Şahide Goekce (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 organisations in Vienna, Austria, that protect and support women victims of gender-based violence. They claimed that Şahide Goekce (deceased), an Austrian national of Turkish origin and former client of the Vienna Intervention Centre against Domestic Violence, was a victim of continued domestic violence, and was eventually shot by her husband, Mustafa Goekce, in front of her children. Prior to her death, it was know to the police that her husband owned a handgun and had threatened to kill her on several occasions. Two requests that he be detained were denied by the police. On 5 December 2002, the Vienna Public Prosecutor stopped the prosecution of Mustafa Goekce for causing bodily harm and making a criminal dangerous threat on grounds that there were insufficient reasons to prosecute him. Two-and-a-half hours after shooting his wife, Mustafa Goekce surrendered to the police. He is reportedly currently serving a sentence of life imprisonment in an institution for mentally disturbed offenders.

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 complained that Şahide Goekce was a victim of a violation by the State party because it did not take all appropriate measures to protect her right to personal security and life. The State party failed to treat Mustafa Goekce as an extremely violent and dangerous offender in accordance with criminal law. The authors claimed that the Federal Act for the Protection against Violence within the Family does not provide the means to protect women from highly violent persons, especially in cases of repeated, severe violence and death threats, and therefore detention is necessary. The authors also alleged that had the communication between the police and Public Prosecutor been better and faster, the Public Prosecutor would have known about the ongoing violence and death threats and may have found that he had sufficient reason to prosecute Mustafa Goekce. 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 Şahide Goekce'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 disputed that domestic remedies had been exhausted, citing Şahide Goekce's refusal to grant the competent authorities authorisation to prosecute Mustafa Goekce for making a criminal dangerous threat, and to testify against him, and asserted that she would have been free to address the Constitutional Court with a complaint in accordance with the Constitution. Concerning the allegations made, 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. The State party submitted that effective protection was doomed to fail without Şahide Goekce's cooperation, and that she never made a clear decision to free herself and the children from their relationship with her husband (for example, she gave him the keys to the apartment, despite there being a valid interim injunction). The State party argued that detention was not justified as Mustafa Goekce had no criminal record and the Public Prosecutor did not know at the time that Mustafa Goekce had a weapon. The State party also submitted that special training courses are held on a regular basis for judges and the police on domestic violence, and that co-operation between judges and the police is constantly reviewed in order to ensure more rapid intervention by organs of the State.

5) Decision

The Committee opined that there was no effective remedy provided in Austrian law, and therefore deemed the complaint admissible. It found a violation of the rights of the deceased Şahide Goekce to life and physical and mental integrity 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. It considered that given the combination of factors, the police knew or should have known that Şahide Goekce was in serious danger, in particular because Mustafa Goekce had shown that he had the potential to be a very dangerous and violent criminal, and therefore considered that the police were accountable for failing to exercise due diligence to protect Şahide Goekce. The Committee noted that the authors also made claims that articles 1 and 5 of the Convention were violated by the State party but was of the view that the submissions of the authors of the communication and the State party did not warrant further findings. It made a number of recommendations to the State party including:

• strengthening the 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;

- vigilantly and swiftly prosecuting perpetrators of domestic violence;
- 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;
- 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 organizations that work to protect and support women victims of gender-based violence;
- and strengthen training programmes and education on domestic violence for judges, lawyers and law enforcement officials.