



Turkish authorities did not effectively protect the life of a woman threatened with death by her husband

In today's **Chamber** judgment¹ in the case of **Halime Kılıç v. Turkey** (application no. 63034/11) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights, and

a violation of Article 14 (prohibition of discrimination) taken together with Article 2.

The case concerned the death of Ms Kılıç's daughter, Fatma Babatlı, who was killed by her husband despite having lodged four complaints and obtained three protection orders and injunctions.

The Court found in particular that the domestic proceedings had failed to meet the requirements of Article 2 of the Convention by providing protection for Fatma Babatlı. By failing to punish the failure by Fatma Babatlı's husband to comply with the orders issued against him, the national authorities had deprived the orders of any effectiveness, thus creating a context of impunity enabling him to repeatedly assault his wife without being called to account.

The Court also found it unacceptable that Fatma Babatlı had been left without resources or protection when faced with her husband's violent behaviour and that in turning a blind eye to the repeated acts of violence and death threats against the victim, the authorities had created a climate that was conducive to domestic violence.

Principal facts

The applicant, Halime Kılıç, is a Turkish national who was born in 1940 and lives in Diyarbakir (Turkey). She is the mother of Fatma Babatlı, a woman who suffered domestic violence and death threats on the part of her husband.

On 16 July 2008, her daughter, Fatma Babatlı lodged a complaint against her husband (S.B.), saying that she had seven children and had been repeatedly assaulted by her husband. She requested application of the protection measures provided for in the Family Protection Act (Law no. 4320) and an order removing her husband from the home, fearing for her own and her children's lives. On 18 July 2008 the Family Court issued an initial protection measure ordering, among other things, S.B.'s removal from the matrimonial home and an injunction against any violent behaviour towards his wife. That decision which was served on 6 August 2008, also provided that any failure to comply with the court orders would open the way to a custodial sentence. On 7 October 2008 the prosecution charged S.B. with inflicting simple injuries.

In July and October 2008 Fatma Babatlı lodged a further complaint of domestic violence. The Family Court issued two further injunctions. The prosecution committed S.B. for trial in the Criminal Court, requesting that he be placed in pre-trial detention, but the court rejected the request. Subsequently

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.

Fatma Babatlı wrote to the prosecutor seeking urgent assistance, complaining that her husband had abducted two of her children and made death threats. She thus lodged a fourth complaint. On 7 November 2008 Fatma Babatlı was killed by her husband, who also killed himself.

In January 2009 Ms Kılıç lodged a complaint with the prosecution alleging a breach of duties and requesting the identification and prosecution of the officials who, despite her daughter's complaints, had allegedly failed to carry out an effective investigation, and whose shortcomings had resulted in her daughter's death. The public prosecutor issued a decision discontinuing the proceedings. Ms Kılıç unsuccessfully challenged that decision.

Complaints, procedure and composition of the Court

Relying in particular on Article 2 (right to life), in particular, Ms Kılıç complained that the domestic authorities had failed to protect her daughter's life, among other things by failing to ensure compliance with the orders issued by the Family Court against S.B. She also complained that the domestic authorities had failed to carry out an effective investigation and had not protected her daughter. Ms Kılıç also alleged that the proceedings in her daughter's case had been unfair, and complained of the lack of effective remedies capable of protecting her daughter, arguing that the complaint she had lodged following her daughter's death, with a view to drawing attention to the responsibility of the civil servants, had resulted in an order discontinuing the proceedings.

Relying also on Article 14 (prohibition of discrimination), Ms Kılıç alleged that the acts complained of under Article 2 (right to life) had occurred because her daughter was a woman, and that her son-in-law had not been arrested because it was a case of domestic violence.

The application was lodged with the European Court of Human Rights on 5 August 2011.

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

Julia **Laffranque** (Estonia), *President*,
 Işıl **Karakaş** (Turkey),
 Nebojša **Vučinić** (Montenegro),
 Paul **Lemmens** (Belgium),
 Valeriu **Griţco** (Republic of Moldova),
 Ksenija **Turković** (Croatia),
 Stéphanie **Mourou-Vikström** (Monaco),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 2 (right to life)

The Court noted that Fatma Babatlı had applied to the authorities four times, stating each time that she feared for her own and her children's lives and requesting protection. Although the family court had issued three protection orders and injunctions, these had turned out to be totally ineffective in providing her with any protection. Although in the context of domestic violence protection measures were in theory designed to provide a rapid response to a dangerous situation, it had taken 19 days for the first order of the family court to be served on S.B. and eight weeks for the second. Those delays could not but deprive Fatma Babatlı of the benefit of the measure of immediate protection, despite this being necessary in her situation, and consequently the orders of their effectiveness. The Court found that it was sufficient to observe that between the date on which the first order had been issued and the date it had been served, Fatma Babatlı had again been assaulted by her husband.

The Court also found that the effectiveness of the protection measures could only be guaranteed by appropriate control mechanisms. However, the Court observed that it had not been until 8 October 2008 and S.B.'s arrest by the police in possession of two knives that the public prosecutor had ordered him to be placed in police custody. Furthermore, whilst S.B. had clearly been shown to represent a danger, the criminal court had refused to grant the prosecution's request to place him in pre-trial detention, without assessing the risks for Fatma Babatlı, including the risk of death or further possible attacks. S.B. had therefore been released without any practical measure being taken to protect Fatma Babatlı's life, despite the fact that it was clear that the orders issued by the family court had had no deterrent effect on him. The Court also observed that Law no. 4320 provided for a custodial penalty in the effect of failure to comply with injunctions, but S.B. had never been effectively prosecuted in that regard. The Court therefore considered that in failing to punish S.B.'s failure to comply with the injunctions that had been imposed on him the national authorities had deprived them of any effectiveness, thus creating a situation in which he could continue assaulting his wife with impunity.

The Court noted the conflicting accounts of the parties regarding Fatma Babatlı's ability to seek refuge in a shelter with her seven children. It noted, firstly, the low number of shelters for women in Turkey at the relevant time. It then observed that even if there were appropriate facilities where Fatma Babatlı could have found protection for herself and her children, as the Government claimed, neither the prosecutor nor the police officers, to whom Fatma Babatlı had explained why she had been unable to go to a shelter, had attempted to inform her otherwise or direct her to a facility adapted to her needs. In the Court's view, the national authorities had had a duty to take account of the particularly precarious and vulnerable psychological, physical and material situation in which Fatma Babatlı had found herself and to assess it accordingly, whilst offering her appropriate support. That had not been done however.

With regard to Ms Kılıç's claim that the criminal responsibility of public officials in the death of her daughter had not been established, the Court reiterated the nature of Ms Kılıç's complaints under the substantive aspect of Article 2 of the Convention and the findings it had reached in that respect. It followed from those findings that the domestic proceedings had failed to meet the requirements of Article 2 of the Convention.

Having regard to the foregoing, the Court concluded that there had been a violation of Article 2 of the Convention.

Article 14 (prohibition of discrimination), taken in conjunction with Article 2

The Court observed that Fatma Babatlı had been repeatedly assaulted and threatened with death by her husband and that the domestic authorities had been informed accordingly. It reiterated the findings it had reached regarding the failure by the domestic authorities to provide Fatma Babatlı with effective protection and the impunity that had been afforded to her husband. In the Court's view, that impunity reflected wilful denial on the part of the national authorities regarding the seriousness of the incidents of domestic violence, which had been particularly worrying, and regarding the particular vulnerability of the victims of that violence. In regularly turning a blind eye to the repeated acts of violence and death threats against Fatma Babatlı, the domestic authorities had created a climate that was conducive to domestic violence. The Court found it unacceptable that the victim had been left without resources or protection when faced with her husband's violence.

Accordingly, the Court found that the finding it had reached in the *Opuz*² judgment remained valid in the circumstances of the present case.

The Court therefore concluded that there had been a violation of Article 14 of the Convention taken in conjunction with Article 2.

² *Opuz v. Turkey*, no. 33401/02, § 198, ECHR 2009

Just satisfaction (Article 41)

The Court held that Turkey was to pay Mrs 65,000 euros in respect of non-pecuniary damage.

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.