

## EUROPEAN COURT OF HUMAN RIGHTS

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### HEARINGS IN OCTOBER

The European Court of Human Rights will be holding the following **two** hearings in **October 2008**:

Tuesday 7 October 2008: 9 a.m.

#### **Chamber hearing on the merits and the admissibility**

***Opuz v. Turkey*** (application no. 33401/02)

The applicant, Nahide Opuz, is a Turkish national who was born in 1972 and lives in Diyarbakır (Turkey). In 1990 Ms Opuz started living with H.O., the son of her mother's husband. Ms Opuz and H.O. got married in November 1995 and had three children in 1993, 1994 and 1996. They had serious arguments from the beginning of their relationship.

The case concerns the applicant's complaint, in particular, that the Turkish authorities failed to protect her and her mother from the violent and abusive behaviour of H.O., who ultimately killed her mother.

Between April 1995 and March 1998 there were four incidents of H.O.'s violent and threatening behaviour which came to the notice of the authorities. Those incidents involved several beatings, a fight during which H.O. pulled out a knife and H.O. running the two women down with his car. Following those assaults the women were examined by doctors who testified in their reports to various injuries, including bleeding, bruising, bumps, grazes and scratches. Both women were medically certified as having sustained life-threatening injuries: the applicant as a result of one particularly violent beating; and, her mother following the assault with the car.

Criminal proceedings were brought against H.O. on three of those occasions for death threats, actual, aggravated and grievous bodily harm and attempted murder. As regards the knife incident, it was decided not to prosecute for lack of evidence. H.O. was twice remanded in custody and released pending trial.

However, as the applicant and her mother withdrew their complaints during each of those proceedings, the domestic courts discontinued the cases, their complaints being required under Article 456 § 4 of the Criminal Code to pursue any further. The proceedings concerning the car incident were nevertheless continued in respect of the applicant's mother, given the seriousness of her injuries, and H.O. was convicted to three months' imprisonment, later commuted to a fine.

On 29 October 2001 the applicant was stabbed seven times by H.O. and taken to hospital. H.O. was charged with knife assault and given another fine. In his statement to the police he

claimed that he and his wife, who frequently argued about her mother interfering in their marriage, had had an argument which had got out of hand.

In April 1998, October and November 2001 and February 2002 the applicant and her mother filed complaints with the prosecution authorities about H.O.'s threats and harassment, claiming that their lives were in immediate danger and requesting that the authorities take immediate action such as H.O.'s detention.

Finally, on 11 March 2002 the applicant's mother, having decided to move to Izmir with her daughter, was travelling in the removal van when H.O. forced the van to pull over, opened the passenger door and shot her. The applicant's mother died instantly.

The criminal proceedings against H.O. for murder are currently still pending before the Assize Court. He claimed that he killed the applicant's mother because she had taken his wife and children away from him and had led his wife into an immoral way of life.

The applicant alleges that the Turkish authorities failed to protect the right to life of her mother and that they were negligent in the face of the repeated violence, death threats and injury to which she herself was subjected. She relies on Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment) and 13 (right to an effective remedy). She further complains about the lack of protection of women against domestic violence under Turkish domestic law, in violation of Article 14 (prohibition of discrimination).

Wednesday 22 October 2008: 9.15 a.m.

### **Grand Chamber<sup>1</sup>**

*Micallef v. Malta* (no. 17056/06)

The applicant, Joseph Micallef, is a Maltese national who lives in Vittoriosa (Malta).

He complains about the proceedings which had to decide on the fairness of a prohibitory injunction issued against his sister in a dispute with her neighbour.

The applicant's sister, Mrs M, was a party to civil proceedings brought in 1985 by her neighbour, Mr F., who claimed that Mrs M's habit of hanging her washing out above his yard interfered with his right of property. The president of the relevant court issued an injunction in favour of Mr F and in the absence of Mrs M., who had not been informed of the date of the hearing. In 1992 the court, having examined the merits of the civil case brought by

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Mr F., found against Mrs M. and issued a permanent injunction ordering her to refrain from interfering with Mr F's right of property.

In the meantime Mrs M. brought proceedings before the Civil Court in its ordinary jurisdiction, alleging that the injunction had been issued in her absence and without her being given the opportunity to testify. In October 1990 the Civil Court held that the interim injunction had been issued in breach of the adversarial principle and declared it null and void.

In February 1993 the Court of Appeal, presided over by the Chief Justice who sat with two other judges, decided an appeal lodged by Mr F. and set aside the judgment of the Civil Court. Mrs M. lodged a constitutional application with the Civil Court in its constitutional jurisdiction alleging that the Chief Justice lacked impartiality by reason of his family ties with the other party's lawyers since he was the brother and uncle of the lawyers who had successively represented Mr F. As Mrs M. died before her constitutional claim could be determined, the applicant intervened in the proceedings in his capacity as the appellant's brother. The claim was dismissed in January 2004 and a further appeal to the Constitutional Court was dismissed in October 2005.

Relying on Article 6 § 1 (right to a fair hearing), the applicant complained that the Court of Appeal had lacked impartiality by reason of the president of that court's family ties with the other party's lawyers and that this had resulted in an infringement of the principle of equality of arms.

In a judgment of 15 January 2008 the European Court of Human Rights held, by four votes to three, that there had been a violation of Article 6 § 1 on account of the lack of objective impartiality of the Court of Appeal. It also held that it was not necessary to examine separately the complaint in relation to a breach of the equality-of-arms principle. It held, further, that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Micallef and awarded him 2,000 euros (EUR) for costs and expenses.

The case was referred to the Grand Chamber at the Government's request.

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Decisions, judgments and further information about the Court can be found on its Internet site (<http://www.echr.coe.int>).<sup>2</sup>

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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.*

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<sup>2</sup> These summaries by the Registry do not bind the Court.