



## Criminal proceedings against persons charged in connection with prostitution of a fourteen-year-old child: violations of the Convention

In today's **Chamber judgment**<sup>1</sup> in the case of [N.Ç. v. Turkey](#) (application no. 40591/11) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The case concerned shortcomings in the criminal proceedings against a number of individuals charged with prostitution offences in relation to a fourteen-year-old child.

The Court found that the lack of support for the applicant, the failure to protect her against the defendants, the unnecessary reconstruction of the rape incidents, the repeated medical examinations, the lack of a calm and secure environment at the hearings, the assessment of the victim's consent, the excessive length of the proceedings, and, lastly, the fact that two of the charges had become time-barred, amounted to a serious case of secondary victimisation of the applicant. The national authorities' conduct had been inconsistent with the obligation to protect a child who had been the victim of sexual exploitation and abuse.

### Principal facts

The applicant, N.Ç., is a Turkish national who was born on 2 January 1990 and lives in Istanbul (Turkey). In July 2002 two women forced N.Ç. to work as a prostitute with them. On 8 January 2003 N.Ç. lodged a complaint against both women, and against the men with whom she had had sexual relations. The Mardin public prosecutor opened a criminal investigation. The police identified twenty-eight suspects. N.Ç. underwent several medical examinations.

Between 14 and 21 January 2003 twenty-seven suspects were placed in pre-trial detention by investigating judges from various courts. On 20 January 2003 the prosecutor filed a bill of indictment against twenty-eight individuals on charges of rape of a girl aged under fifteen, "false imprisonment for fulfilment of sexual desires", incitement to prostitution and involvement in false imprisonment.

On 24 January 2003 the Mardin Assize Court upheld the decision to place twenty-seven suspects in pre-trial detention and decided to hold a hearing. N.Ç., her parents, and the Child Protection Agency, attached to the Ministry of Family Affairs, joined the criminal proceedings as civil parties.

On 24 February 2003 N.Ç., her father, twenty-eight defendants and the parties' representatives appeared at the hearing before the Mardin Assize Court. Given the sensitive nature of the case, the public were excluded from the courtroom.

On the same day the relatives of certain defendants attacked N.Ç. and her representatives as they left the court building after the hearing. No response was given to a request by her lawyers for protection measures.

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 14 May 2003 the Assize Court dismissed a new request by N.Ç.'s representatives, who had asked that the trial be transferred elsewhere for safety reasons. By a majority, it also decided to release sixteen defendants. On 15 May and 26 June 2003 the remaining defendants were released.

On 28 September 2010, at the close of its thirty-fifth hearing, the Mardin Assize Court acquitted three defendants of the charge of raping a minor, for lack of evidence. With regard to the charge of "forced imprisonment for fulfilment of sexual desires" in respect of each of the locations where N.Ç. had been held, the Assize Court reclassified the offences and held that N.Ç. had consented to remain. Noting further that the statutory limitation period for criminal liability in respect of "consensual imprisonment" had expired, it struck out this part of the charges in respect of all the defendants. It also struck out the charge of incitement to prostitution in respect of three defendants who had cooperated with the two women, E.A. and T.T.

The Assize Court also held that sexual acts with a child aged under fifteen were prohibited in all cases by Article 414 of the former Criminal Code, applicable to the facts of the case, but that if the victim had consented, the first paragraph of that provision was to be applied; only the second paragraph was classified as the version which amounted to a crime. In the light of a psychiatric report and certain facts, the Assize Court considered that N.Ç. had not been "totally unwilling" and that there was no evidence allowing for a conclusion that the defendants had forced her to act as she did.

In consequence, the Assize Court decided to apply the first paragraph of Article 414, and the minimum sentence set out in that provision, to all of the defendants, with two exceptions, then imposed various prison sentences under the different provisions of the above Code.

On 13 March 2003 N.Ç. was placed in a specialised institution for child protection in Malatya. She was later transferred to a similar institution in Adana for psychiatric monitoring, and subsequently moved to Istanbul. This measure continued to apply until she reached the age of majority.

## Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 6 (right to a fair hearing), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the Convention, the applicant complained that she had received no professional support during the proceedings, that she had been humiliated before the defendants and that she had been threatened by them with the knowledge of the judicial authorities. She also complained that two charges had been struck out as being time-barred, and that the defendants' sentences had been mitigated on the grounds of good conduct at the hearings. She considered that she had not been protected during the proceedings, and that those proceedings had been ineffective on account of both their length and the outcome. Relying on Article 14 (prohibition of discrimination), she alleged that she had been discriminated against on account of her gender.

The application was lodged with the European Court of Human Rights on 25 March 2011.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,  
Marko **Bošnjak** (Slovenia),  
Aleš **Pejchal** (the Czech Republic),  
Egidijus **Kūris** (Lithuania),  
Branko **Lubarda** (Serbia),  
Pauliine **Koskelo** (Finland),  
Saadet **Yüksel** (Turkey),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

## Decision of the Court

### Articles 3 and 8

The Court observed that the complaints in this case related, firstly, to the protection of the applicant's personal integrity in the course of the criminal proceedings concerning the sexual abuse against her, and, secondly, to the effectiveness of the investigation. It was not disputed that the threshold of gravity required to trigger Article 3 of the Convention had been reached in the applicant's case.

Regarding the lack of support for the applicant the Court noted that, from the lodging of her complaint on 8 January 2003 until 12 May 2004, the applicant had not at any stage been accompanied by a welfare assistant, a psychologist or any kind of expert, either before the police or the public prosecutor or during the Assize Court hearings. The Court therefore concluded that the applicant had not been cared for adequately during the proceedings in question.

As to the failure to protect the applicant against the defendants, the Court noted that no steps had been taken to separate the applicant from the defendants during the hearings before the Mardin Assize Court. At several hearings, until 26 June 2003, the applicant had been placed opposite her assailants and had been obliged to recount in detail the threats and rapes of which she had been a victim. There was no indication in the case file that she had requested this confrontation or that it had been necessary for an adequate and effective exercise of the rights of the defence. Accordingly, the Court held that the authorities had not conducted a proper balancing exercise and that they had failed to protect the applicant from the defendants in this serious case of prostitution and sexual abuse against a child aged under fifteen.

As to the rape incidents, there was likewise nothing in the case file to explain why the reconstruction of events designed to establish the positions in which the sexual acts had occurred had been necessary in order to establish the facts or their characterisation in law. Those hearings must have been extremely traumatic for the applicant, and simply deciding to conduct them without the public being granted access had been insufficient to protect the applicant from the damage to her dignity and the invasion of her private life. In the Court's view, those hearings had adversely affected her personal integrity and substantially exceeded the level of discomfort inherent in giving evidence as a victim of sexual exploitation and abuse. Accordingly, they could in no way be justified by the requirements of a fair trial for the defendants.

As to the medical examinations, the Court noted that the applicant had been examined on ten occasions at the request of the judicial authorities. This excessive and unexplained number of medical examinations, many of them extremely intrusive, represented unacceptable interference with the victim's physical and psychological integrity.

With regard to the lack of security, at the close of the hearings the applicant had been confronted with the aggressive attitude of the defendants' relatives, to the extent that on 24 March 2003 a police escort had been necessary to enable her to leave the town. The authorities had apparently taken no preventive measures in this connection. Likewise, the case file offered no insight as to why the Assize Court had refused to transfer the trial elsewhere, despite this being common practice in sensitive criminal cases.

When it came to assessing the victim's consent, the Court observed that, in practice, attributing equivalent weight to the consent of a child aged under fifteen and to that of an adult was not under any circumstances permissible in the context of a case involving sexual exploitation and abuse. In the Court's view, the investigation and its conclusions had to focus primarily on the issue of lack of consent. Nevertheless, the domestic courts had attached decisive weight to the applicant's "consent" in finding the first paragraph of Article 414 of the Criminal Code to be applicable, without however indicating why the alleged threats and violence on the part of E.A. and T.T., and the

payments made by the remaining defendants, had not been found to meet the criteria set out in the second paragraph of that Article. The latter provided for longer prison sentences, referring to “force, violence or threats” and to “fraudulent means rendering the victim incapable of resisting”.

Accordingly, the Court noted that the judicial authorities had gone to great lengths to avoid applying Article 414 § 2, which laid down longer prison sentences, and had shown no concern at any stage for the vulnerability of the applicant, who had been under fifteen years of age at the time of the events. This interpretation, which had not taken account of the victim’s age, was completely at odds with an objective assessment of the sensitive context of the case and with the protection of a child who had been a victim of sexual exploitation.

As to the effectiveness of the investigation, the Court observed that the criminal proceedings had lasted for approximately eleven years and that the case had been examined on four occasions at two levels of jurisdiction. It also noted that the unexplained large number of medical examinations had caused considerable delays in the proceedings. There had been an unexplained period of inactivity between July 2005 and June 2010, and no explanation had been offered either for the length of time for which the case had been pending before the Court of Cassation. Lastly, the Court observed that the charge of false imprisonment in respect of all of the defendants, and the charge of incitement to prostitution in respect of one of them, had been struck out as being time-barred. The Court therefore held that the conduct of the judicial authorities had been wholly incompatible with the requirement of promptness and diligence in the present case, which had warranted special attention and absolute priority in order to ensure the protection of a child.

The Court considered that the lack of support for the applicant, the failure to protect her against the defendants, the unnecessary reconstruction of the rape incidents, the repeated medical examinations, the lack of a calm and secure environment at the hearings, the assessment of the victim’s consent, the excessive length of the proceedings, and, lastly, the fact that two of the charges had become time-barred, amounted to a serious case of secondary victimisation of the applicant. The conduct of the national authorities had been inconsistent with the obligation to protect a child who had been the victim of sexual exploitation and abuse.

Lastly, the Court considered that the improvements made to the Turkish judicial system as of 2005 were not relevant in the present case because, apart from the fact that the applicant had been assisted by a psychologist when she had given evidence on commission on 12 May 2004, those amendments had not been applied in the applicant’s case.

The Court therefore held that the way in which the proceedings had been conducted had not ensured effective application of the criminal law to the infringement of the values protected by Articles 3 and 8 of the Convention.

#### Article 14

The applicant’s complaint of discrimination on grounds of gender, submitted on 1 December 2018, was rejected as out of time since the proceedings in question had ended in January and March 2014.

#### Just satisfaction (Article 41)

The Court held that Turkey was to pay the applicant 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

*The judgment is available only in French.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court’s press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHR\\_CEDH](https://twitter.com/ECHR_CEDH).

**Press contacts**

During the current public-health crisis, journalists can continue to contact the Press Unit via [echrp@echr.coe.int](mailto:echrp@echr.coe.int)

**Denis Lambert**

Tracey Turner-Tretz

Inci Ertekin

Neil Connolly

**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.