

# Beyond Recognition: Rethinking Gender-Based Violence in Law

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## **Abstract**

*This article examines the European Court of Human Rights' (ECtHR) landmark judgment in *Opuz v. Turkey* (2009), which recognised domestic violence as a form of gender-based discrimination under Article 14 of the European Convention on Human Rights. The study explores the case through the lens of feminist legal theory, focusing particularly on the perspectives of Dianne Otto and Alexandra Timmer. By analysing the Court's reasoning and its interpretation of state responsibility, the article aims to evaluate how *Opuz* contributed to the development of gender equality within international human rights law. The analysis also identifies the conceptual and doctrinal challenges that limit the Court's approach and suggests directions for advancing a more transformative understanding of equality in future jurisprudence.*

## **Annotasiya**

*Bu məqalə Avropa İnsan Hüquqları Məhkəməsinin (AİHM) Opuz Türkiyəyə qarşı (2009) adlı presedent qərarını araşdırır. Belə ki, sözügedən qərarla Məhkəmə məişət zorakılığını Avropa İnsan Hüquqları Konvensiyasının 14-cü maddəsi çərçivəsində gender əsaslı ayrı-seçkilik forması kimi tanımışdır. Bu tədqiqatda isə adıçəkilən iş, xüsusilə Dianne Otto və Alexandra Timmer-in yanaşmalarına əsaslanaraq feminist hüquqi nəzəriyyə prizmasından təhlil edilir. Məqalənin məqsədi AİHM-in bu qərar vasitəsilə beynəlxalq insan hüquqları hüququnda gender bərabərliyinin inkişafına necə töhfə verdiyini qiymətləndirmək, həmçinin Məhkəmənin yanaşmasında mövcud olan konseptual və doktrinal məhdudiyyətləri müəyyənləşdirərək gələcək təfsirlər üçün daha transformativ bərabərlik modelinə keçid istiqamətləri təklif etməkdir.*

## CONTENTS

I. Situating <i>Opuz v. Turkey</i> in the Struggle for Substantive Gender Equality .....	252
A. Escalating Violence, State Inaction and Judicial Response .....	252
B. Turning Point or Missed Opportunity? .....	254
II. Applying Feminist Frameworks to the ECtHR's Reasoning .....	254
A. Otto's Critique of Legal Neutrality and Its Reflection in <i>Opuz</i> .....	255
B. Timmer's Transformative Equality and Its Potential in <i>Opuz</i> .....	256
C. The Case Through Feminist Lenses: What Could Have Been? .....	258
III. Testing the Limits of <i>Opuz</i> .....	259

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A. Where the Court Broke New Ground .....	259
B. Where the Court Fell Short .....	262
C. Comparative and Doctrinal Expansion .....	265
D. Broader Implications & Recommendations .....	266
Conclusion .....	267

## Introduction

Gender-based violence remains one of the most widespread and persistent human rights violations around the world. Despite increased awareness and legal recognition, international human rights law has struggled to fully address the complex social, cultural, and institutional factors that allow such violence to continue. The ECtHR judgment in *Opuz v. Turkey* stands as a landmark decision in this field. For the first time, the Court explicitly recognised domestic violence as a violation of human rights and identified it as a form of gender-based discrimination, holding states responsible for failing to act with due diligence to protect victims.<sup>1</sup> This ruling was widely celebrated as a major step forward in developing the legal protection of women against violence.

However, this article argues that the ECtHR's decision ultimately failed to adopt a truly transformative legal approach. The Court's reasoning remained confined within traditional legal frameworks and did not sufficiently challenge the deeper patriarchal structures and stereotypes that underpin systemic gender-based violence. As a result, the judgment's potential to bring about substantive justice and meaningful social change is limited. While many scholars have analysed this case from various perspectives, this article offers a distinct contribution by applying the feminist critiques of Dianne Otto and Alexandra Timmer to reveal the Court's limitations in addressing the structural causes of violence against women.

This analysis further situates *Opuz* within its broader legacy by examining how subsequent judgments, such as *Bălşan v. Romania*, *Kurt v. Austria*, and *Volodina v. Russia*, have deepened or diluted its feminist potential. In doing so, it critically assesses how the ECtHR's formalistic and reactive approach often falls short of embracing feminist principles that demand a more contextual and anti-stereotyping framework. In doing so, it critically assesses how the ECtHR's formalistic and reactive approach often falls short of embracing feminist principles that demand a more contextual and anti-stereotyping framework. The article highlights the need for a shift in international human rights jurisprudence toward transformative equality that confronts not only

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<sup>1</sup> *Opuz v. Turkey*, ECtHR No. 33401/02, § 199-202 (2009). Available at: <https://hudoc.echr.coe.int/fre?i=001-92945> (last visited Oct. 15, 2025).

individual violations but also the social and institutional factors that sustain gender-based violence.

This article begins by presenting the legal and factual background of the *Opuz* case, providing the necessary context for understanding the Court's decision. It then introduces feminist legal theories, particularly those developed by Dianne Otto and Alexandra Timmer, which critique traditional legal responses to gender-based violence. Using these theories, the article critically examines the Court's reasoning, showing where it falls short in addressing the deeper social and structural causes of violence against women. Through this analysis, the article aims to contribute to the evolving conversation on how international courts can more effectively address gender-based violence.

## I. Situating *Opuz v. Turkey* in the Struggle for Substantive Gender Equality

This section sets out the legal and factual background necessary to understand the significance of *Opuz v. Turkey*. It outlines the events that gave rise to the case, the applicant's legal claims, and the ECtHR's reasoning. By doing so, it establishes the foundation for the critical and theoretical analysis that follows, highlighting how the case exemplifies systemic state failure to address gender-based violence.

### A. Escalating Violence, State Inaction and Judicial Response

The case of *Opuz v. Turkey* involves a prolonged pattern of severe domestic violence suffered by Nahide Opuz and her mother at the hands of Opuz's husband, H.O.. Despite multiple complaints and medical reports documenting severe physical abuse, including a 1998 incident where H.O. attempted to run them over with his car and a 2001 assault where H.O. stabbed the applicant, Turkish authorities repeatedly failed to take effective action.<sup>2</sup> Although H.O. was convicted on several occasions, his sentences were systematically reduced, and he was released without adequate punishment.<sup>3</sup> The situation escalated when, on 11 March 2002, H.O. murdered the applicant's mother while she was attempting to move away from her husband for safety.<sup>4</sup> While he was convicted of intentional murder in 2002, his sentence was reduced due to alleged provocation and good conduct, leading to his release pending appeal in 2008.<sup>5</sup> The authorities' response remained limited, reactive, and ineffective throughout, despite clear signs of escalating violence and known risks to the women's lives and safety. This persistent inaction and impunity formed the basis of the applicant's complaint before the ECtHR.

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<sup>2</sup> *Id.*, § 23, 37.

<sup>3</sup> *Id.*, § 17, 36, 44.

<sup>4</sup> *Id.*, § 54.

<sup>5</sup> *Id.*, § 57.

On 15 July 2002, Opuz brought the case to the ECtHR after exhausting domestic remedies, alleging violations of Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), and 14 (prohibition of discrimination) of the European Convention on Human Rights (the Convention) due to the State's repeated failures to protect her and her mother.<sup>6</sup> In its judgment delivered on 9 June 2009, the Court unanimously found that Türkiye violated Articles 2, 3, and 14, holding that this inaction constituted a failure to safeguard the right to life, inhuman and degrading treatment, and gender-based discrimination under the Convention.

Regarding Article 2, the Court held that Türkiye had breached both the preventive and procedural aspects of the right to life.<sup>7</sup> The authorities had been made aware of imminent risks but failed to act, and the criminal proceedings that followed the murder were protracted and ineffective. Significantly, the Court clarified that States cannot rely on victims' reluctance to pursue complaints as an excuse for inaction when lives are at risk.<sup>8</sup>

Turning to Article 3, the Court found that the applicant's repeated experiences of violence constituted inhuman and degrading treatment, especially given her vulnerability and the prolonged pattern of abuse.<sup>9</sup> The Court was particularly critical of legal provisions requiring the victim's active involvement for prosecutions, which effectively shifted the burden of protection away from the State.<sup>10</sup>

Finally, under Article 14, the Court made a pivotal finding that inaction in domestic violence cases can amount to gender-based discrimination.<sup>11</sup> Drawing on reports and statistics, it held that systemic passivity by law enforcement perpetuated inequality and denied women equal protection of the law. Importantly, the Court emphasised that discrimination can arise not only from differential treatment but also from a failure to respond adequately to the specific needs of women as a vulnerable group.

This judgment thus marked a doctrinal shift, linking domestic violence to structural inequality and articulating positive obligations on States. Yet, the reasoning also exposes tensions between the Court's reliance on formal legal remedies and the deeper, transformative equality demanded by feminist theory, a tension that forms the basis of the critique developed in later sections.

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<sup>6</sup> *Id.*, § 118, 154, 177.

<sup>7</sup> *Id.*, § 129, 136.

<sup>8</sup> *Id.*, § 153.

<sup>9</sup> *Id.*, § 158-161.

<sup>10</sup> *Id.*, § 167-169.

<sup>11</sup> *Id.*, § 191-202.

## B. Turning Point or Missed Opportunity?

*Opuz v. Turkey* was the first case in which the ECtHR explicitly recognised domestic violence as a form of gender-based discrimination under Article 14 of the Convention. This recognition was a strength of the judgment: it expanded the Court's approach beyond individual harm, acknowledging systemic patterns of inequality that underlie gender-based violence. It also confirmed that State responsibility under the Convention includes not only direct action by authorities but also inaction to protect against private violence.

At the same time, the Court's reasoning revealed limitations. Its analysis remained closely tied to procedural shortcomings, such as delays, ineffective remedies, and reliance on the victim's initiative, without fully interrogating the structural and cultural dynamics of patriarchal harm. While groundbreaking, the judgment thus stopped short of adopting a transformative approach to equality.

This case, therefore, presents a critical opportunity to test feminist frameworks of substantive and transformative equality against the Court's reasoning, in order to evaluate both its achievements and its blind spots.

## II. Applying Feminist Frameworks to the ECtHR's Reasoning

International human rights law has long been celebrated for its universality and its capacity to restrain state power. However, feminist scholars have revealed that its very architecture embeds structural blind spots, particularly in relation to women's lived experiences. Far from being neutral, international law was historically shaped by male, state-centric perspectives that render certain forms of harm invisible.<sup>12</sup> This becomes especially clear in relation to domestic violence, long dismissed as a "private" matter beyond the reach of law.<sup>13</sup>

A central concern identified by feminist critiques is the persistence of the public/private divide within international human rights law. Under this dichotomy, state responsibility is primarily limited by state actors to violations committed in the public sphere, while abuses occurring in the private sphere, such as domestic violence or intimate partner abuse, often fall outside the scope of legal protection.<sup>14</sup> For women, this divide has been devastating: it effectively renders private harms legally invisible and shields them from scrutiny under international norms, reinforcing patriarchal assumptions that treat the home as an apolitical, private domain beyond state

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<sup>12</sup> Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 *American Journal of International Law* 613, 621-625 (1991).

<sup>13</sup> *Id.*, 627.

<sup>14</sup> *Id.*, 625-627.

accountability. Another concern lies in the dominance of formal equality, treating everyone the same, over substantive equality, which demands recognition of structural disadvantage. The “neutral” application of rights has often entrenched hierarchies rather than dismantled them.<sup>15</sup>

In response, feminist theorists have developed the notion of transformative equality, which requires dismantling stereotypes, restructuring institutions, and demanding proactive state measures to change the conditions that sustain gender-based subordination.<sup>16</sup> These critiques are not abstract theoretical claims. They provide concrete interpretive lenses through which judgments such as *Opuz v. Turkey* can be read, revealing both the case’s groundbreaking recognition of domestic violence as gender discrimination and the limits of the Court’s reasoning.

### **A. Otto’s Critique of Legal Neutrality and Its Reflection in *Opuz***

Dianne Otto’s scholarship offers a foundational feminist critique of international human rights law, particularly targeting its claims to neutrality and universality. Otto argues that these claims are not only misleading but also serve to obscure the law’s embedded hierarchies and exclusions. According to her, international law operates through a form of “false universalism”, that is, it presents itself as objective and inclusive, but in practice, it reflects the values and experiences of a privileged subject, typically male, Western, and heteronormative.<sup>17</sup> As a result, the perspectives and experiences of marginalised groups, such as particularly women, non-heterosexual identities, and non-Europeans, are treated as anomalies rather than as central to the human rights project.

A key element of Otto’s analysis is her argument that international human rights law does more than merely regulate individuals’ actions; it also constitutes them as particular kinds of subjects. As the author explains, there is no “natural” legal subject that exists prior to representation in law; rather, legal discourse actively (re)produces dominant norms and identities, including those that naturalise women’s inequality.<sup>18</sup> In this way, international human rights law participates in constructing subjects, for example, as women, as victims, or as citizens, in ways that often reinforce existing hierarchies. This dual role of law, as both regulator of behaviour and producer of identity, means that legal neutrality can conceal the reproduction

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<sup>15</sup> *Id.*, 626.

<sup>16</sup> See Alexandra Timmer, *Toward an Anti-Stereotyping Approach for the ECtHR*, 11 Human Rights Law Review 707 (2011).

<sup>17</sup> Dianne Otto, *Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law*, 18 Australian Year Book of International Human Rights Law 1, 14-15 (1997).

<sup>18</sup> Dianne Otto, *Lost in Translation: Re-scripting the Sexed Subjects of International Human Rights Law*, 15 Yale Journal of Law and Feminism 281, 319-320 (2003).

of stereotypes, such as the passive female victim, under the appearance of objectivity.

The scholar also critiques the international human rights law framework for failing to address the structural inequalities that perpetuate gender-based violence.<sup>19</sup> She argues that human rights law remains deeply entrenched in a patriarchal paradigm, often reinforcing rather than dismantling existing power structures. It often reinforces hierarchical power dynamics by framing women primarily as victims needing protection, rather than as autonomous legal subjects. Human rights discourse frequently prioritises state action, which she mentioned as “protective measures”, rather than addressing the broader societal transformation needed to dismantle gendered violence. This tendency aligns with the broader concern that international human rights law adopts a victim-protection model rather than tackling systemic and cultural norms that sustain gender-based violence. While certain international instruments have advanced women’s rights, they remain limited by their focus on formal rather than substantive equality. This reinforces the legal system’s tendency to focus on addressing the consequences of violence rather than its root causes, limiting the transformative potential of international human rights law. Thus, while existing frameworks acknowledge gender inequality, they often fail to challenge the underlying social, economic, and cultural structures that perpetuate it.

This dynamic is evident in *Opuz v. Turkey*. While the Court took important steps in recognising domestic violence as gender discrimination and condemning Türkiye’s systemic failures, its reasoning remained framed in the idiom Otto warns against: the applicant was positioned as a victim requiring protection, while the state’s duty was limited to a narrow focus on “due diligence” and procedural adherence.<sup>20</sup> The Court refrained from addressing how international law, in its treatment of gender-based violence as an exceptional harm rather than a structural problem, contributes to reinforcing structural inequalities.

Thus, while *Opuz* marked undeniable progress in recognising women’s vulnerability to private violence, it also illustrates the persistence of the “neutral” frame that casts women as passive recipients of protection. In Otto’s terms, the judgment advanced women’s rights only within the limits of a victim-protection paradigm, failing to address the underlying structural factors that perpetuate inequality.

## **B. Timmer’s Transformative Equality and Its Potential in *Opuz***

Alexandra Timmer’s approach centres on the concept of transformative equality, a model that goes beyond the frameworks of both formal and

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<sup>19</sup> See Dianne Otto, *Women’s Rights*, in *International Human Rights Law* (3rd ed. 2018).

<sup>20</sup> *Supra* note 1, § 145-149.

substantive equality. While formal equality is concerned with treating everyone the same regardless of differences, and substantive equality aims to correct disadvantages through differential treatment, transformative equality seeks to dismantle the deep-rooted social norms, stereotypes, and institutional structures that sustain discrimination and inequality.<sup>21</sup>

Timmer draws inspiration from anti-stereotyping jurisprudence, particularly from the constitutional courts of the United States and Canada, where courts have begun to reject legal reasoning that reinforces gender-based or identity-based stereotypes.<sup>22</sup> She argues that international human rights bodies, especially the ECtHR, should adopt a similar approach. Rather than simply evaluating whether discrimination occurred in a given case, courts should critically assess how legal norms and reasoning might be complicit in reinforcing systemic harm. The author critiques the Strasbourg Court for its inconsistent application of this approach, noting that while the Court has sometimes addressed gender stereotypes, it has largely failed to apply this reasoning systematically.<sup>23</sup> This inconsistency weakens the Court's ability to challenge deeply embedded societal norms that contribute to gender-based violence.

In her view, transformative equality demands that courts engage more deeply with context, identity, and power structures. It is not enough to acknowledge individual harm; courts must also interrogate the institutional and cultural frameworks that allow such harm to persist. This entails a rethinking of positive obligations under human rights law, not merely as procedural requirements for states to prevent rights violations, but as substantive responsibilities to actively reshape unjust social arrangements.<sup>24</sup>

In this sense, transformative equality offers a normative and doctrinal foundation for feminist legal reform, urging on adjudicative bodies to take a proactive role in achieving structural change. This framework presents a stronger alternative to the traditional human rights model, as it calls for transformative legal reasoning that actively dismantles gender hierarchies rather than merely compensating victims after violations occur. By challenging the stereotypes that normalise gender-based violence, courts can play a more substantive role in addressing structural discrimination rather than treating cases as isolated incidents.

*Opuz v. Turkey* shows both the promise and the limits of this approach. Though the ECtHR made a historic breakthrough by recognising domestic violence as discrimination under Article 14, an important step toward

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<sup>21</sup> Timmer, *supra* note 16, 712.

<sup>22</sup> Alexandra Timmer, *Judging Stereotypes: What the European Court of Human Rights Can Borrow from American and Canadian Equal Protection Law*, 63 *The American Journal of Comparative Law* 239, 240 (2015).

<sup>23</sup> *Supra* note 16, 709.

<sup>24</sup> *Id.*, 713.

substantive equality, it did not embrace the transformative dimension of Timmer's framework. The Court condemned the authorities' failures but stopped short of challenging the cultural and institutional passivity that normalised such violence. It treated Türkiye's duty primarily as one of procedural compliance, rather than as a substantive obligation to address the gendered stereotypes and structural impunity that underpinned the violence.

The result is a judgment that gestured toward transformative equality but fell back into doctrinal conservatism. *Opuz* thus illustrates Timmer's critique of Strasbourg: the Court is willing to acknowledge discrimination, but reluctant to require deeper structural reform. Its reasoning advanced equality in form but left intact many of the systemic conditions that make women's lives precarious.

### **C. The Case Through Feminist Lenses: What Could Have Been?**

A counterfactual reading of *Opuz* reveals both the depth of the Court's achievement and the scope of its missed opportunity. If the reasoning had been guided by Dianne Otto's critique of legal neutrality, the Court would have moved beyond attributing blame solely to Türkiye's authorities. Instead, it would have interrogated how international human rights law itself is complicit in sustaining the invisibility of private violence. Rather than framing domestic violence solely as a result of state negligence, the Court might have recognised how the public/private divide reinforced the inequality of women by concealing family violence from legal scrutiny. Such a judgment would have recast the issue not as an isolated enforcement failure, but as a critique of the systemic framework of human rights law that had long ignored gendered harm. Under this framework, women would no longer be seen simply as passive victims in need of protection; they would be recognised as autonomous rights-holders entitled to the dismantling of the structural conditions that perpetuate their vulnerability.

Had the Court adopted Alexandra Timmer's framework of transformative equality, its reasoning would have gone further still. Building on its recognition of domestic violence as discrimination, the Court might have imposed positive obligations requiring Türkiye not just to prosecute individual cases, but also to address the stereotypes and institutional barriers that sustain harm. Transformative equality would have demanded structural reforms: training for judges and law enforcement officials to dismantle gender stereotypes, educational programmes to challenge cultural norms of male dominance, and monitoring mechanisms to ensure that these changes reshaped institutional practices. In this counterfactual, the Court would have acknowledged that preventing domestic violence requires more than procedural measures; it requires a proactive restructuring of the social and legal landscape that maintains inequality.

Such a feminist reimagining of *Opuz* highlights how the Court could have produced a doctrinally bolder and normatively richer judgment. By doing so, the Court could have transformed *Opuz* from a landmark recognition of domestic violence into a genuine watershed in gender equality jurisprudence. This would not have meant abandoning legal principle but rather reinterpreting it in a way that foregrounds women's lived experiences as central to the project of human rights.

Thus, while *Opuz* is rightly celebrated as a milestone, a counterfactual reading through feminist theory demonstrates its limits. The judgment acknowledged gender discrimination while leaving intact the broader cultural and institutional structures that perpetuate violence. Its transformative potential was recognised but not realised, leaving open the possibility, and the necessity, of deeper critique in subsequent jurisprudence.

### III. Testing the Limits of *Opuz*

While this case is often praised as a major success, the reality of its long-term impact is more complicated. Later judgments have occasionally expanded its promise, reinforcing positive obligations and suggesting an anti-stereotyping approach; however, they have simultaneously revealed a tendency to retreat into procedural formalism and avoid deeper structural critique. The following discussion explores how the ECtHR's subsequent jurisprudence has both developed its potential and limited its transformative impact.

#### A. Where the Court Broke New Ground

The legacy of *Opuz v. Turkey* is visible in subsequent Strasbourg jurisprudence. Far from being an isolated judgment, *Opuz* opened a doctrinal space in which the Court began to experiment with more demanding standards of state responsibility. Several later cases demonstrate that the judgment inspired a progressive development of the Court's case law, one that, at its best, integrated feminist insights into the Court's approach to violence against women.

*Bălșan v. Romania* (2017) is one of the clearest examples of this expansion. It illustrates that the applicant endured years of physical abuse without adequate response from the State's authorities, leading the Court to find violations of Articles 3 and 14. Importantly, *Opuz* already recognised that the "general and discriminatory judicial passivity" of the authorities amounted to gender-based violence and thus a form of discrimination.<sup>25</sup> Yet its reasoning remained cautious and fact-specific, framed in terms of Türkiye's particular failures. *Bălșan*, by contrast, clarified and generalised the principle, holding more explicitly that state inaction on domestic violence constitutes not just

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<sup>25</sup> *Supra* note 1, § 200-202.

procedural shortcomings but systemic discrimination against women.<sup>26</sup> The Court underscored that the general and discriminatory passivity of the authorities perpetuates a climate of impunity that disproportionately affects women as a group.<sup>27</sup> This doctrinal step connected the protection from violence with the principle of substantive equality, framing domestic violence as a problem of systemic inequality rather than a set of individual acts. For feminist theory, this is a crucial acknowledgment: by identifying domestic violence as discrimination, the Court moved closer to Timmer's conception of transformative equality, which demands recognition of structural hierarchies and the stereotypes underpinning them.

Another case is *Talpis v. Italy* (2017) that further expanded the reach of *Opuz* by challenging the idea that state responsibility should depend on a victim's procedural initiative. As in *Opuz*, where the authorities failed to intervene despite a clear pattern of escalating violence, the *Talpis* case revealed how procedural formalism, such as the withdrawal of a complaint, can perpetuate the same pattern of state passivity. On the facts of the *Talpis* case, the applicant had withdrawn her complaint against her abusive husband, after which the authorities effectively dropped their investigations; her son was later killed during another attack. The Court found violations of Articles 2, 3, and 14, holding that the state's obligations are autonomous and cannot be nullified by a victim's withdrawal.<sup>28</sup> This represents a doctrinal shift because it separates state duties from the formal choices of individual victims, recognising that such choices often occur under pressure, fear, or dependency. From a feminist perspective, the *Talpis* case is vital because it challenges the stereotype that women "choose" to stay in abusive relationships and thus bear responsibility for their fate. Instead, the judgment reaffirms that the burden of prevention lies with the state: gender-based violence is a structural phenomenon that requires proactive measures regardless of a victim's procedural choices.<sup>29</sup> Notably, the Court did not "eschew its pedagogical role," as Timmer observed, and succeeded in confronting the societal narratives that normalise gender-based violence.<sup>30</sup> It did not repeat the failure of *Opuz* to challenge structural norms but, by contrast, applied the anti-stereotyping approach, aiming at dismantling the stereotypes and ideologies that normalise domestic violence.

*Volodina v. Russia* (2019) pushed the Court's reasoning even further by identifying a systemic legislative gap as a human rights violation in itself.

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<sup>26</sup> *Bălșan v. Romania*, ECtHR No. 49645/09, § 78-89 (2017). Available at: <https://hudoc.echr.coe.int/eng?i=001-173619> (last visited Oct. 15, 2025).

<sup>27</sup> *Id.*, § 86-88.

<sup>28</sup> *Talpis v. Italy*, ECtHR No. 41237/14, § 107-131, 141-149 (2017). Available at: <https://hudoc.echr.coe.int/eng?i=001-171994> (last visited Oct. 16, 2025).

<sup>29</sup> *Id.*, § 144-145.

<sup>30</sup> Timmer, *supra* note 22, 251.

According to the case, the applicant had suffered repeated abuse, stalking, and threats, but the Russian authorities refused to act effectively in the absence of a specific domestic violence law. The Court found breaches of Articles 3 and 14, emphasising that Russia's refusal to criminalise domestic violence amounted to an institutionalised failure of protection.<sup>31</sup> This case extended *Opuz's* critique by showing that a state can sustain violence not only through inaction but also through gaps in legislation. The feminist significance of the *Volodina* case lies in its alignment with Otto's insight that law is not neutral: when states refuse to legislate adequately, they entrench patriarchal structures and deny women equal protection.<sup>32</sup> Here, the Court signals that addressing domestic violence requires not only reactive enforcement but also systemic reform of legal frameworks. From Timmer's perspective, this approach reflects a model of transformative equality, one that interrogates not only the harm done to individuals but also the structural frameworks that permit such harm.<sup>33</sup>

*Kurt v. Austria* (2021) represented another key development following *Opuz*. The case arose after the applicant's son was killed by his father despite repeated requests for protection for herself and her children. In contrast to the applicant's claim, the Court ultimately found no violation of Article 2, emphasising that the Austrian authorities had taken appropriate measures in response to the applicant's complaints of domestic violence, including issuing protection orders and conducting risk assessments. However, its reasoning highlighted the importance of preventive operational measures, stressing that state authorities are required to conduct an individualised risk assessment whenever there is a known threat of domestic violence.<sup>34</sup> Unlike in *Opuz*, where the emphasis was on state inaction in the face of a pattern of abuse and repeated threats, *Kurt* elevated the due diligence standard by requiring a structured and anticipatory duty: states must not only respond to violence, but also actively assess individual risk and intervene before it escalates.<sup>35</sup> The doctrinal move matters because it situates domestic violence within the framework of life-threatening systemic risk rather than "private" harm. From a feminist standpoint, *Kurt* is significant for dismantling the idea that fatal violence is unforeseeable or unavoidable; it affirms that states have an obligation to treat women's (and children's) safety as a matter of public concern and structural prevention. The importance of *Kurt* becomes clearer when viewed through the lens of feminist critiques of the public/private

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<sup>31</sup> *Volodina v. Russia*, ECtHR No. 41261/17, § 78-85 (2019). Available at: <https://hudoc.echr.coe.int/fre?i=001-194321> (last visited Oct. 16, 2025).

<sup>32</sup> *Id.*, § 132.

<sup>33</sup> *Id.*, § 85.

<sup>34</sup> *Kurt v. Austria*, ECtHR No. 62903/15, § 157-190 (2021). Available at: <https://hudoc.echr.coe.int/eng?i=001-210463> (last visited Oct. 16, 2025).

<sup>35</sup> *Id.*, § 167-176.

divide, a divide that has confined state responsibility largely to the public sphere while leaving abuses in the private sphere legally invisible and socially naturalised. By requiring authorities to conduct individualised risk assessments and to treat domestic violence as a foreseeable and preventable threat to life, the Court took an important step toward dismantling this dichotomy. *Kurt* therefore reframes intimate partner violence not as an unfortunate private tragedy but as a structural, public concern that engages the full weight of state responsibility under the Convention.

Taken together, these cases illustrate that *Opuz* was not a doctrinal anomaly but a foundation upon which the Court has sometimes built more demanding standards. They reveal a willingness to articulate domestic violence as a structural problem of equality, to challenge harmful stereotypes, and to impose proactive duties on states in ways that resonate with feminist critiques of international law. At the same time, they also show the limitations of this trajectory: progress has been gradual, inconsistent, and dependent on the Court's willingness to push its own precedents forward. As the next section will demonstrate, the Court has often retreated into formalism or minimised the structural dimensions of gender-based violence, leaving the transformative potential of *Opuz* only partially realised.

## **B. Where the Court Fell Short**

Despite notable advances after *Opuz*, the Court's approach remains uneven. Too often, the structural insights of *Opuz*, that domestic violence is both gendered and systemic, give way to a more comfortable proceduralism. Formal diligence is prioritised more than ensuring real safety; stereotypes are acknowledged but rarely critically examined; and Article 14, the Convention's anti-discrimination provision, is inconsistently invoked. These shortcomings mean that the feminist promise of *Opuz* has been only partially realised. Several recurring weaknesses are especially visible: proceduralism over substance, weak engagement with stereotypes, inconsistent reliance on Article 14, and remedial minimalism.

One of the most persistent weaknesses in the Court's approach is its tendency to equate compliance with due diligence obligations to the performance of isolated procedural steps. Instead of asking whether the state effectively neutralised a known pattern of escalating risk, the Court frequently settles for whether the authorities did something, filed a report, issued a warning, or initiated an investigation. This approach weakens the core message of *Opuz*, which is that systemic passivity towards domestic violence amounts to discrimination.

In several post-*Opuz* judgments, such as *Levchuk v. Ukraine* (2020) and *A. v. Croatia* (2010), the Court acknowledged repeated prior complaints or protective orders but concluded that authorities had acted with sufficient

diligence because they had recorded statements or initiated formal steps.<sup>36</sup> Such an interpretation threatens to convert the “real and immediate risk” test, which is designed to sharpen state obligations, into a shield for inaction: if risk is framed narrowly and individually, authorities can avoid responsibility for ignoring evident patterns of escalating violence.

From a feminist perspective, this proceduralism reproduces precisely the neutral approach that Otto critiques. It appears that legal procedures are being carried out and records are being kept, but the real-life circumstances in which women face lethal violence are being ignored.<sup>37</sup> Timmer’s lens makes the same point differently: by refusing to integrate patterns and context into risk assessments, the Court abandons the transformative equality approach that *Opuz* had made possible.<sup>38</sup>

A second shortcoming lies in the Court’s inconsistent engagement with the role of gender stereotypes in shaping official responses. The authorities’ tendency to dismiss domestic violence as a “family matter”, to assume that reconciliation ends the danger, or to ignore victims who hesitate to pursue complaints reflects entrenched cultural norms. While the Court occasionally acknowledges such attitudes, it rarely frames them as systemic manifestations of discriminatory stereotyping.

In many cases, such as *Eremia v. Moldova* (2013), the Court criticises delay or passivity but avoids identifying the underlying stereotype.<sup>39</sup> For example, when police decline to intervene because a woman had withdrawn her complaint, the Court may find a violation of procedural obligations but not interrogate the gendered assumption that a victim’s “choice” absolves the state of responsibility. Without identifying and dismantling the stereotypes that sustain institutional inaction, the Court misses the opportunity to transform official practices and prevent persistence.

Here, Otto’s critique of the victim-protection discourse is telling: women are framed as passive objects to be protected when they meet formal criteria, but not as rights-holders entitled to structural change.<sup>40</sup> Timmer, by contrast, insists that the key to transformative equality is anti-stereotyping analysis: unless the Court diagnoses how gendered assumptions structure institutional responses, reform will be merely symbolic.<sup>41</sup>

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<sup>36</sup> See *Levchuk v. Ukraine*, ECtHR No. 17496/19, § 77-91 (2020). Available at: <https://hudoc.echr.coe.int/eng?i=001-203931> (last visited Oct. 17, 2025); *A. v. Croatia*, ECtHR No. 55164/08, § 75-80 (2010). Available at: <https://hudoc.echr.coe.int/eng?i=001-101152> (last visited Oct. 17, 2025).

<sup>37</sup> Otto, *supra* note 18.

<sup>38</sup> *Supra* note 22, 251.

<sup>39</sup> *Eremia v. the Republic of Moldova*, ECtHR No. 3564/11, § 89 (2013). Available at: <https://hudoc.echr.coe.int/eng?i=001-119968> (last visited Oct. 17, 2025).

<sup>40</sup> Otto, *supra* note 19.

<sup>41</sup> *Supra* note 22, 251.

A third continuing problem is the Court's inconsistent engagement with Article 14. While *Bălșan v. Romania* represented a milestone in recognising domestic violence as gender-based discrimination, in cases such as *J.I. v. Croatia* (2022), the Court has declined to engage with Article 14 at all.<sup>42</sup> The formula is familiar: once the Court finds a violation of Articles 2, 3, or 8, it concludes that “no separate issue arises” under Article 14.

The consequence of this approach is significant. Avoiding Article 14 precludes structural analysis of gender inequality. It prevents the Court from demanding evidence-based accountability (such as gender-specific statistics on prosecutions) and from articulating standards for state responsibility in addressing systemic discrimination. Ultimately, violence is treated as an isolated failure of protection rather than a manifestation of inequality between women and men.

From Otto's vantage point, this reflects the persistence of neutrality: discrimination becomes secondary, not central to the Court's reasoning.<sup>43</sup> In Timmer's analysis, Article 14—the key vehicle for anti-stereotyping and substantive equality—is marginalised, with the result that structural inequality remains untouched.<sup>44</sup>

Even when the Court finds violations, remedies often remain limited to financial compensation for the applicant. The Court may use Article 46 to mandate structural reforms such as mandatory law-enforcement training, implementation of lethality-risk protocols, or legislative change. The *Volodina* case is a welcome exception, recognising legislative gaps as Convention violations, but this remains rare.<sup>45</sup>

This minimalist remedial framework underscores Otto's claim that international law can shift responsibility away from itself by compensating victims rather than reforming the institutions that sustain the harm.<sup>46</sup> From Timmer's perspective, true transformation requires more than damages—it requires targeted, structural measures that prevent recurrence.<sup>47</sup>

Together, these themes reveal the Court's tendency to retreat into procedural formalism. Procedural activity outweighs substantive protection; stereotypes remain unnamed; Article 14 becomes dispensable; remedies end at compensation. Measured against Otto and Timmer, Strasbourg jurisprudence still hesitates to move from protection to transformation.

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<sup>42</sup> *J.I. v. Croatia*, ECtHR No. 35898/16, § 105-108 (2022). Available at: <https://hudoc.echr.coe.int/fre?i=001-219067> (last visited Oct. 15, 2025).

<sup>43</sup> *Supra* note 18, 319-320.

<sup>44</sup> *Supra* note 16, 709.

<sup>45</sup> *Supra* note 31.

<sup>46</sup> *Supra* note 19.

<sup>47</sup> *Supra* note 16, 713.

### C. Comparative and Doctrinal Expansion

Looking beyond Strasbourg, other international bodies have articulated clearer and more explicitly feminist approaches to gender-based violence. The CEDAW Committee's General Recommendation No. 19 (1992) was well ahead of *Opuz*, stating clearly that gender-based violence constitutes discrimination under Article 1 of CEDAW.<sup>48</sup> In *A.T. v. Hungary* (2005), the Committee held the state responsible for failing to offer protection against domestic violence.<sup>49</sup> It developed a strong understanding of state due diligence and recognised that such violence stems from structural discrimination. Similarly, the Inter-American Court of Human Rights, in *González et al. ("Cotton Field") v. Mexico* (2009), adopted a broader and more integrated legal approach. The Court acknowledged that gender-based violence is deeply rooted in structural inequality.<sup>50</sup> It required states to eliminate discriminatory laws and cultural practices and interpreted the duty of due diligence as an obligation to actively challenge and change harmful gender norms.<sup>51</sup> Compared to *Opuz*, the *Cotton Field* judgment reflects a more thorough feminist understanding of both legal obligations and social realities. That's to say, the ECtHR's jurisprudence appears fragmented and cautious.

These comparative developments help illustrate the critiques advanced by Otto and Timmer. The more developed approaches of the CEDAW Committee and the Inter-American Court reflect Otto's argument that international human rights law should move beyond formal notions of neutrality and address the deeper, structural causes of gender-based harm. Likewise, Timmer's emphasis on the Court's failure to fulfil its pedagogical role and to adopt an anti-stereotyping approach is visible in the ECtHR's reluctance to articulate a coherent doctrine under Article 14. In contrast, the jurisprudence of these other bodies shows how a transformative equality model can operate in practice. Taken together, these contrasts suggest that *Opuz* did not set the Court on a consistently feminist trajectory. Its legacy is best understood as a contested and partial breakthrough—an important doctrinal moment whose transformative promise remains unfulfilled.

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<sup>48</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, § 6 (1992). Available at: <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (last visited Oct. 17, 2025).

<sup>49</sup> *A.T. v. Hungary*, Committee on the Elimination of Discrimination Against Women No. 2/2003, U.N. Doc. CEDAW/C/36/D/2/2003, § 9.1-9.6 (2005). Available at: [https://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf?utm\\_source](https://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf?utm_source) (last visited Oct. 17, 2025).

<sup>50</sup> *González et al. ("Cotton Field") v. Mexico*, Inter-American Court of Human Rights, § 128-236 (2009). Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf) (last visited Oct. 17, 2025).

<sup>51</sup> *Ibid.*, § 258.

## D. Broader Implications & Recommendations

The *Opuz* judgment continues to occupy a central place in the jurisprudence of the ECtHR because it broke the silence on domestic violence as a matter of human rights law. By holding that inaction in the face of gender-based violence could amount to discrimination, the Court signalled that entrenched patterns of harm in the private sphere fall within the reach of the Convention. This symbolic move extended beyond Strasbourg. It is widely recognised that *Opuz* contributed momentum to the adoption of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) in 2011, the first binding European instrument explicitly linking gender-based violence to structural discrimination. The Convention reflects in treaty form the core insight of *Opuz*: that states must not only react to individual cases of violence, but also address the systemic conditions that enable it.

Despite this achievement, the legacy of *Opuz* is contested. Later jurisprudence has often diluted its transformative potential, focusing on procedural adequacy rather than structural inequality. This uneven trajectory underscores the critiques advanced by feminist theorists. *Otto* reminds us that formal neutrality leaves structural harms unaddressed, while *Timmer* highlights how the Court has hesitated to adopt its pedagogical role and challenge the stereotypes that underpin violence. These critiques are not merely academic—they suggest concrete directions for the Court's future development.

First, the Court should integrate anti-stereotyping more explicitly into its reasoning. Too often, Strasbourg judgments describe failures of protection without naming the discriminatory attitudes—such as victim-blaming or diminishing abuse—that perpetuate impunity. Recognising stereotypes as discriminatory harms in their own right would align the Court with developments in CEDAW and the Inter-American system.

Second, the Court should embed substantive equality into its proportionality analysis. Rather than asking only whether remedies are available in law, it should examine whether legal and institutional frameworks actually work to dismantle structural barriers to women's safety. This would prevent a drift into formalism, ensuring that the Convention protects not just on paper but in practice.

Third, the Court should give real weight to women's lived experiences. The effectiveness of state responses cannot be measured in isolation from the social realities of victims. Statistical data on prevalence, patterns of official inaction, and testimonies from survivors should play a greater role in assessing compliance with the Convention. This methodological shift would make judgments more responsive to the structural dimensions of gendered harm.

Taken together, these steps would allow the Court to transform the promise of *Opuz* into a more consistent feminist trajectory. The case demonstrated that international human rights law can confront violence against women as a structural issue, but it also revealed how easily this potential can be diluted into procedural formalism. *Opuz* was a milestone, but unless feminist methodologies are consciously integrated into the Court's approach, its legacy risks being remembered as a symbolic breakthrough rather than a sustained transformation.

## Conclusion

This article has examined the European Court of Human Rights' landmark decision in *Opuz v. Turkey* through a feminist legal lens, highlighting both its significance and limitations. The analysis began by outlining the legal and factual background of the case and emphasising the Court's groundbreaking recognition of domestic violence as a form of gender-based discrimination under Article 14 of the European Convention on Human Rights. Next, a theoretical framework was developed by engaging feminist critiques of international human rights law, focusing on the persistent public/private divide, the flawed claims of legal neutrality, and the need for transformative equality to dismantle patriarchal norms. Key contributions from scholars such as Dianne Otto and Alexandra Timmer were used to demonstrate how current human rights doctrines often fail to address structural gender inequality and instead reproduce stereotypes that hinder meaningful change.

The Article later applied these feminist theories to critically analyse the *Opuz* judgment. While the Court's approach was progressive in linking state inaction to discrimination and affirming positive obligations, it stopped short of challenging the underlying patriarchal assumptions that enable domestic violence. The ruling did not fully embrace a transformative model of equality, instead remaining within a reactive and formalistic legal framework. The Court's failure to adopt an anti-stereotyping approach and to provide clear doctrinal guidance on systemic gender discrimination limits the judgment's potential to drive broader social and legal reforms.

To address these shortcomings, this Article argues that future human rights adjudication must move beyond mere protection of individual victims and engage more actively with the cultural and institutional structures that perpetuate gender-based violence. Incorporating feminist methodologies—especially the transformative equality model—can strengthen international legal standards by demanding not only enforcement but substantive change. Comparative analysis of other Strasbourg cases, as well as of other international bodies such as the CEDAW Committee and the Inter-American Court of Human Rights, shows promising paths for advancing these goals.

Ultimately, *Opuz* represents both a crucial step forward and a missed opportunity. Its legacy includes inspiring comprehensive instruments like the

Istanbul Convention, which better reflect feminist concerns. For international human rights law to realise its full potential in combating gender-based violence, it must critically confront patriarchal legal paradigms and develop a jurisprudence that actively dismantles systemic inequalities rather than merely responding to their effects.