

VOLINDA V RUSSIA: CAN DOMESTIC ABUSE AMOUNT TO TORTURE?

Conor Courtney

29 January 2020

Dear Editor,

The European Court of Human Rights (ECHR) recently commented on their position on domestic abuse, and how such acts could form the definition of inhuman treatment, or torture. The recent judgement of *Volodina v Russia* set out clear determinations on how domestic abuse falls under the Article 3 fundamental right to be free from inhumane treatment and torture.¹

The issue of domestic abuse has been, rightly, strongly criticised in the media in recent weeks. In Ireland there has been considerable debate as to whether the frameworks in place to deal with domestic abuse claims are suitable or whether there is a need for reform.² In Northern Ireland, Chief Inspector Brendan McGuinan recently noted that, '[i]n my view there is no excuse why victims of domestic violence and abuse in Northern Ireland do not have access to a properly funded IDVA scheme similar to those which have been operating in England and Wales for the last 15 years'.³ The collective drive to modernise domestic abuse case law has likely been driven by global movements such as 'MeToo'.⁴

Domestic abuse has recently been discussed in an international legal lens, in the wake of expert survey reports published by organisations such as Thomson Reuters

¹ *Volodina v Russia* [2019] ECHR case 41261/17 09/07/2019; European Convention on Human Rights, Art 3.

² Samantha Libreri, 'Call For State Supports For Domestic Violence Victims' *RTE News* (22 November 2019) <https://www.rte.ie/news/2019/1122/1094554-womens-aid-domestic-violence/> accessed 27 January 2020.

³ Irish Legal News, 'Further Action Needed on Handling Domestic Violence and Abuse Cases' *Irish Legal News* (19 June 2019) <https://www.irishlegal.com/article/further-action-needed-on-handling-domestic-violence-and-abuse-cases> accessed 26 January 2020.

⁴ Colin Gleeson, 'Helpline credits #MeToo with huge rise in sexual assault calls' *Irish Times* (13 September 2018) <https://www.irishtimes.com/news/crime-and-law/helpline-credits-metoo-with-huge-rise-in-sexual-assault-calls-1.3628100> accessed 27 January 2020.

Foundation.⁵ The sixth most dangerous country in the world for women on this list was Pakistan, who recently broadcast their commitment to establish over 1,000 courts to deal specifically with violence against women.⁶ In light of these advances, it is important to examine the updates to the European stance on domestic violence.

On 9 July 2019, the ECHR determined that Russia was in contravention of Article 3 of the European Convention on Human Rights; the right to be free from torture and inhuman treatment, and Article 14; the right to be free from discrimination.⁷ The central issue in this case was the State's position on gender-orientated violence, in which they were deemed to have failed to protect victims.

The woman behind this case was Valeriya Igorevna Volodina. Ms Volodina entered into a year-long relationship, which became violent after she split from her partner. Both Ms Volodina and her son were threatened and she was abused. For a period of over three years she suffered several instances of intimidation, and verbal and physical assaults, including strangulation and death threats from her ex-partner. Ms Volodina's partner was never prosecuted, despite the fact that she had lodged several reports regarding his offences. Ms Volodina instigated her case with the European Court of Human Rights in June 2017. The basis of this claim was that, '[t]he Russian authorities had failed in their duty to prevent, investigate and prosecute acts of domestic violence', as well as having, 'failed to put in place a legal framework to combat gender-based discrimination against women'.⁸ Over two years later it has become apparent that the Court is in agreement with Ms Volodina's claims.

Of paramount consideration was the spectrum of violence which could be applied to Article 3's commitment to protect individuals from inhuman treatment. The Court was satisfied that this condition was met, given the strong evidence of physical violence.⁹ Further, the Court identified that the degree of psychological harassment

⁵ Thomson Reuters Foundation, 'The world's most dangerous countries for women 2018' <https://poll2018.trust.org> accessed 27 January 2020.

⁶ Waqar Mustafa, 'Pakistan to set up Special Courts to Tackle Violence Against Women' *Reuters* (19 June 2019) <https://www.reuters.com/article/us-pakistan-women-court/pakistan-to-set-up-special-courts-to-tackle-violence-against-women-idUSKCN1TK2X2> accessed 26 January 2020.

⁷ *Volodina* (n 1), [110] (De Gaetano J).

⁸ *ibid* [3].

⁹ *Volodina* (n 1), [74] (De Gaetano J).

delivered by her partner was ‘sufficiently serious’ to equate to inhuman treatment.¹⁰ These considerations, when coupled with the insufficient investigations or procedural frameworks, enabled the Court to reach a determination that Russia had failed to discharge its duties under Article 3.

An interesting aspect to this decision comes through the opinions of four judges. These opinions, separately, concluded that the extent of abuse in this case warranted a determination of ‘torture’, given the severity of her partner’s actions.¹¹ These viewpoints may be reflective of the wider collective need to provide some lasting and effective support to domestic abuse cases within Europe.

The ruling relating to the right to be free from discrimination (Article 14) is succinctly summed up in the decision:

[T]he [State’s] continued failure to adopt legislation to combat domestic violence and the absence of any form of restraining or protection orders clearly demonstrate that the authorities’ actions in the present case were not a simple failure or delay in dealing with violence against the applicant, but flowed from their reluctance to acknowledge the seriousness and extent of the problem of domestic violence in Russia and its discriminatory effect on women. By tolerating for many years a climate which was conducive to domestic violence, the Russian authorities failed to create conditions for substantive gender equality that would enable women to live free from fear of ill-treatment or attacks on their physical integrity and to benefit from the equal protection of the law.¹²

Torture has been a hotly debated topic in the Republic of Ireland and Northern Ireland in recent months, given the ECHR consideration of the ‘Hooded Men’ torture case.¹³ In that instance, interrogation and detainment techniques of IRA suspects was held to not amount to torture. It is interesting to note how this case diverges from the Russia case. This ruling on torture will likely have wide ranging effects on Irish case law moving forward. Despite the fact that the ruling is merely persuasive, not binding, on

¹⁰ *ibid*, [75] (De Gaetano J).

¹¹ *ibid*, [7] (Separate Opinion of Pinto De Albuquerque J, Joined by Dedov J)

¹² *ibid*, [132] (De Gaetano J).

¹³ *Ireland v The United Kingdom* [2018] ECHR case 5310/71 20/03/2018.

Irish law, the social good underpinning increased support for domestic abuse victims is difficult to ignore, and this can hopefully open the door to implementation of effective domestic abuse legislation and investigative procedures across Europe.

Is mise le meas,

Conor Courtney