

DOMESTIC VIOLENCE AND RIGHT TO BE FREE FROM TORTURE

Abstract

This article examines the development of the international human rights law, and its application by the international monitoring bodies as well as courts, with respect to violations of the right to be free from torture and inhuman and degrading treatment by victims of domestic violence.

Domestic violence is one of the most spread forms violence against women that feeds on inequalities in society such as discrimination against women. As a global average, at least one in three women is beaten, coerced into sex, or otherwise abused by an intimate partner in the course of her lifetime. Once domestic violence was viewed as belonging to the realm of the private sphere, and thus exempt from the state responsibility under the accepted obligations through being a party of certain international human rights instruments

However, over the past two decades, international human rights documents, decisions, work of dedicated advocates for women's rights have popularized the issue of domestic violence moving it on the international agenda and out of the gray area of regulation, *i.e.* the private sphere. It has become clearer that the main threat to human rights did not always come directly from the state. Therefore, the need to use the human rights law in intervening in the private sphere has increased. Thus a number of regulations, interpretation, monitoring and elaborations of state responsibility for acts in the private sphere has started to emerge.

Finally, the rights of women victims of domestic violence have found it self on high on the international agenda's, being confirmed by the jurisprudence of the ECtHR in the latest cases. Moreover, the Court confirmed that the acts of domestic violence against women constitute a violation of the right to be free form torture and inhuman and

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degrading treatment as well recognized the positive obligations that states have to prevent such occurrences and to protect victims.

1. Introduction

This article examines the development of the international human rights law, and its application by the international monitoring bodies as well as courts, with respect to violations of the right to be free from torture and inhuman and degrading treatment by victims of domestic violence.

The right to be free from torture and inhuman and degrading treatment or punishment has been worded differently by different international instruments; however, all interpretations done by the monitoring bodies to those international human rights instrument go in the direction of recognition that domestic violence constitute torture and inhuman and degrading treatment or punishment. Therefore the practice of domestic violence falls within the scope of this right.

Consequently, given the recent developments in the international legal arena through the work of the international human rights courts especially ECtHR, it was established that states have positive obligations with respect to domestic violence, to prevent, punish, investigate and to protect victims. Consequently, extracting domestic violence from the realm of the private into the public.

The article concludes that the decisions by the ECtHR are paving the way of better state regulation of domestic violence.

2. Development of the notion that Domestic Violence is a violation of women's human rights

Domestic violence is one of the most spread forms violence against women that feeds on inequalities in society such as discrimination against women.² As a global average, at least one in three women is beaten, coerced into sex, or otherwise abused by an

² Nikolic-Ristanovic V., Dokmanovic M. International Standards on Domestic Violence and their implementation in the Western Balkans, Prometej publishing, 2006, at 39. Catharine A. Mackinnon, in Sex Equality: Family Law, stresses that male violence against women, called in the old days an 'illusage' represents relation of power between men and women in the family, and thus mirrors the inequalities of sexes in society as a whole. Catharine A. Mackinnon, in Sex Equality: Family Law University Casebook Series, Foundation Press 2001 at pg. 715.

intimate partner in the course of her lifetime.³ Once domestic violence was viewed as belonging to the realm of the private sphere, and thus exempt from the state responsibility under the accepted obligations through being a party of certain international human rights instruments.⁴ This distinction between public and private has been persistent in human rights law in the past. This distinction had its base in gender inequalities and discrimination especially in societies where the public sphere traditionally has been dominated by men and the private by women. In those societies the public and the private sphere has not been seen as of equal value. This serves as one of the arguments to justify men's domination of women and reinforces women's disadvantaged position. Traditionally, it was perceived that legislative intervention in the private sphere was inappropriate, and that any such interference would disrupt the privacy of life of the individuals.

However, over the past two decades, international human rights documents, decisions, work of dedicated advocates for women's rights have popularized the issue of domestic violence moving it on the international agenda and out of the gray area of regulation, *i.e.* the private sphere.⁵ It has become clearer that the main threat to human rights did not always come directly from the state. Therefore, the need to use the human rights law in intervening in the private sphere has increased. Thus a number of regulations, interpretation, monitoring and elaborations of state responsibility for acts in the private sphere has started to emerge.⁶

Now, domestic violence is considered as a human rights violation, and the states have responsibility to address it.⁷ This was confirmed in a recent decision by the CEDAW Committee in *AT vs. Hungary*, stating that States Parties are accountable for the conduct of private actors 'if they fail to act with due diligence to prevent violations of rights or to investigate and punish...violations by such actors, including domestic

³ UNITED NATIONS DEPT PUBLIC INFORMATION , U.N. SECRETARY -GENERAL 'S CAMPAIGN, UNITE TO END VIOLENCE AGAINST WOMEN , FACTSHEET , DPI/2498 (Feb. 2008), available at <http://www.un.org/en/women/endviolence/pdf/VAW.pdf>.

⁴ Hasselbacher, Lee Nw. U. J. Int'l Hum. Rts. 190, Vol.2 Issue 8, (2009) State Obligations regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International Legal Minimums of Protection, pg. 3.

⁵ Netkova B. Human Rights and Domestic Violence, Arberia Design 2007, at 25.

⁶ See Inter American Court of Human Rights in *Velásquez Rodríguez v. Honduras*; ECtHR: *X and Y v. The Netherlands*, app. no. 8978/80; Also see Sheila Dauer, 'Indivisible or Invisible, Women's Human Rights in Public and Private Sphere', in Marjorie Agosin (ed.), *Women, Gender, and Human Rights A Global Perspective* New Jersey: Rutgers University Press, (2001) pp. 65-82, at 67.

⁷ Vienna Declaration and Programme of Action, World Conference on Human Right, Vienna 14-15 June 1993, A/CONF.157/23, 12 July 1993; General Recommendation No. 19-eleventh session, U.N. Doc. A/47/38 (1992).

violence.’⁸ The Committee acknowledged that ‘[w]omen’s human rights to life and to physical and mental integrity⁹ cannot be superseded by other rights, including the right to property and the right to privacy.’¹⁰ In continuation to that it is paramount to acknowledge that the practice of domestic violence touches upon the women’s rights to life, the right to be free from torture and inhuman and degrading treatment, the right to freedom and security of person, as well as, the right to free movement. The recognition of the heinousness of this practice and the protection that should be guaranteed by the state unfortunately took a very long time. Thus, the materialization of the wide spread international recognition of as a violation of human rights of women comes as the last barrier between life and death to many affected women.

3. Domestic Violence and the Concept and Scope of application of the right to be free from torture

One of the rights affected by the practice of domestic violence is the right to be free from torture and inhuman and degrading treatment and punishment. As stated by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: ‘Women and children who are victims of domestic violence...have to deal with the same or similar grave effects to their physical and mental health as victims of torture and ill-treatment in detention.’¹¹ Catherine MacKinnon, a feminist human rights thinker, places domestic violence as a form of torture. She wonders why though torture with cases of disappearance and murder, is widely recognized as a core violation of human rights, hence, torture on basis of sex in the form of rape, domestic battering and pornography is not seen as a violation of human rights?¹² As Sheila Dauer, director of the Women's Human Rights Program at Amnesty International U.S.A. concludes: ‘*If you look at what happens in domestic violence and what happens in torture they are*

⁸ AT vs. Hungary, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003 (26 January 2005).

⁹ The Committee acknowledges that there is a hierarchy of rights in the cases of domestic violence, with the right to life and right to be free from torture and inhuman and degrading treatment and punishment being the leading rights that a state needs to protect.

¹⁰ AT vs. Hungary, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003 (26 January 2005).

¹¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Human Rights Council Thirteenth session, Feb. 05. 2010, A/HRC/13/39/Add.5, pg.53.

¹² DOMESTIC VIOLENCE AND THE POLITICS OF PRIVACY by Kristin A. Kelly. Ithaca: Cornell University Press, 2003. Vol. 13 No. 7 (July 2003)209 pp.

convergent;¹³ in that direction Amnesty International uses the idea of intentional harm when combined with discrimination, and with state acquiescence to draw the connection between torture and domestic violence.¹⁴

This right to be free from torture and inhuman and degrading treatment has been defined by the ICCPR,¹⁵ the CAT¹⁶ the ACHR¹⁷ and the ECHR¹⁸ and has wide scope of application in international human rights law. Over time a variety of forms of physical and mental maltreatment and harm have been brought within its scope-ranging from lesser seriousness to an inherent seriousness of treatment with torture as its peak as the gravest form of maltreatment. The right recognizes the torture that is aggravated inhuman treatment; the treatment that is inhuman; and the punishment.¹⁹

In the case of domestic violence victims, these gradations of the right have been often seen in practice, since partner based violence ranges from, severe beating, sexual violence such as rape, insults, undermining, threatening in a form of psychological violence, and all kinds of punishment, such as denial of food and necessity products, money denial, corporal punishment and similar.²⁰

The right to be free from torture and inhuman and degrading treatment and punishment, has been further defined by the monitoring bodies to the respective conventions. For example the monitoring by state compliance of CAT is conducted by the Committee Against Torture monitors State,²¹ the ICCPR Commission monitors and further the ICCPR, the European Court of Human Rights has the similar mandate in the case of ECHR, and the Inter-American commission on Human Rights monitors the application

¹³ Sheila Dauer, director of the Women's Human Rights Program at Amnesty International U.S.A., based in New York City, in Shauna Curphey's article: Amnesty Pushing Nations to end Gender Violence, 2004, found on: <http://www.womensenews.org/article.cfm/dyn/aid/1755>.

¹⁴ Shauna Curphey, Amnesty Pushing Nations to end Gender Violence, 2004, found on: <http://www.womensenews.org/article.cfm/dyn/aid/1755>.

¹⁵ International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR] (reaffirming in Article 7 that the prohibition against torture is a fundamental human right);

¹⁶ Convention Against Torture, *supra* note 16, arts. 17-24, 1465 U.N.T.S. at 116-21 (establishing a Committee Against Torture and defining its scope and power).

¹⁷ ACHR, Signed at the Inter-American Specialized Conference on Human Rights, San Josi, Costa Rica, 22 November 1969), found on: http://www.hrcr.org/docs/American_Convention/oashr.html.

¹⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 3, 213 U.N.T.S. 221, 224 (1953) [hereinafter European Convention on Human Rights].

¹⁹ Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 Colum. Hum. Rts. L. Rev. 291, 308 (1994).

²⁰ Hasselbacher, Lee Nw. U. J. Int'l Hum. Rts. 190, Vol.2 Issue 8, (2009) State Obligations regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International Legal Minimums of Protection, pg. 1.

²¹ *See* Convention Against Torture, *supra* note 16, arts. 17-24, 1465 U.N.T.S. at 116-21 (establishing a Committee Against Torture and defining its scope and power).

of the ACHR.²² These bodies also have set the boundaries of the scope of application of this right through its recommendations and /or quasi-jurisdiction.

The Article 7 of the ICCPR has the purpose to extend protection not only to physical wellbeing but also to mental wellbeing and sets to protect the individual's dignity,²³ whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.²⁴ The Article doesn't not contain a list of prohibited acts or distinctions between different kinds of punishment or treatment; the distinction depends on the nature purpose and severity of the treatment applied.²⁵ The Human Rights Committee has put domestic violence as falling under Article 7: '...domestic violence against women, and a lack of access to safe abortion for women who have become pregnant as a result of rape can be applicable under Article 7 of the ICCPR...' ²⁶ to repeat the same in 2000, that domestic violence (including marital rape) can give rise to violations of the right to be free from torture or ill-treatment under article 7 of the ICCPR. ²⁷

The CAT sets the scope of application of the right in its Article 3, which acts, on several levels: torture inflicted by private individuals and not sanctioned by the state; inhuman and degrading treatment- conducted usually by state officials; and in prohibition of expulsion, refoulement, or extradition of any 'person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.'²⁸ In 2008, both the CAT Committee, as well as the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, recognized that domestic violence could constitute torture under CAT. Therefore the scope of

²² . See American Convention on Human Rights, Nov. 22, 1969, art. 5(2), 9 I.L.M. 673, 676 (1970) (looking to the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, and the UDHR); European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 3, 213 U.N.T.S. 221, 224 (1953) [hereinafter European Convention on Human Rights] (incorporating the UDHR's prohibition against torture).

²³ ²³ International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR] (reaffirming in Article 7 that the prohibition against torture is a fundamental human right);

²⁴ Human Rights Committee, General Comment 20, Article 4 (fourth-fourth session, 1992), UN Doc. HRI/GEN/1/RevV.1 ar 30 (1994), para. 2.

²⁵ Human Rights Committee, General Comment 20, Article 4 (fourth-fourth session, 1992), UN Doc. HRI/GEN/1/RevV.1 ar 30 (1994), para. 4.

²⁶ *Id.*

²⁷ Report of the UN Special Rapporteur on violence against women, its causes and consequences E/CN.4/1996/53 dated 6 February 1996 <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/c41d8f479a2e9757802566d6004c72ab?OpenDocument> accessed on Feb. 10, 2010.

²⁸ Convention Against Torture, art. 3, 1465 U.N.T.S. at 114.

application of this right is clearly extended to domestic violence, whether it is torture itself, or other degrading or inhuman acts. Especially, in recent times the CAT has proved very useful in protection of refugee women who has been exposed to gross violations of their rights through domestic violence in the countries of origin in order to be granted asylum.²⁹ CAT relief is significant because it prevents States from returning women, to husbands who will continue to torture them. Accordingly, CAT is an important and viable alternative legal remedy for domestic violence victims.

The ACHR in its Article 5 the right to humane treatment encompasses torture and inhuman and degrading treatment. The IACHR in *Jessica Gonzales v the United States*, (2011) has clearly stated that domestic violence fall within the scope of the right to humane treatment and it constitutes torture.³⁰

The prohibition under ECHR Article 3, also contains the same three categories as the ICCPR's Article 7, The prohibition under Article 3 of the ECHR also contains the same three categories of 'conduct,' the torture as first, the inhuman or degrading treatment second, and the third is the punishment.³¹ The Commission of Human Rights, further, perceived torture as: 'The word 'torture' is often used to describe inhuman treatment which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience.'³²

In the cases of domestic violence, this right will mainly apply to situations in connection to ill treatment, degrading treatment, and punishments endured by women victims inflicted deliberately,³³ also we can include acts such as deprivation of food and medicine, in *Williams v Jamaica*³⁴ the Human Rights Committee under the ICCPR, and the European Court of Human Rights in *Hurtado v Switzerland*³⁵ confirm that those act constitute torture.

²⁹ See case *Jessica Gonzales v the United States*, (2011) ICAHR.

³⁰ *Jessica Gonzales v the United States*, (2011) ICAHR.

³¹ Michael K. Addo and Nicholas Grief, *Does Article 3 of the European Convention on Human Rights Enshrine Absolute Rights?* *European Journal of International Law* 9 (1998), 510-524, at 511.

³² Greek Case 12 (1969), at 186.

³³ Jane Connors, *General Human Rights Instruments and their relevance to women*, *Advancing the Human Rights of Women: Using International Human Rights in domestic litigation*, By Andrew Byrnes, Lum Bik, Jane Frances, 1996, pg 28.

³⁴ *Nathaniel Williams v. Jamaica*, Communication No. 609/1995, U.N. Doc. CCPR/C/61/D/609/1995 (4 November 1997).

³⁵ *Hurtado v. Switzerland*, [1994] IIHRL 3 (28 January 1994).

4. State Obligations and violations of the right to be free from torture and inhuman and degrading treatment

Domestic Violence once thought belonging to the realm of the private, has finally become an international human rights concern, instigating state responsibility on all levels. The First UN Special Rapporteur on Violence against Women its causes and consequences in 1996 noted that intimate partner violence is deeply ingrained in culture and linked to male supremacy and ideology and because of this, domestic violence is a human rights concern rather than as a mere domestic criminal justice concern and therefore it is the duty of States to ensure that there exists no impunity for the perpetrators of such violence.³⁶ She pointed out that the State that does not act against crimes of violence against women is as guilty as the perpetrators.³⁷

States have positive obligations in relation to domestic violence against women. These positive obligations include the obligation to respect, protect, fulfill and promote human rights with regard to violence against women.³⁸ They also encompass the responsibility to prevent, investigate and prosecute all forms of violence against women, and protect women from, such violence and to hold perpetrators accountable.³⁹

States are responsible under international law for human rights violations and acts of violence against women not only from actions perpetrated by the State or any of its agents –negative state obligations, but also from omissions and failure to take positive measures to protect and promote rights. This means that States must refrain from committing human rights violations through their own agents and prevent human rights violations by non-State actors. They must investigate allegations of violations, punish wrongdoers and provide effective remedies to victims. In this regard, States are obligated for the actions of non-State actors if they fail to act with due diligence prevent,

³⁶ Report of the UN Special Rapporteur on Violence against Women, its causes and consequences, Ms. Radhika Coomaraswamy, E/CN.4/1996/53 dated 6 February 1996.

³⁷ *Id.*

³⁸ Lee Hasselbacher, State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection, 8 Nw. U. J. Int'l Hum. Rts. 190.

<http://www.law.northwestern.edu/journals/jjhr/v8/n2/3>

³⁹ In-depth study on all forms of violence against women Report of the Secretary-General A/61/122/Add.1 6th July 2006.

investigate or punish such acts and provide an effective remedy.⁴⁰ This was confirmed by the IACHR noting that international instruments more generally, which are an important part of the context for interpreting the *American Declaration*, recognize that ‘the continuum of human rights obligations is not only negative in nature; it also requires positive action from States.’⁴¹ Further, it indicated that under Article II of the *Declaration*, States may be found responsible for acts and omissions related to the conduct of non-state actors, as well as, state actors. This may include responsibility for the failure “to prevent, prosecute and sanction acts of domestic violence perpetrated by private individuals” as part of the State’s obligations to combat discrimination, both direct and indirect.⁴²

The right to be free from torture and inhuman treatment or punishment as an absolute right that does not entail any legitimate limitations nor proportionality issues, has been in the center of the recent developments made through growing body of jurisprudence from the ECtHR.

The Article 3 from the ECHR imposes three different types of obligations on the state:

- **a negative obligation** which means that the state must itself refrain from subjecting anyone within its jurisdiction to treatment or punishment that meets the ‘threshold’ of being torture, inhumane or degrading treatment.⁴³
- **a positive obligation** to require public authorities to take steps to prevent torture and ill-treatment. This requires the state to have laws in place to adequately protect vulnerable groups from ill-treatment and for public officials to act to protect vulnerable people from harm inflicted on them by others.
- **a procedural obligation** to carry out an effective investigation where there are credible allegations of serious ill-treatment. For an investigation to be considered effective, there need to be procedural safeguards in place and the investigation should

⁴⁰ *Opuz v Turkey*, (Application no. 33401/02), European Court of Human Rights, Judgment 9th June 2009, *Maria Da Penha v Brazil* (Case 12.051) (Report o 54/01) Inter-American Commission of Human Rights, Judgment dated 16th April 2001

⁴¹ At at paras 117, 118 citing Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001, paras 3, 37-44).

⁴² At paras 119, 120, citing Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001, paras 3, 37-44).

⁴³ *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, ECHR 1998-II. 11 *Tyrev v. the United Kingdom* (5856/72) ECHR 1978

be prompt and independent and it should be capable of leading to the identification and punishment of those responsible of any violation of Article 3 ECHR.

In that direction is the work of the ECtHR that in its two recent judgments have found domestic authorities liable for failing to exercise due diligence to adequately protect victims of domestic violence. In the first case, decided in 2008, the ECtHR held that the positive obligations of domestic authorities ‘may include, in certain circumstances, a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.’⁴⁴ The ECtHR noted ‘the particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection.’⁴⁵

It could be said that one of those recent cases is a ground breaking case regarding Article 3, and state obligations in cases of domestic violence is *Opuz v Turkey*.⁴⁶ In the case the European Court of Human Rights heard arguments in the case of *Opuz v Turkey*.⁴⁷ The case is particularly important as it opens the vista for recognition at ECtHR level that states have enforceable and justiciable positive obligations to take reasonable steps to protect individuals from domestic violence. Of course, states’ positive obligations in relation to the right to be free from torture, inhuman and degrading treatment or punishment have been long established under the ECHR, but a finding that domestic violence engages those obligations is enormously important from the perspective of effective protection.

Through this case the European Court has now clearly established that domestic violence can constitute a violation of the right to be free from torture or inhuman or degrading treatment (article 3). The applicant alleged that the authorities had failed to protect herself and her mother from domestic violence on the part of her husband, which had resulted in the death of her mother and her own ill treatment. The Court held that there had been a violation of article 3 of the Convention following the applicant’s argument that the injuries she had suffered amounted to torture within the meaning of article 3. The Court held that the violence suffered was sufficiently serious to amount to ill treatment within the meaning of article 3, although it did not specify whether it amounted to torture, as opposed to inhuman or degrading treatment. The Court

⁴⁴ *Bevacqua and S. v. Bulgaria* (2008).

⁴⁵ *Opuz v. Turkey*, ECtHR Judgment of 9 June 2009, para. 128

⁴⁶ *Id.*

⁴⁷ *Id.*

concluded that there had been a violation of article 3 ‘as a result of the State authorities’ failure to take protective measures in the form of effective deterrence against serious breaches of the applicant’s personal integrity by her husband.’⁴⁸

The Court then examined Opuz’s allegation that the husbands abusive treatment of her and the local authorities’ subsequent failure to act constituted a violation of Article 3 — the prohibition of torture and inhuman treatment. The Court reiterated the principle that states have a positive obligation in some situations to protect at risk individuals from Article 3 violations by private citizens. Noting the history of abuse and threats, as well as ‘the vulnerable situation of women in south-east Turkey,’ the Court held that Opuz’s abusive treatment rose to the level of torture or inhuman treatment, which Article 3 was meant to prohibit.⁴⁹

Given that local authorities had remained relatively passive in their treatment of H.O., the Court held that Turkey violated Article 3 by failing to adequately protect Opuz. The Court’s judgment places a strong burden on states to protect women from domestic violence. A number of holdings in the Opuz judgment support this obligation. First, Opuz clearly confirms that states have positive obligations to protect a person’s Article 3, rights when they are threatened by the actions of other private actors. Second, Opuz identifies when such positive obligations rise to the required levels of necessary action. Third, Opuz directly states that domestic violence can amount to a violation the Article 3 prohibition of torture and inhuman treatment.

The Court’s decision thus adequately equips victims of domestic violence with legal recourse through the Convention to successfully pursue cases against states for failing to protect them.

The Court’s judgment means that in order to fulfill Convention obligations, European governments must aggressively pursue criminal proceedings in cases of alleged domestic violence, and such proceedings must be effective. Known patterns of continuous and serious abuse, in particular, should not be tolerated. To this end, states should consider amending domestic violence and criminal assault and battery laws to give prosecutors greater discretion to pursue independent claims. These laws should also provide for more aggressive measures for repeat offenders. Even with new laws, prosecutors, judges, and police must redouble efforts to identify dangerous situations

⁴⁸ *Id* at 176.

⁴⁹ *Id*.

and make effective interventions. This might require particular vigilance in situations where victims are fearful of reporting abuse, a likely possibility in domestic violence scenarios.

5. Conclusion

Finally, the rights of women victims of domestic violence have found it self on high on the international agenda's, being confirmed by the jurisprudence of the ECtHR in the latest cases. Moreover, the Court confirmed that the acts of domestic violence against women constitute a violation of the right to be free from torture and inhuman and degrading treatment as well recognized the positive obligations that states have to prevent such occurrences and to protect victims.

The Opuz decision has clear social implications as well. Failure to adequately enforce Convention protections can arise from discrimination embedded in social institutions and practices. A showing of systemic discrimination can be supported by reports and statistics documenting a lack of sufficient law enforcement activity to protect women from domestic violence. Such indications of discrimination indicate a need for states to make wider reforms across law enforcement generally, including better human rights education and additional training of police and prosecutors.