



X and Y v. Georgia

Communication No. 24/2009; U.N. Doc. CEDAW/C/61/D/24/2009

Country: Georgia

Region: Europe

Year: 2015

Court: Committee on the Elimination of All Forms of Discrimination Against Women Committee for the Elimination of All Forms of Discrimination against Women

Health Topics: Violence

Human Rights: Freedom from discrimination

Facts

X and her daughter Y claimed a long history of physical and sexual assault at the hands of X's husband, who was Y's father. X was raped by him in 1987 and later married him, believing that Georgian social and cultural norms defining virginity as essential to female virtue compelled her to marry him or to never marry at all. The complaint alleged recurrent spousal battery from 1996 to 2004, including multiple incidents requiring police intervention and at least one incident requiring medical attention. The complaint also alleged sexual and severe physical abuse of Y, beginning in 1993 when she was two years old.

In 2001, after X sought medical care for injuries to her face and head resulting from an assault, an initial investigation by the district prosecutor's office determined that X had been physically assaulted by her husband. However, the case was closed after X withdrew the complaint under pressure from her husband.

In 2004, X made new reports of abuse suffered by herself and her daughter. On each occasion, the prosecutor's office declined to open a criminal case and took no action beyond having the husband sign written pledges not to use violence to solve family disputes. X appealed the prosecutor's office refusal to open a criminal case. On appeal, the refusal was annulled and the case was sent back to the district prosecutor's office for further investigation, but no criminal charges resulted.

In 2007, X petitioned the European Court of Human Rights, claiming violations of the European Convention's prohibition against torture, right to private and family life, and right to an effective remedy. The Court declared the petition inadmissible in 2008.

X and Y submitted a communication alleging violations of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) under Article 1 (discrimination), Articles 2(b)-2(f) (obligation of States Parties to adopt all appropriate measures, including legislation, legal protections or sanctions, to prevent discrimination against women by public authorities and private individuals), and Article 5(a) (obligation on States Parties to take all appropriate measures to change social stereotypes and cultural patterns contributing to discriminatory views about women).

Decision and Reasoning

The Committee found that Georgia had failed to fulfill its positive obligations under Articles 2(b)-2(f) of CEDAW, in conjunction with Articles 1 and 5(a), and with the Committee's General Recommendation No.19 on Violence Against Women, interpreting discrimination to encompass gender-based violence. The Committee also found that Georgia had failed to fulfill its obligation to take appropriate measures to eliminate prejudicial and customary practices and views based on sex-based and discriminatory stereotypes.

The Committee noted that Georgia did not dispute certain facts alleged by X and Y, including that there was no domestic legislation incorporating definitions of domestic violence or providing effective remedies for it until 2006. Contrary to Georgia's claim that the numerous appeals between 2004 and 2006 indicated a prompt and impartial judicial response to domestic violence allegations that fulfilled Georgia's CEDAW obligations, the Committee found a failure to effectively investigate and a failure to provide effective legal protection to X and Y. The allegations indicated a pattern within law enforcement of handling incidents of gender-based violence through non-binding and unenforceable written declarations or attempted mediation between spouses and families, rather than through investigation and prosecution. The Committee also highlighted the repeated nature and long duration of the allegations of violence, beginning with the rape in

1987, indicating an ongoing failure of the public authorities to protect X and Y from gender-based violence.

The Committee also noted that the judicial appeals process culminated in a finding that the complaints were groundless, despite statements from multiple witnesses and medical evidence of past abuse. These proceedings indicated an extremely high burden of proof placed on victims alleging domestic violence.

The Committee recommended that Georgia provide financial compensation to X and Y and adopt measures to fulfill its positive obligations under CEDAW, including ensuring provision of shelter and psychological support services to victims of domestic violence, introducing zero-tolerance policies with respect to violence against women, ratifying the Convention on Preventing and Combating Violence against Women and Domestic Violence, and providing mandatory trainings on violence and gender stereotypes to law enforcement, legal, and judicial personnel.

The Committee rejected Georgia's claim that the communication was inadmissible, finding that the parties, facts, and legal arguments before the Committee differed from those previously rejected as ill-founded by the European Court of the Human Rights. In the prior petition, X had claimed violations of Article 3 (prohibition on torture), Article 8 (right to respect for private and family life) and Article 13 (right to effective remedy) of the European Convention on Human Rights based on the State's failure to protect Y and her brother from sexual and physical abuse and failure to prosecute the perpetrator, causing severe emotional and mental suffering. The Court did not consider any claims under Article 14 of the Convention (prohibition against discrimination), and X did not make any claims based on the repeated domestic violence she suffered, nor did she allege gender-based discrimination. Therefore, there was no concern about re-examination, and the Committee was not precluded from considering the communication.

Decision Excerpts

“[I]n accordance with paragraph 6 of [the Committee's] general recommendation No. 19, discrimination within the meaning of article 1 of the Convention encompasses gender-based violence against women. Such discrimination is not restricted to action by or on behalf of the Government. Rather, under article 2 (e), States parties may be responsible for private acts if they fail to act with due diligence to prevent violations of the rights or to investigate and punish acts of violence, and for providing compensation[.]” Para. 9.3.

“[T]he State party's authorities have failed in their duty to adopt appropriate legislative and other measures, including sanctions, prohibiting violence against women as a form of discrimination against women; to establish legal protection of women's rights on an equal basis with men and to ensure, through competent tribunals and other public institutions, the effective protection of women against discrimination; to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with that obligation; to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women.” Para. 9.7.