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Meeting: 1451st meeting (December 2022) (DH)

Communication from an NGO (Association for Struggle Against Sexual Violence) (18/10/2022) in the case of OPUZ v. Turkey (Application No. 33401/02).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1451^e réunion (décembre 2022) (DH)

Communication d'une ONG (Association for Struggle Against Sexual Violence) (18/10/2022) dans l'affaire OPUZ c. Turquie (requête n° 33401/02) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

18 OCT. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



..... 2022

To: Department for Execution of Judgments
of the European Court of Human Rights
Secretariat of the Committee of Ministers
of the Council of Europe

Communication from an NGO (Association for Struggle Against Sexual Violence) in the case of *Opuz v. Turkey* (Application No. 33401/02)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

A. Introduction

The Association for Struggle Against Sexual Violence¹ (CŞMD) would like to provide information to the Committee of Ministers on information gathered regarding sexual and sexualized domestic violence in Turkey and how it relates to Turkey's obligations in relation to the implementation of judgements of *Opuz Group* (Application No. 33401/02). In Turkey, sexual violence is the most visible type of domestic violence. The perpetrators of sexual violence crimes in Turkey are generally people whom women know well. Reports of crimes related to domestic sexual violence are not considered as domestic violence. In Turkey, the crime of sexual assault committed in a marriage union is not taken into account straightforwardly, the complaint of the woman is required according to Article 102/2 of the Turkish Penal Code. The purpose of this report is to provide how this divergence renders the prevention and effective implementation of legal and practical obligations of Turkey in relation to domestic violence more difficult. The case of *Opuz v. Turkey* concerns the failure of the authorities and courts to fulfill positive obligations under Articles 2, 3 and 14 in relation to domestic and family violence by the applicant's ex-partner.

CŞMD is an association operating in Turkey/Istanbul. Since 2014. The Association's work focuses on whether or not survivors of domestic sexual violence have access to effective support, including but not limited to, shelters and other support centres, quality staff serving in relevant institutions of protection and prevention, that there are in-house trainings, that there are rehabilitation and transformative training activities for perpetrators, and that there is disaggregated data available to public. CSMD believes that information on public institutions, local governments and civil society support units working on domestic violence including domestic sexual violence in Turkey should be easily accessible. Unfortunately, such information is not publicly available. Having seen this gap, CSMD made this information available for the province of Istanbul in 2019 through csdestek.org website in Turkish, Kurdish, Arabic and English languages.² The association addresses people who have been subjected to sexual violence with the term survivor, which it finds as a more empowering expression instead of victim.

¹ Association for Struggle Against Sexual Violence, <https://cinselsiddetlemucadele.org/en/home-english/>

² <https://csdestek.org/en/>

Following the violation decision in the *Opuz v. Turkey* in 2011, Turkey within the Council of Europe system engaged in the drafting of the Istanbul Convention, which includes detailed regulations on violence, including the right to life, and subsequently became the first country to sign the Convention. However, with the Presidential Decree published in the Official Gazette on March 20, 2021, Turkey unilaterally terminated the Istanbul Convention.³ During the time the Convention remained in force, not all its articles were implemented and serious violations such as sexual violence in domestic settings and femicides continued to occur and perpetrators continued to go unpunished. Following the decision to withdraw from the Convention, many women's organizations, individuals and institutions applied to the judiciary for the annulment of the decision, but no positive outcome was achieved.

Keeping in mind the rights provided by the Istanbul Convention, international regulations, recommendations and Turkey's national legislation, in 2021, in order to reveal the current situation regarding the implementation of judgements and recommendation of the Committee of Ministers of the Council of Europe of the *Opuz* group cases, including prevention of sexual violence in domestic settings in Turkey, CŞMD conducted a research involving public institutions to find out whether or not they have action plans, legislation and policies as recommended by the CM. CSMD also looked into whether or not any disaggregated data is collected and/or kept within the institutions.

CSMD found out that evaluating every type of violence that takes place in the home only under the name of domestic violence makes it difficult to name violence and define it. **The different forms of harm to women cannot be identified with existing available data. This in turn makes it impossible to understand the needs of women, let alone to develop policies and services that meet these needs for a life without any forms of violence. In this context, it is not known how the qualifications of women's shelters would be developed. Public institutions do not publicly share data on sexual violence in the home. For this reason, it is not possible to obtain reliable data on the type of domestic violence in pending or completed cases.** However, it can still be argued that where domestic violence is mentioned, women are also exposed to sexual violence. In addition, public institutions do not publicly share information on whether national action plans, legislation and policies are being implemented or not, as explained in more detail below. For this reason, a civil society movement has had to develop that creates/collects its own data.⁴

Using the Law No. 4982 on Access to Information in force in Turkey, CSMD requested access to information from 11 institutions in Istanbul: the Ministry of Health, ŞÖNİM (Administration of Violence Prevention and Monitoring Centers), Istanbul Chief Public Prosecutor's Office, Provincial Directorate of Probation, Istanbul Provincial Security Directorate, Istanbul Bar Association, Istanbul Metropolitan Municipality, Istanbul Regiment Command, the Ministry of Family and Social Services, Department of Judicial Support and Victim Rights and Istanbul Governorship. **Only four of the 11 institutions, namely the Department of Forensic, Support and Victim Services (ADMHDB) of the Ministry of Justice, the General Directorate on the Status of Women (KSGM) of the Ministry of Family and Social Services, the Legal Aid Office of the Istanbul Bar Association and the Istanbul Metropolitan Municipality responded in detail to our request for information. İstanbul ŞÖNİM, on the other hand, sent a general response to our association.**

B. Failure to Implement National Plans, Legislation and Policies

In the *Opuz v. Turkey* judgment, the ECHR unanimously ruled that Turkey discriminated against a woman who was subjected to violence, by failing to protect her from her husband, even though she had applied to the prosecutor's office. The Court also noted that police officers in Turkey regarded the issue of violence as "a domestic matter in which they could not intervene" and therefore took on the role of mediators when complaints were received from women. Indeed, this situation has not yet fully improved

³ <https://www.resmigazete.gov.tr/eskiler/2021/03/20210320-49.pdf>

⁴ <https://bianet.org/kadin/bianet/133354-bianet-siddet-taciz-tecavuz-cetelesi-tutuyor>

in police stations in Turkey. For this reason, there are women who were killed because the police station did not consider them a "at risk" and did not take their testimony into consideration⁵ and there are even some police officers who share with the perpetrator of violence the address of the shelter where the women sought refuge from violence.⁶ It was not shared in the news article whether public institutions took any administrative or judicial action against these police officers, but the civil society organizations filed criminal complaints against the police officers. These examples are just a few of many.

In its response to our request for information, the General Directorate on the Status of Women (KSGM) stated that the Internal Circular "On the Implementation of Law No. 6284" entered into force on 16.06.2021, and that 5 main targets for the roadmap in the IVth National Action Plan on Combating Violence against Women covering the period 2021-2025, which includes the targeted measures in the context of the subject, were determined as Access to Justice and Legislation, Policy and Coordination, Protective Preventive Services, Social Awareness and Data and Statistics. It was stated that the "Coordination Plan for Combating Violence against Women" for 2020-2021 was put into effect in 2019. It was stated that 75 activities were put into effect in 81 provinces. Here, questions were asked in line with the "Circular on Combating Violence against Women" published by the Governorship of Istanbul on September 11, 2020 and they were asked to share their provincial action plan with us. Because it is not known through which channels the provincial action plans are shared. **Provincial Action Plans that are said to have been created are not open to the public. This question remained unanswered and KSGM did not share the action plans with the association.**

In the response of the Directorate, we received the following data: Within the scope of combating violence against women, trainings and seminars have been provided to a total of 2,021,729 people, including 1,353,943 privates and conscripts, 75,000 public officials, 106,389 religious officials, 158,693 health officials, and 327,704 law enforcement officers since 2007. Training was provided to 5,113 students at Police Vocational Training Centers. It was stated that remote training continued during the pandemic. The content of these training and by whom they were conducted were not answered. Regarding ŞÖNİMs, it was shared that 31,000 citizens and 11,600 public officials were reached in order to increase knowledge and awareness. **The content of these awareness raising activities, whether they were implemented in cooperation with CSOs and by whom were not specified.**

When asked whether the "Victim Support Services Bureau" established within the Ministry of Justice has psycho-social support programs for survivors, the response was positive. **Quantitative data such as how many people they provide psycho-social support to was not shared.** The Office stated that victims belonging to the vulnerable group are informed about their rights by the institution, referred to the relevant units in line with their needs, and that they work to strengthen access to justice. **They did not provide information on which units they referred them to, which needs were met, and in which aspects access to justice was strengthened.**

C. Insufficient number of Women's Shelters and the lack of Rape Crisis Centers

Due to the lack of a policy on the standards of women's shelters⁷ in Turkey, the attitudes towards women, physical and psychological conditions, especially in the shelters of public institutions, are far from supporting and empowering women psychologically and leading them to a life without violence.⁸ This situation in practice is known from the reports of non-governmental organizations working in the field

⁵ <https://t24.com.tr/haber/karakola-siginan-emine-bulut-u-herhangi-bir-risk-gormeyip-gonderen-polis-amirinin-ifadesiyle-tutanaklar-arasinda-celiski-var,855325>

⁶ <https://www.birgun.net/haber/siddetten-kacan-kadinin-kaldigi-siginma-evi-polis-tarafindan-evli-oldugu-erkege-soylendi-303086>

⁷ The definition of shelter refers to units such as guesthouses in domestic legislation documents.

⁸ Diner, C., & Toktaş, Ş. (2013). Women's Shelters in Turkey : A Qualitative Study on Shortcomings of Policy Making and Implementation. *Violence Against Women*, 19(3), 338-355.

<https://doi.org/10.1177/1077801213486258>

and women's own narratives.⁹ There are even women who had to return home of the perpetrator of violence due to these poor shelter conditions.¹⁰ A woman who applied to the police against violations in shelters was told, "You cannot make a complaint about a state institution to the state."¹¹

While the number of women's shelters was 109 in 2017, this number increased to 112 in 2021, meaning that only 3 shelters were opened in these years. **Based on the Council of Europe Minimum Standards, number of shelters should be proportionate to the population, therefore, the minimum number of centers in Turkey should be 5314. According to the 2020 population¹², there should be 4169 shelters across the country, while the number of shelters within the ministry is 112. In addition, the ministry did not share data on violence. Although there are action plans and legislation against violence, the requirements for data collection, in-service training, policy documents and transparency stated in the sub-divisions have not been complied with and the data has not been shared with the public.**

Istanbul Metropolitan Municipality sent an information note and stated that they are rapidly implementing their action plan for combating violence against women based on the article "5393 Municipal Law Duties and Responsibilities of the Municipality Article 14 (a) Metropolitan municipalities and **municipalities with a population over 100,000 are obliged to open guesthouses for women and children.**" Based on the norm of 1 shelter for every 10,000 population in Istanbul, the number of shelters that the state is obliged to open according to 2020 female population ratios is 771. It was stated that women who are observed to be in need of one-to-one care in terms of mental health are referred to the Ministry of Family and Social Services for placement in the appropriate social service institution.

Most women exposed to domestic violence including sexual violence in Turkey do not lodge complaints to the judicial system due to victim-blaming they experience before in police centres and during trials. As a matter of infringement of its obligations borne by the Opuz group, there are still very limited and under resourced violence centres and no sexual violence/rape crisis centers and there are insufficiently trained public personnel on domestic violence including sexual violence in Turkey, women are subjected to interrogations by law enforcement and public officials that create secondary trauma.

D. Lack of clear criteria for support services and barriers to access to justice

In the Opuz case, Nahide Opuz had repeatedly applied to the judicial system through her lawyer, but she was ignored and not provided with adequate protection. In Turkey, women are hesitant to apply to the judicial system due to the negative attitudes in police stations, prosecutor's offices and courts.¹³ Some of these hesitations are due to the lack of "sufficient evidence" especially in cases of sexual violence, the discriminatory and sexist attitudes of the courts towards women, the fact that women are constantly forced to prove themselves to the judicial system and the court - that the crime has actually occurred - and the victim-blaming behavior of male lawyers representing the perpetrators by presenting women's past, private and sexual lives to the court as evidence. The courts do not intervene in these sexist defenses. Women's right to life is not effectively protected in Turkey and judicial processes regarding attacks against this right are not carried out effectively. The closest example of victim-blaming by the

⁹ Human Rights Watch (May 2022). Turkey Fails Domestic Violence Victims.

<https://www.hrw.org/news/2022/05/26/turkey-fails-domestic-violence-victims>

¹⁰ <https://www.evrensel.net/haber/344799/siginmaevi-deneyimini-yasayan-kadinlar-yasadiklarini-anlatti>

¹¹ <https://t24.com.tr/haber/kadinlarin-agzindan-siginma-evleri-sanki-suc-islemisiz-gibi-davraniyorlar,849566>

¹² According to TÜİK's (Turkish Statistical Institute) data, the female population in Turkey was 41,698,377 in 2020.

¹³ Why women's shelters in Turkey no longer provide safety <https://www.al-monitor.com/originals/2020/07/turkey-istanbul-convention-violence-against-women-on-rise.html#ixzz7hzLckXga>

courts is the question "Why didn't you shout during the incident?" asked by the court panel to a woman who was subjected to sexual violence.¹⁴

It was found out that 112 directorates of judicial support and victim services are in operation across the country. It was stated that the relevant unit is planning to expand the number of directorates; however, the exact number of units, directorates and their opening dates were not specified. Implemented in 2017 to prevent particularly vulnerable groups from being subjected to secondary trauma by the judicial system, the number of Forensic Interview Rooms (FIORs) is 102, found in 97 courthouses in 75 provinces, and there are rooms in 6 courthouses in Istanbul. The number of these rooms in Istanbul is not clearly stated. It is known from the experiences of survivors and lawyers working in the field that these rooms are not actively used by prosecutors and judges. However, none of them are specifically established to address the needs of women victims/survivors of domestic violence.

It is stated that the workshops and trainings organized for judges, prosecutors, professional staff and clerks working in family courts in the last five years on the issues of consent building of children and preventing forced early marriages were carried out by the Presidency of the Turkish Justice Academy and the Ministry's Training Department. Accordingly, it is said that it's envisaged to implement awareness and capacity-raising measures to change stereotypes in accordance with CEDAW Recommendations, Article 23, paragraph 29 (a). It was also stated that awareness-raising activities for prosecutors' offices were carried out in the National Action Plan on Combating Violence against Women, which was put into effect in 2020. Although it was stated in the response we received that in-service trainings were provided, no information was provided on what capacity-building activities were carried out, what workshops and trainings were organized for judges, prosecutors, professional staff and clerks working in family courts, or whether there was any cooperation with NGOs working in the field. None of the reported training activities specifically addressed specifically the domestic violence, including sexual violence.

In the responses of the Istanbul Bar Association Code of Criminal Procedures (CMK) Center, it was reported that lawyers can only receive CMK assignments after undergoing training. This assignment includes mandatory defense counseling for children (the obligation to be represented by a lawyer due to minors) and the appointment of a lawyer for adults, especially in criminal proceedings. **Unlike the Legal Aid Center, the training content of the CMK Center focuses on current legislation and does not include topics such as gender.** Considering that women are mostly subjected to victim blaming in criminal proceedings, their privacy is violated, their right to be forgotten is not recognized and their right to privacy is also violated. **The assigned lawyers should at least have training contents such as gender equality, possible psychological effects of domestic and sexual violence and secondary trauma, restorative justice, child safety and child protection, survivor-oriented conduct of the judicial process, and they should carry out their professional activities with this awareness.** Although lawyer support is provided through legal aid and the CMK system, it is reported that **this lawyer support is not sufficient and does not play an effective role in protecting the rights of survivors.**¹⁵

Regarding the difficulties experienced by survivors in accessing their rights, it is possible to state that distrust of the judicial system is intense. **This distrust is about that the perpetrator of the crime will not be punished and that state institutions will not provide the support that survivors need. Therefore survivors' motivation to seek their rights decreases. They are subjected to discrimination in institutions such as prosecutor's offices and police stations.** For this reason, they have to create their own support systems and try to ensure the obligations of state institutions by themselves, that survivors are isolated due to the discrimination-based actions of institutions. Survivors

¹⁴ Turkish judge asks sexual assault survivor why she didn't scream: <https://www.duvarenglish.com/turkish-judge-asks-sexual-assault-survivor-why-she-didnt-scream-news-59023>

¹⁵ Council of Europe (2021) Report Of The Online Roundtable On "Framework To Measure Access To Justice Including Specific Challenges Facing Women": <https://rm.coe.int/report-of-the-online-roundtable-on-framework-to-measure-access-to-just/1680a876bc>

continue their search for rights by creating public pressure through online platforms such as Twitter in the absence of any positive outcome of the search for justice within the institutions.¹⁶

E. Lack of restorative and transformative practices against perpetrators and impunity of perpetrators

After signing the Istanbul Convention, Law No. 6284 was enacted in Turkey as a domestic harmonization law as indicated by the Convention. Many issues were regulated in this law and especially in cases of violence, it was envisaged to issue a restraining order of 1-6 months for the protection of the applicant against the perpetrator without any evidence being sought. This practice, which was relatively well implemented at the beginning, has become quite dysfunctional due to problems in practice over time. **One of the reasons for this is that the application for a protection order against the perpetrator must be notified to the perpetrator. Restraining orders are not implemented against perpetrators whose address is unknown or cannot be found. In addition, the law stipulates a 3-day prison sentence for violating the protection order. However, in practice, there are hardly any instances where this prison sentence is applied.**¹⁷ It is implicitly known that restorative and transformative activities for perpetrators are not carried out in Turkey.

The belief that perpetrators are effectively prosecuted and punished in cases that are mostly on the agenda on social media is reinforced. The lack of "concrete" evidence in cases of domestic violence including sexual violence and the lack of importance given to the survivor's testimonies ensure that perpetrators remain unpunished.

F. RECOMMENDATIONS

- The reporting system of institutions providing support services to survivors of domestic sexual violence should be organized to collect data on gender identity, sexual orientation, refugee status, disability, consent building of children and early forced marriages.
- The crime of sexual assault committed in a marriage union should be investigated ex officio by the authorized institutions. This crime should be removed from being a crime subject to complaint.
- Transformative programs for perpetrators should be implemented with a restorative justice perspective.
- Disaggregated data according to type of violence, age, disability, gender identity and refugee status should be kept for those who apply for institutional support due to exposure to violence
- The Istanbul Convention, the Beijing Declaration, CEDAW and its recommendations require states parties and institutions to formulate policies on issues specified in the conventions, such as awareness of domestic sexual violence, protection of children's rights, shelters and standards, anti-discrimination policies, and to implement these policies to solve existing problems.
- Staff working in institutions should be regularly provided with awareness raising trainings on rights-based approach, treatment to survivors, human rights, sexual violence.
- Psycho-social support programs for survivors should be developed and implemented.

- Service providing centers should be accessible, inclusive and available 24/7.
- Rape Crisis Centers should be opened urgently in Turkey.

¹⁶ Ogan, C., & Başı, Ö. (2020). Women's Rights and Gender Equality in Turkey | Use of Social Media in the Struggle Surrounding Violence Against Turkish Women. *International Journal Of Communication*, 14, 19. Retrieved from <https://ijoc.org/index.php/ijoc/article/view/12035>

¹⁷ Kelebek-Küçükarslan, G., & Cankurtaran, Ö. (2022). Experiences of Divorced Women Subject to Domestic Violence in Turkey. *Journal of Interpersonal Violence*, 37(5-6), 2443-2466. <https://doi.org/10.1177/0886260520927503>

- A budget should be allocated to establish the necessary support mechanisms and to ensure that survivors can access and receive services from support units.
- Institutions should work in coordination and, when necessary, develop collaborations and sign protocols with rights-based women's and LGBTI+ organizations.