

DOMESTIC VIOLENCE- A MATTER OF GENDER?

Few would argue that domestic violence or 'intimate partner violence' is a virulent cancer in our society which is very difficult to eradicate. The Parliamentary Assembly of the Council of Europe recognises that domestic violence is the major cause of death and disability of women between the ages of 16 and 44 years of age. However domestic violence is not purely a gender issue, and men may also be victims of domestic violence. The physical abuse of men within marriage or close relationships is increasingly recognised a hidden phenomenon.

Domestic violence has in the past been seen as a private or family matter beyond the control of the State. State intervention at policy or 'macro' level in Ireland however resulted in the creation of the National Office for the Prevention of Domestic, Sexual and Gender-Based Violence. The agency is called 'Cosc' and it was established in June 2007. "Cosc" is an Irish word meaning to Stop or Prevent. The primary aim of the Office is to ensure the delivery of a well co-ordinated "whole of Government" response to domestic, sexual and gender-based violence in Ireland. Cosc is in the process of mapping the current services for victims of domestic violence and abuse with a view to identifying gaps and roadblocks in their way out of the abusive cycle. They are also endeavouring to encourage policy and service development. At micro level the powers to enforce protective orders secured under Domestic Violence Act, 1996-2002 are robust and An Garda Siochana are now trained to be far more sensitive to issues of domestic violence and protection.

However, this position does not necessarily pertain globally or even within the Council of Europe Member States. On October 07 2008 the

Grand Chamber of the ECtHR held a public hearing in a landmark case concerning domestic violence. The facts of *Opuz v Turkey* Application No. 33401/02 relate to the aftermath suffered by a Turkish woman whose extremely violent husband ill-treated both her and her mother. She was subjected to physical assault and her husband eventually killed her mother.

The Turkish authorities were made aware of the situation. It is alleged that they failed to take any adequate action to end the violence. The woman now complains to the European Court that her human rights have been affected by the inaction of the Turkish government whom she alleges failed to protect her right to life (Article 2 ECHR) and her right not to be subjected to torture and inhuman and degrading treatment (Article 3 ECHR). She also complains however that she has been discriminated against in the sense of lack of adequate protection under Turkish law for women who are victims of domestic violence (Article 14 ECHR). She has defined Domestic Violence as a human rights violation.

The Non Governmental Organisation "INTERIGHTS" (the International Centre for the Legal Protection of Human Rights) was given leave to intervene as a third party in the case. INTERIGHTS is an international human rights law centre with extensive experience of human rights litigation, including in the fields of equality and non-discrimination.

Their intervention coupled with the public nature of the hearing which is posted as a web cast on the HUDOC website highlight that the case has and will continue to generate huge interest. It is also an acknowledgement of an increased awareness that domestic violence is not purely a private family law matter, but is a

wider issue of serious concern for society in general. If the Court holds that States have enforceable and justiciable positive obligations to protect individuals from domestic violence this could change the landscape of domestic violence prevention and protection. It could firmly catapult issues of domestic violence from a purely 'private family law' issue to a public issue. States could be held liable for harm suffered by individual citizen by the actions of another citizen.

[Z v United Kingdom](#) (2002) and [A v United Kingdom](#) (1998) have already established that States have a positive obligation to protect children from sexual abuse and corporal punishment inflicted by their parents. These matters are not just individual concerns but public law issues. The *Opuz v Turkey* case however goes one step further and raises the question of whether this woman was discriminated against by the State because of her gender? Issues of discrimination are generally viewed at through the 'comparison' lens by the ECtHR so the Applicant would have to show that a male victim of domestic violence is not subjected to the same detrimental treatment. 'INTERIGHTS' have made an interesting and novel argument to surmount this hurdle. They argue for a robust 'due diligence' assessment as to whether States have adhered to and incorporated international instruments aimed at preventing gender based violence into national law and policy. If they have not done so then they this should 'trigger' a presumption that they 'knew or ought to have known' that discrimination would follow from their lack of action. Where the State fails to protect against domestic violence, it fails in its obligation to provide equal protection of the law based on sex. The arguments in the case have been heard, and submissions made and the Judgment is awaited with interest.

This is the [link](#) to the hearing. A link to the internet page of INTERIGHTS on the case, including their legal brief, can be found [here](#). Finally, this is the [link](#) to the Court's press release.

**For Advice on any Family Law matters
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