EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 120

June 2009

Opuz v. Turkey - 33401/02

Judgment 9.6.2009 [Section III]

Article 2

Positive obligations

Article 2-1

Life

Fatal injuries sustained by applicant's mother in domestic violence case in which authorities had been aware of the perpetrator's history of violence: *violation*

Article 3

Degrading treatment

Inhuman treatment

Positive obligations

Failure of authorities to take adequate measures to protect applicant and her family from domestic violence: *violation*

Article 14

Discrimination

Failure of judicial system to provide adequate response to serious domestic violence: *violation*

Facts: The applicant's mother was shot and killed by the applicant's husband in 2002 as she attempted to help the applicant flee the matrimonial home. In the years preceding the shooting the husband had subjected both the applicant and her mother to a series of violent assaults, some of which had resulted in injuries which doctors had certified as life-threatening. The incidents had included beatings, an attempt to run the two women down with a car that had left the mother seriously injured and an assault in which the applicant was stabbed seven times. The incidents and the women's fears for their lives had been repeatedly brought to the authorities' attention. Although criminal proceedings had been brought against the husband for a range of offences, including death threats, serious assault and attempted murder, in at least two instances they were discontinued after the women withdrew their complaints, allegedly under pressure from the husband. However, in view of the seriousness of the injuries, the proceedings in respect of the running down and stabbing incidents continued to trial. The husband was convicted in

both cases. For the first offence, he received a three-month prison sentence, which was later commuted to a fine, and for the second, a fine payable in instalments. The violence culminated in the fatal shooting of the applicant's mother, an act the husband said he carried out to protect his honour. For that offence, he was convicted of murder in 2008 and sentenced to life imprisonment. He was, however, released pending appeal and renewed his threats against the applicant, who sought the authorities' protection. It was not until seven months later, following a request for information from the European Court, that measures were taken to protect her.

The Committee of Ministers Recommendation on the Protection of Women against Violence (Rec(2002)5 of 30 April 2002) stated that member States should introduce, develop and/or improve national policies against violence where necessary. It recommended, in particular, the penalisation of serious violence against women and the introduction of measures designed to ensure that victims can initiate criminal proceedings and receive effective protection, and that prosecutors regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute.

Law: Article 2 – The Court reiterated that where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

(a) *Foreseeability of risk*: The case disclosed a pattern of escalating violence against the applicant and her mother that was sufficiently serious to have warranted preventive measures and there had been a continuing threat to their health and safety. It had been obvious that the husband had a record of domestic violence and there was therefore a significant risk of further violence. The situation was known to the authorities and, two weeks' before her death, the mother had notified the public prosecutor's office that her life was in immediate danger and requested police intervention. The possibility of a lethal attack had therefore been foreseeable.

(b) *Whether the authorities took appropriate measures*: The first issue was whether the authorities had been justified in not pursuing criminal proceedings against the husband when the applicant and her mother withdrew their complaints. The Court began by examining practice in the member States. It found that, although there was no general consensus, the practice showed that the more serious the offence or the greater the risk of further offences, the more likely it was that the prosecution would proceed in the public interest even when the victim had withdrawn her complaint. Various factors were to be taken into account in deciding whether to pursue a prosecution. These related to the offence (its seriousness, the nature of the victim's injuries, the use of a weapon, planning), the offender (his record, the risk of his reoffending, any past history of violence), the victim and potential victims (any risk to their health and safety, any effects on the children, the existence of further threats since the attack) and the relationship between the offender and the victim (the history and current position, and the effects of pursuing a prosecution against the victim's wishes). In the applicant's case, despite the pattern of violence and use of lethal weapons, the authorities had repeatedly dropped proceedings against the husband in order to avoid interfering in what they perceived to be a "family matter" and did not appear to have considered the motives behind the withdrawal of the complaints, despite being informed of the death threats. As to the argument that the authorities had been prevented from proceeding by the statutory rule that prevented a prosecution where the complaint had been withdrawn unless the criminal acts had resulted in a minimum of ten days' sickness or unfitness for

work, that legislative framework fell short of the requirements inherent in the State's positive obligations with regard to protection from domestic violence. Nor could it be argued that continuing with the prosecution would have violated the victims' rights under Article 8 of the Convention, as the seriousness of the risk to the applicant's mother had rendered such intervention necessary.

Turning to the Government's submission that there had been no tangible evidence that the mother's life was in imminent danger, the Court observed that it was not the case that the authorities had assessed the threat posed by the husband and concluded that detention was disproportionate. Rather they had failed to address the issues at all. In any event, in domestic violence cases perpetrators' rights could not supersede victims' rights to life and physical and mental integrity.

Lastly, the Court noted that the authorities could have ordered protective measures under the Family Protection Act (Law no. 4320) or issued an injunction restraining the husband from contacting, communicating with or approaching the applicant's mother or entering defined areas. In sum, they had not displayed due diligence and had therefore failed in their positive obligations to protect the applicant's mother's right to life.

(c) *Effectiveness of investigation*: The criminal proceedings arising out of the death had been going on for more than six years and an appeal was still pending. This could not be described as a prompt response by the authorities to an intentional killing where the perpetrator had already confessed.

In conclusion, the criminal-justice system, as applied in the applicant's case, had not acted as an adequate deterrent. Once the situation had been brought to the authorities' attention, they had not been entitled to rely on the victims' attitude for their failure to take adequate measures to prevent threats to physical integrity being carried out.

Conclusion: violation (unanimously).

Article 3 – The authorities' response to the husband's acts had been manifestly inadequate in the face of the gravity of his offences. The judicial decisions had had no noticeable preventive or deterrent effect and had even disclosed a degree of tolerance, with the husband receiving a short prison sentence (commuted to a fine) for the running down incident and, even more strikingly, a small fine, payable in instalments, for stabbing the applicant seven times. Furthermore, it had not been until 1998, when Law no. 4320 came into force, that Turkish law had provided specific administrative and policing measures to protect against domestic violence, and even then, the available measures and sanctions were not effectively applied in the applicant's case. Lastly, it was a matter of grave concern that the violence against the applicant had not ended and that the authorities had continued to take no action. Despite the applicant's request for help, nothing was done until the Court requested the Government to provide information about the protective measures it had taken. In short, the authorities had failed to take protective measures in the form of effective deterrence against serious breaches of the applicant's personal integrity by her former husband.

Conclusion: violation (unanimously).

Article 14, in conjunction with Articles 2 and 3 – The Court noted that under the relevant rules and principles of international law accepted by the vast majority of States, a failure – even if unintentional – by the State to protect women against domestic violence breached their right to the equal protection of the law. Reports by the Diyarbakır Bar Association and Amnesty International, which were not contested by the Government, indicated that the highest number of reported victims of domestic violence was in Diyarbakır, where the applicant had lived at the relevant time. All the victims were women, the vast majority of Kurdish origin, illiterate or of a low level of education and

generally without any independent source of income. The reports also suggested that domestic violence was tolerated by the authorities and that the available remedies did not function effectively. Police officers did not investigate complaints but sought to assume the role of mediator by trying to convince victims to return home and drop their complaints. Delays in issuing and serving injunctions were frequent and the courts treated such proceedings as a form of divorce action. Perpetrators of domestic violence did not receive deterrent sentences, which were mitigated on the grounds of custom, tradition or honour.

Domestic violence thus affected mainly women, while the general and discriminatory judicial passivity in Turkey created a climate that was conducive to it. The violence suffered by the applicant and her mother could therefore be regarded as having been gender-based and discriminatory against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors, as in the applicant's case, indicated an insufficient commitment on the part of the authorities to take appropriate action to address domestic violence.

Conclusion: violation (unanimously).

Article 41 – EUR 30,000 in respect of non-pecuniary damage.

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