



April 2012

This factsheet does not bind the Court and is not exhaustive

# Violence against Women

## Domestic Violence

### **Kontrovà v. Slovakia (no. 7510/04)**

31.5.2007

On 2 November 2002 the applicant filed a criminal complaint against her husband for assaulting her and beating her with an electric cable. The police later assisted her in withdrawing her complaint when she returned to the police station accompanied by her husband. On 31 December 2002 her husband shot dead their daughter and son, born in 1997 and 2001. The applicant received no compensation.

The European Court of Human Rights found a violation of Article 2 (right to life) of the European Convention on Human Rights, concerning the authorities' failure to protect the children's lives, and a violation of Article 13 (right to an effective remedy) of the Convention, concerning the impossibility for their mother to obtain compensation. Execution of this judgment is [ongoing](#).

### **Bevacqua and S. v. Bulgaria (no. 71127/01)**

12.6.2008

The applicant, who claimed she was regularly battered by her husband, left him and filed for divorce, taking their three-year-old son (also an applicant) with her. However, she maintained that her husband continued to beat her. She spent four days in a shelter for abused women with her son but was allegedly warned that she could face prosecution for abducting the boy, leading to a court order for shared custody, which, she stated, her husband did not respect. Pressing charges against her husband for assault allegedly provoked further violence. Her requests for interim custody measures were not treated as priority and she finally obtained custody only when her divorce was pronounced more than a year later. The following year she was again battered by her ex-husband and her requests for a criminal prosecution were rejected on the ground that it was a "private matter" requiring a private prosecution.

The Court found a violation of Article 8 (right to respect for family life) given the Bulgarian authorities' failure to adopt the measures necessary to punish and control the applicant's husband. The Court also stressed that considering the dispute to be a "private matter" was incompatible with the authorities' obligation to protect the applicants' family life. Execution of this judgment is [ongoing](#).

### **Branko Tomašić and Others v. Croatia (no. 46598/06)**

15.1.2009

The applicants are the relatives of a baby and mother whose husband/father killed both them and himself one month after being released from prison, where he had been held for making those same death threats. He was originally ordered to undergo compulsory psychiatric treatment while in prison and after his release, as necessary, but the appeal court ordered that his treatment be stopped on his release.

The Court found a violation of Article 2 (right to life) concerning the deaths of the mother and child: the Croatian authorities had not followed the order for continued psychiatric treatment; the Government had failed to show that the husband had even received psychiatric treatment in prison; and, he did not undergo a psychiatric assessment prior to his release. Execution of this judgment is [ongoing](#).

### **Opuz v. Turkey (no. 33401/02)**

9.6.2009

The applicant and her mother were assaulted and threatened over many years by the applicant's husband H.O., at various points leaving both women with life-threatening injuries. With only one exception, no prosecution was brought against him on the grounds that both women had withdrawn their complaints, despite their explanations that H.O. had harassed them into doing so, threatening to kill them. He subsequently stabbed his wife seven times and was given a fine equivalent to about 385 euros, payable in instalments. The two women filed numerous complaints, claiming their lives were in danger. H.O. was questioned and released. Finally, when the two women were trying to move away, H.O. shot dead his mother-in-law, arguing that his honour had been at stake. He was convicted for murder and sentenced to life imprisonment but released pending his appeal, whereupon his wife claimed he continued to threaten her.

The Court found a violation of Article 2 (right to life) concerning the murder of H.O.'s mother-in-law and a violation of Article 3 (prohibition of inhuman or degrading treatment) concerning the State's failure to protect his wife. Turkey had failed to set up and implement a system for punishing domestic violence and protecting victims. The authorities had not even used the protective measures available and had discontinued proceedings as a "family matter" ignoring why the complaints had been withdrawn. There should have been a legal framework allowing criminal proceedings to be brought irrespective of whether the complaints had been withdrawn.

The Court also found – for the first time in a domestic violence case - violations of Article 14 (prohibition of discrimination), in conjunction with Articles 2 and 3, as the violence suffered by the two women was gender-based; domestic violence mainly affected women and it was encouraged by discriminatory judicial passivity. Despite reforms in the field (Law no. 4320), the unresponsiveness of the judicial system and impunity enjoyed by aggressors indicated that Turkey was not committed to tackling the problem: police officers tried to persuade women to drop their complaints, delays were frequent and courts mitigated sentences on the grounds of honour or tradition. Execution of this judgment is [ongoing](#).

### **E.S. and Others v. Slovakia (no. 8227/04)**

15.9.2009

In 2001 the applicant left her husband and lodged a criminal complaint against him for ill-treating her and her children and sexually abusing one of their daughters. He was convicted of violence and sexual abuse two years later. Her request for her husband to be ordered to leave their home was dismissed, however, the court finding that it did not have the power to restrict her husband's access to the property (she could only end the tenancy when divorced). The applicant and her children were therefore forced to move away from their friends and family.

The Court found that Slovakia had failed to provide the applicant and her children with the immediate protection required against her husband's violence, in violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life). Execution of this judgment is [ongoing](#).

### **A. v. Croatia (no. 55164/08)**

14.10.2010

The applicant's now ex-husband (suffering from post-traumatic stress disorder, paranoia, anxiety and epilepsy) allegedly subjected her to repeated physical violence causing bodily injury and death threats over many years and also regularly abused her in front of their young daughter. After going into hiding, the applicant requested a court order preventing her ex-husband from stalking or harassing her. It was refused on the ground that she had not shown an immediate risk to her life.

The Court found a violation of Article 8 (right to respect for private and family life) in that the Croatian authorities had failed to implement many of the measures ordered by the courts to protect the applicant or deal with her ex-husband's psychiatric problems,

which appeared to be at the root of his violent behaviour. It was also unclear whether he had undergone any psychiatric treatment.

**Hajduová v. Slovakia (no. 2660/03)**

13.11.2010

The applicant's (now former) husband was detained in hospital for psychiatric treatment after he attacked her in public and threatened to kill her. Injured and fearing for her life and safety, the applicant moved to a refuge with her children. Her ex-husband was released, without having undergone the required treatment, and renewed his threats. Her complaint about the failure to treat him in hospital was rejected.

The Court reiterated that Slovakia had a duty to protect the physical and psychological integrity of individuals, particularly vulnerable victims of domestic violence. It found a violation of Article 8 (right to respect for private and family life), in that, although the applicant's ex-husband had not actually assaulted her following his release from hospital, her fear that his threats might be carried out were well-founded and the authorities had failed in their duty to ensure his detention for psychiatric treatment.

**Kalucza v. Hungary (no. 57693/10)**

24.04.2012

The case concerns Hungary's failure to protect Ms Kalucza from her abusive former partner with whom she unwillingly shares her flat pending numerous civil disputes concerning its ownership.

The Court found a violation of Article 8 (right to respect for private life) because the Hungarian authorities had not taken sufficient measures for Ms Kalucza's effective protection from her former partner's violent behaviour, despite criminal complaints lodged against him for assault, repeated requests for a restraining order against him and civil proceedings to order his eviction from their flat.

## Genital Mutilation

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**Izevbekhai v. Ireland (no. 43408/08)**

Decision 17.5.2011

The applicant and her two daughters claimed the girls risk female genital mutilation (FGM) if the family was returned to Nigeria, in violation of Article 3 (prohibition of inhuman or degrading treatment). They alleged that the mother's eldest daughter died aged one from profuse bleeding after FGM was performed by an "elder". The family left Nigeria for Ireland in the face of pressure from the father's family to perform FGM on the two younger girls. Their request for asylum was unsuccessful. The Court found that there were "strong reasons to doubt" the claims made concerning the birth and death of the eldest daughter. The family was also in a financially and socially privileged position in Nigeria. The first applicant was an educated professional and her husband and parents were against FGM. No attempt was made by her or her husband to report any issue concerning their daughters and FGM to the police, to seek help or to relocate to northern Nigeria, where the rate of FGM was significantly lower or rare. The Court therefore considered that she and her husband could protect the daughters from FGM if returned to Nigeria. The case was declared inadmissible.

**Omeredo v. Austria (no. 8969/10)**

Decision 20.9.2011

The applicant, born in 1973, fled Nigeria in 2003 to avoid FGM. Her sister had already died of the consequences and she alleged there was a risk villagers would kill her if she refused and that her mother had told her she must co-operate. Her request for asylum was unsuccessful. The Court found that, given her education and working experience as a seamstress, there was reason to believe that she would be able to build up her life in Nigeria without having to rely on her family's support. The case was declared inadmissible.

## Rape

### **X and Y v. the Netherlands (no. 8978/80)**

26.3.1985

A girl with a mental handicap was raped, in the home for children with mental disabilities where she lived, the day after her sixteenth birthday (which was the age of consent for sexual intercourse in the Netherlands) by a relative of the person in charge. She was traumatised by the experience but deemed unfit to sign an official complaint given her low mental age. Her father signed in her place, but proceedings were not brought against the perpetrator because the girl had to make the complaint herself. The courts recognised that there was a gap in the law.

The Court found a violation of Article 8 (right to respect for private life), emphasizing that it was "indispensable" for the Netherlands criminal legal system to provide an effective deterrent in such cases. Measures taken.

### **Aydın v. Turkey (no. 23178/94)**

25.9.1997

The applicant, a young Turkish woman of Kurdish origin (aged 17 at the relevant time) was arrested without explanation and taken, along with two other members of her family, into detention. She was blindfolded, beaten, stripped naked, placed in a tyre and hosed with pressurised water before being raped by a member of the security forces and then again beaten for about an hour by several people. A subsequent medical examination by a doctor, who had never before dealt with a rape case, found her hymen torn and widespread bruising on her thighs. She further claimed that the family was intimidated and harassed by the authorities to coerce them into withdrawing their complaint before the European Court of Human Rights.

The Court stressed that the rape of a detainee by a State official had to be considered an especially grave and abhorrent form of ill-treatment which left deep psychological scars on the victim. The applicant must have felt debased and violated both physically and emotionally as a result of the sexual assault. The Court found that both the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture, in violation of Article 3 (prohibition of torture). In addition, an allegation of rape by an official in custody required that the victim be examined with all appropriate sensitivity by independent doctors with the relevant expertise. That did not occur, rendering the investigation deficient and denying the applicant access to compensation, in violation of Article 13 (right to an effective remedy). Execution is ongoing (last Interim Resolution).

### **M.C. v. Bulgaria (no. 39272/98)**

4.12.2003

The applicant, aged 14 (which was the age of consent for sexual intercourse in Bulgaria), was raped by two men; she cried during and after being raped and was later taken to hospital by her mother, where it was found that her hymen had been torn. Because it could not be established that she had resisted or called for help, the perpetrators were not prosecuted.

The Court found violations of Articles 3 (prohibition of degrading treatment) and 8 (right to respect for private life), noting the universal trend towards recognising lack of consent as the essential element in determining rape and sexual abuse. Victims of sexual abuse, especially young girls, often failed to resist for psychological reasons (either submitting passively or dissociating themselves from the rape) or for fear of further violence. Stressing that States had an obligation to prosecute any non-consensual sexual act, even where the victim had not resisted physically, the Court found both the investigation in the case and Bulgaria law to be defective. Execution of this judgment is ongoing.

### **Maslova and Nalbandov v. Russia (no. 839/02)**

24.1.2008

The applicant, who had been called in for questioning at her local police station, was coerced by police officers into confessing to involvement in a murder. One police officer put thumb cuffs on her, beat her, raped her and then forced her to perform oral sex. Subsequently he and another officer repeatedly hit her in the stomach, put a gas mask over her face, blocking the air to suffocate her, and ran electricity through wires attached to her earrings. When allowed to go to the lavatory, she tried to cut the veins of her wrists. Three prosecution officers, after interrogating her at the police station, drank alcohol and continued to rape her using condoms and disposal wipes. The applicant filed a complaint alleging that she had been raped and tortured. A used condom found in the station was proven to have a 99.99% probability of having traces of her vaginal cells. Disposable wipes were found with traces of sperm and various items of clothing with traces of sperm and vaginal tissue of the same antigen group as the applicant. However, a court ruled that the evidence collected was inadmissible, as a special procedure for bringing proceedings against prosecution officers had not been followed. The case was finally discontinued for lack of evidence of a crime.

The Court noted that there had been an impressive and unambiguous body of evidence in support of the applicant's version of events. It further reiterated that the rape of a detainee by an official of the State had to be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender could exploit the vulnerability and weakened resistance of his victim. The physical violence, especially the cruel acts of repeated rape, to which the applicant had been subjected, were in violation of Article 3 (prohibition of torture). There was a further violation of Article 3 concerning the ineffective investigation. Execution of this judgment is [ongoing](#).

## Violence and social exclusion

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### **N. v. Sweden (no. 23505/09)**

20.07.2010

The applicant, an Afghan national having an extra-marital affair with a man in Sweden, maintained that she risked social exclusion, long imprisonment or even death if returned to Afghanistan. Her applications for asylum were unsuccessful.

The Court noted that women were at a particularly heightened risk of ill-treatment in Afghanistan if they were perceived as not conforming to the gender roles ascribed to them by society, tradition or the legal system. The mere fact that N. had lived in Sweden might well be perceived as her having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband, and did not want to live with him any longer, might result in serious life-threatening repercussions. The Shiite Personal Status Act of April 2009 required women to obey their husbands' sexual demands and not to leave home without permission. Reports had further shown that around 80 % of Afghani women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male "tutor", faced continuous severe limitations on having a personal or professional life, and were doomed to social exclusion. It was clear that they also often lacked the means for survival if not protected by a male relative. The Court therefore found that, if N. were deported to Afghanistan, Sweden would be in violation of Article 3 (prohibition of inhuman or degrading treatment or punishment). Execution of this judgment is [ongoing](#).

## Inhuman treatment in detention

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### **Yazgüil Yılmaz v. Turkey (36369/06)**

01.02.2011

The applicant, aged 16, complained that she was sexually harassed while in police detention. She was given a gynaecological examination - unaccompanied and without

her or her guardian's consent - to verify whether her hymen had been broken. After being acquitted and released, she suffered from post-traumatic stress and depression. Her allegations of assault in custody were largely corroborated by subsequent medical examinations. No disciplinary proceedings were brought against the prison doctors concerned.

The Court noted that the law at that time did not provide the necessary safeguards concerning examinations of female detainees and that additional guarantees were required for gynaecological examinations, particularly for minors. The general practice of automatic gynaecological examinations for female detainees – supposed to prevent false sexual assault accusations against police officers – was not in the interests of detained women and had no medical justification. The applicant had complained of sexual harassment, not rape, which could not be disproved by an examination of her hymen. The Court noted that the new Code of Criminal Procedure regulated gynaecological examinations, but made no specific provision for minors. The Court found two violations of Article 3 (prohibition of inhuman treatment) concerning the gynaecological examinations of the applicant while in police custody and the inadequate investigation concerning those responsible.

## Violence in public places

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### **Ebcin v. Turkey (19506/05)**

01.02.2011

The applicant, a teacher, had acid thrown in her face while walking to work, leaving her with a tumour and restricted use of her eye, ear and mouth.

The Court noted that there had been lengthy delays in the ensuing criminal proceedings and that 13 years later the case was still pending before the administrative court without the applicant having received compensation. The proceedings had therefore failed to provide adequate protection against a serious act of violence, in violation of Article 3 (prohibition of inhuman treatment) and Article 8 (right to respect for private and family life).

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