



Fighting gender based violence in EU

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1

- **Istanbul Convention**
- **Relevant ECtHR case law**
- **EU Directive on combating violence against women and domestic violence**

2

Equality

- **Founding value** of the European Union
- Provided by the European Treaties, particularly in Articles [2](#) and [3\(3\)](#) of the Treaty on European Union (TEU), Articles [8](#), [10](#), [19](#), [153](#) and [157](#) of the Treaty on the Functioning of the European Union (TFEU) and Articles [21](#) and [23](#) of the Charter of Fundamental Rights;
- Article 23 of the Charter, equality between women and men must be ensured **in all areas**, including employment, work and pay

3

INSTANBUL CONVENTION

CoE Convention on preventing and combating violence against women and domestic violence / 2011

<https://rm.coe.int/168008482e>

- Violence against women is a **form of gender-based violence** that is **committed against women because they are women**.
- State should address it fully, in all its forms
- Take measures to prevent violence against women
- Protect DV victims
- Prosecute the perpetrators.
 - There can be no real equality between women and men if women experience gender-based violence on a large-scale and state agencies and institutions turn a blind eye.
 - **Men** also can be subject to convention protection

4

Istanbul Convention CoE Convention on preventing and combating violence against women and domestic violence / 2011

- *Preamble*
- Chapter I - Purposes, definitions, equality and non-discrimination, general obligations
- Chapter II – Integrated policies and data collection (*incl. financial resources, NGO & CSO, coordinating body, data collection and research*)
- Chapter III – Prevention
- Chapter IV – Protection and support
- Chapter V – Substantive law (*civil lawsuits and remedies, compensation, criminal offenses, long list of GBV and DV, prohibition of mandatory ADR*)
- Chapter VI – Investigation, prosecution, procedural law and protective measures (*investigation, evidences, legal aid, ex parte & ex officio proceedings*)
- Chapter VII – Migration and asylum
- Chapter VIII – International co-operation
- Chapter IX – Monitoring mechanism – GREVIO

5

ECtHR case law on GBV & DV

6

Opuz v. Turkey - *Application no. [33401/02](#)*

- In 1995, the applicant and her mother filed a complaint against their partners, respectively A.O and H.O, at the Public Prosecutor's Office. The complain alleged that A.O and H.O had **beaten** and **threatened** them. The First Magistrate's Court and Second Magistrate's Court discontinued the assault case, as the applicant and her mother had withdrawn their **complaints**.
- In 1996, H.O **beat** the applicant again, this time **endangering her life**. H.O was first remanded in custody, but then released. At the next hearing of the court, the applicant withdrew her complaint. Under Turkish Criminal Code, **applicant's complaint** was required in order to pursue the proceedings, so they were discontinued.

7

Opuz v. Turkey

- In 1998, H.O **pulled a knife** on the applicant, her sister and her mother. However, the public prosecutor decided not to prosecute anyone in respect of this incident.
- Later in 1998, H.O ran a car into the applicant and her mother, causing to the latter **life-threatening injuries**. H.O was remanded in custody. During the trial the applicant and her mother withdrew their complaints, stating that it was an accident. The Court discontinued the case.
- In 2001, H.O **stabbed** the applicant **7 times with a knife**. H.O. handed himself in at a police station, claiming that his wife had attacked him first, and was released. The mother's lawyer petitioned the local Public Prosecutor's Office, claiming that the two women obliged to withdraw their complaints due to continuing **death threats** and requested that H.O was detained. H.O was imposed a fine, which could be paid in 8 instalments.

8

Opuz v. Turkey

- After another complaint by the applicant's mother, H.O was charged with making **death threats**. The applicant's mother requested the police to tap her telephone, but the telephone line did not cooperate.
- In 2002, the applicant's mother was **killed with a gun** by H.O, while trying to move to another city.
- H.O was convicted with fifteen years and ten months' imprisonment and a fine of 180 Turkish liras. In view of the time spent by the convict in pre-trial detention and the fact that the judgment would be examined on appeal, the court ordered the release of H.O.
- H.O started **threatening** the applicant again.

9

Opuz v. Turkey

- In a rare practice, the ECtHR referred not only to the **material & procedural law**, but also to **reports** concerning domestic violence and the situation of women in Turkey. The reports originated from both local and international organisations. These reports highlighted **serious issues** regarding:
 - Lack implementation of laws protecting women;
 - In response to applications made by women in mortal danger, Courts were still setting hearings **two or even three months ahead**;
 - Domestic violence was **still treated with tolerance** at police stations;
 - Police officers try to act as **arbitrators**, or take the side of the male, or suggest that the **woman drop her complaint**.

10

Opuz v. Turkey

Other issues according to these reports concerned:

- **Unreasonable delays** in issuing injunctions by the courts;
- Treating domestic violence complaints **as a form of divorce**;
- Authorities' **failure to monitor** implementation of injunctions;
- Police officers regarded domestic violence as a **private family matter** into which the police are reluctant to interfere;
- Police did not make sure that the **protecting orders** (*Urdherat e Mbrojtjes*) **were enforced** by the perpetrators;
- DV penalties were reduced at the discretion of the judges, who continued to take into account the "**severe provocation**" of the offence to custom, **tradition or honour**.

11

Opuz v. Turkey - Infringement of Art. 2: Right to life

- The first sentence of Article 2 § 1 requires the State **not only to refrain** from the intentional and unlawful taking of life, but also to **take appropriate steps to safeguard lives**.
- Where there is an allegation that the authorities have violated their obligation to protect the right to life, it must be established that the **authorities knew or ought to have known** at the time of the existence of a **real and immediate risk to the life**.
- In this case, it was obvious that the perpetrator had a record of domestic violence and there was therefore a significant risk of further violence. Thus, the local authorities **could have foreseen** a lethal attack by H.O.

12

Opuz v. Turkey- Art 2 v. Art 8 of ECHR

When the victims **withdraw their complaint**, certain **factors** can be taken into account in deciding to pursue the prosecution:

- the **seriousness** of the offence;
- whether the **victim's injuries** are physical or psychological;
- if the defendant **used a weapon**;
- if the defendant has made any **threats** since the attack;
- if the defendant **planned the attack**;
- the **effect** (including psychological) **on any children** living in the household;
- the current state of the **victim's relationship** with the defendant;
- the **defendant's criminal history**, particularly previous violence; etc.

It does not appear that the local authorities sufficiently considered the above factors when repeatedly deciding to discontinue the criminal proceedings against H.O.

13

Opuz v. Turkey- Art 2 v. Art 8

- National authorities' interference with the private or family life (*Government justification for not acting on the assaults – by interfering state institutions could potentially violate Art. 8*) of the individuals **might be necessary** in order to protect the health and rights of others or to prevent commission of criminal acts.
- Bearing in mind the seriousness of the crimes committed to the victims by H.O. in the past, the prosecuting authorities should have been able to pursue the proceedings **as a matter of public interest, regardless of the victims' withdrawal** of complaints.
- The Turkish authorities **failed** in their positive obligation to protect the right to life of the applicant's mother within the meaning of Article 2 of the Convention.

14

Opuz v. Turkey- Art 3- Inhuman treatment

- **States have to take measures** to ensure that individuals are not subjected to torture, inhuman, degrading treatment or punishment, including ill-treatment by **private individuals**.
- The ill-treatment must attain a **minimum level of severity** if it is to fall within the scope of Article 3, taking into consideration:
 - the nature & context of the treatment;
 - its duration;
 - its physical & mental effects;
 - the sex, age & state of health of the victim.
- Physical injuries and psychological pressure in this case were **sufficiently serious** to amount to ill-treatment within the meaning of Article 3 of the Convention.

15

Opuz v. Turkey - Art 14: Discrimination

- The alleged discrimination at issue was not based on the legislation *per sé* but rather resulted from the **general attitude of the local authorities**, such as:
 - the manner in which women were treated at police stations when they reported domestic violence;
 - judicial passivity in providing effective protection to victims.
- The Court concluded that there had been a violation of Article 14 of the Convention, read in conjunction with Articles 2 and 3.

16

Durmaz v. Turkey / 2014

- Court held that there had been a **violation of Article 2** (right to life) of the Convention in its procedural aspect on account of the Turkish authorities' **failure to carry out an effective investigation into the death** of the applicant's daughter.
- Like in the Opuz case, domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence.

17

Talpis v. Italy / 2017

- **Violation of Article 2** (right to life) of the Convention on account of the murder of the applicant's son and her own attempted murder;
- Italian authorities **failed to take prompt action** on the complaint lodged by the applicant, deprived that complaint of any effect, creating a situation of impunity conducive to the recurrence of the acts of violence;
- ... applicant had lived with her children in a **climate of violence serious enough to qualify as ill-treatment**, and that the manner in which the authorities had conducted the criminal proceedings pointed to judicial passivity, which was incompatible with Article 3.
- ... violation of Article 14 (prohibition of discrimination) of the Convention in conjunction with Articles 2 and 3, finding that the applicant had been the victim of discrimination as a woman on account of the **inaction of the authorities**, which had **underestimated the violence in question and thus essentially endorsed it**.

18

Tershana v. Albania / 2020

- Acid attack – presumably from the former husband;
- **No violation of Article 2** (right to life) of the Convention **in its substantial aspect**, finding that the Albanian State could not be held responsible for the attack. It noted in particular that, if the State had been aware of a risk to the applicant, it would have been its duty to take preventive measures. In the present case, however, the **national authorities had only found out about the violent behaviour of the applicant's former husband after the incident**.
- On the other hand, the Court held that there had been a **violation of Article 2 in its procedural aspect**, finding that the **authorities' response to the acid attack had been ineffective** - investigation into the attack, which had had the hallmarks of gender-based violence and therefore should have incited the authorities to **react with special diligence**, had not even been able to identify the substance thrown over her. The investigation was moreover stayed in 2010, without identifying the person responsible, and the applicant had not been given any information about its progress since, despite her repeated enquiries.

19

X v Greece (2024) - Treatment of sexual assaults

- **Rape & serious sexual assault** fall within the ambit of **Article 3** of the Convention.
- **Interviews with victims of sexual violence should be conducted by a person of the same sex as the victim, so that the course of the criminal proceedings will not be prejudiced**.
- The **intimate nature** of the subject matter, the applicant's **young age** and the fact that she claimed to have **been raped while on holiday in a foreign country** were points of particular sensitivity, called for a sensitive approach.

20

Kurt v Austria (2021)

- The **scope and content of state obligations** related to DV are as follows:
- The **authorities must respond immediately** to allegations of domestic violence;
- When such allegations come to their attention, the **authorities must check whether a real and immediate risk to the life** of the identified victim exists by **carrying out an autonomous, proactive and comprehensive lethality risk assessment**.
- Authorities must **assess the real and immediate nature of the risk**, taking due account of the particular context of DV;
- If the risk assessment reveals that a real and immediate risk to life exists, the **authorities must take operational preventive and protective measures to avert that risk**.
- Measures must be **adequate & proportionate** to the level of risk assessed.

21

Practical Recommendations for Attorneys Addressing Domestic Violence Cases

- **Prioritise victim safety**: apply for restraining orders at first insight of domestic violence
- **Encourage documentation**: advise clients to document instances of abuse (keeping a journal, preserving text messages, photos of injuries).
- **Utilise expert testimony**: bring in experts (like social workers and psychologists) to inform the court on issues related to trauma and behaviour or the victim.
- **Protect victim's privacy**: take steps to protect the identity and privacy of victims during court hearings, including the option for closed hearings.
- **Material & Procedural violations** (Art. 6 ECHR)

22

Manual / OSCE 2013

Si te kerkojme mbrojtje nga dhuna ne familje?

https://www.echr.coe.int/documents/d/echr/FS_Domestic_violence_SQI

23

Manual / OSCE

- [Si te kerkojme mbrojtje nga dhuna ne familje](https://www.echr.coe.int/documents/d/echr/FS_Domestic_violence_SQI)

Manual / OSCE

24

Facts Sheets

Translated into Albanian on DV & GBV

- https://www.echr.coe.int/documents/d/echr/FS_Domestic_violence_SQI

25

EU Directive on combating violence against women and domestic violence

May, 2024

<https://eur-lex.europa.eu/eli/dir/2024/1385/oj/eng>

26

EU Directive on combating violence against women & domestic violence

- Comprehensive framework to effectively **prevent** and **combat** violence against women and domestic violence throughout the Union. It does so by strengthening and introducing **measures** on:
 - definition of relevant criminal offences and penalties
 - protection of victims
 - access to justice
 - victim support
 - enhanced data collection
 - Prevention
 - coordination
 - cooperation

27

EU Directive on combating violence against women & domestic violence

- **Equality** between women and men and **non-discrimination** are core values of the Union and fundamental rights enshrined, respectively, in **Article 2** of the Treaty on European Union - **TEU** and in Articles **21 & 23** of the Charter of Fundamental Rights of the European Union - **The Charter**.
- Violence against women and domestic violence **endanger those very values and rights**, undermining women and girls' rights to equality in all areas of life and hindering their equal societal and professional participation.

28

EU Directive on combating violence against women & domestic violence

- Violence against women and domestic violence is a **violation of fundamental rights**
 - right to human dignity
 - right to life & integrity of the person
 - prohibition of inhuman or degrading treatment or punishment
 - right to respect for private and family life
 - right to liberty and security
 - right to the protection of personal data
 - right to non-discrimination, including on the grounds of sex
 - rights of the child (as provided by the Charter and the United Nations Convention on the Rights of the Child)

29

EU Directive on combating violence against women & domestic violence

- The rights of victims should apply to all victims of criminal conduct which amounts to violence against women or domestic violence, as criminalised under Union or national law.
- Criminal offences defined in Directive
- Female genital mutilation
- Forced marriage
- Non-consensual sharing of intimate or manipulated material
- Cyber stalking, cyber harassment, cyber flashing and cyber incitement to violence or hatred, covered by other Union legal acts

30

EU Directive on combating violence against women & domestic violence

- Material & procedural legislation
- Evidence
- Access
- Compensation
- Specialized support services (tailored to victims) – access / shelters & rape crisis centers
- Trauma and recovery process
- Trained staff
- Online helplines
- Children of victims of DV can fully benefit from this Directive

31

EU Directive on combating violence against women & domestic violence

- Prevention
- Minimise the risk
- Coordinated policies
- Member States - ensure minimum policy coordination at central level as well as, where appropriate, at regional or local level
- Role of CSO's / NGO's
- Exchanging best practices and consulting in individual cases, within the mandates of Eurojust, the European Judicial Network in criminal matters and other relevant Union agencies

32

EU Directive on combating violence against women & domestic violence

- Article 2 – **Definitions**
- **Chapter II - Offences concerning sexual exploitation of women and children and computer crime**
 - All types of GBV & DV Offences
 - Penalties
 - Aggravating circumstances
- **Chapter III – Protection of Victims and Access to Justice**
 - Reporting
 - Investigation & Prosecution
 - Identify of Victims' & Support needs
 - Referral mechanism – Emergency Barring /Restrain/Protection orders
 - Protection of Private Life
 - Compensation of Victims (from their offenders)

33

EU Directive on combating violence against women & domestic violence

- **Chapter III – Dedicated to VICTIM's SUPPORT**
 - Specialist support (for all types of GBV & DV)
 - Helplines
 - Shelters & other interim accommodation
 - Support of child victims
 - Safety of children

Chapter IV - Prevention & early intervention

- Preventive measures
- Prevention of rape
- Training & information of professionals
- Intervention Programmes

34