## Fatma Yildirim (deceased) v Austria (Communication No. 6/2005)

# 1) Reference Details

Jurisdiction: United Nations Committee on the Elimination of Discrimination against

Women

Date of Decision: 6 August 2007

Link to full case:

http://daccessdds.un.org/doc/UNDOC/GEN/N07/495/37/PDF/N0749537.pdf?OpenEl

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## 2) Facts

The authors of the communication were the Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice, two organizations in Vienna, Austria, that protect and support women victims of gender-based violence. From July 2003 Fatma Yildirim was subject to repeated death threats from her husband Ifran Yildirim, who also threatened to kill her children. On 6 August 2003 the police issued an expulsion and prohibition to return order against Irfan Yildirim. The police also reported to the Vienna Public Prosecutor that Irfan Yildirim had made a dangerous criminal threat against Fatma Yildirim and requested that Irfan Yildirim be detained. The Public Prosecutor rejected the request. On 14 August 2003, Fatma Yildirim gave a formal statement about the threats made to her life to the police, who in turn reported to the Vienna Public Prosecutor, requesting that Irfan Yildirim be detained. Again, this request was refused. On 11 September 2003, Irfan Yildirim fatally stabbed Fatma Yildirim near the family's apartment.

Irfan Yildirim was arrested and convicted of killing Fatma Yildirim. At the time of the application he was serving a sentence of life imprisonment.

# 3) Law

• UN Convention on the Elimination of All Forms of Discrimination against Women, articles 1, 2, 3 and 5.

### 4) Legal Arguments

The Author

The authors submitted that Fatma Yildirim was a victim of a violation by the State party of articles 1, 2, 3 and 5 of the Convention because of the failure of the State party to take all appropriate positive measures to protect Fatma Yildirim's right to life and personal security. In particular, the authors alleged that communication between the police and Public Prosecutor did not adequately allow the Public Prosecutor to assess the danger posed by Irfan Yildirim and that on two occasions the Public Prosecutor should have requested the investigating judge to order the detention of Irfan Yildirim under the Code of Criminal Procedure. The authors submitted that the State party also failed to fulfil its obligations stipulated in a number of international instruments and documents, including the general recommendations Nos. 12, 19 and 21 of the Committee on the Elimination of Discrimination against Women, as well as those found in the Austrian Constitution.

With regard to article 1 of the Convention, the authors contended that women are disproportionately affected by the failure of public prosecutors to take domestic

violence seriously as a real threat to life, the practice of not prosecuting and punishing offenders in domestic violence cases appropriately, and the lack of coordination and education on domestic violence of law enforcement and judicial personnel. The authors submitted that the lack of detention of alleged offenders in domestic violence cases, inadequate prosecution and lack of coordination among law enforcement and judicial officials resulted in a violation of article 1 together with article 2(a), (c), (d) and (f) and article 3 of the Convention.

The authors further argued that the Austrian criminal justice personnel failed to act with due diligence to investigate and prosecute acts of violence and protect Fatma Yildirim's human rights, and that her murder exemplifies the lack of seriousness with which violence against women is taken by the public and by the Austrian authorities.

#### State

The State party argued that the Federal Act for the Protection against Violence within the Family constitutes a highly effective system to combat domestic violence and establishes a framework for effective co-operation among various institutions. It submitted that as Irfan Yildirim had no criminal record, did not use a weapon, appeared quiet and co-operative to the police officers who intervened, and as Fatma Yildirim had no apparent injuries, his detention would not have been proportionate. Further to this, the State party argued that the persons who are now intervening on behalf of the victim would have been free to address the Constitutional Court on grounds that no appeal was available to Fatma Yildirim against the Public Prosecutor's failure twice to comply with the request to issue an arrest warrant, thus domestic remedies had not been exhausted.

# 5) Decision

The Committee opined that there was no effective remedy provided in Hungarian law, and therefore deemed the complaint admissible. While noting that that Irfan Yildirim was prosecuted to the full extent of the law for killing Fatma Yildirim, the Committee still concluded that the State party violated its obligations under article 2(a) and (c) through (f), and article 3 of the Convention read in conjunction with article 1 of the Convention and general recommendation 19 of the Committee and the corresponding rights of the deceased, Fatma Yildirim, to life and to physical and mental integrity.

The Committee noted that the authors also made claims that articles 1 and 5 of the Convention were violated by the State party but viewed that these submissions did not warrant further findings. It made a number of recommendations to the State party including that it strengthen implementation and monitoring of the Federal Act for the Protection against Violence within the Family and related criminal law by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so. Also that the State vigilantly and swiftly prosecute perpetrators of domestic violence and ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity. Next the State should ensure enhanced coordination among law enforcement and judicial officers and also ensure that all levels of the criminal justice system routinely co-operate with non-governmental organisations that work to protect and support women victims of gender-based violence. And finally the State should strengthen training programmes and education on domestic violence for judges, lawyers and law enforcement officials.