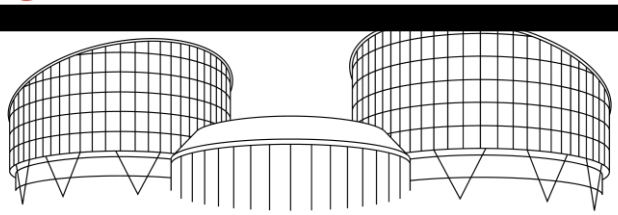

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

THIRD SECTION

CASE OF OPUZ v. TURKEY

(Application no. 33401/02)

JUDGMENT

STRASBOURG

9 June 2009

FINAL

09/09/2009

This judgment has become final under Article 44 § 2 of the Convention.

This document contains excerpts only.
The original document has been altered.

132. However, before embarking upon these issues, the Court must stress that the issue of domestic violence, which can take various forms ranging from physical to psychological violence or verbal abuse, cannot be confined to the circumstances of the present case. It is a general problem which concerns all member States and which does not always surface since it often takes place within personal relationships or closed circuits and it is not only women who are affected. The Court acknowledges that men may also be the victims of domestic violence and, indeed, that children, too, are often casualties of the phenomenon, whether directly or indirectly. Accordingly, the Court will bear in mind the gravity of the problem at issue when examining the present case

(ii) Whether the local authorities could have foreseen a lethal attack from H.O.

133. Turning to the circumstances of the case, the Court observes that the applicant and her husband, H.O., had a problematic relationship from the very beginning. As a result of disagreements, H.O. resorted to violence against the applicant and the applicant's mother therefore intervened in their relationship in order to protect her daughter. She thus became a target for H.O., who blamed her for being the cause of their problems (see paragraph 28 above). In this connection, the Court considers it important to highlight some events and the authorities' reaction.

(i) On 10 April 1995 H.O. and A.O. beat up the applicant and her mother, causing severe physical injuries, and threatened to kill them. Although the applicant and her mother initially filed a criminal complaint about this event, the criminal proceedings against H.O. and A.O. were terminated because the victims withdrew their complaints (see paragraphs 9-11 above).

(ii) On 11 April 1996 H.O. again beat the applicant, causing life-threatening injuries. H.O. was remanded in custody and a criminal

(iii) Whether the authorities displayed due diligence to prevent the killing of the applicant's mother

137. The Government claimed that each time the prosecuting authorities commenced criminal proceedings against H.O., they had to terminate those proceedings, in accordance with the domestic law, because the applicant and her mother withdrew their complaints. In their opinion, any further interference by the authorities would have amounted to a breach of the victims' Article 8 rights. The applicant explained that she and her mother

had had to withdraw their complaints because of death threats and pressure exerted by H.O.

138. The Court notes at the outset that there seems to be no general consensus among States Parties regarding the pursuance of the criminal prosecution against perpetrators of domestic violence when the victim withdraws her complaints (see paragraphs 87 and 88 above). Nevertheless, there appears to be an acknowledgement of the duty on the part of the authorities to strike a balance between a victim's Article 2, Article 3 or Article 8 rights in deciding on a course of action. In this connection, having examined the practices in the member States (see paragraph 89 above), the Court observes that there are certain factors that can be taken into account in deciding to pursue the prosecution:

– the seriousness of the offence;
– whether the victim's injuries are physical or psychological;
– if the defendant used a weapon;
– if the defendant has made any threats since the attack;
– if the defendant planned the attack;
– the effect (including psychological) on any children living in the household;
– the chances of the defendant offending again;
– the continuing threat to the health and safety of the victim or anyone else who was, or could become, involved;
– the current state of the victim's relationship with the defendant and the effect on that relationship of continuing with the prosecution against the victim's wishes;
– the history of the relationship, particularly if there had been any other violence in the past; and
– the defendant's criminal history, particularly any previous violence.

139. It can be inferred from this practice that the more serious the offence or the greater the risk of further offences, the more likely that the prosecution should continue in the public interest, even if victims withdraw their complaints.

140. As regards the Government's argument that any attempt by the authorities to separate the applicant and her husband would have amounted to a breach of their right to family life, and bearing in mind that under Turkish law there is no requirement to pursue the prosecution in cases where the victim withdraws her complaint and did not suffer injuries which renders her unfit for work for ten or more days, the Court will now examine whether the local authorities struck a proper balance between the victim's Article 2 and Article 8 rights.

141. In this connection, the Court notes that H.O. resorted to violence from the very beginning of his relationship with the applicant. On many instances both the applicant and her mother suffered physical injuries and were subjected to psychological pressure, given the anguish and fear. For

some assaults H.O. used lethal weapons, such as a knife or a shotgun, and he constantly issued death threats against the applicant and her mother. Having regard to the circumstances of the killing of the applicant's mother, it may also be stated that H.O. had planned the attack, since he had been carrying a knife and a gun and had been wandering around the victim's house on occasions prior to the attack (see paragraphs 47 and 54 above).

142. The applicant's mother became a target as a result of her perceived involvement in the couple's relationship, and the couple's children can also be considered as victims on account of the psychological effects of the ongoing violence in the family home. As noted above, in the instant case, further violence was not only possible but even foreseeable, given the violent behaviour and criminal record of H.O., his continuing threat to the health and safety of the victims and the history of violence in the relationship (see paragraphs 10, 13, 23, 37, 45, 47 and 51 above).

143. In the Court's opinion, it does not appear that the local authorities sufficiently considered the above factors when repeatedly deciding to discontinue the criminal proceedings against H.O. Instead, they seem to have given exclusive weight to the need to refrain from interfering with what they perceived to be a "family matter" (see paragraph 123 above). Moreover, there is no indication that the authorities considered the motives behind the withdrawal of the complaints. This is despite the applicant's mother's indication to the Diyarbakır Public Prosecutor that she and her daughter had withdrawn their complaints because of the death threats issued and pressure exerted on them by H.O. (see paragraph 39 above). It is also striking that the victims withdrew their complaints when H.O. was at liberty or following his release from custody (see paragraphs 9-12, 17-19, 31 and 35 above).

144. As regards the Government's argument that any further interference by the national authorities would have amounted to a breach of the victims' rights under Article 8 of the Convention, the Court notes its ruling in a similar case of domestic violence (see *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 83, 12 June 2008), where it held that the authorities' view that no assistance was required as the dispute concerned a "private matter" was incompatible with their positive obligations to secure the enjoyment of the applicants' rights. Moreover, the Court reiterates that, in some instances, the national authorities' interference with the private or family life of the individuals might be necessary in order to protect the health and rights of others or to prevent commission of criminal acts (see *K.A. and A.D. v. Belgium*, nos. 42758/98 and 45558/99, § 81, 17 February 2005). The seriousness of the risk to the applicant's mother rendered such intervention by the authorities necessary in the present case.

145. However, the Court regrets to note that the criminal investigations in the instant case were strictly dependent on the pursuance of complaints by the applicant and her mother on account of the domestic-law provisions

in force at the relevant time; namely Articles 456 § 4, 457 and 460 of the now defunct Criminal Code, which prevented the prosecuting authorities from pursuing the criminal investigations because the criminal acts in question had not resulted in sickness or unfitness for work for ten days or more (see paragraph 70 above). It observes that the application of the above-mentioned provisions and the cumulative failure of the domestic authorities to pursue criminal proceedings against H.O. deprived the applicant's mother of the protection of her life and safety. In other words, the legislative framework then in force, particularly the minimum ten days' sickness unfitness requirement, fell short of the requirements inherent in the State's positive obligations to establish and apply effectively a system punishing all forms of domestic violence and providing sufficient safeguards for the victims. The Court thus considers that, bearing in mind the seriousness of the crimes committed by H.O. in the past, the prosecuting authorities should have been able to pursue the proceedings as a matter of public interest, regardless of the victims' withdrawal of complaints (see, in this respect, Recommendation Rec(2002)5 of the Committee of the Ministers, paragraphs 80-82 above).

146. The legislative framework preventing effective protection for victims of domestic violence aside, the Court must also consider whether the local authorities displayed due diligence to protect the right to life of the applicant's mother in other respects.

147. In this connection, the Court notes that despite the deceased's complaint that H.O. had been harassing her, invading her privacy by wandering around her property and carrying knives and guns (see paragraph 47 above), the police and prosecuting authorities failed either to place H.O. in detention or to take other appropriate action in respect of the allegation that he had a shotgun and had made violent threats with it (see *Kontrová*, cited above, § 53). While the Government argued that there was no tangible evidence that the applicant's mother's life was in imminent danger, the Court observes that it is not in fact apparent that the authorities assessed the threat posed by H.O. and concluded that his detention was a disproportionate step in the circumstances; rather the authorities failed to address the issues at all. In any event, the Court would underline that in domestic violence cases perpetrators' rights cannot supersede victims' human rights to life and to physical and mental integrity (see the *Fatma Yıldırım v. Austria* and *A.T. v. Hungary* decisions of the CEDAW Committee, both cited above, §§ 12.1.5 and 9.3 respectively).

148. Furthermore, in the light of the State's positive obligation to take preventive operational measures to protect an individual whose life is at risk, it might have been expected that the authorities, faced with a suspect known to have a criminal record of perpetrating violent attacks, would take special measures consonant with the gravity of the situation with a view to protecting the applicant's mother. To that end, the local public prosecutor or

the judge at the Diyarbakır Magistrate's Court could have ordered on his/her initiative one or more of the protective measures enumerated under sections 1 and 2 of Law no. 4320 (see paragraph 70 above). They could also have issued an injunction with the effect of banning H.O. from contacting, communicating with or approaching the applicant's mother or entering defined areas (see, in this respect, Recommendation Rec(2002)5 of the Committee of the Ministers, paragraph 82 above). On the contrary, in response to the applicant's mother's repeated requests for protection, the police and the Diyarbakır Magistrate's Court merely took statements from H.O. and released him (see paragraphs 47-52 above). While the authorities remained passive for almost two weeks apart from taking statements, H.O. shot dead the applicant's mother.

149. In these circumstances, the Court concludes that the national authorities cannot be considered to have displayed due diligence. They therefore failed in their positive obligation to protect the right to life of the applicant's mother within the meaning of Article 2 of the Convention.

2. The effectiveness of the criminal investigation into the killing of the applicant's mother

150. The Court reiterates that the positive obligations laid down in the first sentence of Article 2 of the Convention also require by implication that an efficient and independent judicial system should be set in place by which the cause of a murder can be established and the guilty parties punished (see, *mutatis mutandis*, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 69 and 71, ECHR 2002-II). A requirement of promptness and reasonable expedition is implicit in the context of an effective investigation within the meaning of Article 2 of the Convention (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-04, *Reports* 1998-VI, and *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80-87 and 106, ECHR 1999-IV). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of tolerance of unlawful acts (see *Avşar v. Turkey*, no. 25657/94, § 395, ECHR 2001-VII).

151. The Court notes that a comprehensive investigation has indeed been carried out by the authorities into the circumstances surrounding the killing of the applicant's mother. However, although H.O. was tried and convicted of murder and illegal possession of a firearm by the Diyarbakır

Assize Court, the proceedings are still pending before the Court of Cassation (see paragraphs 57 and 58 above). Accordingly, the criminal proceedings in question, which have already lasted more than six years, cannot be described as a prompt response by the authorities in investigating an intentional killing where the perpetrator had already confessed to the crime.

3. Conclusion

152. In the light of the foregoing, the Court considers that the above-mentioned failures rendered recourse to criminal and civil remedies equally ineffective in the circumstances. It accordingly dismisses the Government's preliminary objection (see paragraph 114 above) based on non-exhaustion of these remedies.

153. Moreover, the Court concludes that the criminal-law system, as applied in the instant case, did not have an adequate deterrent effect capable of ensuring the effective prevention of the unlawful acts committed by H.O. The obstacles resulting from the legislation and failure to use the means available undermined the deterrent effect of the judicial system in place and the role it was required to play in preventing a violation of the applicant's mother's right to life as enshrined in Article 2 of the Convention. The Court reiterates in this connection that, once the situation has been brought to their attention, the national authorities cannot rely on the victim's attitude for their failure to take adequate measures which could prevent the likelihood of an aggressor carrying out his threats against the physical integrity of the victim (see *Osman*, cited above, § 116). There has therefore been a violation of Article 2 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLES 2 AND 3

177. The applicant complained under Article 14 of the Convention, read in conjunction with Articles 2 and 3, that she and her mother had been discriminated against on the basis of their gender.

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

1. The applicant

178. The applicant alleged that the domestic law of the respondent State was discriminatory and insufficient to protect women, since a woman's life was treated as inferior in the name of family unity. The former Civil Code, which was in force at the relevant time, contained numerous provisions distinguishing between men and women, such as the husband being the head of the family, his wishes taking precedence as the representative of the family union. The then Criminal Code also treated women as second-class citizens. A woman was viewed primarily as the property of society and of the male within the family. The most important indicator of this was that sexual offences were included in the section entitled "Crimes Relating to General Morality and Family Order", whereas in fact sexual offences against women are direct attacks on a woman's personal rights and freedoms. It was because of this perception that the Criminal Code imposed lighter sentences on persons who had murdered their wives for reasons of family honour. The fact that H.O. received a sentence of fifteen years is a consequence of that classification in the Criminal Code.

179. Despite the reforms carried out by the Government in the areas of the Civil Code and Criminal Code in 2002 and 2004 respectively, domestic

violence inflicted by men is still tolerated and impunity is granted to the aggressors by judicial and administrative bodies. The applicant and her mother had been victims of violations of Articles 2, 3, 6 and 13 of the Convention merely because of the fact that they were women. In this connection, the applicant drew the Court's attention to the improbability of any men being a victim of similar violations.

2. The Government

180. The Government averred that there was no gender discrimination in the instant case, since the violence in question was mutual. Furthermore, it cannot be claimed that there was institutionalised discrimination resulting from the criminal or family laws or from judicial and administrative practice. Nor could it be argued that the domestic law contained any formal and explicit distinction between men and women. It had not been proven that the domestic authorities had not protected the right to life of the applicant because she was a woman.

181. The Government further noted that subsequent to the reforms carried out in 2002 and 2004, namely revision of certain provisions of the Civil Code and the adoption of a new Criminal Code, and the entry into force of Law no. 4320, Turkish law provided for sufficient guarantees, meeting international standards, for the protection of women against domestic violence. The Government concluded that this complaint should be declared inadmissible for failure to exhaust domestic remedies or as being manifestly ill-founded since these allegations had never been brought to the attention of the domestic authorities and, in any event, were devoid of substance.

3. Interights, the third-party intervener

182. Interights submitted that the failure of the State to protect against domestic violence would be tantamount to failing in its obligation to provide equal protection of the law based on sex. They further noted that there was increasing recognition internationally – both within the United Nations and Inter-American systems – that violence against women was a form of unlawful discrimination.

B. The Court's assessment

1. The relevant principles

183. In its recent ruling in *D.H. and Others v. the Czech Republic* ([GC], no. 57325/00, 13 November 2007, §§ 175-80, ECHR 2007-IV), the Court laid down the following principles on the issue of discrimination:

"175. The Court has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV, and *Okpisz v. Germany*, no. 59140/00, § 33, 25 October 2005). ... The Court has also accepted 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 (see *Hugh Jordan* [*v. the United Kingdom*, no. 24746/94], § 154[, 4 May 2001], and *Hoogendijk* [*v. the Netherlands* (dec.), no. 58461/00, 6 January 2005]), and that discrimination potentially contrary to the Convention may result from a *de facto* situation (see *Zarb Adami* [*v. Malta*, no. 17209/02], § 76[, ECHR 2006-VIII]).

...

177. As to the burden of proof in this sphere, the Court has established that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (see, among other authorities, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 91-92, ECHR 1999-III, and *Timishev* [*v. Russia*, nos. 55762/00 and 55974/00], § 57[, ECHR 2005-XII]).

178. As regards the question of what constitutes prima facie evidence capable of shifting the burden of proof on to the respondent State, the Court stated in *Nachova and Others* ([*v. Bulgaria* [GC], nos. 43577/98 and 43579/98], § 147[, ECHR 2005-VII]) that in proceedings before it there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. The Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake.

179. The Court has also recognised that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation – see *Aktaş v. Turkey*, no. 24351/94, § 272, ECHR 2003-V). In certain circumstances, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Anguelova v. Bulgaria*, no. 38361/97, § 111, ECHR 2002-IV). In *Nachova and Others* (cited above, § 157), the Court did not rule out requiring a respondent Government to disprove an arguable allegation of discrimination in certain cases, even though it considered that it would be difficult to do so in that particular case, in which the allegation was that an act of violence had been motivated by racial prejudice. It noted in that connection that in the legal systems of many countries proof of the discriminatory effect of a policy, decision or practice would dispense with the need to prove intent in respect of alleged discrimination in employment or in the provision of services.

180. As to whether statistics can constitute evidence, the Court has in the past stated that statistics could not in themselves disclose a practice which could be classified as

discriminatory (see *Hugh Jordan*, cited above, § 154). However, in more recent cases on the question of discrimination in which the applicants alleged a difference in the effect of a general measure or *de facto* situation (see *Hoogendijk*, cited above, and *Zarb Adami*, cited above, §§ 77-78), the Court relied extensively on statistics produced by the parties to establish a difference in treatment between two groups (men and women) in similar situations.

Thus, in *Hoogendijk* the Court stated: "[W]here an applicant is able to show, on the basis of undisputed official statistics, the existence of a prima facie indication that a specific rule – although formulated in a neutral manner – in fact affects a clearly higher percentage of women than men, it is for the respondent Government to show that this is the result of objective factors unrelated to any discrimination on grounds of sex. If the onus of demonstrating that a difference in impact for men and women is not in practice discriminatory does not shift to the respondent Government, it will be in practice extremely difficult for applicants to prove indirect discrimination."

2. Application of the above principles to the facts of the present case

(a) The meaning of discrimination in the context of domestic violence

184. The Court notes at the outset that when it considers the object and purpose of the Convention provisions, it also takes into account the international-law background to the legal question before it. Being made up of a set of rules and principles that are accepted by the vast majority of States, the common international or domestic law standards of European States reflect a reality that the Court cannot disregard when it is called upon to clarify the scope of a Convention provision that more conventional means of interpretation have not enabled it to establish with a sufficient degree of certainty (see *Saadi v. Italy* [GC], no. 37201/06, § 63, ECHR 2008, cited in *Demir and Baykara*, cited above, § 76).

185. In this connection, when considering the definition and scope of discrimination against women, in addition to the more general meaning of discrimination as determined in its case-law (see paragraph 183 above), the Court has to have regard to the provisions of more specialised legal instruments and the decisions of international legal bodies on the question of violence against women.

186. In that context, the CEDAW defines discrimination against women under Article 1 as

"... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

187. The CEDAW Committee has reiterated that violence against women, including domestic violence, is a form of discrimination against women (see paragraph 74 above).

188. The United Nations Commission on Human Rights expressly recognised the nexus between gender-based violence and discrimination by stressing in resolution 2003/45 that "all forms of violence against women occur within the context of *de jure* and *de facto* discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State."

189. Furthermore, the Belém do Pará Convention, which is so far the only regional multilateral human rights treaty to deal solely with violence against women, describes the right of every woman to be free from violence as encompassing, among others, the right to be free from all forms of discrimination.

190. Finally, the Inter-American Commission also characterised violence against women as a form of discrimination owing to the State's failure to exercise due diligence to prevent and investigate a domestic violence complaint (see *Maria da Penha v. Brazil*, cited above, § 80).

191. It transpires from the above-mentioned rules and decisions that the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional.

(b) The approach to domestic violence in Turkey

192. The Court observes that although the Turkish law then in force did not make explicit distinction between men and women in the enjoyment of rights and freedoms, it needed to be brought into line with international standards in respect of the status of women in a democratic and pluralistic society. Like the CEDAW Committee (see the Concluding Comments on the combined fourth and fifth periodic report of Turkey CEDAW/C/TUR/4-5 and Corr.1, 15 February 2005, §§ 12-21), the Court welcomes the reforms carried out by the Government, particularly the adoption of Law no. 4320 which provides for specific measures for protection against domestic violence. It thus appears that the alleged discrimination at issue was not based on the legislation *per se* but rather 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. The Court notes that the Turkish Government have already recognised these difficulties in practice when discussing the issue before the CEDAW Committee (ibid.).

193. In that regard, the Court notes that the applicant produced reports and statistics prepared by two leading NGOs, the Diyarbakır Bar Association and Amnesty International, with a view to demonstrating discrimination against women (see paragraphs 94-97 and 99-104 above). Bearing in mind that the findings and conclusions reached in these reports

have not been challenged by the Government at any stage of the proceedings, the Court will consider them together with its own findings in the instant case (see *Hoogendijk v. the Netherlands* (dec.), no. 54861/00, 6 January 2005, and *Zarb Adami v. Malta*, no. 17209/02, §§ 77-78, ECHR 2006-VIII).

194. Having examined these reports, the Court finds that the highest number of reported victims of domestic violence is in Diyarbakır, where the applicant lived at the relevant time, and that the victims were all women who suffered mostly physical violence. The great majority of these women were of Kurdish origin, illiterate or of a low level of education and generally without any independent source of income (see paragraph 98 above).

195. Furthermore, there appear to be serious problems in the implementation of Law no. 4320, which was relied on by the Government as one of the remedies for women facing domestic violence. The research conducted by the above-mentioned organisations indicates that when victims report domestic violence to police stations, police officers do not investigate their complaints but seek to assume the role of mediator by trying to convince the victims to return home and drop their complaint. In this connection, police officers consider the problem as a "family matter with which they cannot interfere" (see paragraphs 92, 96 and 102 above).

196. It also transpires from these reports that there are unreasonable delays in issuing injunctions by the courts, under Law no. 4320, because the courts treat them as a form of divorce action and not as an urgent action. Delays are also frequent when it comes to serving injunctions on the aggressors, given the negative attitude of the police officers (see paragraphs 91-93, 95 and 101 above). Moreover, the perpetrators of domestic violence do not seem to receive dissuasive punishments, because the courts mitigate sentences on the grounds of custom, tradition or honour (see paragraphs 103 and 106 above).

197. As a result of these problems, the above-mentioned reports suggest that domestic violence is tolerated by the authorities and that the remedies indicated by the Government do not function effectively. Similar findings and concerns were expressed by the CEDAW Committee when it noted "the persistence of violence against women, including domestic violence, in Turkey" and called upon the respondent State to intensify its efforts to prevent and combat violence against women. It further underlined the need to fully implement and carefully monitor the effectiveness of Law no. 4320 on the protection of the family, and of related policies in order to prevent violence against women, to provide protection and support services to the victims, and punish and rehabilitate offenders (see the Concluding Comments, § 28).

198. In the light of the foregoing, the Court considers that the applicant has been able to show, supported by unchallenged statistical information, the existence of a prima facie indication that the domestic violence affected

mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence.

(c) Whether the applicant and her mother have been discriminated against on account of the authorities' failure to provide equal protection of law

199. The Court has established that the criminal-law system, as operated in the instant case, did not have an adequate deterrent effect capable of ensuring the effective prevention of unlawful acts by H.O. against the personal integrity of the applicant and her mother and thus violated their rights under Articles 2 and 3 of the Convention.

200. Bearing in mind its finding above that the general and discriminatory judicial passivity in Turkey, albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the instant case, indicated that there was insufficient commitment to take appropriate action to address domestic violence (see, in particular, section 9 of the CEDAW Committee's General Recommendation No. 19, cited at paragraph 74 above).

201. Taking into account the ineffectiveness of domestic remedies in providing equal protection of law to the applicant and her mother in the enjoyment of their rights guaranteed by Articles 2 and 3 of the Convention, the Court holds that there existed special circumstances which absolved the applicant from her obligation to exhaust domestic remedies. It therefore dismisses the Government's objection on non-exhaustion in respect of the complaint under Article 14 of the Convention.

202. In view of the above, the Court concludes that there has been a violation of Article 14 of the Convention, read in conjunction with Articles 2 and 3, in the instant case.