Forum Polityki Kryminalnej, vol. 1 (3), s. 1–24
ISSN 2720-1589
https://doi.org/10.31261/FPK.2022.03.02

FORUM POLITYKI KRYMINALNEJ

KAROLINA PRAŻMOWSKA-MARCINOWSKA
https://orcid.org/0000-0002-3080-6924
University of Silesia, Faculty of Law and Administration

Impact of rape-myths on judiciary proceedings A lack of acknowledgement in the European Court of Human Rights case-law

Wpływ mitów wspierających kulturę gwałtu na postępowanie sądowe Brak uznania w orzecznictwie Europejskiego Trybunału Praw Człowieka.

ABSTRACT: Rape myths can be defined as prejudicial, stereotyped or false beliefs about rape, rape victims, and rapists, and they include common opinions whereby women mean "yes" when they say "no"; women provoke rape; if a woman does not want to be raped, she will just fight back at any cost. These pervasive social attitudes can have a detrimental effect on victims of sexual violence, especially when employed by authorities during official proceedings. As such, this article aims at analyzing to what extent rape myths affect the perception of victims of sexual violence during the official proceedings on the example of the case-law of the European Court of Human Rights (ECHR). Thus the first part explains the notion of rape myths, while the second part provides an analysis of the jurisprudence of the ECHR. Lastly, the final part suggests new approach to cases concerning sexual violence.

KEYWORDS: rape myths, sexual violence, gender stereotypes, European Court of Human Rights, discrimination

ABSTRAKT: Mity wspierające kulturę gwałtu można zdefiniować jako krzywdzące, stereotypowe lub fałszywe przekonania na temat gwałtu, ofiar gwałtu i gwałcicieli, obejmujące takie twierdzenia, jak: kobiety mają na myśli „tak", gdy mówią „nie"; kobiety prowokują gwałt; jeśli kobieta nie chce być zgwałcona, będzie walczyć za wszelką cenę. Te wszechobecne postawy społeczne mogą mieć szkodliwy wpływ na ofiary przemocy seksualnej, zwłaszcza gdy są one stosowane w trakcie postępowań. W związku z tym celem niniejszego artykułu jest analiza wpływu mitów na postrzeganie ofiar przemocy seksualnej w trakcie oficjalnych postępowań na przykładzie orzecznictwa Europejskiego Trybunału

Praw Człowieka (ETPCz). Pierwsza część wyjaśnia pojęcie mitów o gwałcie, podczas gdy druga część zawiera analizę orzecznictwa ETPCz. Wreszcie ostatnia część sugeruje nowe podejście do spraw dotyczących przemocy seksualnej.

SŁOWA KLUCZOWE: mity wspierające kulturę gwałtu, przemoc seksualna, stereotypy płci, Europejski Trybunał Praw Człowieka, dyskryminacja.

1. Introduction

The recognition of women's rights as human rights that took place in the 1990s was a long-awaited groundbreaking moment and a crowning achievement of feminist scholarship and movement. Since then at the international law level, violence against women has been defined as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life[1]. Although violence against women is only one of the faces of oppression that women encounter in their daily lives[2], it is undoubtedly a widespread phenomenon and as such it requires a multidimensional approach.

Despite endeavors undertaken by both governmental and non-governmental organizations, violence against women, and especially sexual violence is still a widespread phenomenon – according to Eurostat about 187.000 accounts of sexual violence were recorded by the police in the European Union in 2019, of which 63.442 were rapes[3]. The figures, however, do not necessarily reflect the actual number of violent sexual crimes, as they only show to what extent such crimes are reported to and recorded by the police. And not reporting sexual violence, due to for example the fear of not being trusted or the fear of further victimization, is far too common. As such, this article aims at analyzing to what extent the so-called rape myths affect the perception of victims of sexual violence during the official proceedings on the example of the case-law of the European Court of Human Rights (ECHR, the Court). Thus the first part explains the notion of rape myths and offers a brief historical overview of the formation of such myths. Subsequently, the second part provides an analysis of

[1] Declaration on the Elimination of Violence against Women, United Nations General Assembly, Resolution 48/104 of 20 December 1993.

[2] M.I. Young, *Five faces of oppression*, in: *Geographic Thought: A Praxis Perspective*, G.L. Henderson & M. Waterstone (eds.), Routledge 2008, pp. 55–71.

[3] Estimation based on the data provided by the Eurostat: https://ec.europa.eu/eurostat/databrowser/view/crim_off_cat/default/table?lang=en; and https://ec.europa.eu/eurostat/databrowser/view/crim_off_cat/default/table?lang=en [accessed 14 April 2022].

the jurisprudence of the ECHR, while the third part suggests new approach to cases concerning sexual violence.

2. Rape myths

Deeply held and pervasive social attitudes such as gender stereotyping and acceptance of interpersonal violence are strongly connected to rape attitudes: "rape is the logical and psychological extension of a dominant-submissive, competitive, sex role stereotyped culture"[4]. Rape myths can be defined as "prejudicial, stereotyped or false beliefs about rape, rape victims, and rapists"[5].

The popular rape myths include the following opinions and statements: women mean "yes" when they say "no"; women are "asking for it" when they wear provocative clothes, go to bars alone, or simply walk down the street at night; only virgins can be raped; women are vengeful, bitter creatures; if a woman says "yes" once, there is no reason to believe her "no" the next time; if a woman agreed to kissing, it means she agreed to sexual intercourse; women who ridicule men deserve to be raped; the majority of women who are raped have bad reputations; if a woman does not want to be raped, she will just fight back at any cost; women provoke rape; a woman who goes to the home of a man on the first date implies she is willing to have sex; women cry rape to cover up an illegitimate pregnancy; a man is justified in forcing sex on a woman who makes him sexually excited; most of the rape accusations are false; women secretly desire to be raped; women exaggerate how much rape affects them; women report rape immediately; only strangers can commit rape, thus martial rape or rape by acquainted is not a rape[6].

Rape myths are not a "modern" invention, but have been gradually constructed throughout history, with the culmination in the Victorian period. One of the earliest examples is a passage from Herodotus, from the fifth century B.C., who wrote: "Abducting young women is not, indeed a lawful act; but it is stupid after the event to make a fuss about it. The only sensible thing is to take no notice; for it is obvious that no young woman allows herself to be [raped] if she does not want to be"[7]. This

[4] M.R. Burt, *Cultural myths and supports for rape*, "Journal of Personality and Social Psychology", Vol. 38, 1980, p. 229.

[5] Ibidem, p. 217.

[6] M. Torrey, *When will we be believed – rape myths and the idea of a fair trial in rape prosecutions*, "U.C. Davis L. Review", Vol. 1012, No. 24, 1991, p. 1015. K.M. Edwards et al., *Rape myths: history, individual and institutional-level presence, and implications for change*, "Sex Roles", Vol. 65, Issue 11–12, 2011, p. 765 .

J. Temkin et al., *Different functions of rape myth use in court: findings from a trial observation study*, "Feminist Criminology", Vol. 13, No. 2, 2018, p. 210.

[7] K.M. Edwards et al., *Rape myths*…, p. 765.

passage includes at least several myths, such as a woman can fight back the rapist and if she does not, it means she wants it or that women secretly desires to be forced into a sexual intercourse.

In the seventeenth century Lord Justice Hale constructed some ideas that had a great impact on how the victim of rape was perceived in the rape trails; his theories became well-known and frequently repeated in courtrooms. One of them even received the name "Hale's Warning" and it reflects one of the most common myths and the greatest fear of judiciary: "rape is an accusation easily to be made, hard to be proved, and harder to be defended by the party accused, tho' never so innocent"[8]. Lord Justice Hale pronounced also upon marital rape: "by their matrimonial consent and contract, the wife hath given up herself in this kind unto her husband, which she cannot retract"[9]. That theory was later supported by an English juror and professor, William Blackstone, who asserted that "husband and wife are legally one person. The legal existence of the wife is suspended during marriage, incorporated into that of the husband… If a wife is injured, she cannot take action without her husband's concurrence"[10]. As a consequence, even the possibility of bringing charges of rape against the victim's husband was for a very long time excluded from the scope of legal actions.

Nevertheless, the biggest development of rape myths took place in the 19th century. In that period many of the social attitudes began to crystallize into legal rules, and the stereotypes and expectations of female behaviour began to have profound implications for the ways in which women were (and still are) regarded in the trials. One clear example is the Victorian era in Great Britain. The Victorian courtroom required that any victim of rape who brought the charges conformed with society's prescribed moral standards of respectability. Complainants were expected to appear genuinely innocent and modest in terms of both looks and behavior[11]. The victim was supposed to behave in line with stereotypical models of the genuine "innocent victim" and "innocent women" – she had to prove that she was virtuous and highly moral. If she was able to prove that, she could expect protection provided by the justice system. Her conduct had to be impeccable if she was to convince a suspicious court that she had neither invited, nor consented to, sexual violation. Thus, the woman pre-rape history of behavior was an important evidence.

---

[8] M. Erikson, *Defining Rape: Emerging Obligations for States under International Law?*, Martinus Nijhoff Publishers, 2011, p. 43.

[9] Ibidem, p.42.

[10] K.M. Edwards et al., *Rape Myths*…, p. 764.

[11] K. Stevenson, *Unequivocal victims: The historical roots of the mystification of the female complainant in rape cases*, "Feminist Legal Studies", Vol. 8, 2000, p. 353.

As pointed out by Kim Stevenson, many Victorians believed that a man could not rape a healthy woman and that it was physically impossible to rape a child. It was also believed that a woman could only conceive if she had consented to intercourse in the first place. Widely accepted Victorian medical opinion claimed that women experienced no excitement or feelings from sex, at least outside legitimate marital relationships[12].

All these beliefs were then reflected in the courtroom. In the 1850 case of Thomas Saker at Maidstone, accused of raping five year-old Mary Hill, medical evidence supported his plea of innocence. According to one of the surgeons, the brutal injuries she suffered were so extensive and serious that they "could not have been inflicted without any corresponding marks on him" and "he had none at all." Medical opinion assumed that if the violation was as brutal as alleged, then the child would have fought back as hard as she could, producing marks of resistance on her assailant. Saker was acquitted despite evidence from witnesses that Mary's clothing had been removed and her screams heard[13].

In 1852 in Great Britain a "respectable young man" received just one month imprisonment for unlawfully attempting to abuse Emma Gooding. The judge commented that "although women are to be protected it was partly her fault by going into a dubious area at night"[14].

Another example of the case in which the rape myths were employed is the case of Eliza Armitt, from 1853. She was on her way to visit her sister in Banbury one night. As her sister's house was in darkness, a man whom she had met on the train, William Page, offered to take her back to the station. However, on the way he "took liberties" with her. Eliza feeling deeply shamed, failed to inform her sister later that night of what had happened. It was only on her return to the workhouse the following day, where she attempted to take her own life, that the story was revealed. As she failed to report the attack immediately, the perpetrator was acquitted due to the absence of an early complaint[15].

The Victorian notion of modesty is not an isolated belief and the attitudes on how women and victims of rape should behave were employed in different parts of the globe and became well established in modern society. In 1980, Martha R. Burt published the Rape Myth Acceptance Scale (RMAS), which was the first widely-used tool to measure prejudicial concepts about rape and rape victims[16]. The RMAS combined with rape myths the concepts of sex role stereotyping, adversarial sexual beliefs,

[12] Ibidem.
[13] Ibidem, p. 355.
[14] Ibidem, p. 361.
[15] Ibidem, p. 362.
[16] M.R. Burt, *Cultural myths*…

and acceptance of interpersonal violence. An example item is as follows: "any healthy woman can successfully resist a rapist if she really wants to", or "a woman who is stuck-up and thinks she is too good to talk to guys on the street deserves to be taught a lesson"[17]. Answering above the midpoint on this seven-point scale from "strongly agree" to "strongly disagree" typically denotes agreement with a myth. Since 1980 several other measures and methods have also been employed, such as, for example, the Attitudes Toward Rape Victims Scale or Illinois Rape Myth Acceptance Scale.

The general outcome of research using abovementioned scales is that between 25% and 35% of the respondents (both male and female) agree with the majority of rape myths and that men are more likely than women to endorse rape myths[18]. In a study conducted in 2008 by the United Kingdom Amnesty International it was found that 33% of those surveyed were of the opinion that a woman was partially or totally responsible for rape if she had many sexual partners, and 26% thought her partially or totally responsible for rape if she was wearing sexy or revealing clothing[19]. In another study conducted on college males and females, the skirt length of a women portrayed as a rape victim varied: it was either short, moderate, or long. It was found that when the victim was wearing a short skirt (compared to the other two), she was deemed to want sex more, to be more suggestive to the perpetrator, and to lead the perpetrator on to a greater degree[20].

When it comes to the myth of false accusation, in 1980 Martha R. Burt found that 50% of men and women surveyed believed that women lied about being raped. More recently, in 2010, a survey conducted by Katie M. Edwards showed that 22% of the respondents agreed that "women lie about rape to get back at men", and 13% agreed that "a lot of women lead men on and then cry rape"[21]. However, an international report estimated that approximately 2–8% of reported sexual assaults are believed to be false[22].

The last example shows that even though the rape myths are untrue, they continue to be prevalent and influence the way society perceive perpetrators and victims of sexual violence. As judiciary system does not exist in a void and to some extent reflects wider social mechanisms and attitudes, the rape myths are subsequently employed, mostly unconsciously, by judges, jurors, and others in trials and as a result they also play an important role in the way that rape crime proceedings are being conducted.

---

[17] Ibidem, p. 223.

[18] K.M. Edwards et al., *Rape myths*…, p. 762.

[19] Amnesty International, *Violence Against Women. The perspective of students in Northern Ireland*, Amnesty International UK, September 2008.

[20] K.M. Edwards et al., *Rape myths*…, p. 766.

[21] Ibidem, p. 767.

[22] Ibidem.

Research has shown that those who believe in rape myths are more likely to find the defendant not guilty, to believe that the complainant consented, and to place at least some of the blame for the events upon the complainant[23]. A study conducted by Jennifer Temkin in 2010 involved an observation of eight single perpetrator rape trials including one attempted rape. Rape myths were used in three identifiable ways: to distance the case from the "real rape" stereotype, to discredit the complainant, and to emphasize the aspects of the case that were consistent with rape myths. For the purpose of the study Jennifer Temkin listed thirteen myths: lack of injury/torn clothes; failure to resist; absence of immediate complaint; rape complainants are commonly liars; sexual history; previous allegations of rape suggest fabrication; rape is an easy allegation to make (Hale's dictum); rape by former partner/husband is not really rape; real victims of marital rape leave the marital home; sex offenders are different from ordinary people; complainant's clothing may precipitate rape; kissing as consent; post-rape behavior/demeanor in court[24]. All of them have been used at least once during the trails by defense counsel, with a total number of thirty-four times references. On eleven occasions the judges addressed the myths, cautioning the jury, however at least four references to the rape myth further perpetuated stereotypes, with a special emphasis on a judge who employed the "Hale's Warning".

3. Sexual violence in the case-law of the European Court of Human Rights

The European Court of Human Rights was established on January 21, 1959 on the basis of Article 19 of the European Convention on Human Rights, adopted by the Council of Europe. Its primary function is to hear applications alleging that a contracting State has breached one or more of the human rights provisions concerning civil and political rights set out in the Convention and its protocols. Throughout its existence, the ECHR proved to be a well-functioning institution, standing up for the protection of human rights, whose argumentation have had a great impact on the development of human rights and the interpretation of the European Convention on Human Rights as a "living instrument". Although the Court's authority in the scope of human rights is unchallengeable, the judgments are sometimes controversial and require scrutiny.

On several occasions the ECHR pronounced upon the cases concerning rape and a significant evolvement can be observed in the manner that the Court deals with this

[23] J. Temkin et al., *Different functions*…, p. 207.
[24] Ibidem, p. 210.

kind of allegations. The first of such cases, X and Y v. the Netherlands[25], was brought before the Court in 1985. Nearly twelve years later, in the case Aydın v. Turkey[26], the Court delivered a landmark decision in which the connection between the prohibition of torture and rape was established. Furthermore, the Court stated that "rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally"[27].

Indeed, the founding that rape in and of itself was sufficient to constitute torture was a remarkable and progressive decision, which significantly marked the jurisprudence of the ECHR and served as a starting point for the cases concerning future rape allegations brought before the Court.

In the years following Aydin v. Turkey, the Court's jurisprudence has developed in significant and important ways which have expanded the scope of human rights protection beyond the examples of state coercion and offences committed by the state actors. The doctrine of positive obligations constructed by the Court has been deployed to great effect to bring to account State failures regarding the investigation and prosecution of previously marginalized forms of rape, particularly acquaintance rapes[28]. A landmark decision in this manner is the case M.C. v. Bulgaria[29], in which the Court stated that "any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardizing the effective protection of the individual's sexual autonomy. In accordance with contemporary standards and trends in that area, the member States' positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the penalization and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim"[30].

Since the judgment in the case M.C. v. Bulgaria, ECHR has dealt with some relevant number of cases concerning rape allegations and the failure of the domestic authorities to conduct a proper investigation and impartial trail. Most of the victims in these cases alleged violations of Articles 3, 6, 8, 13 and 14 in different configurations. In none of the cases did the Court deal directly with the question of discrimination

[25] ECHR, X and Y v. the Netherlands (Application no. 8978/80).

[26] ECHR, Aydın v. Turkey (Application no. 57/1996/676/866).

[27] Ibidem, par. 83.

[28] C. McGlynn, *Rape, torture and the European Convention on Human Rights*, "International and Comparative Law Quarterly", Vol. 58, Issue 3, p. 568.

[29] ECHR, M.C. v. Bulgaria (Application no. 39272/98).

[30] Ibidem, par. 166.

and stereotyping, despite the fact that, as will be argued subsequently, it had a certain opportunity to do so.

4. Stereotyping in rape cases

As mentioned before, stereotypes about rapes and victims of rape are deeply rooted in society, and as such they are also being employed in the official proceedings. The following paragraphs provide an analysis of three cases brought before the ECHR. An important factor while choosing the cases for the analysis was the fact that the perpetrators in the cases were individuals, not State actors, and the clarity with which the stereotypes were employed by the domestic authorities. In each of the cases a rape myth saying that "a woman, if she does not want to be raped, will just fight back at any cost" was present. Additionally, at least one more stereotype was employed by the official authorities, let it be investigators, prosecutors or judges.

In the first case, D.J. v. Croatia[31], the applicant complained that the investigation into her allegations of rape had not been thorough, effective or independent and that she had no effective remedy and in that respect she relied on Article 3, 8, 13 and 14 of the European Convention of Human Rights.

The applicant took a job working on the boat E. On the night of 22 August 2007, the applicant called the police, telling them that she had been raped by D.Š. in the boat's lounge area. A police officer soon arrived and found the applicant, D.Š., A.R. (the owner of the boat), and some other people on the boat. The applicant told him that she had been raped, while the others said that she had been disturbing public order. She alleged that her skirt had been torn and had traces of blood on it, and she told the officer that she was not wearing any underwear because D.Š. had torn it and thrown it away in the boat's lounge. The applicant asked the officer to secure the evidence at the scene, such as her clothes, including her underwear, but he replied that there was no need for that because she was drunk and had not been raped. On 23 August 2007 the applicant was taken to the medical center, where she was examined by a gynecologist, who established that she did not have injuries on her genitals but had a few lacerations on her body, without noting any further details. On the same day the State Attorney's Office lodged a request for an investigation in respect of D.Š. on the basis of the allegations of rape. D.Š. was arrested and brought before S.G, an investigating judge at the S. County Court.

Judge S.G. heard evidence from D.Š., who denied having raped the applicant. He explained that the applicant had become very drunk and he had taken her to

[31] ECHR, D.J. v. Croatia (Application no. 42418/10).

her cabin on the boat. The judge then issued a decision expressing his disagreement with the request for an investigation. In his reasoning he emphasized the fact that the applicant had been drunk at the time of the events. However, a three-judge panel of the S. County Court ordered an investigation in respect of D.Š. on the basis of the applicant's allegations of rape. The investigation was conducted by Judge S.G.[32]

A medical report drawn up by a doctor at the C. Hospital on 25 August 2007 records that the applicant had bruises on her genitals, a rash on the back of her upper legs and two smaller bruises on her buttocks. However, Judge S.G. concluded that the injuries established by the physician at the C. Hospital had been recorded two days after the alleged rape and had not been established by the gynecologist who had seen the applicant on the morning after the alleged rape; they could not therefore be connected with certainty with the event. A medical report drawn up by a doctor at the Rijeka Hospital on 30 August 2007 noted that the applicant was suffering from an acute reaction to stress. On 30 August 2007 the applicant, on her own initiative, gave the skirt she had been wearing on the night in question to the police in C. as a piece of evidence. However, it was not given for forensic examination[33].

Later on, Judge S.G. commissioned a psychiatric report on the applicant in order to establish her ability to correctly interpret events. He also ordered that the applicant's previous psychiatric records be provided. Also the father of the applicant was interviewed about the applicant's relationship with her family[34].

On 31 March 2008 the S. County State Attorney's Office ceased to pursue the criminal prosecution of D.Š. for lack of evidence. On 9 April 2008 the investigating judge terminated the criminal proceedings against D.Š.[35]

The applicant before the ECHR argued that the legal framework as regards the criminal offence of rape in the Croatian legal system was insufficient because the Criminal Code required the use of force by the perpetrator. Legal practice also required resistance from the victim. She argued that the judges often analyzed aspects of the victim's behavior, such as wearing a short skirt, visiting disco clubs, hitchhiking and so on, and on the basis of such facts applied decreased sentences to the perpetrators[36].

This kind of attitude was present in her case, embodied both in the person of the police officer and the judge. The primary assumption had an effect on the whole investigation and thus the stereotype of a "perfect victim" and her "modest" conduct prevented the applicant from receiving an equal and impartial treatment in

[32] Ibidem, par. 6–12.
[33] Ibidem, par. 15.
[34] Ibidem, par. 25–26.
[35] Ibidem, par. 33.
[36] Ibidem, par. 72.

the conduct of the investigation. The judge in his initial decision "labelled" her by saying that she had disturbed public peace and order, caused disturbances, shouted, woken up the guests, and consumed large quantities of alcoholic beverages, whereas he did not comment at all on the behavior of the suspect, who had also been under the influence of alcohol[37].

The Court argued that even if an investigating judge who has initially expressed his or her disagreement with the request for an investigation, later conducts the investigation in the same case, it does not follow that he or she will necessarily lack impartiality. However, in the present case the investigating judge while disagreeing with the request to open the investigation in respect of D.Š., voiced quite a strong opinion of the applicant and largely based his disagreement on the applicant's conduct[38].

The Court observed that the allegation whereby a rape victim was under the influence of alcohol or other circumstances concerning the victim's behavior or personality could not dispense the authorities from the obligation to effectively investigate. The Court also noted that the investigating judge concluded as follows: "The criminal complaint and the enclosures in the case-file show with certainty that the injured party was not, at any moment, alone with the suspect…". This choice of words left little doubt as to the judge's view as regards one of the crucial aspects of the case, namely the question whether the applicant and D.Š. were left alone at any time. This strongly worded statement combined with the emphasis on the applicant's own conduct could raise a question of appearances as to the judge's objectivity and impartiality in respect of his continued conduct of the investigation[39].

Considering that many omissions and shortcomings in the investigation proceeding augmented distress and harm of the applicant, the Court found out that in the case of the applicant there had been a violation of the procedural aspect of both Article 3 and Article 8 of the Convention and that no separate issue arose under Article 13 and 14 of the Convention[40].

The second case selected for the analysis is the case of M.G.C. v. Romania[41]. The case involves an eleven-year-old girl, who was allegedly raped numerous times by her friends' relatives. However, in this case, it was decided on the domestic level that it was the applicant who provoked the perpetrators by being "scantily dressed", thus they were not charged with the offence of rape.

The applicant, M.G.C., lived with her family and used to play with the neighbours' daughters at their house. When the mother noticed that M.G.C. did not get

[37] Ibidem, par. 76.
[38] Ibidem, par. 99–100.
[39] Ibidem, par. 101–102.
[40] Ibidem, par. 104.
[41] ECHR, M.G.C. v. Romania, (Application no. 61495/11).

her period, M.G.C. revealed that she had been sexually abused by several of the sons and a fifty-two-year-old male relative, J.V., living in the neighboring family's house where she used to go to play. According to the statement later made by the applicant to the police, in August 2008 and then again in December 2008, J.V. dragged her by force while she was playing with her girlfriends at the neighbors' house, took her to an empty room in the house or into the barn and raped her while holding her down and keeping his hand over her mouth in order to prevent her from screaming. The applicant also stated to the police that between August 2008 and February 2009 she had been raped in similar circumstances by four of the neighbours' sons and their friend G.I.[42].

During the investigation J.V. declared that the applicant had provoked him to have sex as she had always been "scantily dressed". He further stated that it was she who had come to him and had asked him to have sex with her the first time, in August or September 2008. He alleged that the applicant had told him that she had had sex before with the boys from the B. family. F.B. declared before the prosecutor that he had had sex with the applicant once on 22 December 2008. A.B. declared that he had had sex with the applicant in the autumn of 2008. G.B. declared that he had had sex with the applicant once in April and then again in October 2008. P.B. stated that he had had sex with the applicant on one occasion in the autumn of 2008. The applicant had asked him to have sex with her, and when he had refused – because he had never done this before – it was she who got undressed and climbed onto him. He further mentioned that he had used a condom that he had had in his pocket. They all declared that it was the applicant who had taken the initiative each time and that it had happened because she had displayed a provocative attitude, being scantily dressed most of the time. Each brother stated that the applicant had told him that she had had sex before, either with one of the other brothers or with J.V.[43]

On 10 December 2009 the Prosecutor's Office of the Hunedoara County Court issued an indictment decision with respect to J.V. for the crime of sexual intercourse with a minor on repeated occasions. F.B., A.B., G.B. and P.B. were given administrative fines for the same crime. The prosecutor based his decision on the statements of the perpetrators and the two sisters and held as proved the fact that the applicant had gone to the neighbors' house scantily dressed and had had a sexual relationship with J.V. The prosecutor therefore concluded that from the documents in the file it was not proved beyond doubt that the applicant had not given her consent to the sexual acts[44].

[42] Ibidem, par. 6–9.
[43] Ibidem, par. 17.
[44] Ibidem, par. 19.

The applicant declared before the court that J.V. had forced her to have sex with him and had threatened to beat her if she told anyone. She was afraid of him because he could become violent when he was drunk. The other boys had also threatened to beat her and once A.B. had threatened her with a knife. However, the Deva District Court firstly observed that the forensic certificate stated that there were no signs of violence on the victim's body. The court further noted that it was apparent from the statements of J.V. and the other perpetrators who had not been indicted by the prosecutor that the applicant had always taken the initiative for the sexual acts and she had been in the habit of provoking both J.V. and the other boys to have sex with her. As regards the content of the above-mentioned statements, the court considered "relevant" the fact that the applicant was scantily dressed and that even after she had allegedly been sexually abused she went on playing with her girlfriends[45].

These two assumptions are based on two stereotypes: firstly, that by dressing "provocatively", girls and women "ask for it" – or, in this case, actually go as far as taking the initiative. The second conclusion stereotypically expects child victims of sexual abuse to tell their parents about it. The "ideal" female child rape victim implicit in these gender and age-based stereotypes is thus someone who dresses in clothes that are more body-concealing and tells her parents about the sexual abuse without delay[46].

The Court observed that the attitude of the authorities in the applicant's case was rooted in defective legislation and a predominant practice of not making a context-sensitive assessment of the evidence, more specifically failing to take into account age-specific behaviours, and generally prosecuting perpetrators for rape against minors only where there is evidence of physical resistance[47]. In addition, the domestic courts chose to attach more weight to the statements given by J.V., F.B., P.B. and A.B. and by the two witnesses from their family, thereby concluding that it was the applicant who had provoked J.V. to have sex with her. Furthermore, no consideration was given by the courts to the difference in age between the applicant and J.V. or the obvious physical difference between them. The courts also failed to examine whether any reasons existed for the applicant to falsely accuse J.V. of rape[48].

All the above is a sign of lack of a child-sensitive approach in analyzing the facts of the case and held against the applicant facts that were, in reality, consistent with the child's possible reaction to a stressful event, such as not telling her parents.

---

[45] Ibidem, par. 23–24.

[46] L. Peroni, *Clothes on trial: M.G.C. and the need to combat rape stereotypes*, "Strasbourg Observers", April 20, 2016, https://strasbourgobservers.com/2016/04/20/clothes-on-trial-m-g-c-and-the-need-to-combat-rape-stereotypes/ [last accessed: 14.04.2022].

[47] ECHR, M.G.C. v. Romania, par. 62.

[48] Ibidem, par. 68–69.

Thus, the Court found that the investigation of the applicant's case, and, in particular, the approach taken by the national courts, caused a violation of the respondent State's positive obligations under both Articles 3 and 8 of the Convention.

The last case, I.P. v. Moldova[49], involves the rape myth that only strangers can commit rape, thus marital rape or rape by acquainted is not a rape. The applicant in the case, I.P., had been in a relationship with O.P. for over one year. Towards the end of their relationship they started to have disputes because O.P. became very jealous and violent. On the evening of 10 May 2010 O.P. became upset with the applicant because she was not at home for several hours and did not answer his calls. He waited for her in front of her home and when she arrived he assaulted her and forced into his car. The applicant and O.P. arrived at the latter's house, where he locked her inside and left alone for approximately forty-five minutes. The applicant attempted to escape but was not able to and there was no telephone in the house. After O.P. returned, he ordered the applicant to undress and to lie with him on the bed. As a result of the applicant's refusal they clashed, but O.P. broke her resistance by violently assaulting and threatening her, after which he raped her. In the morning, when the applicant attempted to leave O.P.'s house, a new dispute broke out between them. After assaulting her, O.P. forcefully raped her and only after that did he call a taxi for her[50].

On 11 May 2010 the applicant lodged a criminal complaint against O.P. and underwent a forensic medical investigation. A medical report issued on the same date found multiple bruises on the applicant's face, lips, neck and thorax. Some of the bruises were as large as 5x4 centimeters. Traces of semen were found only in her vagina.

A few days later O.P. underwent a forensic medical investigation as a result of an order issued by a prosecutor. The medical report found scratches produced by nails on his neck. The report recorded that O.P. did not deny having had sexual intercourse with the applicant; however, he insisted that both partners had consented. The report concluded that the injuries on his body resembled those frequently inflicted by rape victims[51].

On 6 August 2010 the Prosecutor's Office refused to initiate criminal proceedings. When describing the facts of the case in his decision, the prosecutor relied solely on O.P.'s version of the facts, according to which the applicant used to date and to engage in sexual activity with him for one year before the events. The prosecutor mentioned the findings of the forensic doctors to the effect that the scratches on O.P.'s neck resembled injuries provoked by a rape victim. Nevertheless, he dismissed

[49] ECHR, I.P. v. Moldova, (Application no. 33708/12).

[50] Ibidem, par. 5–8.

[51] Ibidem, par. 9–11.

the applicant's version of the events on the ground that she used to date O.P. and to have sex with him and because she could have resisted had she really wanted to[52].

The applicant appealed against the prosecutor's decision not to initiate criminal proceedings against O.P. She argued, inter alia, that her neighbors had witnessed how O.P. had assaulted and forced her into his car on the evening of 10 May 2010. Her unsuccessful attempt to run away from him had also been witnessed by employees of a petrol station where O.P. had stopped the car.

The applicant's appeal was upheld and a fresh examination of the case was ordered. In the reopened investigation, the Prosecutor's Office obtained two new forensic medical reports. According to one of them, the injuries on O.P.'s neck could have been produced either as a result of a rape or as a result of a fight. Another report concluded that the injuries on the applicant's body could have been produced by an assault committed by O.P. and that they were not characteristic of rape. As to the traces of semen in her vagina, the report concluded that it was not possible to determine whether they dated from 11 May 2010 or from a previous intercourse. Two new witnesses were heard: O.P.'s friend, who stated that he had seen O.P. and the applicant and that the applicant had waited calmly in the car; and O.P.'s parents, whose house was several meters away from his house and who stated that they had not seen the applicant on that evening nor heard any noise from their son's house.

On 18 April 2011 a prosecutor from the Chisinau Prosecutor's Office dismissed again the applicant's complaint concerning rape. He concluded that even if O.P. and the applicant had had sex on 10 or 11 May 2010, it must have been consensual since no injuries characteristic of rape had been discovered on her body. Moreover, the applicant willingly came to O.P.'s house and did not leave when presented with an opportunity. She also could have resisted rape had she wanted to. Moreover, O.P.'s violent reaction had been provoked by the applicant's immoral behavior as she had gone for a walk with another person, had not replied to O.P.'s telephone calls and had come back late letting him wait for a long time[53].

The ECHR noted that the prosecutors refused to initiate criminal proceedings after receiving the applicant's complaint, apparently treating her allegations as not serious enough. That happened in spite of the findings in the initial medical reports to the effect that the applicant had signs of violence on her body and traces of semen in her vagina and the alleged rapist had scratches on his neck characteristic of rape. No confrontation between the applicant and O.P. was conducted and no other witnesses were heard. The prosecutor accepted without any reserve O.P.'s version of the facts according to which the applicant had not been forced to come with him on

[52] Ibidem, par. 12.
[53] Ibidem, par. 17–18.

the evening of 10 May 2010. He did not question her neighbors or the employees of a petrol station who, according to the applicant, witnessed her attempts to escape from O.P. The Court thus found that the investigation of the applicant's case fell short of the requirements inherent in the state's positive obligations to effectively investigate and punish rape and sexual abuse and that there was a violation of the respondent state's positive obligations under Article 3 of the Convention.

In each of the cases the rape myths and stereotyping played a crucial role in the domestic proceedings, harming the applicants in several ways. In all of the cases, the use of force instead of the notion of consent and the requisite of the "utmost resistance" were pivotal for assessing the facts of the cases. In the case D.J. v. Croatia, the fact that the applicant had been intoxicated was for the domestic authorities a proof of her unreliability. However, intoxication did not have the same consequence for the perpetrator and his character, and his prior behavior was not questioned.

In M.G.C. v. Romania., the domestic authorities simply assumed that the applicant had given her consent partly based on her alleged "scanty dressing" and "provocative behavior". This, in turn, influenced the way the prosecutor and judges understood the criminal offense. The fifty-two-year-old neighbor was indicted for sexual intercourse with a minor (punishable with 3 to 10 years of imprisonment) rather than for rape of victims under 15 (punishable with 10 to 25 years of imprisonment).

In the last case, it might seem that the applicant followed all the "rules" to become "ideal victim" of rape. She lodged the complaint immediately, she had injuries and scratches and traces of semen; it can even be assumed that she was "properly" dressed. Yet, it was insufficient for the domestic authorities, as there was a relationship between her and the perpetrator. And, as we all know, "rape occurs only in a dark alley".

5. Lack of acknowledgement of the harmful stereotypes in the Court's reasoning

In all of the abovementioned cases, the employment of rape stereotypes played a crucial role in domestic proceedings and in fact their employment compromised the investigations and trails in a way that it constituted a breach of positive obligations of the states to effectively investigate and punish rape and sexual abuse. However, on any occasion this problem was addressed by the Court.

In this matter, the Court especially had the chance to pronounce upon the issue in the case of D.J. v. Croatia, where the applicant directly invoked the violation of Article 14, stating that the national authorities involved in the investigation of her

allegations of rape had discriminated against her on the basis of her gender[54]. The Court however found that the complaint essentially overlapped with the issues which were examined under Articles 3 and 8 of the Convention and held that no separate issue arose under Article 14 of the Convention.

Article 14, being the non-discrimination clause of the European Convention, contains some peculiarities, which are of great importance when assessing the Court's approach to the discriminatory cases. First of all, it is a subsidiary provision which cannot be invoked independently, but only in conjunction with other Conventional rights. Nevertheless, the application of Article 14 does not presuppose a breach of one of the substantive provisions, but requires solely that the facts concerned fall within the ambit of one or more of the provisions of the Convention. Secondly, the jurisprudence has clarified that the provision prohibits different treatment of individuals in analogous situations and equal treatment of individuals in significantly different situations, unless there is a reasonable and objective justification[55]. Thus, it follows, there has to be a control group, compared to which a person can prove discrimination. Objective and reasonable justification requires that there is a legitimate aim and a reasonable relationship of proportionality between the means employed and the aims sought to be realized[56]. Moreover, cases concerning the so-called "suspected grounds", such as sex, will generally be subjected to a higher degree of scrutiny.

When it comes to discrimination, it has to be noted that the Court pronounced upon discrimination on many occasions. However, during the first decades of its existence, the Court saw discrimination solely through the lens of formal equality. Formal equality means that persons placed in similar situations must be treated in an equal manner and that without reasonable justification no distinction can be made on a number of grounds of discrimination such as race and sex. As pointed out by Alexandra Timmer, it generally means that "women have the same rights as men"[57]. However, this approach has shown to have some shortcomings, especially when it comes to gender equality. Thus, the concept of substantive equality has emerged. In contradistinction to formal equality, the substantive equality takes as its starting point the reality of a rule or practice as it is experienced by a disadvantaged group. The question which should be asked is therefore whether the effect of a rule is discriminatory, not whether a distinction has been made between different groups.[58]

---

[54] D.J. v. Croatia (Application no. 42418/10), par. 105.

[55] D.H. and Others v. Czech Republic (Application no. 57325/00), par. 196.

[56] I. Radacic, *Gender equality jurisprudence of the European Court of Human Rights,* "The European Journal of International Law", Vol. 19, no. 4, 2008, p. 843.

[57] A. Timmer, *Toward an anti-stereotyping approach for the European Court of Human Rights*, "Human Rights Law Review", Vol. 11, Issue 4, 2011, p. 710.

[58] Ibidem, p. 711.

As the Court observed in the landmark decision in the case D.H. and Others v. Czech Republic, which concerned segregation of Roma children in Czech schools, "sometimes, positive action is expected from the authorities, in order to correct factual inequalities."[59] In the same judgement the Court stated that "a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group […] and that discrimination potentially contrary to the Convention may result from a de facto situation."[60]

On another occasion, the Court emphasized another important factor that should be taken into account in the cases regarding discrimination, namely the historical discrimination: "if a restriction on fundamental rights applies to a particularly vulnerable group in society that has suffered considerable discrimination in the past, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question. The reason for this approach, which questions certain classifications per se, is that such groups were historically subject to prejudice with lasting consequences, resulting in their social exclusion."[61]

When such a historical discrimination can be established, the "very weighty reason test" must be applied: a distinction requires very weighty reasons, if it concerns certain groups in society that are particularly vulnerable due to significant past discrimination.

With regard to violence against women, effective access to justice for female victims of violence entails the prerequisite that the access is provided free of any discriminatory treatment based on sex or any other ground[62]. However, not many cases on violence against women have been successfully pleaded under Article 14 of the Convention.

The landmark decision in this respect is the case Opuz v. Turkey, concerning domestic violence[63]. The applicant complained that she and her mother had been discriminated against on the basis of their gender under Article 14 in conjunction with Article 2 and 3 of the Convention. One of the crucial influences on the reasoning of the Court was the statistical information provided by various non-governmental organizations, proving that domestic violence was tolerated by the authorities and that the remedies indicated by the government did not function effectively. The Court thus observed that although there was not any explicit distinction in the Turkish law

[59] ECHR, D.H. and Others v. Czech Republic, par. 175.

[60] Ibidem.

[61] ECHR, Kiyutin v. Russia (Application no. 2700/10), par. 63.

[62] Council of Europe, *Equal access to justice in the case-law on violence against women before the European Court of Human Rights*, Strasbourg September 2015, p. 21.

[63] ECHR, Opuz v. Turkey (Application no. 33401/02).

per se between men and women in the enjoyment of rights and freedoms, it needed to be brought into line with the international standards in respect of the status of women in a democratic society. The Court stated that the alleged discrimination resulted from the general attitude of the local authorities, such as the manner in which the women were treated at police stations when they reported domestic violence and judicial passivity in providing effective protection to victims[64].

The approach initiated by the Court in the case Opuz v. Turkey has since then been followed in domestic violence cases, as for example in the case Eremia v. the Republic of Moldova[65] or T.M. and C.M. v. the Republic of Moldova[66]. In those cases the Court observed that "the domestic authorities' passive attitude towards the women victims has clearly demonstrated that the authorities' actions were not a simple failure or delay in dealing with the cases of domestic violence but amounted to condoning such violence and reflected a discriminatory attitude towards female victims"[67].

Similar attitudes could be found in the cases previously analyzed. However, the Court, in its reasoning, overlooked this important factor in the domestic investigations concerning rape allegations.

As it was mentioned before, the Court had an opportunity to pronounce upon stereotypes in rape cases, i.e. in the case of D.J. v. Croatia. The applicant, invoking the violation of Article 14, argued that the victims of sexual violence were mostly women. In Croatia the level of sensitivity and specific knowledge of law-enforcement personnel in this area was quite low and there was no protocol on the procedure to be followed in cases of sexual violence. As regards her case, the investigating judge acted with prejudice against the applicant when he expressed his disagreement with the request for an investigation and labelled the applicant as a person disturbing public peace and order and consuming a large quantity of alcohol, while he ignored the crucial facts of the case[68].

Although the Court declared complaint admissible, it was further stated that this complaint essentially overlaps with the issues that had been examined under Article 3 and 8 of the Convention and that no separate issue arises under Article 14 of the Convention.

The Court, having in mind its authority, can play a crucial role in combating harmful gender stereotypes, particularly in rape cases. However, in order to do so, the ECHR has to firstly acknowledge their existence, especially when they have such

[64] Ibidem, par. 192.

[65] ECHR, Eremia v. the Republic of Moldova (Application No. 3564/11).

[66] ECHR, T.M. and C.M. v. the Republic of Moldova (Application No. 26608/11).

[67] Council of Europe, *Equal access*…, p. 22.

[68] Ibidem, par. 106.

a clear impact on the investigations and trials on a domestic level; secondly the Court should contest the above-discussed stereotypes. In order to do so the Court could use the model of judicial review for equal treatment cases developed by Janneke H. Gerards[69] or Alexandra Timmer[70].

The proposition of Janneke H. Gerards is based on a three-step model. The first step is a pre-phase in which the intensity review must be determined. The Court has already established that distinctions based on sex require an intensive review. In the second step the Court must determine whether there has actually been an instance of unequal treatment that requires justification. In order to do so the Court is currently using the aforementioned group comparability. However, instead of the comparability test, Gerards argues for a "disadvantage test". The "disadvantage test" means that the complainant must prove that a rule or practice disadvantaged her or him compared to another person or a group of persons. If it has been proven that the applicant suffered a genuine disadvantage, then the State has the possibility to justify this. In the third step, the Court must determine whether there is a justification for the distinction, based on pursuing a legitimate aim and the proportionality between the means employed and the aim sought to be realized.

The model elaborated by Alexandra Timmer is grounded on the Gerards' proposal, however with some important nuances. In the first phase of Timmer's model the Court should name the gender stereotype. In order to do so, the Court should analyze the historical context of the stereotype employed and the current effects of a rule or practice that are influenced by the stereotype. The last step in the first phase is to unmask the harmful stereotypes, in the sense that "the Court has to make clear what the adverse consequences of these stereotypes are and what the State's international obligations are to combat gender stereotypes"[71]. In the second phase, called "contesting", the Court should declare Article 14 or Protocol 12 applicable, and then apply the "very weighty reason test", after which the State would be left with a very small margin of appreciation. The third step in the phase two is based on the "disadvantage test". According to Timmer, "the comparability test is not well suited to cases that revolve around stereotypes, because the way that gender stereotypes affect the autonomy of certain women and men is a harm that stands on its own: the disadvantage is not dependent on a comparison with another group of people"[72].

---

[69] J.H. Gerards, *Judicial Review in Equal Treatment Cases*, Martinus Nijhoff, 2005, pp. 659–719; A. Timmer, *Toward an anti-stereotyping*…, pp. 718–720.

[70] Ibidem, p. 720.

[71] Ibidem, p. 722.

[72] Ibidem, p. 723.

The third step in the phase of contesting is focused on the issue of justifications, in which the Court should adopt a critical attitude towards the reasons and justifications delivered by States, especially having in mind that the vast majority of stereotypes is perceived as normal and objective opinions among society[73].

While applying the Timmer's model in the case of D.J. v. Croatia, in the first phase the Court should have named the harmful stereotype that had a bearing on all the domestic proceedings. The applicant was labelled by the domestic authorities as a person who caused disturbance in the public order, and because her behavior was not "modest" she could not adhere to the concept of a "perfect victim". Moreover, the fact that she had been intoxicated was for the domestic authorities a proof of her unreliability. Stereotypes in rape cases are still prevalent in society and as such they hamper access to justice of the victims, due to ineffectiveness of the proceedings and the subsequent victimization that the victims have to endure while engaging in the legal actions against the perpetrator. Thus, in the second phase of A. Timmer's model, the Court should have declared Article 14 or Protocol 12 applicable and proceeded to the very weighty reason test, after which the State would be left with a very limited margin of appreciation. Subsequently, after applying the disadvantage test, it should have been stated that the victims of rape were disadvantaged as they were starting the legal proceedings from a disadvantage position, which was based on the belief that they were unreliable.

Up to this point, however, despite having many opportunities, the Court has been silent on the role of gender stereotypes in the legal proceedings. And by failing to pronounce upon the discriminatory aspect of the legal proceedings in the rape cases and often stereotypical attitude of the domestic authorities, the Court is overlooking a broader concept of such cases, which is indispensable for achieving the actual, substantive gender equality.

6. Conclusions

Rape myths are not only pervasive in public opinion, but have a great impact on the way in which the investigations into rape cases are conducted, in many instances effectively hindering access to justice for the victims of sexual violence. As such, a more systemic approach is needed. Although in the landmark decision in the case Aydin v. Turkey the ECHR acknowledged that rape can constitute torture in the meaning of Article 3 of the European Convention of Human Rights and has since developed the notion of States' positive obligations in the cases concerning rape, the

[73] Ibidem, p. 725.

Court itself failed to pronounce upon the impact of harmful stereotypes in rape cases in the domestic proceedings and denied acknowledging their role and effects they have on the victims of rape.

Having in mind that the Court has admitted that when confronting the discrimination against women, the Court has to have regard to the provisions of more specialized legal instruments, such as the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[74], it would be desirable that on the next possible occasion the Court derives from the landmark communication decided under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in the case Karen Tayag Vertido v. The Philippines[75]. The author of the communication was raped by her employer after a business meeting. The judge who was in charge of the legal proceedings acquitted the perpetrator relying on gender based myths, such as "it is easy to make accusation of rape" (Hales' Warning), "if a woman does not want to be raped, she is not going to be raped" and that "only strangers can commit rape". In the communication CEDAW Committee put wrongful gender stereotyping at the heart of the case and framed it as one concerning the Philippines' legal responsibility for judicial stereotyping in a rape trial. The Committee stressed that stereotyping affected women's right to a fair and just trial[76] and that the assessment of the credibility of the author's version of events was influenced by a number of stereotypes, and that the author did not fit in what was expected from a rational and "ideal victim" or what the judge considered to be the rational and ideal response of a woman in a rape situation[77]. Subsequently, the Committee stated that the judiciary must take caution not to create inflexible standards of how women or girls should behave when confronted with a situation of rape based merely on preconceived notions of what defines a "perfect" rape victim.

As such, a great impact should be placed on the sensitization of the judiciary in the context of rape myths and their influence on the legal proceedings. Moreover, the acknowledgment of the impact which the rape myths have on the perception of victims of sexual violence issued by the ECHR would result in a more systemic approach to rape cases and could contribute to the gradual eradication of harmful stereotypes and the welfare of the victims.

[74] ECHR, Opuz v. Turkey, par. 185.

[75] CEDAW/C/46/D/18/2008, Karen Tayag Vertido v The Philippines (No. 18/08).

[76] Ibidem, par. 8.4.

[77] Ibidem, par. 8.5.

Bibliography

Amnesty International, *Violence Against Women. The Perspective of Students in Northern Ireland*, Amnesty International UK, September 2008.

Burt, M.R., *Cultural myths and supports for rape*, "Journal of Personality and Social Psychology", Vol. 38, 1980.

CEDAW/C/46/D/18/2008, Karen Tayag Vertido v. The Philippines (No. 18/08).

Council of Europe, *Equal Access to Justice in the Case-Law on Violence against Women before the European Court of Human Rights*, Strasbourg September 2015.

Declaration on the Elimination of Violence against Women, United Nations General Assembly, Resolution 48/104 of 20 December 1993.

ECHR, Aydın v. Turkey (Application no. 57/1996/676/866).

ECHR, D.H. and Others v. Czech Republic (Application no. 57325/00).

ECHR, D.J. v. Croatia (Application no. 42418/10).

ECHR, Eremia v. the Republic of Moldova (Application no. 3564/11).

ECHR, I.P. v. Moldova, (Application no. 33708/12).

ECHR, Kiyutin v. Russia (Application no. 2700/10).

ECHR, M.C. v. Bulgaria (Application no. 39272/98).

ECHR, M.G.C. v. Romania, (Application no. 61495/11).

ECHR, Opuz v. Turkey (Application no. 33401/02).

ECHR, T.M. and C.M. v. the Republic of Moldova (Application no. 26608/11).

ECHR, X and Y v. the Netherlands (Application no. 8978/80).

Edwards, K.M. et al., *Rape myths: history, individual and institutional level presence, and implications for change*, "Sex Roles", Vol. 65, Issue 11–12, 2011.

Gerards, J.H., Judicial Review in Equal Treatment Cases, Martinus Nijhoff, 2005.

McGlynn, C. *Rape, torture and the European Convention on Human Rights*, "International and Comparative Law Quarterly", Vol. 58, Issue 3, 2009.

Peroni, L., *Clothes on trial: M.G.C. and the need to combat rape stereotypes*, "Strasbourg Observers", April 20, 2016, https://strasbourgobservers.com/2016/04/20/clothes-on-trial-m-g-c-and-the-need-to-combat-rape-stereotypes/.

Radacic, I., *Gender equality jurisprudence of the European Court of Human Rights*, "The European Journal of International Law", Vol. 19, no. 4, 2008.

Stevenson, K., *Unequivocal victims: the historical roots of the mystification of the female complainant in rape cases*, "Feminist Legal Studies", Vol. 8, 2000.

Temkin, J. et al., *Different functions of rape myth use in court: Findings from a trial observation study*, "Feminist Criminology", Vol. 13, No. 2, 2018.

Timmer, A., *Toward an anti-stereotyping approach for the European Court of Human Rights*, "Human Rights Law Review", Vol. 11, Issue 4, 2011.

Torrey, M., *When will we be believed – rape myths and the idea of a fair trial in rape prosecutions*, "U.C. Davis L. Review", Vol. 1012, No. 24, 1991.

Young, M.I., *Five faces of oppression*, in: *Geographic Thought: A Praxis Perspective*, G.L. Henderson & M. Waterstone (eds.), Routledge 2008.

KAROLINA PRAŻMOWSKA-MARCINOWSKA, magister
karolina.prazmowska@us.edu.pl

Karolina Prażmowska-Marcinowska jest doktorantką i członkinią Zespołu Prawa Międzynarodowego Publicznego i Prawa Europejskiego na Wydziale Prawa i Administracji Uniwersytetu Śląskiego w Katowicach.

Karolina Prażmowska-Marcinowska is a Ph.D. student and a member of the Research Group of Public International Law and European Law at the Faculty of Law and Administration, University of Silesia (Poland).