



***Protecting victims of harmful traditional
practices:
Jurisprudence of the European Court of
Human Rights***

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Overview

- 1. Violence against women
- 2. Five different forms of ill-treatment/persecution addressed by ECtHR
- 3. When exhaustion of local remedies not required
- 4. States' positive obligations



1. Violence against women (VaW)

- VaW including domestic violence is a form of discrimination against women *Opuz v. Turkey*, No. 33401/02, (June 2009)
- VaW is not a private matter but part of the State's obligation to protect private/family life



2. Forms of inhuman treatment/ persecution

- Female genital mutilation
- Domestic violence
- Refusal to conform to gender roles
- Honour crimes
- Sterilization without informed consent



2.1 Female genital mutilation

- Two (in)admissibility decisions in 2011 concern women from Nigeria
- *Izevbekhai v. Ireland* (no. 43408/08)
- *Omeredo v. Austria* (no. 8969/10)
- FGM constitutes ill-treatment & violates ECHR Article 3, but ...



2.1 Female genital mutilation

- Both applications were found inadmissible
- Applicants had an internal flight/protection alternative in N. Nigeria, so no violation of ECHR Article 3 if returned there



2.2 Domestic violence

- *Opuz v. Turkey*, No. 33401/02, (June 2009)
- “The State’s failure to protect women against domestic violence breaches their right to equal protection of the law. This failure does not need to be intentional.”
- Domestic violence affects mainly women & general & discriminatory judicial passivity in Turkey created a climate conducive to domestic violence
- *Ahmadpour v. Turkey*, No. 12717/08 (June 2010)



2.3.1 Refusal to conform to gender roles: Afghanistan

- *N. v. Sweden* (no. 23505/09) July 2010, Afghan woman having extra-marital affair with Swede, rejected as asylum-seeker
- 80% Afghan women affected by domestic violence, authorities see such acts as legitimate & do not prosecute
- “Women are at particular risk of ill-treatment if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system.”



2.3.2 Refusal to conform to gender roles: career women

- *Ebcin v. Turkey*, No. 19506/05, (Feb. 2011), acid attack on female teacher in 1994
- Assailants only arrested in 2000; one convicted in 2007; the other case still ongoing
- Proceedings failed to provide adequate protection against serious attack violating ECHR 3 & 8



2.3.2 Refusal to conform to gender roles: LGBTIs

- LGBTI cases involving asylum-seekers often declared inadmissible
- *K.N. v. France*, No. 47129/09, gay Iranian man, pending
- *D.B.N. v. UK*, No. 265560/10, lesbian from Zimbabwe, struck off because applicant left UK voluntarily



2.4 Honour crimes

- *Opuz v. Turkey*, the husband shot his mother in law when she and her daughter sought to move away arguing that his honour was at stake.
- Three pending cases of Iraqi Kurd fleeing honour crimes and threatened death for illicit relationship with women: *S.A.S. v. Sweden*, No. 3503/11, Dec. 2010; *A.H.H. v. Sweden*, No. 4401/11, Jan. 2011; *D.N.M. v. Sweden*, No. 28379/11, May 2011



2.5 Sterilization

- *V.C. v. Slovakia*, 18968/07, (Nov. 2011) sterilization without informed consent violates Article 3 & 8 ECHR
- The sterilisation procedure & the manner in which she was asked to agree to it, was liable to arouse in her feelings of fear, anguish and inferiority & to entail lasting suffering. Owing to her infertility, she experienced difficulties in her relationship & indicated her infertility as a reason for her divorce. She suffered serious medical & psychological after-effects from the sterilisation, which included the symptoms of a false pregnancy & required psychiatric treatment. Owing to her inability to have more children she has been ostracised by the Roma community.



3. Exhaustion of local remedies

- “The overall unresponsiveness of the judicial system & impunity enjoyed by the aggressors ... indicated there was insufficient commitment to take appropriate action to address domestic violence... The Court [thus] holds that there existed special circumstances which absolved the applicant from her obligation to exhaust domestic remedies.” (*Opuz v. Turkey*, paras. 200-1)



4. States' positive obligations

- “The authorities’ view that no assistance was required as the dispute concerned a ‘private matter’ was incompatible with their positive obligations to secure the enjoyment of the applicants’ rights” *Bevacqua and S. v. Bulgaria*, no. 71127/01, (June 2008)
- “[T]he State’s failure to protect women against domestic violence breaches their right to equal protection of the law and ... this failure does not need to be intentional.” *Opuz v. Turkey*, No. 33401/02, (June 2009)
- *Rantsev v. Cyprus & Russia*, No. 25965/04 (Jan. 2010)



Thank you!

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