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Gender violence and Human Rights

Abstract
Gender violence or domestic violence, understood as that which is exercised against women for the mere fact of being women, is the result of a social and political structure that puts them in unequal conditions as opposed to men, and is currently one of the main concerns of States and international organizations.
This article intends to analyze the jurisprudence of the different Courts and International Organizations specialized in Human Rights, when judging applications of individuals against Member States regarding acts of violence against women. The aim of the article is a mere approach to the case-law as a more comprehensive study would require longer extension. Specifically, case-law of the European Court of Human Rights and Inter-American Court of Human Rights will be studied. In addition, the article addresses the Views of the Committee of the United Nations on the Elimination of All Forms of Discrimination against Women.
Within the range of human rights that may be involved in issues of gender violence, this article will focus on the right to life, effective judicial protection and the prohibition of torture and inhuman and degrading treatment.

Keywords: human rights, gender violence, violence against women, domestic violence, effective judicial protection.

1. Introduction

The purpose of this article is to relate the crimes committed by men against women for the mere fact of being women, with some of the human rights that may be involved in such processes. Among the judgments that address

this type of crime, we will focus exclusively on international organizations on human rights as they unify doctrine for a group of Member States and have a broader and more global view of the problem. In particular, I will analyze certain relevant cases from the European Court of Human Rights, the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the Committee on the Elimination of Discrimination against Women of the United Nations.

The focus of the article is based on the analysis of specific cases to develop the content of each right in order to make reading more dynamic and pedagogical.

2. Right to life

A) EUROPEAN COURT OF HUMAN RIGHTS

The right to life is enshrined in Article 2 of the European Convention on Human Rights, hereinafter the CHR, in the following terms:

"1. The right of every person to life is protected by law. No one may be intentionally deprived of his or her life, except in execution of a sentence that imposes the capital punishment dictated by a court to the offender of a crime for which the law establishes that penalty.

2. Death will not be considered as inflicted in violation of this article when it occurs as a result of a recourse to force that is absolutely necessary:

a) in defense of a person against unlawful aggression;

b) to arrest a person according to law or to prevent the escape of a prisoner or legally detained person;

c) to repress, in accordance with the law, a revolt or insurrection".

The Court in charge of assessing the violations of the rights enshrined in said Convention, the European Court of Human Rights, hereinafter ECHR, has delivered different judgments analyzing whether the Member State in question has violated this right in relation to an act of violence of gender.

Regarding this right, the ECHR has declared that Article 2 obliges Member States to take appropriate initiatives to safeguard the life of those within their jurisdiction[1], and among their duties, their first is to include

[1] LCB v. Great Britain of June 9, 1998

sanctions in the penal laws that deter the commission of these crimes and which must be supported by the appropriate machinery for their prevention and punishment. It also implies that States must adopt preventive measures with respect to those at risk; however the Court recognizes the difficulties that modern societies entail, the unpredictable nature of the human being and the limited resources available. Thus, it can not be understood that Article 2 of the Convention imposes on States an impossible or disproportionate burden, nor can all alleged risk to the life entitle to preventive measures.

As more significant, we can mention:

a) The Branko Tomašić case and others v. Croatia, of January 15, 2009

What is really relevant in this case is the importance of curative measures or multidisciplinary treatments that are often associated with custodial sentences for gender-biased crimes, or imposed as a condition to suspend the custodial sentence. This type of measure is given a "minor" consideration in comparison with incarceration to which they are associated, however, their purpose is essential, both at the level of crime prevention and rehabilitation of the offender. Let's not forget that criminal law acts at the last stage of the cycle of violence[2], once the three phases of the same have occurred and that prevention has a fundamental role to avoid the repetition of these crimes. Well, these treatments, which are usually associated with the prison sentence, have a purpose of special prevention[3] and therefore they must be duly regulated and executed by the different States; something that occasionally does not happen as in the tragic case that we will analyze next.

The applicants before the ECHR are the parents and siblings of the deceased, MT. This young woman started a relationship with MM in 2004, they went to live together in the home of her family, and they had

[2] Cycle discovered by the psychologist LEONORE WALKER, in "The battered woman syndrome" of 1979. This cycle begins with a first phase of tension, accumulation with anger over anything and aggressive reactions to any discomfort, a second phase of burst of tension that accumulated in the previous phase and is discharged in an acute incident to punish the "inadequate" behaviour of the woman, and the third of "honeymoon" or repentance, in which the tension diminishes, he apologizes, threatens to self-harm, tells her that if she leaves him it will destroy his life, etc.

[3] Special crime prevention seeks to prevent those who have already committed it from doing so again.

a daughter in 2005. From then on, MM began to argue with family members, and often threatened his partner MT, until finally MM left the house in July 2005.

On January 4, 2006 the Social Services of the city issued a report addressed to the Police stating, among other things, that MM had gone to its headquarters on day 2nd and had affirmed in front of everyone that he had a bomb and that he would throw it at his ex-wife and daughter. MT filed a complaint to the Prosecutor's Office against MM on the 5th, alleging that on several occasions, starting in July 2005, (the date on which he left the family home, where she and her daughter were still living), he had threatened to kill her and her daughter with a bomb if she did not take him back. According to the complaint, MM repeated these threats over the phone and through SMS messages. On January 19, 2006, MT repeated the same threat to police officers.

MT was arrested on February 3, 2006 by order of the municipal court, and was examined by a psychiatrist who reported that MT suffered from a profound personality disorder, etiologically linked to a malfunction of the brain from birth, and to the highly unfavourable pedagogical circumstances of his childhood. Therefore, due to this disorder, his reactions to problematic situations were inadequate and had a pathological defence mechanism. He was not considered totally unaccountable at the time of the events but the psychiatrist considered it highly probable that he would repeat the same or similar crimes in the future, for which he recommended compulsory psychiatric treatment, with a predominantly psychotherapeutic approach in order to develop the ability to resolve difficult situations of daily life in a more constructive way.

He was finally sentenced on March 15, 2006 for continued threats, to five months in prison and a security measure for compulsory psychiatric treatment during incarceration, and subsequent, if necessary, in the terms recommended by the psychiatrist. However, the court of second instance reduced the security measure to the strict prison time.

MM served his sentence and was released on July 3, 2006. On August 15 he shot and killed MT, his daughter who was one year old, and then committed suicide.

In this case, the ECHR studies whether Croatia complied with its positive obligations to prevent the deaths of MT and her daughter, as well as other

issues that are not going to be analyzed in this article. After the investigation, it was ascertained that the psychiatric treatment that the court imposed, actually consisted in sessions of conversations between MM and the prison staff, the governor and the doctor of the same, and that instead of five months, it lasted at most two months and five days. It was also discovered that MM was a very introverted person who did not want to cooperate in the treatment.

This Court assessed that the State had acted proportionately with the facts because MM was sentenced to unconditional imprisonment and without prison benefits, however, despite the fact that he said repeatedly that he had a bomb, and therefore could well have other weapons, no order to register his home or vehicle was granted by the authorities. This, added to the negligent compliance with the security measure imposed by the court, (which was not provided by any psychiatrist, nor lasted the established time), and that there was no mental evaluation prior to the release of MM causes a violation of the right to life on the part of Croatia.

b) The Durmaz case v. Turkey, dated November 13, 2014

In this case, the ECHR makes an important reflection on the investigation and prosecution of crimes against women from a gender perspective. This perspective has been defined as an instrument of analysis and action, of analysis insofar as it explains the phenomenon as a manifestation of the historically unequal power relations between men and women; in which violence is used to maintain relations of domination, and an instrument of action as a necessary means to change the traditional conception of the role of women in society[4].

Investigating and prosecuting this type of crime from this point of view is doubly beneficial because it impacts and benefits the whole of society, by lifting obstacles and discrimination, establishing more equitable conditions for the participation of half of society, and by relieving men of many gender assumptions that are also a burden and an injustice to them. In the words of Inés Alberdi[5] "The gender perspective helps to understand the lives of women while not considering them as a necessary consequence of their nature."

[4] Montalbán Huertas, Inmaculada. The Comprehensive Law against Gender Violence 1/2004 as a normative instrument. Balance of one year in the judicial field. Notebooks on Judicial Law IV/2006

[5] Alberdi, InéS. The meaning of gender in the Social Sciences.

The facts that were the subject of the Durmaz case against Turkey are the following: Mrs. Gülperi O., a nurse in a University Hospital in the city of Izmir, was married to OO, who worked in the same hospital's pharmacy. The applicant before the ECHR is the mother of Mrs Gülperi. According to her, the fights between the couple were frequent and in them OO used violence against her.

On July 18, 2005 OO took his wife Gülperi O., conscious but drowsy, to the emergency department of the Hospital in which both worked and told doctors and nurses that his wife had taken an overdose of two medications called "Prent" and "Muscoril". One hour and 45 minutes after OO took his wife to the hospital, a policeman talked to him, and he said they had had a fight that day, she had attacked him and he had beaten her. He left home and when he returned, his wife was not feeling well so he took her to the hospital. The statement lasted five minutes, and immediately afterwards, the policeman called the Prosecutor and the Prosecutor instructed him to receive a statement from both parties, OO and Gülperi.

Mrs. Gülperi's pulse began to fall, resuscitation maneuvers were unsuccessful, and she died four and a half hours after being admitted to the Hospital. Her husband OO did not attend her funeral.

On July 20, the Police issued a report on the investigation carried out in relation to this death maintaining that it was a suicide due to drug overdose. The *post-mortem* study of the corpse, from which samples had been taken for analysis, had not yet been completed .

Mrs. Gülperi's father filed a complaint with the prosecutor's office on July 22, accusing OO of the death of his daughter, referring to a history of mistreatment, the intention of the latter to divorce, and a previous conversation that the deceased had had with her sister that same day that ran in the most absolute normality. In the framework of the investigation initiated as a result of this complaint, the Prosecutor discovered that Gülperi had been hospitalized twice for suspicious head injuries.

The final autopsy, after receiving the tests, issued on January 30, 2006, determined that no medicines, drugs or alcohol were found in the deceased's body and that the patient had advanced edema in the lungs. The cause of death, according to the report, was acute alveolar swelling and intra-alveolar hemorrhage in the lungs. The forensic report ruled out the presence of external substances and in particular, the medicines "Prent" and "Muscoril".

On February 28, 2006, the Prosecutor closed the investigation on the grounds that the death was due to pulmonary complications resulting from drug intoxication. Mrs. Gülperi's mother appealed this decision on the grounds that OO acknowledged that he had beaten her daughter that day, that the Prosecutor's statement contradicted the forensic report and that the couple's home was not registered, which, according to her statements, was a complete mess, and even had broken windows.

At the request of the ECHR, three forensic experts from the Institute of Forensic Medicine verified that the samples taken from the body of the deceased did not match any of the substances known and included in the database, so they could conclude that she did not die as a result of any of them, without being able to totally rule out that she could have ingested another toxic substance not included in the database. These same forensics disagreed with the report of January 30, 2006, and consider that the cause of Mrs. Gülperi's death could not be known.

The application before the ECHR is limited only to the effectiveness of the investigation carried out by the authorities in relation to the death of her daughter. The Court notes, as it usually does in these cases, that the obligation to protect the right to life enshrined in Article 2 of the Convention is not an investigation of results but of means, so that not every investigation must conclude successfully or according to the version of the facts of the applicant.

The ECHR notes that *"neither the Prosecutor nor the investigating police officers kept an open mind during the investigation as to the cause of the applicant's daughter's death"*, since both accepted from the beginning the version of events that OO gave them, even when no proof corroborated it. Likewise, it regrets that the prosecution did not take any other line of investigation apart from the alleged drug intake, even after the *post-mortem* and toxicological results, which completely dismantled the version given by OO. In the opinion of the Court, the point of departure of the Prosecutor should have been to question OO, because due to his false statements he caused the doctors to waste precious time to find out the real cause of her injuries and, therefore, to save her life. OO was never questioned by the prosecution, which for the ECHR was "crucial". The Court notes that judgments such as those indicated follow the pattern of other investigations made in Turkey regarding domestic violence generally suffered by women, and about which there is a general and discriminatory judicial passivity that

creates a climate prone to the commission of these crimes. Consequently, the ECHR considered that the authorities did not duly investigate the death of Gülperi O. and thereby violated Article 2 in its procedural aspect.

c) The Opuz case v. Turkey, of June 9, 2009

One of the most shocking cases is the Opuz case against Turkey, which ended with the death of Nahide Opuz's mother at the hands of Nahide's husband, Mr. HO. What is striking about the case, is the long period of time during which both Nahide (the applicant) and her mother, were ill-treated by their husbands, before the lack of action on behalf of the police and judicial authorities, in charge of responding to their repeated complaints. Nahide was married to HO, while Nahide's mother was married to the father of HO. Nahide and HO had three children, all of them minors at the time of the events.

The complaints of the applicant and her mother are filed between April 10, 1995 and November 19, 2001, in a total of six. The first one is addressed to the prosecution, by both women claiming that both HO and his father had threatened to kill and beaten them. They were examined by a doctor who observed several injuries coinciding with the reported facts. The prosecutor finally filed an indictment against HO and referred the matter to the court, which closed it for the injuries as both women withdrew the complaint. HO was acquitted of the threats.

The second complaint is initiated by a severe beating that HO gave the applicant. She was examined by a doctor who reported that the injuries were sufficient to endanger her life. The prosecutor accused HO and he was put into pretrial custody. However, at the hearing, held a month and three days after the events, the Court provisionally released HO until the trial considering the nature of the crime, and the fact that the applicant had already been healed of her injuries. A month later the applicant withdrew the complaint and said they had reconciled. Another month later, the matter was closed because the complaint was a requirement to prosecute the crime and it had been withdrawn.

The third complaint is filed by the applicant, her mother and her sister, alleging that they had a fight with HO in the course of which he took a knife and HO, the applicant and her mother were injured. The prosecutor did not accuse anyone having understood that there was not enough evidence to indicate that HO participated in the attack with the knife and that the

injuries and the damages could be paid civilly. Thereafter the applicant went to live with her mother.

The fourth complaint starts because HO hit the applicant and her mother with his car. The applicant's mother had injuries that put her life in danger. HO told the police that he only wanted to take them somewhere, they did not want to, they kept walking and threw themselves on top of his car. The version of the applicant's mother was that HO told them to get in the car or he would kill them, they started running, HO hit Gülperi with the car and she fell to the ground, her mother went to lift her up, the moment in which he backed into the applicant's mother. HO remained in pretrial custody and was released two months later, until the trial was held. The applicant initiated the divorce proceedings in that *interim*, which she later abandoned due to threats and resumed living with HO. He was accused of attempted murder and stated in the trial that it was an accident, something that the applicant and her mother corroborated, so he was acquitted for the injuries to the applicant, but not for the injuries sustained by his mother-in-law, since they had been more serious. The sentence was three months in prison and a fine. The prison time was replaced by a fine.

The fifth complaint is made by the applicant's mother, upon learning from one of her grandchildren that her daughter had been stabbed by her husband. The mother, with the help of the neighbours put the applicant in a taxi and took her to a hospital, where seven stab wounds were found, none of them, with risk to her life. HO surrendered to the police claiming they argued because she spent too much time with her mother, then she attacked him with a fork, and he lost control, took the knife for peeling the fruit and stabbed her. He explained that he did so because she is bigger than him and therefore he had to fight back. After that statement at the police station he was released. The mother filed a complaint with the Prosecutor regarding the continued mistreatment and that the fact that they withdrew the allegations was due to threats and pressure from HO. Finally, the act of stabbing was punished with a fine, to be paid in eight instalments.

The sixth complaint was lodged by the applicant for threats, which was closed due to lack of evidence.

Finally the mother filed a complaint with the Office of the Prosecutor against HO and his father due to continued threats to her and her daughter. HO denied everything, alleging that her mother-in-law had interfered in her

marriage, influenced her daughter to lead an immoral life and threatened him. HO was charged with death threats, and an investigation was initiated.

Three months later, when mother and daughter lived together again, they decided to move out of town. Once the furniture was loaded on the moving truck, the applicant's mother asked the driver to let her sit in the passenger seat, which he agreed to. When they were on their way, a taxi pulled up in front of them and signalled to them. The driver of the moving truck stopped, thinking that they wanted to ask him an address, HO got out of the taxi, opened the passenger door, shouted "where are you taking the furniture?", and shot her dead.

An intentional homicide investigation was initiated, and the accused claimed to have killed his mother-in-law for having incited his wife to lead an immoral life, and to leave him, taking his children, in short, in defence of his and his children's honour. He was sentenced to life imprisonment for murder and illegal possession of weapons. However, considering that he killed her as a result of a previous provocation on the part of his mother-in-law (according to him when he asked about the furniture, she told him an expletive, and that she was going to take his wife and sell her), and his good behaviour during the trial, he was replaced with life imprisonment for fifteen years and ten months in prison and a fine of 180 Turkish lira. Since he was already in pretrial detention and the sentence had been appealed, he was released. As of the date of issuance of the ECHR judgment, the appeal had still not been resolved.

The ECHR analyzed whether the authorities had deployed the necessary diligence to prevent violence against the applicant and her mother and concluded that given the background described above, the authorities could have foreseen a lethal attack by HO. The Court notes that it could not have been known that things gone differently if the authorities had acted differently, but points out that the failure to adopt measures had a real chance of changing the outcome or mitigating the damage and that is enough to consider the State responsible. The ECHR adds that the non-uniform treatment that Member States give to the fact of the withdrawal of complaints of gender-based violence is indeed a problem, but that regardless of domestic legislation they have to take into account certain factors such as the seriousness of the offence, if the injuries are physical or psychological, if a weapon was used, if it was intentional, if there were minors involved, or the background of the couple, among other factors.

The applicant's mother, in the Court's opinion, became a target for HO, while her children became victims of psychological abuse after having witnessed so many episodes of violence. However, the local authorities did not take any of this into account and decided to close the criminal proceedings that she initiated without ascertaining the origin of the withdrawal of the complaints, and that these occurred whenever HO was released. On the contrary, they had given exclusive weight to their consideration as a "family matter" or a "private matter". In the Court's opinion, the authorities could have adopted protective measures on their own initiative, as provided by Turkish legislation, or adopt a restraining order, which they never did.

B) INTER-AMERICAN COURT OF HUMAN RIGHTS

The American Convention on Human Rights, signed in Costa Rica in 1969, also recognizes this right in Article 4, which, as far as we are concerned here, provides the following:

1. Everyone has the right to have their life respected. This right will be protected by law and, in general, from the moment of conception. No one can be deprived of life arbitrarily.

The Court competent to prosecute the violations committed against the rights recognized in said Convention is the Inter-American Court of Human Rights, who is also seated in Costa Rica.

One of the most relevant and innovative judgments of this body, when judging Member States for violating the right to life in relation to a crime of gender violence, is the case of Esmeralda Herrera Monreal, Laura Berenice Ramos Monárrez and Claudia Ivette González (cotton field) against Mexico, of November 16, 2009.

What is relevant, as innovative, in this case is the approach given by the Court in relation to the way in which the State of Mexico should repair the damage for having violated the right to life of the young Esmeralda, Laura Benerice and Claudia Ivette. With this judgement, the Court implemented the individualization of compensation and, for the first time, endorsed the notion of reparation based on gender with a transforming vocation.

This sentence judged Mexico for the performance of its police and judicial system, in relation to the disappearance and homicide of the aforementioned women in Ciudad Juárez, and included their relatives as victims in the

proceeding against the State of Mexico for the harassment that they suffered on the part of the authorities and other people due to their demand for justice before the disappearance and murder of the young women, including the theft of documents and equipment that they used in a civil organization created as a result of these events "Integración de Madres por Juárez". These families were also subjected to defamation and harassment by local media. Such was the situation that the Monárrez family requested and obtained asylum in the United States of America.

Said judgment considers the text itself as a form of reparation *per se*, insofar as international law recognizes that the declaratory judgment of the responsibility of a State is a way of repairing non-pecuniary damages, in the same way that it is the mothers of the dead girls were heard. To this we must add that Provision two of the judgment imposes on the State the obligation to conduct the investigation again taking into consideration these facts from a gender perspective, undertaking specific research lines regarding sexual violence as established in the Belém do Pará Convention, and the behaviour patterns of the area.

Another form of reparation that includes this innovative judgement is the obligation imposed on the State to investigate within a reasonable time the officials accused of irregularities in the investigation, and those who harassed the relatives of the three victims. As a symbolic remedy, it imposed on the State the publication of the judgment in the Official Gazette of the Federation, in a newspaper of wide national circulation and in a newspaper of wide circulation in the state of Chihuahua; perform a public act of recognition of international responsibility and in honour of the memory of the three murdered women, and erect a monument in memory of women victims of homicide due to gender in Ciudad Juarez.

The reparations for the damage inflicted by this type of crime requires particular measures of compensation, in order to satisfy the specific needs of each woman, guiding the reparations to subvert, instead of reforming, the patterns of structural subordination, hierarchies based on gender, etc. which are the causes of the violence suffered by women. Hence the importance of this case, since as an International Court, it laid the foundations for the different judicial bodies of its Member States to apply this doctrine in their respective judgments.

3. Prohibition of torture and inhuman or degrading treatment

Article 3 of the CHR provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"

According to the ECHR, the abuse must be of sufficient severity to fall within the scope of Article 3 of the Convention. The assessment of said minimum or sufficient severity is relative and will always depend on the circumstances of the case, such as the nature and context, its duration, the physical and mental effects, and in some cases, the sex, age and health status of the victim[6].This article requires the Member States to develop effective legal norms to deter the commission of crimes against personal integrity, backed by a system to prevent, suppress and punish violations of such norms. The function of the Court will never be to determine whether the Member State acted in accordance with its domestic law, since they have the freedom to choose what type of measures to adopt, but, as has been said, an efficient penal system has been developed to prevent and punish mistreatment

a) Case Valiulienė v. Lithuania on March 26, 2013

The applicant before the ECHR is Ms Loreta Valiulienė, who lodged a complaint with a Court in February 2001, so that an investigation could be initiated at her own request, not by the Public Prosecutor's Office, for having been assaulted by her sentimental partner JHL on days 3, 4, 7 and 29 of January, as well as on February 4, 2001. Ms Valiulienė provided information from five witnesses who were neighbours to be heard in the proceedings, asked the police for evidence of the violence she had suffered, and provided medical reports on the injuries, coinciding with the dates with the facts reported.

The police, in response to her request, suggested that she should report the facts before the Court. However, in subsequent information the police reported that they went to her home on January 7 and February 4, 2001, and on those occasions the applicant had told them that she had been insulted and threatened, but not physically assaulted.

The investigation was initiated by the Office of the Prosecutor as a matter of urgency. The applicant told the investigator that at the beginning of 2001 she decided to end the relationship with JHL and he insulted and threatened to beat her

[6] Case Đorđević v.Croatia No. 41526/2010

and "fix her face". From there the threats were continuous but she never reported them because the agents told her to initiate civil rather than criminal proceedings.

In February 2002 JHL was charged with continued abuse. The investigation was closed and reopened several times because he had failed to appear and was absconded. Each time the investigation was closed, the applicant appealed the decision. In December 2002, the investigator definitively closed the case on the grounds that there was not enough evidence to prove that JHL had beaten the applicant. The latter appealed, and the Prosecutor quashed the decision because the pretrial investigation had not been thorough enough.

In January 2003, the matter was again closed by the investigator, a decision that was upheld by the Prosecutor and quashed by a Senior Prosecutor, who ordered the investigation reopened.

The investigator who had so far handled the case was challenged because of doubts about his impartiality, and in June 2005 the prosecutor considered that there was sufficient evidence that JHL had strangled, beaten and kicked Mrs. Loreta on five separate occasions within the span of a month, in the family home. However, the investigation was closed due to a legal reform that came into effect in 2003, which established that minor injuries, as was the case, had to be sustained only by the victim before a Court and that in this case there was no public interest for the Prosecutor's Office to sustain the accusation.

After a long pilgrimage of appeals, the prosecution became time-barred in accordance with the new legislation both to be accused privately and publicly, and the case was definitively closed, without possibility of further appeal on February 8, 2007.

The ECHR in this judgment highlights, and assesses, the in-depth study on all types of violence against women, of the United Nations, in 2006, which reports that 32.7% of Lithuanian women will suffer physical violence by part of their partners throughout their life. The judgment also assesses the result of the survey conducted by the United Nations Division for Gender Equality and Women's Empowerment that concluded that 42% of Lithuanian women with a partner, between 18 and 74 years old, had been physically assaulted or threatened by their partners.

In the same way, the Court notes that the level of seriousness of the violence exercised against women makes it fall under the aforementioned Article 3, which requires the States to implement an adequate legal mechanism to dissuade crimes against personal integrity, backed by a system of prevention, suppression and

punishment of violations of these legal provisions. It insists once again that it is not its function to review whether prosecutors and judges correctly applied the national law, but rather the responsibility of the State under the Convention.

In this case, the Court points out that Mrs. Valiulienė filed a complaint one week after the last attack, describing in detail each incident, giving names and other information from five witnesses. Therefore, the Court considers that the Lithuanian authorities had sufficient information in their hands to suspect that a crime had been committed and were therefore obliged to act in accordance with that complaint. The Court notes that the State acted with due diligence when the matter was in the hands of the judge, but once it was referred to the Prosecutor's Office, it was closed twice for lack of evidence, decisions that were persistently appealed by the applicant.

In addition, the Prosecutor decided to refer the matter to private prosecution, refusing to initiate a public accusation, two years after the legislative reform, which returned the applicant to "square one", that is, to the same situation in which she was four years before. As anticipated, due to all the procedural delays and difficulties indicated, the facts reported, especially serious, went unpunished as a result of becoming time-barred due to the failures committed by the national authorities, despite all the attempts of the applicant to avoid it.

In short, the ECHR considers that Lithuania has violated Article 3 of the Convention, since the purpose of imposing criminal sanctions is to dissuade the offender from causing harm, however, if the evidence is not set by a competent court (the matter never came to leave the prosecution) it can hardly reach this aim.

b) The Opuz case v. Turkey of June 9, 2009

This case, previously mentioned, also analyzes whether there was a violation of Article 3 of the Convention in the conduct of the national authorities by not adopting protective measures to safeguard the applicant. The Court notes that the Turkish authorities did not remain totally passive before the facts reported by the applicant, since after each complaint, she was seen by the doctor, criminal proceedings were initiated, the accused was imprisoned and indicted. However, none of these measures prevented him from continuing to mistreat the applicant. In the opinion of the Court, despite all this, the local authorities did not show due diligence to prevent HO's recurrent attacks on

his wife, since he committed them without hindrance and with impunity, (citing the Maria da Penha case against Brazil of the Inter-American Court) shown especially impacted by the fact that he was imposed a very low fine, and on top to pay in instalments for stabbing his wife seven times.

The Court considers that in addition to a lack of effectiveness, there was a certain degree of tolerance on behalf of the authorities, showing great concern that a case like this is not isolated in that country, where the authorities continue to be inactive, and that, in addition, only after the applicant had lodged the claim with the ECHR, had measures been taken for her protection, (distributing his photo and fingerprints to the police stations in the area for his arrest if he approached her) since HO was at liberty.

In short, the ECHR considered that Turkey also violated Article 3 of the Convention because its authorities did not take measures to dissuade HO from mistreating his wife.

c) Case ES, Er.S., Ja. S. and Já S. v. Slovakia of September 15, 2009

The applicants in this case are Mrs. ES and her children. Mrs. ES left, together with her children, the family home in which they lived with her husband Mr. S. in March 2001. The purpose of this change of address was to protect their children from physical and sexual abuse by their father. In April of the same year, the wife filed for divorce in the Courts, and in June provisional custody of the three children was granted to the mother. The final divorce was granted in May 2002 and the mother maintained custody of the children.

Simultaneously, in May 2001 the wife reported the husband for ill-treatment of her and her children, and sexual abuse towards one of her daughters, she also requested an interim measure for the husband and father of the children to leave the family home, of which, until then, were both co-tenants. In that request, she provided an expert report that indicated that she and her children had been mistreated by the father and considered it absolutely necessary to separate them from him. Said request was dismissed in June 2001 when the Judge considered that since they were both co-tenants, the Court lacked the authority to restrict the use of the dwelling. This decision was upheld, deferring this decision to the divorce decree, and also the court of second instance understood that what the applicant intended was a disproportionate burden for the husband. As a result, the applicants left the house and the children changed schools.

Finally, the husband was sentenced in June 2003 for mistreatment, assault and sexual abuse to four years in prison. A month later, in July, the Constitutional Court considered that the ordinary jurisdiction had not adequately protected the applicants from the ill-treatment.

In January 2003 there was a change in legislation and in July of that same year the applicant repeated the request for a provisional measure that prevented the husband from entering the family home, which in this case was granted for a period of 15 days, and ordered the wife to fill an eviction request within thirty days of the notification of the provisional measure. This lawsuit was filed and was granted, the wife was since then, the sole tenant of the apartment.

Regarding the merits of the case, the ECHR assesses that the State admitted that its national authorities failed to take adequate measures to protect the applicants from domestic violence, and therefore that they violated Article 3 of the Convention. In addition to this failure, admitted by the State, the Court asks in the judgment, why, if the divorce ended in May 2002, the resolution of the lease was not granted until December 2004. The Court understands that given the seriousness and nature of the applicant's allegations, she and her children needed immediate protection, which was not granted, on the understanding that for this reason there was also a violation of Article 3 of the Convention.

d) BS case v. Spain, of July 24, 2012

This case analyzes violence against women, but not in the family framework, like the previous ones, but from the point of view of police action.

a ') first complaint: The applicant, Mrs. BS, worked as a prostitute in July 2005, on a highway, when two policemen asked her for identification and told her to leave the place, which she did.

According to the complainant, a week later, after returning to the same place where she had been identified, the same policemen went towards her and she tried to flee. The agents caught her, beat her and again asked her for identification. According to her, this assault was seen by several witnesses who could be identified, and who heard how the police insulted her with expressions like "get out of here, you black whore." Once the applicant identified herself to the agents, they let her go.

A week later, the same agents stopped her, and one of them hit her with a truncheon. That day the applicant filed a complaint with the Courts and

went to the Hospital. The Court asked the Police Headquarters for a report regarding what had happened. The report said that police patrols are common in that area due to numerous complaints of theft or injury by residents, which damages the image of the area. According to the report, the applicant tried to avoid being identified, and the agents neither humiliated her nor used physical force. On the identity of the agents, the report says that they were the members of the "Rayo 98" and "Rayo 93" patrols, while the applicant said it was the "Luna 10" patrol. In October 2010 the matter was closed for lack of evidence. The applicant appealed, and the second instance partially quashed the decision and ordered the file to continue as a misdemeanour. During this procedure, the applicant requested to identify the agents through a two-way mirror, which was rejected due to the lack of reliability of said method given the time elapsed and that the agents had worn helmets all the time.

The fact was judged in March 2008 and the officers were acquitted on the basis that the police report denied that there had been an incident when they spoke with the applicant, and that the medical report did not specify the date of its issuance, therefore it could not be established with certainty that the cause of the injuries was police action. This decision was upheld in second instance, and said body added that the two-way mirror had not added anything to the evidence already existing in the procedure.

b ') second complaint : the same month of July 2005 the applicant says that she was stopped and interrogated by two policemen, who hit her with their truncheon, went to the emergency room in a health centre, where they found abdominal pain and bruises. The applicant reported these facts and that she was pointed out due to the fact that she is black, since there were other white prostitutes that the police did not address. She also states that she was later taken to a police station where she had refused to sign a document for which she admitted resisting the agents. She requested the removal of the agent who had hit her and the addition of this complaint to the previous one. Neither of the two requests was admitted.

The court initiated an investigation in which the applicant requested that the officers on duty on the day of the events be identified and in addition the identity of all those who had patrolled the area to identify them through a two-way mirror. Her request was dismissed. The court requested a report from the police headquarters, which said that the applicant admitted to working as a prostitute in the area, and that this activity had caused many

complaints from neighbours. As for the identity of the agents, it said that no intervention was recorded on that day. The file was provisionally closed. The applicant appealed in first and second instance, both appeals were dismissed. It was also dismissed by the Constitutional Court.

The ECHR considers that when a person makes a credible claim about having suffered police violence, Article 3 of the Convention, together with Article 1, requires an effective official investigation, capable of identifying and punishing the perpetrator, otherwise it leaves the prohibition of torture without efficacy in practice. In this specific case, the Court takes into consideration that the complaints were investigated, but concludes that this investigation was not effective, since the applicant made some requests that were not superfluous such as the two-way mirror or the statements of the witnesses that were dismissed. The judges limited themselves to requesting information from the Police Station. These requests, in the opinion of the Court, were not superfluous to identify those responsible[7]. In fact, in one of the trials that took place, the defendants could not be identified by the applicant. Therefore the action of the Spanish authorities in this case was not considered sufficient to satisfy the requirements of Article 3 of the Convention.

4. Right to effective judicial protection

The right to a fair and impartial trial, as well as the right to have the facts prosecuted within a reasonable time, is part of the right to effective judicial protection.

Independence and impartiality, despite being concepts that might seem synonymous, are not synonymous in the eyes of the ECHR, although it itself has recognized that in certain cases they have to be examined together[8].

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[7] Mentioning other cases of the same Court, such as: Krastanov v.Bulgaria , no.50222/99, § 48, September 30, 2004; Çamdereli v.Turkey, no.28433/02 , §§ 28-29, July 17, 2008; and Vladimir Romanov v.Russia , no. 41461/02 , §§ 79 and 81, July 24, 2008

[8] Case of Sacilor-Lormines v. France No. 65411/01 and Oleksandr Volkov v. Ukraine No. 21722/11.In the case of Tahir Durán v. Turkey, of January 29, 2004, the ECHR assesses both concepts, independence and impartiality jointly, considering this right infringed in a case of attack against the unit of the country in which the State Security Court which judged the applicant was composed of three career judges of which one was military and depended on the military judiciary. The ECHR understood that the complainant's fears that the Security Court should be unduly guided by considerations unrelated to the nature of the case were objectively justified and therefore considered that this right was violated.

Impartiality has been defined by the ECHR as "absence of prejudice and predisposition"[9]. There are two steps, a first subjective step in which it is necessary to analyze whether the judge has a personal conviction or a particular behaviour that suggests that he or she is predisposed to a decision (in which impartiality is presumed unless proof to the contrary[10]), and a second objective step in which it is necessary to pay attention to the composition of the court itself, the existence of hierarchical or other relationships with the parties[11] and the intervention of judges in other phases of the same process[12] in order to be able to verify if the judge in question offers sufficient guarantees to exclude any legitimate doubt in this regard. The ECHR considers that it is necessary to study each specific case to decide if a certain link or relationship indicates a lack of impartiality and emphasizes that at this point even appearances are important, so that not only justice has to be done, but it also has to be seen that justice is done, because what is at stake is the confidence that the court awakens in the democratic society[13].

In regards to what should be considered as "reasonable time", the ECHR deals, on the one hand, with the circumstances of the case, its complexity, number of parties, etc., and on the other hand, it addresses the procedural attitude of the applicant. It considers that the duration of the procedure may have been extended for reasons not attributable to the Administration of Justice[14]. The ECHR considers the process as a whole and not the specific delay that a part of the procedure may have had[15].

In the cases that are presented below, the International Organizations considered that the States violated these rights of the victims of gender violence:

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[9] Case of Wettstein v. Switzerland No. 33958/96 and Micallef v. Malta No. 17056/06

[10] Case of Le Compte, Van Leuven and De Meyer v. Belgium of June 23, 1981 and Micallef v. Malta No. 17056/06

[11] In the Spanish case, Sentences such as the TSJ of Cantabria, Social Section No. 244/04, have declared that this right is violated when one of the Magistrates of the room is an associate professor at the defendant University in the procedure.Said judgment expressly invoked the case of the ECHR Pescador Valero case against Spain of June 17, 2003 in which the exact same thing happened and the Court declared that the applicant's fears that the case was not addressed with the required impartiality were legitimate.

[12] Case of Morel against France No. 34130/96, Luka against Romania No. 34197/02 of July 21, 2009 and Pescador Valero against Spain 62435/00

[13] Case of Castillo Algar against Spain of October 28, 1998.

[14] Case of Comingersoll SA v. Portugal No. 35382/97

[15] Case Demeter v. Germany of May 29, 1986

a) Case of Maria da Penha Maia Fernandes v. Brazil of the Inter-American Commission on Human Rights[16].

This Commission, located in Washington, together with the Inter-American Court of Human Rights forms the Inter-American System for the Protection of Human Rights. The Commission is not a court, so it does not issue judgments, but reports. For what concerns us here, the Commission's function is to stimulate awareness of Human Rights in the Member States, issuing reports or recommendations so that the States that violate them take measures to respect these rights. In case these recommendations are not addressed, the Commission should take the case to the Court.

Article 8 of the American Convention on Human Rights provides:

1. Every person has the right to be heard, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or court, established previously by law, in the substantiation of any criminal accusation against him, or the determination of their rights and obligations of a civil, labour, fiscal or any other nature. [...]

Article 25 states:

1. Everyone has the right to a simple and prompt recourse or any other effective recourse before the competent judges or courts, to protect them against acts that violate their fundamental rights recognized by the Constitution, the law or this Convention, even when such violation is committed by persons acting in the exercise of their official functions.

The complainant of this case, Mrs. Maria da Penha, pharmaceutical, was sleeping at home when in May 1983 her husband Heredia Viveiros, economist, shot her with a revolver. As a result of these events, Mrs. Maia suffers from irreversible paraplegia and other physical and psychological traumas. The husband reported these facts claiming to have been the victim of an attempted burglary and aggression by thieves who had escaped. However, statements were collected that indicated that the husband intended to kill her and the police found a shotgun in the house, which he had denied possessing.

Two weeks later, Mrs. Maia returned to her home from the hospital, and while in recovery in June 1983, her husband tried to electrocute her while she was taking a bath. After this incident, Mrs. Maia decides to separate judicially.

[16] Report 54/01, case 12.051 of April 16, 2001.In the debate and resolution of the case, the Brazilian member did not participate, according to the regulations of the Commission itself.

The Prosecutor reported the husband in September 1984. The judgment was delivered on May 4, 1991, for which he was sentenced to ten years in prison. That same day, his defence lodged an appeal that was untimely in accordance with Brazilian law. The Court of Second Instance considered that it was indeed untimely but annulled the sentence for the reason alleged by the defence, which is to say that there had been flaws in the questions addressed to the jury.

A second trial was held on March 15, 1996, in which Mr. Viveiros was sentenced to ten years and six months in prison. Again the Court admitted an extemporaneous appeal. As of the date of issuance of the report, this appeal had not yet been resolved.

During the more than fifteen years that elapsed between the commission of the events and the second conviction, Heredia Viveiros was released. The Commission notes that 17 years after the initiation of the investigation, the process remains open and a final conviction has not been reached, nor have the consequences of the crime been repaired, which places the case in a possible impunity for the statute of limitations of the crime and the impossibility of compensation, which in any case would be late. This impunity is decried by the Commission as a violation of the Convention of Belem do Pará, and implies a tolerance by the organs of the State towards domestic violence as a "systematic pattern", which "perpetuates the roots and psychological, social and historical factors that maintain and fuel violence against women."

The Inter-American Court considers that in order to assess whether a trial has been of a reasonable duration, the complexity of the matter, the procedural activity of the interested party and the conduct of the judicial authorities must be evaluated. In the opinion of the Commission, since the investigation ended in 1984, there was strong evidence to complete the trial and yet the procedural activity was postponed continuously. In conclusion, the Commission understands that Brazil has refrained from acting to ensure the victim's exercise of his rights.

b) Case of Karen Tayag Vertido v. the Philippines from the Committee on the Elimination of Discrimination against Women of the United Nations, September 22, 2010

The mission of the Committee is to monitor the implementation of the Convention on the Elimination of All Forms of Discrimination against Women[17] by the States that have ratified it.

[17] Adopted by the General Assembly in its resolution 34/180 of December 18, 1979

In this case, the Committee, considered that gender prejudices affected the right of women to a fair and impartial trial, since they were stereotyped ideas that society in general has, and judges as a whole, those that led to the acquittal of the accused of raping Mrs. Vertido.

Among others, the legal precepts considered to be violated by the Committee's decision were article 2.c) of the Convention that refers to the right to effective judicial protection:

Article 2

The States Parties condemn discrimination against women in all its forms, agree to follow, by all appropriate means and without delay, a policy aimed at eliminating discrimination against women and, to that end, commit themselves to:

[...]

c) Establish the lgal protection of the rights of women on an equal basis with those of men and guarantee, through national or competent courts and other public institutions, the effective protection of women against all acts of discrimination;

Mrs. Vertido, now unemployed, was Executive Director of the Chamber of Commerce and Industry of Davao, and denounced having been raped by the President of the Chamber, who at the time of the events (March 29, 1996) was 60 years old. As stated in the complaint, after a meeting of the Chamber, the defendant took her and another colleague by car to their homes. At one point they were alone in the car and the defendant, JBC did not let her out, taking her to a motel. Mrs. Vertido, although she believed that the defendant was carrying a gun, refused to leave the car and JBC took her inside by dragging her on the floor to the motel (the garage was private) Mrs. Vertido searched for another exit inside the room but only found the bathroom where she locked herself. She left the bathroom when she stopped hearing noise and thought she was alone, in order to find a phone or leave. When she left the bathroom, she found JBC almost naked. He turned and walked towards her, and she thought he was going to get his gun. JBC pushed Mrs. Vertido on the bed and immobilized her with the weight of his body which barely let her breathe and she lost consciousness. When she recovered the defendant was raping her, she tried to get rid of him by scratching him and asking him to stop. He told her that he would take care of her and that he knew many people who could help her to advance in her career. In the end, Mrs. Vertido took him off by pulling his hair, dressed and took advantage of the fact that he was still naked, went out to the street, tried to open the car but could not. Finally she agreed to let him take her home.

A few hours later Mrs. Vertido was subjected to a forensic medical examination, which included the cause of the examination (alleged rape) and the name of the alleged perpetrator, and in the following 48 hours she reported JBC for rape. The Office of the Prosecutor initially dismissed the complaint because there was no probable cause and that decision was quashed following the appeal filed by Mrs. Vertido.

The prosecution filed a complaint in November 1996 and on the same day issued a warrant for the arrest of the accused, who was arrested more than 80 days later. The procedure was in the phase of first instance until 2005.

After the trial, the sentence that acquitted the defendant did so for the following reasons:

a) "It is easy to make an accusation of rape, it is difficult to prove it, but it is more difficult for the accused, even if innocent, to deny it" (principles derived from the jurisprudence of the Philippine Supreme Court),
b) in the crimes of rape, in which usually only two people intervene, the testimony of the complainant must be assessed with the utmost caution. In this case, given that the victim reacted with resistance to the aggressor in one moment and submission in another, it was considered not credible. In addition, the court considered it incredible that a man over sixty was able to reach ejaculation when the victim is resisting, so it questions the testimony of the complainant. Another fact that leads the court to have doubts about the responsibility of the defendant is that the victim did not try to escape despite the fact that the victim was not "a shy woman who could easily be frightened"
c) the evidence from the prosecution must be enough to disprove the presumption of innocence and justify the sentence, and can not find strength in the weakness of the evidence from the defence.

These arguments were considered as gender stereotypes by the Committee, and considered that the judgement was based on myths, such as that educated women can not be raped, or that a woman is considered as consenting to a sexual relationship when she does not resist the physical force used by the aggressor.

For all these reasons, the Committee understood that the application of these stereotypes had violated Mrs. Vertido's right to a fair and impartial trial. In particular, the statement that "an accusation of rape can be made easily" reflects in itself a gender bias. In addition, although the Court in its judgment

recognizes that not all people react in the same way to emotional stress and that the fact that the victim does not try to escape does not mean that there has been no rape, did not apply any of these principles in the judgment when assessing the credibility of the victim. According to the Committee, the Court expected a rational and ideal response from a woman in a situation of rape, and as an example of it, indicates a paragraph of the sentence that is transcribed below:

Why, then, did she not try to get out of the car at the moment when the defendant should have stopped to avoid crashing into the wall when she grabbed the steering wheel? Why did not she get out of the car or scream for help when he should have slowed down before entering the motel garage? When she went to the bathroom, why did not she stay there and lock the door? Why did not she cry for help when she heard the accused talking to someone else? Why did not she run out of the motel garage when she says she could run out of the room because the defendant was still in bed, NUDE MASTURBATING[18]*? Why did she agree to ride again in the defendant's car AFTER he had allegedly raped her, when he did not threaten her or use force to force her to do so?*

Stereotypes are beliefs or generalized perceptions about the characteristics that are mentally associated with a group of people, and generate an expectation of behaviour[19]. Many of these stereotypes have a "core of truth" but they are still a generalization, sometimes exaggerated and can have both positive and negative effects. In the case of stereotypes based on gender, these can produce inaction or deficient action on behalf of the authorities, for example, inadequate treatment by the police, irregularities in investigations, disqualifications towards the victims, judicial passivity, unjustified delay etc, which prolongs the feeling of vulnerability and insecurity of the victim, producing so-called secondary victimization.

In short, these prejudices limit the exercise of human rights when they influence the performance of judges. That is why awareness of the use of these preconceived ideas and the consequent development of good practices to combat them is essential to advance towards their elimination, even though it is not a simple task since they are concepts so internalized that they influence us all unconsciously.

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[18] Capital letters are used by the Court in the text of the Judgment.

[19] ONOFRE DE ALENCAR, EMANUELA CARDOSO. Women and gender stereotypes in the jurisprudence of the Inter-American Court of Human Rights.Eunomia Magazine in Culture of legality. No. 9, October 2015

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