, which finally led to his criminal conviction following the murder of C., but rather about the authorities response, or a lack thereof, to his actions and C and her family's complaints prior to and after her murder. The fact that he was a serving police officer and an acquaintance of those who had been investigating C's complaints may therefore be relevant to the Court's assessment of questions relating to the procedural and substantive limbs of Article 2 and alleged loss of victim status.

(a) General principles

40. The Court reiterates that, under the principle of subsidiarity, it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention. A decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of his or her status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application (see *Selahattin Demirtaş v. Turkey* (no. 2), no. 14305/17, § 218, 20 November 2018). The principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by the Convention would be devoid of any substance (see, for instance, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 49, 20 December 2007).

41. In cases concerning possible responsibility on the part of State officials for deaths occurring as a result of their alleged negligence, the obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. However, there may be exceptional circumstances where only an effective criminal investigation would be capable of satisfying the procedural positive obligation imposed by Article 2. Such circumstances can be present, for example, where a life was lost or put at risk because of the conduct of a public authority that goes beyond an error of judgment or carelessness. Where it is established that the negligence attributable to State officials or bodies goes beyond an error of judgment or carelessness, in that the authorities in question – fully realising the likely consequences and disregarding the powers vested in them – failed to take measures that were necessary and sufficient to avert the risks, the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy that individuals may exercise on their own initiative (see *Tkheldze*, cited above, § 59).

42. As regards the general principles concerning the State’s relevant substantive positive obligations under Articles 2 and 14 of the Convention, they were comprehensively summarised in *Tkheldze*, the first case exposing the State’s failure to tackle domestic violence and violence against women in general (cited above, §§ 48-51). In addition, the Court further reiterates that a State’s failure to protect women against domestic violence breaches their right to equal protection before the law and that this failure need not be intentional. It has previously held that “general and discriminatory judicial passivity [creating] a climate ... conducive to domestic violence” amounts to a violation of Article 14 of the Convention (see *Opuz v. Turkey*, no. 33401/02,

§§ 191 et seq., ECHR 2009). Such discriminatory treatment occurs where the authorities' actions are not a simple failure or delay in dealing with the violence in question, but amount to repeatedly condoning such violence and reflect a discriminatory attitude towards the complainant as a woman (see *Talpis v. Italy*, no. 41237/14, § 141, 2 March 2017). Indeed, an immediate response to allegations of domestic violence is required from the authorities who must establish whether there exists a real and immediate risk to the life of one or more identified victims of domestic violence by carrying out an autonomous, proactive and comprehensive risk assessment (see *Kurt*, cited above, § 190).

(b) Application of these principles to the circumstances of the present case

(i) Procedural obligations and victim status

43. The Court observes that, since the crux of the application is that the inactivity and negligence of the law-enforcement authorities was one of the main reasons why the domestic abuse was allowed to escalate, culminating in C's murder, and given that the authorities knew or should have known of the high level of risk faced by her if they failed to discharge their policing duties properly – as she was complaining about a fellow police officer, with access to a firearm – and were thus in a position to establish whether he had been involved in similar incidents in the past or his propensity to violence, the Court considers that their inactivity and negligence went beyond a mere error of judgment or carelessness. Consequently, amongst the remedies used by the applicants at domestic level, the most pertinent for the purposes of Article 35 § 1 of the Convention were the criminal proceedings instituted against the police officers and public prosecutors involved (see paragraphs 20-25 above and compare *Tkheldze*, cited above, § 60).

44. However, the Court notes with concern that the competent investigative authority neither made an attempt to establish responsibility on the part of the police officers for their failure to respond properly to the multiple incidents of gender-based violence occurring prior to C's murder nor deem it necessary to grant the applicants victim status. No disciplinary inquiry into the police's alleged inaction was even opened, and no steps were taken to train the police officers in question on how to respond properly to allegations of domestic violence in the future. As regards the part of the applicants' complaint calling into question the inaction of the public prosecutors, no response was received whatsoever – the applicants repeatedly sought but failed to receive information from the investigative authority on this aspect of their criminal complaint. However, in the light of the relevant circumstances of the case, in particular the existence of indices pointing to possible gender based discrimination as at least partly informing the response of law enforcement to the complainant and the complaints and the fact that they permitted the alleged perpetrator to participate in the questioning of the

complainant and victim of the alleged domestic abuse, the Court considers that there was a pressing need to conduct a meaningful investigation into the response of law enforcement and their inaction, which might have been motivated by gender-based discrimination, in the face of C's complaints (compare *Tkheldze*, cited above, § 60). The fact that the alleged perpetrator of the violence of the abuse was a member of law enforcement himself, and that the threats he had used against the victim and her family referred to this fact and what he considered to be his impunity, rendered the need for a proper investigation all the more pressing.

45. Although the above considerations are sufficient for the Court to conclude that there has been a breach by the respondent State of its procedural obligations under Article 2 read in conjunction with Article 14 of the Convention (*ibid.*, §§ 58-60), it notes in addition the insufficiency of the redress offered by the two other sets of domestic proceedings – the criminal prosecution of the perpetrator and civil proceedings brought by the applicants against the law-enforcement authorities. With respect to the former, the Court notes that D's trial and conviction did not involve any examination of the possible role of gender-based discrimination in the commission of the crime (see paragraph 19 above). As regards the latter, whilst it was undoubtedly positive that the domestic courts acknowledged the law-enforcement authorities' failure to take measures aimed at putting an end to the gender-based discrimination and protect C's life, the Court notes that they did not expand their scrutiny to the question of whether the official tolerance of incidents of domestic violence might have been conditioned by the same gender bias. Nor have the courts addressed the question of whether there had been indications of the relevant law-enforcement officers' acquiescence or connivance in the gender-motivated abuses perpetrated by their colleague, D. These gaps in the response of the domestic courts do not sit well with the respondent State's heightened duty to tackle prejudice-motivated crimes.

46. The Court thus concludes that, in the particular circumstances of the present case and having regard to the nature and quantum of the pecuniary award, the applicants, the applicants have retained their victim status within the meaning of Article 34 (see paragraph 35 above) and that there has been a violation of the procedural limb of Article 2 read in conjunction with Article 14 of the Convention.

(ii) *Substantive positive obligations*

47. Like the leading case of *Tkheldze*, the circumstances of the present application confirm that there was clearly a lasting situation of domestic violence, which means that there could be no doubt about the immediacy of the danger to the victim, and that the police knew or certainly ought to have known of the nature of that situation. Although they were put on alert about the seriousness of the risks, the police failed to display the requisite special diligence and committed major failings in their work such as inaccurate,

incomplete or even misleading evidence gathering and not attempting to conduct a proper analysis of what the potential trigger factors for the violence could be (see paragraphs 10 and 12 above and compare with *Tkheldze*, cited above, § 53). In this connection, the Court reiterates that shortcomings in the gathering of evidence in response to a reported incident of domestic violence can result in an underestimation of the level of violence actually committed, can have deleterious effects on the prospects of opening a criminal investigation and even discourage victims of domestic abuse, who are often already under pressure from society, from reporting an abusive family member to the authorities in the future (*ibid.*, § 54).

48. The Court also observes that whilst the domestic legislative framework provided for various temporary restrictive measures in respect of alleged abusers (compare *Tkheldze*, cited above, 55), the relevant domestic authorities did not resort to them at all. It does not appear from the various reports and records drawn up by the police officers that the victim was ever advised by the police of her procedural rights and of the various legislative and administrative measures of protection available to her. The Court further considers that the inactivity of the domestic law-enforcement authorities appears to be even more concerning when assessed against the fact that the abuser was himself a police officer. What is more, whilst the law-enforcement authorities were perfectly aware that he was using various attributes of his official position to commit abuse against C (intimidating her with his service pistol on many occasions, repeatedly claiming impunity for his acts on account of his belonging to the law-enforcement machinery, threatening to bring false charges against C's father and brother if the victim reported the abuse to the police, and so on), not only did the police not put an end to that demonstration of ultimate impunity and arbitrariness (see *Ushakov and Ushakova v. Ukraine*, no. 10705/12, § 83, 18 June 2015), they, on the contrary, allowed the alleged abuser to participate in the questioning of his victim and soon after promoted the abuser to a higher police rank (see paragraphs 14 and 15 above). The Court finds this aspect of the case to be particularly troubling because it expects Member States to be all the more stringent when investigating and, where appropriate, punishing their own law-enforcement officers for the commission of serious crimes, including domestic violence and violence against women in general, than they are with ordinary offenders, because what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State's duty to combat any sense of impunity felt by the offenders by virtue of their very office, and maintain public confidence in and respect for the law-enforcement system (see, *mutatis mutandis*, *Vazagashvili and Shanava v. Georgia*, no. 50375/07, § 92, 18 July 2019, and *Makuchyan and Minasyan v. Azerbaijan and Hungary*, no. 17247/13, § 157, 26 May 2020).

49. The Court thus concludes that the present case can be seen as yet another vivid example of how general and discriminatory passivity of the

law-enforcement authorities in the face of allegations of domestic violence can create a climate conducive to a further proliferation of violence committed against victims merely because they are women. In disregard of the panoply of various protective measures that were directly available, the authorities did not prevent gender-based violence against the applicants' next-of-kin, which culminated in her death, and they compounded this failure with an attitude of passivity, even accommodation, as regards the alleged perpetrator, later convicted of the victim's murder. The respondent State has thus breached its substantive positive obligations under Article 2 of the Convention read in conjunction with Article 14.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

51. The applicants claimed 50,000 euros (EUR) in respect of non-pecuniary damage. They further requested that the Court indicate to the respondent State that there was a need to implement the following two general measures – (i) to put in place a mechanism for “the institutional responsibility of the State organs for preventing and adequately responding to femicide” and (ii) to take legislative measures in order “to explicitly criminalise femicide and ensure that all killings of women are investigated from a gender perspective”.

52. The Government submitted that the amounts claimed were not justified in the circumstances of the case.

53. The Court accepts that the applicants must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It finds it appropriate to award them EUR 35,000 under this head (compare *Tkheldize*, cited above, § 65).

54. As regards the applicants' request for additional measures to be indicated to the respondent State, the Court considers that, in the case at hand, it would be for the respondent State to choose, subject to supervision by the Committee of Ministers, the exact means to be used in its domestic legal order to discharge its obligations under the Convention, including those in relation to the problem of the discriminatory passivity of the law-enforcement authorities in the face of allegations of violence against women (see *Abu Zubaydah v. Lithuania*, no. 46454/11, §§ 682 and 683, 31 May 2018, and

Aghdgomelashvili and Japaridze v. Georgia, no. 7224/11, § 57, 8 October 2020).

B. Costs and expenses

55. On 10 May 2019, within the time-limit allocated by the Court for the submission of just satisfaction claims under Rule 60 of the Rules of Court, the applicants claimed EUR 22,817.60 for the costs and expenses incurred before the Court by two of their British lawyers. No claim was made with respect to the applicant's representation by the remaining seven (five Georgian and two British) lawyers (see paragraph 2 above). No copies of legal service contracts, invoices, vouchers or any other supporting financial documents were submitted. The amount claimed was based on the number of hours spent by the British lawyers in question on the case (ninety-eight hours and thirty minutes) and the lawyers' hourly rate (GBP 150) and included, in addition, a claim for postal, translation and other administrative expenses incurred by them.

56. On 24 June 2019 the Government replied that the claims were unsubstantiated and excessive. They stated, in particular, that no copy of the legal service contract between the applicants and two British lawyers had been submitted.

57. On 21 August 2019 the applicants, without being invited by the Court to do so and without being given any additional time for this submission, supplemented their previous claims with a legal service contract dated 5 August 2019 signed by them and their British lawyers.

58. The Court observes, at the outset, that the applicants' submissions of 21 August 2019 were submitted in breach of the relevant procedural requirement contained in Rule 60 of the Rules of Court. That is to say, the submissions reached the Court outside the relevant time-limit, and no extension of time was requested before the expiry of that period. Furthermore, the submissions consisted of a legal service contract signed and dated after the applicants had formally filed their just satisfaction claims with the Court (compare paragraphs 56 and 58), and no explanation for this discrepancy was given. In these circumstances, the submissions of 21 August 2019 cannot be taken into consideration by the Court (compare, amongst other authorities, *Kováčik v. Slovakia*, no. 50903/06, §§ 91-93, 29 November 2011, and *Stavebná spoločnosť TATRY Poprad, s.r.o. v. Slovakia*, no. 7261/06, §§ 55-56, 3 May 2011).

59. As regards the applicants' claims submitted under Rule 60 of the Rules of Court on 10 May 2019, the Court observes that they did not contain documents showing that they had paid or were under a legal obligation to pay the fees charged by their two British representatives. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicants have actually been incurred (see

Merabishvili v. Georgia [GC], no. 72508/13, § 371, 28 November 2017, and, as a recent authority, *Tkheldze*, cited above, § 68).

60. It follows that the claims must be rejected.

C. Default interest

61. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the question relating to the applicants' victim status;
2. *Declares* the application admissible;
3. *Holds* that the applicants may claim to be victims for the purposes of Article 34 and that there has been a violation of Article 2 under its substantive positive and procedural limbs taken in conjunction with Article 14 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement; and
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Síofra O'Leary
President