



Fault-based divorce attributed exclusively to the applicant for failure to fulfil marital duties: violation of right to respect for private life

In today's **Chamber** judgment¹ in the case of **H.W. v. France** (application no. 13805/21) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights

The case concerned a fault-based divorce in which blame was attributed solely to the applicant, on the grounds that she had ceased to have sexual relations with her husband. The applicant did not complain about the divorce itself, which she had also sought, but rather about the grounds on which it had been granted. The Court noted that the concept of "marital duties", as provided for in the domestic legal order and reaffirmed in the present case, took no account whatsoever of consent to sexual relations. Failure to fulfil marital duties could, in the conditions set out in Article 242 of the Civil Code, be considered a fault which justified the granting of a divorce. It could also entail pecuniary consequences and, in certain circumstances, serve as a basis for a claim for damages.

The Court concluded that the very existence of such a marital obligation ran counter to sexual freedom, the right to bodily autonomy and the Contracting States' positive obligation of prevention in the context of combating domestic and sexual violence.

In the present case, the Court could not identify any reason capable of justifying this interference by the public authorities in the area of sexuality. It noted that the applicant's husband could have petitioned for divorce, submitting the irretrievable breakdown of the marriage as the principal ground, and not, as he had done, as an alternative ground. The Court concluded that the reaffirmation of the principle of marital duties and the granting of the divorce on grounds of the applicant's exclusive fault had not been based on relevant and sufficient reasons, and that the domestic courts had not struck a fair balance between the competing interests at stake.

It followed that there had been a violation of Article 8 of the Convention.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Ms H.W., is a French national who was born in 1955 and lives in Le Chesnay.

The applicant and Mr J.C. married in 1984 and had four children together. On 17 April 2012 the applicant petitioned for divorce.

On 29 January 2013 the family-affairs judge of the Versailles *tribunal de grande instance* granted the couple leave to institute divorce proceedings and ordered interim measures.

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.

On 19 July 2015 the applicant brought divorce proceedings against her husband on grounds of fault. She alleged that he had prioritised his professional career over family life and that he had been bad-tempered, violent and insulting.

Mr J.C. counterclaimed, arguing that the divorce ought to be granted on grounds of fault by the applicant alone; he alleged that for several years she had failed to fulfil her marital duties and that she had breached the duty of mutual respect between spouses by making slanderous accusations. In the alternative, he sought divorce on the grounds of the irretrievable breakdown of the marriage.

On 13 July 2018 the family-affairs judge of the Versailles *tribunal de grande instance* found that none of the complaints raised by the couple had been substantiated and that the divorce could not be granted on grounds of fault. Considering, however, that the applicant's health issues were capable of justifying the couple's long-term lack of sexual relations, he granted the divorce on the grounds of the irretrievable breakdown of the marriage, having found that the couple had not been living together for more than two years at the time the divorce proceedings had been initiated.

The applicant appealed against that judgment.

On 7 November 2019 the Versailles Court of Appeal granted the divorce, attributing fault solely to the applicant, on the grounds that her continued failure to have sexual relations with her husband, which could not be justified on health grounds, constituted a "serious and repeated breach of marital duties and obligations, making it impossible to continue in a state of matrimony".

The applicant appealed on points of law.

On 17 September 2020 the Court of Cassation rejected the applicant's appeal on points of law, considering that the grounds relied on were not manifestly such as to entail the setting aside of the Versailles Court of Appeal's judgment.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant complained about the fact that her divorce had been granted for fault, on the grounds that she had failed to fulfil her marital duties.

The application was lodged with the European Court of Human Rights on 5 March 2021.

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

María Elósegui (Spain), *President*,
Mattias Guyomar (France),
Armen Harutyunyan (Armenia),
Stéphanie Mourou-Vikström (Monaco),
Gilberto Felici (San Marino),
Kateřina Šimáčková (the Czech Republic),
Mykola Gnatovskyy (Ukraine),

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

Article 8

The applicant did not complain about the divorce, which she had also sought, but rather about the grounds on which it had been granted.

The Court considered that the reaffirmation of the principle of marital duties and the fact that the divorce had been granted on the grounds that the applicant had ceased all sexual relations with her husband amounted to interferences with her right to respect for private life, her sexual freedom and her right to bodily autonomy.

In the present case, the Court noted that the legal basis for the divorce had been Articles 229 and 242 et seq. of the Civil Code, which provided that a fault-based divorce could be granted where evidence of a serious and repeated breach of marital duties and obligations was attributable to one of the spouses and led to the irretrievable breakdown of the marriage.

It noted that under the Court of Cassation's long-standing but consistent case-law, spouses were subject to marital duties and failure to fulfil them could constitute a fault justifying divorce. In that connection, the Court of Cassation had confirmed, in a judgment of 17 December 1997, that "a wife's prolonged failure to have sexual relations" could justify the granting of a fault-based divorce where this "was not justified on sufficient medical grounds". Although the Court of Cassation had not reaffirmed this case-law in the meantime, there had been no departure from it, and it continued to be applied by the lower courts. The Court concluded that the interferences complained of had been based on well-established domestic case-law.

As to the legitimacy of the aim pursued, the Court recognised that the purpose of the interferences complained of, which related to the right of each spouse to terminate the marriage, was linked to the "protection of the rights and freedoms of others" within the meaning of the Convention.

The Court's task was to determine whether the domestic courts had struck a fair balance between the competing interests at stake.

In the first place, the Court did not exclude the possibility that obliging a spouse to remain married despite the finding that there had been an irretrievable breakdown of the marriage could, in certain circumstances, amount to an excessive interference with his or her rights. The Court noted, however, that, in so far as the interferences in question affected one of the most intimate aspects of private life, the margin of appreciation afforded to the Contracting States in this area was narrow. Only particularly serious reasons could justify interferences on the part of the public authorities in the area of sexuality.

In the present case, the Court noted that the concept of "marital duties", as set out in the domestic legal order and reaffirmed in the present case, took no account whatsoever of consent to sexual relations. In that connection, the Court reiterated that any non-consensual act of a sexual nature constituted a form of sexual violence. The Court noted that failure to fulfil marital duties could, in the conditions provided in Article 242 of the Civil Code, be considered a fault justifying the granting of a divorce. It also noted that it could entail pecuniary consequences and, in certain circumstances, serve as a basis for a claim for damages.

The Court concluded that the very existence of such a marital obligation ran counter both to sexual freedom and the right to bodily autonomy, and to the Contracting States' positive obligation of prevention in the context of combating domestic and sexual violence.

In the Court's view, consent to marriage could not imply consent to future sexual relations. Such an interpretation would be tantamount to denying that marital rape was reprehensible in nature. On the contrary, consent had to reflect a free willingness to engage in sexual relations at a given moment and in the specific circumstances.

In any event, the Court could not identify any particularly serious reason capable of justifying an interference in the area of sexuality. It noted that the applicant's husband could have petitioned for divorce, submitting the irretrievable breakdown of the marriage as the principal ground, and not, as he had done, as an alternative ground.

The Court concluded that the reaffirmation of the principle of marital duties and the granting of the divorce on grounds of the applicant's exclusive fault had not been based on relevant and sufficient reasons, and that the domestic courts had not struck a fair balance between the competing interests at stake.

It followed that there had been a violation of Article 8 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that the finding of a violation constituted sufficient just satisfaction.

The judgment is available only in French.

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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.