

Violence Against Women

& Case law from the European Court of Human Rights

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Violence Against Women

Violence Against Women through the Human Rights Lens

In relation to the European Convention of Human Rights the following articles have been applied in cases involving violence against women. These are:

- Violations of the right to life under Article 2;
- The right to be free from torture and from inhuman or degrading treatment under Article 3;
- The right to a fair hearing Article 6;
- the right to respect for private and family life under Article 8 and
- the prohibition of discrimination under Article 14;



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European Court of Human Rights

Factsheets pertaining to Country, subjects and provisions

[http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets
&c=](http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c=)



Violence Against Women

Opuz v Turkey 9th June 2009

- The facts were that the applicant and her mother were threatened and assaulted over a long period of time by the applicant's husband.
- The women made complaints to the police but then withdrew them.
- The husband stabbed the applicant seven times and was fined for this. He then killed her mother.
- He was sentenced to life imprisonment but released pending appeal.



Violence Against Women

Violation of Art 14.

“[b]earing in mind ... that the general and discriminatory judicial passivity in Turkey, albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender based violence which is a form of discrimination against women. (para 200)



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Scale of Gender Based Violence

the issue of domestic violence, which can take various forms ranging from physical to psychological violence or verbal abuse, cannot be confined to the circumstances of the present case. It is a general problem which concerns all member States and which does not always surface since it often takes place within personal relationships or closed circuits and it is not only women who are affected. The Court acknowledges that men may also be the victims of domestic violence and, indeed, that children too, are often the casualties of the phenomenon, whether directly or indirectly. Accordingly, the Court will bear in mind the gravity of the problem at issue when examining the present case..(para 132)



Violence Against Women

Rumor v Italy 27th May 2014

- the applicant's partner attacked her in November 2008, threatened her with a weapon and locked her in their flat. This was witnessed by one of their two children.
- The partner was arrested and charged with attempted murder, kidnapping, aggravated violence and threatening behavior. He was convicted and given an initial prison sentence of four years and eight months this was later reduced.
- He served part of his sentence under house arrest at a reception centre located approximately 15 kilometers from the applicant's home. This reception centre allowed him to work outside. He was having so much fun at this centre that have his sentence had expired he continue to reside there



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Art 3. ECHR

The applicant was a 'vulnerable individual' due to the physical injuries that she had suffered as a result of being attacked by her partner and to her fear of further violence (para 60).

The Court held that the violence and the ensuing psychological consequences were sufficiently serious to constitute ill treatment within the meaning of Article 3.



Violence Against Women

Positive Obligations of the States

“[t]his obligation should include effective protection of, inter alia, an identified individual or individuals from the criminal acts of a third party, as well as reasonable steps to prevent ill-treatment of which the authorities knew or ought to have known ... Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity” (para 58)



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Istanbul Convention

Convention on Preventing and Combating Violence Against Women and Domestic Violence 2013

A framework for preventing, protecting and prosecuting gender-based violence with an integrated approach.

The UK is a signatory to the Convention but has not ratified it and we are urgently awaiting a timetable for ratification.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656561/CCS207_CCS1017309396-1_HO_Istanbul_Convention_report_WEB_ACCESSIBLE.PDF



Violence Against Women

Istanbul Convention

Hailed as the 1st legally binding instrument in European within the field of violence against women

Far reaching international treaty to tackle the issue

Adds weight and depth to the ECtHR recognition that domestic violence constitutes a form of gender-based discrimination

Comprehensive - Comprises 12 Chapters and 81 articles.



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Explanatory Note of Istanbul Convention

- See Council of Europe Website re.coe.int
- firmly establishes the link between achieving gender equality and the eradication of violence against women. The Preamble diagnoses violence against women as a socio-structural, gender-based and state problem to which a range of multi disciplinary solutions are needed in order to achieve substantive equality.



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Gendered Approach to Violence Against Women

- a whole raft of positive obligations upon states to exercise due diligence to prevent and protect violence against women, to prosecute and punish perpetrators and to provide reparations for victims
- a multi-disciplinary and multi-faceted approach is required, including specialist support services, prevention programmes and the full force of both civil and criminal law.



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Ongoing Concerns

- 18 states have ratified the new Convention. This is in contrast to the 47 states that are party to the ECHR.
- Awaiting Ratification in the UK
- no mechanism under the Istanbul Convention whereby individuals can take cases or make complaints concerning violations of the Convention.
- limits on the role that litigation can play in promoting change.



Violence Against Women

Litigation & Istanbul Convention

- The practicability of the Istanbul Convention and the *Rumor Case*
- Concerns identified in the Rumor Case;
 - sentence of detention was sufficient?
 - a reception centre facility was this punitive enough?
 - Even though the ill treatment that the applicant had suffered was certainly 'inhuman and degrading', no breach of the Art 3. was found



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Applying Istanbul Convention

Article 46(a) of the Convention states that it should be regarded as an aggravating factor if an offence is committed against a former or current spouse or partner or by a person cohabiting with the victim. This would clearly apply to the situation in *Rumor*.

Article 46(d) that the offence being committed in the presence of a child is another aggravating factor. In *Rumor*, the violence was witnessed by the applicant's son.



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Applying Istanbul Convention

Article 46(f) and (h), aggravating factors also include the offence being 'accompanied by extreme levels of violence ' and the offence resulting in 'severe physical or psychological harm for the victim'. Both of these factors would be applicable as the applicant ended up with injuries causing hospital treatment and also psychological support therapy.



Violence Against Women

Where are we now?

Violence against women has been brought firmly into the public sphere, placing positive obligations and due diligence on the State.

The increased use of Article 14 in domestic violence cases highlights the principle that one of the key causes of domestic violence is the structural inequalities within society.

There is now a wide list of categories of discrimination derived from case law of the ECtHR demonstrating that article 14 is meant to be open-ended and there are requirements to secure the implementation of the provisions without discrimination.



Violence Against Women

Where are we now?

Positive recent developments within case law have established that domestic violence falls within the ambit of Article 3 of the ECHR.

Today the courts are called upon to recognize that civil, political, social, economic, and cultural rights are indivisible and interdependent and that this is a crucial starting point for addressing the whole range of underlying factors behind the perpetuation of violence against women.

There is now in existence a monitoring mechanism that is more amenable to bottom up engagement by requiring the submission of publicly evaluated reports detailing how states are implementing their commitments domestically. This is more transparent, less legalistic, and offers a greater opportunity for bottom up, grass roots, participation in human rights monitoring.



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Where are we now?

There are also the requirements to take into account and address the specific needs of persons made vulnerable by particular circumstances, and to place the HR's of victims at their centre, and the need to train professionals so as to avoid secondary victimization.



Violence Against Women

Conclusion

Potential to transform

Use of the Istanbul Convention and litigation

Gender-based focus

Violence Against Women firmly within the public arena

