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Date: 02/11/2020

DH-DD(2020)955

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Meeting: 1390th meeting (December 2020) (DH)

Communication from an NGO (Federation of Women Associations of Turkey (TKDF)) (22/10/2020) concerning the case of OPUZ GROUP 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 : 1390^e réunion (décembre 2020) (DH)

Communication d'une ONG (Federation of Women Associations of Turkey (TKDF)) (22/10/2020) concernant le groupe d'affaires 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.



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COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision

of the execution of judgments and of terms of friendly settlements by

the Federation of Women Associations of Turkey (TKDF)

H46-32 Opuz group v. Turkey (Application No. 33401/02)

<http://hudoc.exec.coe.int/eng?i=004-37222>

Brief Description of the NGO

The Federation of Women Associations of Turkey (TKDF) was established in 1976 by five women associations. Since then, it has been one of the oldest and the most inclusive women NGOs active in Turkey. TKDF works for gender equality and women's equal rights in the country. At the moment, TKDF, as an umbrella organization, has 10 women's associations and 16 regional representatives at national and international levels. Since 2007, TKDF has been managing the hotline for domestic violence. It has been active for more than 13 years. Although Turkey has adopted Istanbul Convention, the state still does not have a particular hotline for domestic violence. This situation has increased the importance and credibility of TKDF's hotline. In addition to the management of the hotline, TKDF works for gender equality in Turkey through different activities:

- It carries out advocacy activities for making and amending laws to promote gender equality, as well promoting their implementation at the courts;
- It follows the court cases of gender-based and domestic violence;
- It gives gender equality trainings to different organizations, institutions, and companies;
- It carries out advocacy for implementation of the Istanbul Convention;
- It co-operates with INGOs to strengthen gender equality in Turkey.

Case Summary

The applicant, Nahide Opuz, and her mother were subjected to physical and psychological violence and death threats by Nahide's husband for years. On 19 April 1995, Opuz lodged the first complaint before the Turkish authorities. On 11 March 2002, her husband (the perpetrator) murdered the applicant's mother. Turkish authorities failed to protect Opuz and her mother from domestic violence and failed to take measures to prevent the murder. Furthermore, the

sanction applied to the perpetrator after he killed his mother-in-law did not adequately reflect the severity of his crime and did not have a deterrent effect. His initial punishment of three months' imprisonment was commuted into a fine and his threats of death against the applicant continued afterwards.

The Court found a violation of Article 3 due to the failure of Turkish authorities to take adequate measures to protect applicant and her family from domestic violence and of Article 14 due to the failure of judicial system to provide an adequate response to the serious domestic violence.

With the *Opuz* judgment, the ECHR ruled for the first time that the applicant's rights had been violated in a domestic violence case. Following this judgment, the ECHR received applications from different countries regarding domestic and gender-based violence (GBV). That is why the *Opuz* case is particularly important not only for Turkey, but also for other members of Council of Europe, since it sets an example in countries' fight against domestic and GBV.

Furthermore, other cases against Turkey have been added under the leading case of *Opuz*. This group of cases consists of five different cases of domestic and gender-based violence:

Application No	Case	Final Judgment	Enhanced/Standard S.
33401/02	OPUZ (Leading)	09/09/2009	Enhanced
3621/07	DURMAZ	13/02/2015	Enhanced
646/10	M.G.	22/06/2016	Enhanced
55354/11	CİVEK	04/07/2016	Closed
63034	HALİME KILIÇ	28/09/2016	Closed

All cases in this group concern the failure of the authorities to protect the applicants or their deceased relatives from domestic violence and to implement effective sanctions against perpetrators (Violations of article 2 and 3). In the cases of *Opuz*, *M.G.* and *Halime Kılıç*, the Court also found that the failure to protect the applicants or their relatives was discriminatory on grounds of gender since domestic violence affected mainly women (violation of Article 14 in conjunction with Articles 2 and 3).

EXECUTIVE SUMMARY

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2. General Measures (page 3)

- a) *Obstacles in access to justice for female victims of domestic violence (page 3)*
- b) *Women Shelters (page 4)*
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 - ii) *No investigation of suspicious suicide cases*
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3. Conclusions and Recommendations (page 6)

For the purpose of the implementation of the Opuz group, TDKF kindly asks the Court to request the Turkish Government to:

- Provide updated information and copies of documents regarding the new proceedings in the Durmaz and M.G. cases;
- Broaden the scope of the relevant legislation in order to ensure that all definitions of domestic violence include acts committed between former or current spouses or partners and persons who have established family-type relations;
- Develop a sufficient number of shelters of adequate geographical distribution;
- Provide on-going training to professionals (law enforcement, judges, prosecutors, etc.) involved in combating violence against women and domestic violence, in particular with a view to preventing gender-based discrimination;
- Collect disaggregated statistical data and qualitative data about femicides and share the information with national and international stakeholders, and provide relevant statistics collected so far;
- Develop measures for creating guidelines and methodologies for the investigation of domestic and gender-based violence crimes;
- Introduce a 24/7 domestic and gender-based violence hotline;
- Take measures to combat gender-stereotyping and raise awareness about gender equality in society by, for example: a) integrating of gender equality in the curricula of schools; b) increasing cooperation with civil society in order to promote gender equality; c) reverse the decision to suspend the gender equality project initiated by the Council of Higher Education.
- Increase the number of Ministry of Justice personnel providing legal support for gender-based and domestic violence cases.
- Express overt support for the Istanbul Convention by the state and public officials.

1. INDIVIDUAL MEASURES

The Case of Durmaz (application no. 3621/07)

In the 2018 communication from Government of Turkey (DH-DD(2018)997) ([Action Report](#) submitted on 05th October 2018), it was stated (paragraph 9) that criminal proceedings regarding the Durmaz case were pending before the İzmir Assize Court. The ECtHR had found Turkish authorities responsible for the inadequate and deficient investigation into the death of the applicant's daughter and ordered the payment of just satisfaction. Following the ECHR's judgment, the investigation was reopened into the death of the applicant's daughter under charges of intentional killing. At the hearing on 19th November 2018, the domestic court acquitted the perpetrator Oğuzhan Ovalıoğlu. As stated in Turkish Government's [Action Plan](#) (DH-DD(2020)911) submitted on 19th October 2020, the judgment has been appealed against and still pending before the 4th Chamber of the İzmir Appellate Court. The long-lasting legal process for the cases of domestic and gender-based violence demotivates many victims of violence for applying legal authorities and causes further unjust treatments in the meantime due to delays in perpetrators' punishments.

GENERAL MEASURES

a) Obstacles in access to justice for female victims of domestic violence

Despite the existence of domestic laws to fight against and eliminate gender-based and domestic violence, there is currently no definition of gender-based violence or violence against women in the Turkish Penal code. This shortcoming contributes to significant violations of women's rights and also of international agreements Turkey has ratified (CEDAW, Istanbul

Convention, and ECHR). For instance, article 86 of Turkish Criminal Code defines punishment for intentional injury. In this regard, article 86/3¹ states that the punishment for the crime will be aggravated if it is against ancestors, siblings, spouses and sisters/brothers. Thus, when single or divorced women are subjected to gender-based violence from their intimate or ex- partners, the crime is not considered under 86/3 for aggravation of the punishment. In both its action report of 05th October 2018 (DH-DD(2018)997) and action plan of 16th October 2020 (DH-DD(2020)911), Turkish Government provides several examples of sanctions having been effectively applied in domestic violence court cases. However, significant problems continue to occur as to the application of laws. There are numerous cases of domestic violence where non-implementation of the legal framework is evident; 1115 women have been murdered in Turkey since the beginning of 2018. While gender-based and domestic violence continue to increase, the majority of cases do not end in dissuasive judicial decisions and effective sanctions against aggressors. Under pandemic conditions, gender-based violence continued to increase and women's reach of authorities and services to protect them from violence has become more difficult.² This situation has created an illusion that domestic and gender-based violence started to decrease.

b) Women Shelters

Paragraphs 38-43 of the action report DH-DD(2018)997 and paragraphs 64-67 of the action plan DH-DD(2020)911, set out the situation of women's shelters, which are highly insufficient in number. As of September 2020, there are 145 women shelters with a capacity of 3,482 places. There is no official data about the percentage of women affected by domestic or gender-based violence. But, as Turkish Government states in its action plan paragraph 57-58, the Women Support Application (KADES), which is one of the ways to ask for help for women subjected to violence and report this situation, has been downloaded more than 530,000 times and 43,000 notifications has been sent to police through the program to ask for immediate help. If we consider KADES and other official and non-official ways to report domestic and gender-based violence, it is obvious that the current capacity of shelters and opportunities to help women rehabilitate themselves and start a new life are insufficient. Furthermore, the table that is shared in the paragraph 30 of the stated action plan, shows that only in the first nine months of 2020, there were more than 15,000 decisions for providing shelter to victims of violence. It stays an unanswered question whether these decisions were applied, and if applied, where these women placed in for how long time.

The issue of women's shelters needs to be taken more seriously in the fight against domestic violence. The Turkish Government should take measures regarding the good functioning and availability of sufficient places in shelters by cooperating with civil society and private service providers.

¹ <https://barandogan.av.tr/blog/ceza-hukuku/kasten-adam-yaralama-sucu-cezasi.html>, accessed on 18.10.2020 (the page can be translated to English if demanded).

² <https://www.mei.edu/publications/violence-against-women-turkey-during-covid-19> (accessed on 20.10.2020); <https://www.hurriyetdailynews.com/violence-against-women-girls-intensified-since-covid-19-began-un-official-158689>, accessed on 15.10.2020.

c) Measures Taken to Assess Existence of a Real and Imminent Risk and to Take All Necessary Measures Urgently

i. The lack of due diligence to prevent the violation of acts of violence against women.

Although paragraphs 44-49 of Turkey's Action Report DH-DD (2018)997 and paragraphs 121-133 of the Action Plan DH_DD(2020)911, set out the technical side of what these measures are and how these measures should be applied, significant problems continue in practice, which prevent women who are victims of domestic violence from being protected from further violence.

Increasing femicide is an open indicator for the malfunctioning of the implementation of these measures. According to data collected by anitsayac.com³, **404** women were murdered in Turkey in 2018; **418** in 2019, and **293** in 2020 (October). The state institutions do not officially keep statistical record of femicide. The existing information is gathered by collecting data through different media sources. Thus, these numbers only reflect the cases that were reported in Turkish media. Numerous women who were murdered by their intimate (ex)partners had demanded protection from the state. For instance, Ayşe Tuba Arslan was murdered by her ex-husband in October 2019. She had lodged 23 complaints to police and prosecution offices regarding the violence she was subjected to.⁴ There are many cases similar to Ayşe Tuba's case. Law no. 6284 on Protection of Family and Prevention of Violence against Women is still not be applied effectively.

ii. No investigation of suspicious suicide cases. Along with the high number of femicide cases, there are numerous cases of suspicious suicides by women. These cases are not included among femicide cases, and their numbers have been increasing.⁵ Often, the aggressors make the death appear as a suicide or accidental fall. One such example is the case of Şule Çet, which is one of the most well-known cases to the Turkish public.⁶ Çet was murdered after sexual assault in May 2018 and her body was thrown from 20th floor of a residence in Ankara. The aggressors tried to make the murder look like a suicide and the defendants were released three times throughout the trial process and rearrested. However, with women organizations' pressure on the judgment, it was found out that Çet did not commit suicide; she was murdered.⁷

d) The need to strengthen the promotion of gender equality in Turkey

We note that the headline chosen by the Turkish Government in the action report DH-DD (2018)997 refers to strengthening "women's role in society" rather than strengthening "**gender equality** in society." Unfortunately, the Turkish state and its public officials do not display a unanimous point of view regarding gender equality and support for the Istanbul Convention. Many politicians, including the president of the Republic of Turkey, express that they do not believe in the equality between men and women.⁸ This situation continues to prevent the advancement of gender equality. Furthermore, it encourages actors who are against gender

³ <http://anitsayac.com>, accessed on 05.10.2020.

⁴ <https://bianet.org/english/male-violence/218208-women-lawyers-prepare-day-to-day-report-on-femicide-of-ayse-tuba-arslan>, accessed on 12.10.2020.

⁵ <https://www.duvarenglish.com/women/2020/09/02/turkey-observes-50-femicides-and-suspicious-womens-deaths-in-august/>, accessed on 4.10.2020.

⁶ https://www.equaltimes.org/could-the-sule-cet-murder-rape?lang=en#.X5BRAi_OIQI, accessed on 10.10.2020.

⁷ <https://www.bbc.com/news/world-50673700>, accessed on 14.10.2020.

⁸ <https://www.duvarenglish.com/women/2020/08/13/erdogan-signals-withdrawal-of-turkey-from-istanbul-convention/>, 18.10.2020.

equality to raise their voices louder in society, making supporters of gender equality and of the Istanbul Convention open targets for assaults.⁹

Gender equality has not turned into a open state policy. In this regard, for instance Council of Higher Education in Turkey (YÖK) had initiated the Gender Equality Project in 2015 and shared the project with universities aiming to achieve gender equality within universities. However, the document was abandoned in 2019, after it was argued that the concept of gender equality is in contradiction with Turkish society's traditions and values.¹⁰

Paragraph 65 of the Action report DH-DD (2018)997 refers to the cooperation and coordination between Turkish state and NGOs aimed to increase capacity of NGOs. This cooperation has remained weak and limited due to the fact that a large majority of women NGOs active in the field have been ignored and not included due to their ideological stance and non-concession on their belief in gender equality.

Articles 66-71 of the action report refers to projects aimed to empower women. However, these projects focus mostly on employment and help women develop professional skills, but do not consider gender equality as their objective. Neither do they contribute to the advancement of gender equality values in Turkey.

e) Measures taken to Collect Statistics

Articles 87-89 of the action report refer to measures to collect statistical data by state authorities. However, there is still no public statistical data regarding domestic violence and femicide cases collected by the state authorities. TKDF kindly asks the Committee of Ministers to request the Turkish Government to provide the statistics collected so far on femicide and gender-based violence cases and to make them public.

2. CONCLUSIONS AND RECOMMENDATIONS

The on-going non-implementation of the Opuz group, coupled with the Government's attempt to justify the closure of the examination of these cases are contributing to the perpetuation of the discriminatory pattern of judicial passivity and the impunity enjoyed by aggressors in Turkey.

Furthermore, the lack of internalization of gender equality as a norm – by the Turkish authorities and by Turkish society in general - weakens the fight against gender based and domestic violence. A paradigm shift in the mentality, attitudes and practices of the authorities is necessary in order for these crimes to be treated with the seriousness that they require. Gender-based and domestic violence cannot be fought and eradicated without addressing the root causes of gender stereotyping and sexist mentalities and attitudes. Such a paradigm shift will require long-term substantial reforms, awareness-raising efforts and training of professionals.

In this respect, we also note that, in its most recent [decision](#) in the *Talpis v. Italy* case, which also concerns domestic violence, the Committee of Ministers noted with concern the continued

⁹ <https://www.yeniakit.com.tr/yazarlar/osman-atalay/istanbul-sozlesmesinden-aileyi-ve-toplumu-koruma-tartismasi-33096.html>, accessed on 12.10.2020. (The text can be translated into English , if demanded.)

¹⁰ <https://bianet.org/english/women/205678-council-of-higher-education-cancels-gender-equality-project>, accessed on 17.10.2020.

existence of gender stereotypes in society and “*strongly encouraged the authorities to intensify their efforts to eradicate them and achieve changes in cultural behaviours, including by drawing inspiration from the Committee’s Recommendation CM/Rec(2019)1 on preventing and combating sexism; invited the authorities keep the Committee informed of the measures adopted and the progress achieved in this area*”. Similar recommendations must be made to Turkish authorities for the implementation of the Opuz group as well.

In conclusion, for the purpose of the implementation of the Opuz group, TDKF kindly asks the Committee of Ministers to request the Turkish Government to:

- Provide updated information and copies of documents regarding the new proceedings in the Durmaz and M.G. cases;
- Broaden the scope of the relevant legislation in order to ensure that all definitions of domestic violence include acts committed between former or current spouses or partners and persons who have established family-type relations;
- Develop a sufficient number of shelters of adequate geographical distribution;
- Provide on-going training to professionals (law enforcement, judges, prosecutors, etc.) involved in combating violence against women and domestic violence, in particular with a view to preventing gender-based discrimination;
- Collect disaggregated statistical data and qualitative data about femicides and share the information with national and international stakeholders, and provide relevant statistics collected so far;
- Develop measures for creating guidelines and methodologies for the investigation of domestic and gender-based violence crimes;
- Introduce a 24/7 domestic and gender-based violence hotline;
- Take measures to combat gender-stereotyping and raise awareness about gender equality in society by, for example: a) integrating of gender equality in the curricula of schools; b) increasing cooperation with civil society in order to promote gender equality; c) reverse the decision to suspend the gender equality project initiated by the Council of Higher Education.
- Increase the number of Ministry of Justice personnel providing legal support for gender-based and domestic violence cases.
- Express overt support for the Istanbul Convention by the state and public officials.

Regarding procedural issues, TKDF kindly requests the Committee of Ministers to maintain this case on the agenda of its upcoming meetings and closely follow on progress regarding the implementation of general measures and individual measures.