



(Chris Higham, *The woman taken in the act of adultery*, <https://www.flickr.com/photos/122455144@N05/17243477526>)

Mrs. X, a married woman, began seeing another man, Mr. Y. The affair was brief and, after two months, the woman wanted to end it. In response, Mr. Y turned to Mrs. X's husband, Mr. Z, telling him that his wife had been unfaithful. The couple divorced. A few months later, the two men, both enraged, worked together to plan an attack on the woman and put it into practice. Mr. Y kidnapped Mrs. X and held her down while Mr. Z beat her. After charges were filed in the assault, Mr. Z was given a 15-month suspended sentence and a fine of about 1500 EUR. The prosecutor asked a national appeals court for prison time of three years and six months in respect with Mr. Z.

The appeals judicial panel - of which Judge A was the president - decided against it. Moreover, in a 20 page ruling, Judge A quoted passages from the Bible in which one can read that "an adulterous women should be punished with death", cited cultures still in existence where "adulterous women are stoned to death" and even mentioned the national penal code of 1886 which "not so long ago punished with a little more than a symbolic penalty a man who, believing his wife to be an adulteress, kills her". Judge A insisted that "the adultery of a woman is a very serious attack on the honour and dignity of (her) man", so that it was somewhat understandable that a husband in a "depressive state" would act out violently against an ex-wife who had betrayed him.

The case prompted outrage and street protests in the main cities of the country and had a huge media impact. On the one hand, representatives of the civil society asked for Judge A's removal from all cases involving domestic violence, since in several similar judgements he argued that the victim's adultery, whether real or suspected, was the cause of the aggression, in a general social context where only 16% of complaints about domestic violence got to court and in more than 90% condemnations resulted in suspended sentences. In that respect, in a TV interview, Judge A declared: "I'm not a sexist, misogynist or caveman, I'm a normal person, but I have some values that may not be current: I do not think two people should be cheating themselves". Also, when asked to explain why he relieved two men who attacked a woman, Judge A considered that the judgement was not "unreasonable", because he believed "society is strongly influenced by the Judeo-Christian culture". Therefore, the quotation from the Bible appeared to him "as a mere historical reference" and "part of the

reasoning", while the general social context – namely "a very sexist society" - and its consequences on Mr. Z's behaviour must be taken into account while adjudicating, as judges "must judge the facts".

On the other hand, while the Judges' liberty of decision was considered desirable, the ruling in question was deemed intolerable in light of contemporary social conceptions and contradicting the national constitutional values, as it suggested that domestic violence was tolerable when applied to an adulteress.

A disciplinary proceeding was also conducted against Judge A and his co-judge who signed off the ruling, without apparently reading it. While the latter saw the disciplinary case against her archived, Judge A was sanctioned with the mildest sanction possible, a warning. Since four members of the national Superior council of magistrates wanted to fine Judge A and four were in favour of simply giving him a warning, it was the president himself who had the final vote and he chose the mildest sanction. This decision was explained by the fact that, although several rulings were identified in which Judge A had used the same justification or arguments for belittling cases of domestic violence against women, the council only set out to pronounce on the most recent case. At a later date, Judge A was transferred to a civil section of the Appeal Court where he served. According to the national legislation, there are three criteria that can justify the transfer of a judge between sections of a court: the interest of the service, the specialization of the judge or the judge's own preference.

- 1) Is article 10 ECHR applicable in this case?
- 2) Can the disciplinary measures taken against Judge A be justified? Which is the test to be performed in this respect?
- 3) Discuss the appropriateness of the expression used by Judge A in his judgement as a relevant element in the analysis under article 10 ECHR.
- 4) Do you consider that Judge A should have shown restraint in the exercise of his freedom of expression in this judgement? Discuss.
- 5) Could the reasoning used by Judge A in the judgement be qualified as a violation of Mrs. X's rights under art. 6 ECHR? Discuss.