

Europe's Groundbreaking Decision regarding
Violence against Women:
Opuz vs. Turkey

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On June 9, 2009, the European Court of Human Rights issued a groundbreaking decision concerning violence against women. In *Opuz vs. Turkey*, the court held that the Turkish government violated three articles of the European Convention on Human Rights and failed to take steps to protect victims/survivors of repeated instances of domestic violence. It also noted that the failure of a government to address gender-based domestic violence is a form of discrimination under the Convention, affirming and strengthening CEDAW.

The facts of the case demonstrate a pattern by the Turkish local authorities (in South East Turkey) of not taking action in violence committed in the marital relationship. In 1995 the Opuz' married beginning the regular and intensified abuse of Mrs. Opuz and her mother by the husband. The abuse included physical attacks of stabbing with the use of a knife, hitting them with a car by driving into them, and continued death threats.

Both mother and daughter filed complaints with the local prosecutor's office who initially initiated criminal charges. When the women withdrew their complaints in fear of Mr. Opuz' retaliation, the local court dismissed the charges. Subsequently, the local prosecutor's office charged Mr. Opuz and he was issued a monetary fine for knife assault.

Finally in 2002, Mr. Opuz succeeded in killing his mother-in-law by shooting her with a gun in plain view of a passer-by. Although Mr. Opuz was convicted and sentenced to life in prison, the local court shortened the sentence to 15 years on the grounds of 'good behavior' during trial. In light of his appeal, the lower court released him rather than keeping him in custody.

After her mother was killed, Mrs. Opuz sought relief before the European Court of Human Rights. She argued that the Turkish government violated various articles of the European Convention on Human Rights such as: Article 2—the right to life; Article 3—the prohibition of torture and inhumane treatment, for the murder of her mother and her own anguish and suffering; and, the violations of Articles 2 & 3 prompted a violation of Article 14—the prohibition of discrimination. Other significant arguments included that there was a failure to protect her and her mother in spite of a clear and known pattern of violent abuse and death threats. The local authorities' attempts to safeguard her and her mother demonstrated a widespread practice of gender-based discrimination in Turkey in legal institutions and society at large.

The court rejected the Turkish government's arguments that Mrs. Opuz failed to exhaust domestic remedies and proceeded to review the legal and factual context of the case, thus deciding it on its merits. The court found Turkey's applicable domestic criminal code unrealistic, the Turkish government violated Article 2 for the death of Mrs. Opuz' mother, the Turkish government violated Article 3 in failing to adequately protect Mrs. Opuz, and the Turkish government violated Article 14 for not properly protecting Mrs. Opuz' other Convention rights. The court cited to CEDAW and other regional statements relating to gender-based violence.

Significantly, the court allowed the submission of evidence from the Diyarbakir Bar Association, a local NGO, and Amnesty International. Statistics and accounts of domestic violence in South East Turkey together with the failure of police to properly investigate claims and unreasonable delays in judicial proceedings in domestic violence matters were provided. This critical information clearly demonstrated women's reality in Turkey which the court found intolerable.

The Opuz decision acknowledges that domestic violence is a serious societal problem and requires European governments to protect women from it. Otherwise, legal recourse through the Convention for failure to protect will hold governments accountable. With this judgment, governments are now put on notice that they should review their laws, reform law enforcement policies, pursue criminal proceedings, conduct effective criminal proceedings, and develop human rights education/training in the area of domestic violence and gender-based violence.

The Opuz case is another key tool for women's rights defenders as well as for members of the CEDAW Committee of experts.