



## The authorities' passivity with regard to a woman's experience of domestic violence was in breach of the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [M.G. v. Turkey](#) (application no. 646/10) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights, and**

**a violation of Article 14 (prohibition of discrimination), taken in conjunction with Article 3.**

The case concerned the domestic violence experienced by M.G. during her marriage, the threats made against her following her divorce and the subsequent proceedings.

The Court found in particular that the authorities had taken a passive attitude, in that the criminal proceedings had been opened more than five years and six months after M.G. had lodged a complaint against her husband and that the proceedings were apparently still pending.

The Court also held that after the divorce was pronounced (on 24 September 2007) and until the entry into force of a new Law (no. 6284) on 20 March 2012, the legislative framework in place did not guarantee that M.G., a divorcée, could benefit from protection measures, and noted that for many years after applying to the national courts, she had been forced to live in fear of her ex-husband's conduct.

### Principal facts

The applicant, M.G., is a Turkish national who was born in 1973 and lives in Istanbul (Turkey).

On 18 July 2006 M.G. lodged a complaint against her husband with the public prosecutor, stating that she had fled from her home on account of the domestic violence to which she had been subjected from the beginning of her marriage in 1997. A report detailing M.G.'s injuries was drawn up by the institute for forensic medicine; she was referred to the psychiatric department of the Medical Faculty of Istanbul University, which also submitted a document to the prosecutor's office, indicating that she was suffering from depressive disorder and chronic post-traumatic stress resulting from her experiences. Her husband denied the accusations against him; he was questioned on 15 December 2006, and on 22 February 2012 he was charged with injuring his wife.

In the meantime, on 31 August 2006 M.G. instituted divorce proceedings in the family affairs court and requested protection measures, which were granted by the court. The divorce was pronounced on 24 September 2007 and parental responsibility was awarded to M.G.; however, the children were placed under the protection of the social services.

On 1 November 2012, 10 October 2013 and 19 June 2014 M.G. again applied to the family affairs court, requesting preventive measures in respect of her former husband and alleging that he was constantly threatening her with violence and death. The court granted her requests, including by ordering the ex-husband not to approach M.G.'s home or to disturb her by communicating with her.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

On 6 March 2014 the foundation “Purple Roof”, which had provided refuge to M.G. and her children, submitted a social welfare report, specifying in particular that she was living under a continual threat and that her safety was still a problem.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention, M.G. criticised the domestic authorities for failing to prevent the violence to which she had been subjected. Relying on Articles 8 (right to respect for private and family life), 13 (right to an effective remedy), 1 (obligation to respect human rights) and 5 (right to liberty and security), M.G. complained that she had been unable to live in peace and safety with her children on account of the threats hanging over her, and of the excessive length and ineffectiveness of the criminal proceedings which were still pending, and submitted that she had not been protected from very serious violence. The Court decided to examine these complaints under Article 3 of the Convention.

Lastly, relying on Article 14 (prohibition of discrimination) taken together with Article 3, the applicant complained of permanent and systematic discrimination with regard to violence against women in Turkey.

The application was lodged with the European Court of Human Rights on 15 December 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Julia **Laffranque** (Estonia), *President*,  
İşıl **Karakaş** (Turkey),  
Nebojša **Vučinić** (Montenegro),  
Valeriu **Griţco** (the Republic of Moldova),  
Ksenija **Turković** (Croatia),  
Jon Fridrik **Kjølbro** (Denmark),  
Stéphanie **Mourou-Vikström** (Monaco),

and also Abel **Campos**, *Deputy Section Registrar*.

## Decision of the Court

### Article 3 (prohibition of torture and inhuman or degrading treatment)

The Court noted that M.G. had lodged a complaint against her husband on 18 July 2006, and that expert reports had been drawn up by the relevant bodies as early as the following day, describing her physical injuries as well as the link between her psychological state and the violence to which she had been subjected. It observed, however, that a warrant for the husband’s arrest had been issued only on 23 November 2006, and that he had not been questioned by the prosecutor’s office until 15 December 2006, that is, almost five months after the complaint had been lodged; the criminal proceedings, which were apparently still pending, had been opened on 22 February 2012, i.e. more than five years and six months after the complaint. The Court underlined the particular diligence needed in dealing with complaints concerning domestic violence and emphasised that the “Istanbul Convention”<sup>2</sup> required the States Parties to take the necessary measures to ensure that investigations and judicial proceedings were carried out without undue delay. Furthermore, the Court considered that the national authorities had a duty to take into account the victim’s particular state of psychological, physical and/or financial insecurity and vulnerability, and to evaluate the situation as rapidly as possible. In the Court’s view, there was nothing in the present case to explain the prosecution service’s passivity over such a long period (more than five years and six months)

<sup>2</sup> The Convention on preventing and combating violence against women and domestic violence.

prior to opening the criminal proceedings, or the length of the procedure opened after the complaint had been lodged. For these reasons, the Court found that the manner in which the authorities had conducted the criminal proceedings could not be considered as satisfying the requirements of Article 3 of the Convention.

M.G. explained that after the divorce had been pronounced, and until the entry into force on 20 March 2012 of Law no. 6284, the legislative framework in force in Turkey did not enable her to have access to protection measures, and stated that she had been forced to live in hiding for many years, in fear of being subjected once again to violence from her former husband. The Court reiterated that the psychological impact was a major aspect in domestic violence and an important circumstance that it had to take into account in its assessment. It noted that while M.G. was still married, a civil-law provision allowed for the possibility of requesting the family affairs judge to apply the protection measures laid down in Law no. 4320, but that once she had divorced, it was disputed whether she could in fact benefit from such measures. On account of the manner in which the relevant Law was worded, the question of whether the measures provided in it were applicable to unmarried or divorced couples had given rise to various interpretations by the domestic courts. In consequence, after the divorce had been pronounced (24 September 2007) and until the entry into force of Law no. 6284 (20 March 2012), the legislative framework in place did not guarantee that M.G., a divorcée, could benefit from the protection measures laid down in Law no. 4320, as its application was left to the interpretation and discretion of the family-affairs judge examining the case. The Court considered that M.G. had been required to live in a situation likely to cause her fear, vulnerability and anxiety, and that, for many years after having applied to the domestic courts, she had been forced to live in fear of her former husband's conduct.

Accordingly, the Court held that there had been a violation of Article 3 of the Convention.

#### Article 14 (prohibition of discrimination), taken together with Article 3

The Court reiterated that it had already found that a State's failure, even where unintentional, to protect women against domestic violence breached their right to equal protection under the law. It also emphasised that, under Article 3 of the Istanbul Convention, the term "violence against women" was to be understood as a violation of human rights and a form of discrimination against women. In this connection, it noted that, in the circumstances of the present case, the general and discriminatory judicial passivity in Turkey was such as to create a climate that was conducive to domestic violence. Equally, the Court considered that, until the entry into force of Law no. 6284, the legislative framework in force did not guarantee to divorced women the protection measures against their former spouses provided for by Law no. 4320. In consequence, the Court concluded that there had been a violation of Article 14, taken together with Article 3 of the Convention.

#### Article 41 (just satisfaction)

The Court held that Turkey was to pay the applicant 19,500 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.