

Domestic violence as gender-based discrimination before the European Court of Human Rights

Dr. Katarzyna Sękowska-Kozłowska

Institute of Law Studies of the Polish Academy of Sciences,
Poznań Human Rights Centre



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Plan of presentation:

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 - ECHR provisions at stake
- Setting the standard: *Opuz v. Turkey* (2009)
- Consolidating the evidentiary regime: *Volodina v. Russia* (2019)
- How to prove DV as gender-based discrimination?
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- Conclusions

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Introductory remarks

Violence against women(VAW), including domestic violence (DV) as a form of discrimination against women – the role of international law:

- Convention on the Elimination of All Forms of Discrimination against Women, (1979, CEDAW) + General Recommendation No. 19 (1992)
- Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (1994, Belém do Pará Convention)

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Introductory remarks

Articles of the European Convention on Human Rights at stake:

- Art. 2 (right to life)
- Art. 3 (prohibition of torture)
- Art. 8 (right to privacy)

Art. 14 (prohibition of discrimination)

„The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

ECtHR: „*discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations*” (e.g. Biao v. Denmark, 2016)

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Setting the standard: Opuz v. Turkey (2009)

Elements of considerations under Article 14:

- The meaning of discrimination in the context of domestic violence (reference to international law, including CEDAW)
- The approach to domestic violence in Turkey (**general approach**)
- Whether the applicant has been discriminated against on account of the authorities' failure to provide equal protection of law (**individual approach**)

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Consolidating the evidentiary regime: Volodina v. Russia (2019)

- Once the applicant has shown a difference in treatment, it is for the respondent State to show that that difference was justified. **If it is established that domestic violence affects women disproportionately, the burden shifts on to that State** to show what remedial measures which it has taken to redress the disadvantage associated with sex;
- The kinds of **prima facie evidence which can shift the burden of proof on to the respondent State in such cases are not predetermined and can vary**. Such evidence may come from reports by non-governmental organisations or international observers such as the CEDAW, or from statistical data from the authorities or academic institutions which show that (i) domestic violence affects mainly women, and that (ii) the general attitude of the authorities (...) has created a climate conducive to such violence;
- **If a large-scale structural bias is shown to exist, the applicant does not need to show that the victim was also a target of individual prejudice.** If, by contrast, there is insufficient evidence of the discriminatory nature of the legislation or the official practices, or of their discriminatory effects, proven bias by officials dealing with the victim's case will be required

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How to prove DV as gender-based discrimination: general approach

Information that should be provided to prove a large structural bias/systemic gender discrimination:

- domestic violence affects mainly women (**statistics**)
- +
- demonstrating how **the general attitude** of the authorities has created a climate conducive to such violence;

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How to prove DV as gender-based discrimination: general approach

DV in **statistics**: sex-disaggregated data (examples):

- numbers of victims and perpetrators in DV cases registered by the police or prosecutor's office
- number of requested or issued protection orders
- number of persons calling hotlines for victims of DV
- number of women murdered by their relatives (in particular in case of violation of Article 2)

„In view of the lack of proper official statistics, the applicants cannot be expected to come up with such data themselves” (Y. and others v. Bulgaria, para. 126) but still need to underpin their claims by reliable numbers

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How to prove DV as gender-based discrimination: general approach

The general attitude of the authorities: discriminatory nature of the legislation or the official practices, or of their discriminatory effects (examples):

- the manner in which the women were treated at police stations when they reported domestic violence
- unreasonable delays in issuing protection orders by the courts
- lack of dissuasive punishments for the perpetrators
- small number of reported incidents of DV followed by criminal investigation
- limited number of shelters and support services for victims
- the continued failure to adopt legislation to combat domestic violence

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How to prove DV as gender-based discrimination: general approach

Sources of information:

- official statistics and documents
- academic research
- reports by international and local NGOs
- findings of international bodies
 - concluding observations (CEDAW)
 - reports from country visits (UN Special Rapporteur on VAW)
 - reports of GREVIO

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How to prove DV as gender-based discrimination: individual approach

- Evidence of „regularly turning a blind eye to repeated acts of violence” (Halime Kilic v. Turkey, para. 120)
- „Discriminatory treatment occurred where it could be established that the authorities’ actions were not a simple failure or delay in dealing with the violence in question, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the complainant as a woman” (Eremia v. the Republic of Moldova, para. 89)

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How to prove DV as gender-based discrimination: individual approach

Examples:

- notorious failures to undertake actions (authorities’ passivity)
- downplaying incidents of DV
- victim blaming
- suggesting reconciliation with the perpetrator and „being nice”
- shielding perpetrator from responsibility
- not enforcing protection orders
- not initiating ex officio proceedings

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Conclusions

- well-established standard with a large impact of the CEDAW
- development of evidentiary regime (shift of the burden of proof in prima facie cases; if systemic discrimination proved no need to demonstrate individual prejudice and vice versa)
- general approach: data on women as victims of DV + general discriminatory attitude of authorities; various sources at the applicant's disposal (not only official statistics)
- individual approach: actions repeatedly condoning DV (not a simple failure or delay)

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List of cases

Case	Alleged violations with regard to Article 14	If admissible under Article 14	If examined on merit with regard to Article 14	Violation of Article 14
Opuz v. Turkey, 9 June 2009	14+2+3	Yes	Yes	Yes
A.v. Croatia, 14 October 2010	14+8	No	No	-
Eremia and Others v. the Republic of Moldova, 28 May 2013	14+3+8	Yes	Yes (14+3)	Yes (14+3)
Mudric v. the Republic of Moldova, 16 July 2013	14+3+8	Yes	Yes (14+3)	Yes (14+3)
T.M. and C.M. v. the Republic of Moldova, 28 January 2014	14+3+8	Yes	Yes (14+3, 1st Applicant)	Yes (14+3, 1st Applicant)
Rumor v. Italy, 27 May 2014	14+3	Yes	Yes	No
Civek v. Turkey, 23 February 2016	14+2	Yes	No	-
M.G. v. Turkey, 22 March 2016	14+3	Yes	Yes	Yes
Halime Kiliç v. Turkey, 28 June 2016	14+3	Yes	Yes	Yes
Talpis v. Italy, 2 March 2017	14+2+3	Yes	Yes	Yes
Bălșan v. Romania, 23 May 2017	14+3	Yes	Yes	Yes
Volodina v. Russia, 9 July 2019	14+3	Yes	Yes	Yes
Munteanu v. the Republic of Moldova, 26 May 2020	14+3	Yes	Yes	Yes
Tërshana v. Albania, 4 August 2020	14+2	-	No	-
Tkheldize v. Georgia, 8 July 2021	14+2	Yes	Yes	Yes
Tunikova and Others v. Russia, 14 December 2021	14+3	Yes	Yes	Yes
A and B v. Georgia, 10 February 2022	14+2	Yes	Yes	Yes
Y and Others v. Bulgaria, 22 March 2022	14+2	yes	Yes	No
A.E. v. Bulgaria, 23 May 2023	14+3	Yes	Yes	Yes

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Thank you

k.sekowska-kozlowska@inp.pan.pl
phrc.pl

