



A.T. v. Hungary

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

Country: Hungary

Region: Europe

Year: 2005

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

Health Topics: Mental health, Sexual and reproductive health, Violence

Human Rights: Freedom from discrimination, Right to bodily integrity, Right to liberty and security of person, Right to life

Facts

A. T., a Hungarian national, was subjected to severe physical abuse at the hands of her common law husband, L. F., on many occasions over a period of approximately four years. A. T. sought medical attention as a result of ten of these batteries. Despite A. T.'s attempts to protect herself by denying L. F. entry to the family apartment, L. F. forcibly entered the home on two occasions. On the second of these occasions, upon gaining entry to the apartment on July 27, 2001, L. F. beat A. T. so severely as to require A. T.'s hospitalization.

Though criminal investigations into three batteries of A. T. had been ongoing for several years at the time of A. T.'s submission to the Committee, the Hungarian authorities had taken no action to protect A. T. from L. F. In 2000, L. F. instituted civil proceedings to assert his right to continued access to the family apartment. The notary of Ferencvaros local government, the Pest Central District Court, and the Budapest Regional Court each determined that L. F. was legally entitled to use of the apartment. The Supreme Court dismissed A. T.'s request for review of the Regional Court's decision. Also in 2000, A. T. instituted civil proceedings seeking division of the common property and filed a motion for injunctive relief requesting exclusive possession of the residence. The civil proceedings were suspended, and A. T.'s motion for injunctive relief was rejected.

A. T. claimed that the ineffectiveness of the criminal investigations and the lack of protection orders or restraining orders under Hungarian law constituted a failure to provide her with effective protection from L. F. She therefore claimed that Hungary violated articles 2(a) (principle of equality), 2(b) (prohibition on discrimination), 2(e) (elimination of discrimination), 5(a) (modification of social and cultural patterns of conduct), and 16 (elimination of discrimination in marriage and family relations) of the Convention on the Elimination of All Forms of Discrimination against Women (Convention). She also requested interim protective measures under Optional Protocol (OP) article 5, paragraph 1.

Decision and Reasoning

The Committee concluded that Hungary violated Convention article 2(a)(principle of equality), (b) (prohibition on discrimination), and (e)(elimination of discrimination), as well as article 5(a) in conjunction with article 16 (elimination of discrimination in marriage and family relations).

The Committee first determined that the communication was admissible under the Optional Protocol (OP) and could be considered on the merits. Specifically, the Committee noted that the delay of over three years between the alleged batteries and the current state of criminal proceedings constituted an unreasonably prolonged delay under OP article 4, paragraph 1 (admissibility criteria of communications before the Committee). Additionally, although most of the alleged abuse had taken place prior to the OP's entrance into force for Hungary in March 2001, the Committee found that it was competent to consider the entirety of the allegations because the final battery, which was perpetrated in July 2001, constituted the final incident of an uninterrupted series of violence from which the State had allegedly failed to provide protection.

Upon consideration of the merits, the Committee reiterated general recommendation No. 19's assertions that gender-based violence constitutes a form of gender discrimination and that each State party to the Convention must exercise due diligence to prevent, investigate, or punish violations of rights by private actors.

The Committee found that Hungary was obligated to ensure prevention of and protection from violence

against women under article 2 (freedom from discrimination). Noting that the Hungarian government's recent efforts to address violence against women had not provided relief for A. T. and noting further that no legal remedies or institutions existed sufficient to protect A. T. against continued violence by her former husband, the Committee concluded that Hungary violated article 2(a), (b), and (e).

Referencing concerns raised by the combined fourth and fifth periodic report of Hungary in 2002, the Committee determined that the violence against A. T. and the lack of legal and social resources available to A. T. were symptomatic of Hungary's failure to combat national stereotypes concerning the roles of women and men in the family. This failure constituted a violation of article 5(a) (modification of social and cultural patterns of conduct) in conjunction with article 16.

The Committee recommended that Hungary take immediate action to protect and to provide a safe home and legal and monetary support for A. T. The Committee also recommended steps to be taken to ensure prevention of and protection from violence against women throughout Hungary.

Decision Excerpts

"9.2 The Committee recalls its general recommendation No. 19 on violence against women, which states that '[...]the definition of discrimination includes gender-based violence' and that '[G]ender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.' Furthermore, the general recommendation addresses the question of whether States parties can be held accountable for the conduct of non-State actors in stating that...'[U]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.'"

"9.3 Women's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy....[T]he Committee concludes that the obligations of the State party set out in article 2(a), (b) and (e) of the Convention extend to the prevention of and protection from violence against women."

"9.4 The Committee...has stated on many occasions that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them."