

Efficiency and Expediency of Preventive and Protective Measures against Domestic Violence Taken by the Family Courts in Ankara

Özge Yücel*

*Faculty of Law, Ufuk University, Ankara, Turkey.
E-mail: ozge.yucel@ufuk.edu.tr

ABSTRACT

Domestic violence disproportionately affects women in Turkey. The fact that the state does not fulfil its positive obligations to combat domestic violence causes indirect discrimination against women, as pointed out by the European Court of Human Rights in the cases against Turkey. This article reports an analysis of cases in the Ankara family courts from the beginning of January to the end of April 2016 concerning preventive or protective measures against domestic violence, followed by qualitative research consisting of interviews with practitioners. It demonstrates that legal regulations are not executed properly. According to the quantitative data, women have been exposed to the danger of violence mostly by their husbands. Gender stereotyping norms play a determinative role in the political and judicial passivity over combating domestic violence.

I. INTRODUCTION

In *Opuz v Turkey*, *M.G. v Turkey*, and *Halime Kilic v Turkey*,¹ the European Court of Human Rights (ECtHR) found Turkey to be in breach of the European Convention, as the state had failed to fulfil its positive obligations to counteract domestic violence. The common thread in all the judgments is the passivity of the government regarding measures against domestic violence and the lack of implementation of legal regulations by the judiciary. ‘Judicial passivity’ refers to the politics, attitudes and decisions of the prosecution, judicature, and the police. The aim of this study is to determine whether or to what extent the objectives prescribed by the Turkish Act on Protection against Domestic Violence (No 6284) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (The Istanbul Convention) 2011, which was ratified by Turkey in 2012, have been achieved in practice.

As stated in the Istanbul Convention, combatting domestic violence comprises four factors, namely, prevention, protection, prosecution, and policy (Art. 1/a, c, Art. 5). In this study, all decisions about preventive or protective measures against

violence, which were given by the three Ankara family courts from the beginning of January until the end of April 2016, have been researched, and in the light of the research questions, quantitative data have been collected and examined statistically. Qualitative research has also been carried out. Practitioners, namely the police officers, prosecutors, judges and lawyers familiar with the procedures relating to preventive and protective measures against violence have been interviewed.

First, the positive obligations relating to domestic and gender-based violence will be explained, and then the aims and essential rules of Act 6284 will be stated. After that, the findings of the quantitative and qualitative research will be presented.

II. POSITIVE OBLIGATIONS OF STATES IN PROTECTION OF INDIVIDUALS AGAINST DOMESTIC VIOLENCE

1. General Principles

The case law of the ECtHR has created positive obligations, as exercising negative obligations alone does not secure the protection of human rights (Hasselbacher, 2010: 192). In order to make human rights a practical reality, the state has not only to avoid damaging acts, behaviours and procedures but also to take positive measures (Akandji-Kombe, 2007: 7; Interrights, 2011: 20). In *Opuz v Turkey*, the ECtHR remarked that the state has positive obligations with regard to the protection of individuals against the risks of domestic violence.² According to Article 4(c) of UN Declaration on the Elimination of Violence against Women³ and the report introduced by the Special Reporter on Violence Against Women to the UN Economic and Social Council, states are obliged to ‘exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons’ (Ertürk, 2006: 6).

The positive obligations of the state can be set out as follows: to prevent violation of rights as far as possible by sufficient protective and deterrent national legislative regulations;⁴ to take action and intervene on time and in an efficient manner;⁵ to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (Korff, 2006: 38; Khrystova, 2014: 113); to put an efficient judicial system into effect, which includes an efficient and reliable investigation (Korff, 2006: 39) and to ensure the institutional and practical independence of those who are responsible for and carry out investigations from those involved with violence (Ertürk, 2009: 5, 12, 21, 33; Human Rights Watch, 2011: 56).

2. Domestic Violence

The positive obligations imposed on states with respect to protection against domestic violence have different characteristics from others owing to the nature of the subject (Boerefijn, 2009: 191; Hsieh, 2012: 33–34). In particular, measures against domestic violence constitute an exception to the right to respect for private and family life (for further discussion regarding consent to violence and private life, see Sever, 2012: 36). In other words, domestic violence is not a ‘private’ issue; rather, it is a public issue (see Bucci, 2012: 79; Hsieh, 2012: 29; Hasselbacher, 2010: 191–92; Khrystova, 2014: 118). Because of that, domestic violence should be directly

investigated and prosecuted. Further, since domestic violence occurs between people who have emotional affection or familial relationships, it is generally invisible and it is not always easy to inform official authorities about it and prove such violence (see Brookman and Maguire, 2004: 339–40; Baker, 2013: 157; Hsieh, 2012: 29–30; Khrystova, 2014: 117–8). Therefore, individuals are at greater risk than in other types of violence. So, national authorities should approach domestic violence differently and should take account of the risks realistically.

In cases before the Committee on Elimination of Discrimination against Women⁶ non-fulfilment of obligations mentioned above is a common subject of complaints (Boerefijn, 2009: 191). The Committee has advised contracting parties to take measures to protect the physiological integrity of the applicant and her family and provide safe housing so that the applicant can stay with her children, and provide support for her children, seek assistance and ensure proportional compensation with respect to damage and violation of rights. The positive obligations that have been categorized above and developed by the case law of the ECtHR can be summarized as prevention and protection, and, if this is not possible, the application of sanctions through investigation and prosecution (Hasselbacher, 2010: 215; Hsieh, 2012: 33–34). These principles are prescribed in the Istanbul Convention, which entered into force in 2014. The Convention places the contracting states under positive obligations not only with respect to acts of violence committed under public authority, but also acts of non-state actors.

Prevention can be analysed in three subtopics: sufficient legal regulations, taking action in time and efficiently and taking actual measures for those who are at risk. They are all highly important to prevent domestic violence. Particular attention should be given to taking action in time and efficiently and taking actual measures for those at risk, because progressive, detailed and perfect legal regulations whether in international treaties or domestic law require practical actualization. These positive obligations have been concretized in some detail by the Istanbul Convention which refers in Articles 23, 24 and 60 to 24/7 telephone lines, shelters, and the grant of asylum.

The obligation of investigation and prosecution is also highly important to counteract domestic violence. Offenders, who give modesty, morals, 'male honour' and so on as a pretext have been excused and released or have had punishment abated on the grounds of unjust provocation and good conduct (see further Boerefijn, 2009: 198; Bucci, 2012: 86; Gill, 2013: 249). Therefore, the obligations of investigation and prosecution in time and efficiently in this context appear as positive obligations. On the other hand, there is also a negative obligation, eg, not to engage in reconciliation between the victim and the offender. This indicates that negative and positive obligations are interconnected. According to Article 48 of the Istanbul Convention, national authorities are forbidden to use alternative dispute resolutions such as mandatory mediation (Compare Gavrielides and Artinopoulou, 2013: 29–30). Principles such as the independence of investigators, starting and ending investigation rapidly, collecting all the evidence and transparent and legitimate prosecution providing public confidence in the rule of law are important.

3. General and Discriminatory Judicial Passivity Related to Domestic Violence in Turkey

In *Opuz v Turkey*⁷ the ECtHR concluded that Turkey was in violation of obligations to protect victims against domestic violence, and that violence based on gender constitutes a form of discrimination. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not cover violence issues, but it is clearly stated that gender-based violence is at the same time a form of gender-based discrimination; and gender-based discrimination maintains, spreads and justifies gender-based violence (Boerefijn, 2009: 194). Moreover, paragraphs 1 and 11 of General Recommendation 19 of the CEDAW Committee point out that discrimination includes violent acts. Furthermore, in *M.G. v Turkey*,⁸ the conclusion that the prohibition against discrimination was violated was justified by reference to Article 3 of the Istanbul Convention according to which the expression ‘violence against women’ should be seen to constitute a violation of the human rights of women and discrimination against women.

The ECtHR drew on statistics, reports and observations of official and non-governmental organizations. It used qualitative and quantitative evidence about domestic violence in Turkey, and the approach of the state against domestic violence and concluded that the state has remained passive in every respect. According to the Court, from the political, legislative, executive and judicial viewpoints, approaches which exclude some women because of their marital status, origin, and citizenship from protective procedures against domestic violence have been quite common.⁹ Also the Court suggests that domestic violence has not been taken seriously, efficient measures have not been taken to combat against it, and all attempts have remained inconclusive. The Court also noticed that domestic violence in Turkey has disproportionately affected women.¹⁰ Hence judicial passivity related to domestic violence constitutes discrimination against women by the state.

If one considers only legal regulations or judicial decisions, it can hardly be stated that there is explicit discrimination against women. However, indirect discrimination can be observed by considering results and influences, not declarations or intentions. In *M.G. v Turkey*, the ECtHR stated that a general policy or measure which has a disproportionate negative influence on a specific group could be a form of discrimination regardless of whether or not there is an intention to discriminate.¹¹ For this reason, the government has to prove that there is no discrimination by providing evidence of the reasons behind differentiated treatments.

It is no coincidence that domestic violence disproportionately affects women adversely. Gender-based inequalities, sexist policies, manners and customs, expressions, and behaviours nourish gender-based violence (Bucci, 2012: 80; Baker, 2013: 156–57; Arslan-Öncü, 2012: 30–1). In *M.G. v Turkey*, as in *Opuz v Turkey*¹² and *Durmaz v Turkey*,¹³ the ECtHR suggests that general and discriminatory judicial passivity paves the way for domestic violence. For example, according to the Second Chamber of the Turkish Court of Cassation, divorced individuals could not benefit from Act 4320, which was the former legislation prescribing measures against domestic violence, repealed by Act 6284. Since physical, psychological, economic or social violence are not different from discrimination, connivance, non-interference, lack of

policies in domestic violence, in other words non-exercise of positive obligations, serves to perpetuate gender-based discrimination. Lack of policies and non-interference become a policy itself at this point.

III. AIMS STATED IN THE ISTANBUL CONVENTION AND ACT 6284

The Act on Protection of the Family and Prevention of Violence against Women (No 6284, passed 08.03.2012) was enacted to prevent domestic and gender-based violence and to protect individuals against such risks. Section 2 of Act 6284 refers to the Istanbul Convention, which is the first internationally binding instrument against gender-based violence (Peroni, 2016: 50; Arslan-Öncü, 2012: 8), as follows:

‘The following fundamental principles are observed to enforce this law and provide necessary services: (i) The Constitution of Republic of Turkey, the international agreements to which Turkey is a party, especially the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, and other current regulations shall prevail . . .’¹⁴

It can be argued that the aims and principles are common in the both documents. The definitions of domestic violence and violence against women were adopted from the Istanbul Convention. Moreover, according to the Constitution of the Republic Turkey, international conventions related to human rights, which have been ratified in national legislation, are superior to acts and other legislation (see Boerefijn, 2009: 173–4). For this reason, international conventions related to human rights are applicable directly in Turkey.

The aims of the Istanbul Convention can be specified as being: (i) to counteract discrimination and gender inequality in all regulations, implementations, manners and customs to eliminate the root causes of domestic violence (Articles 4, 12.1, 12.5, 42) (Hsieh, 2012: 34; Peroni, 2016: 50); (ii) to combat violence, especially domestic violence, not to normalize and minimize it (Articles 5, 12, 27–28, 45–46, 48–53) (Baker, 2013: 159), and (iii) to protect all human beings against violence regardless of their marital status, sex, gender identity and sexual orientation (Ohms, 2008: 84), language, religion (Bucci, 2012: 82–84), citizenship and any other characteristics (Articles 4, 3, 56) (see from postcolonial feminist perspective, Peroni, 2016: 51); (iv) to make services for protection against violence free of charge and accessible for everyone and to enlighten the victim about her or his rights and application procedures (the police, the prosecution, courts, etc.) (Articles 19–25, 53, 2, 57) (see Human Rights Watch, 2011: 16, 25); (v) where necessary to protect against immediate danger, not to require evidence but to grant ex parte protection where necessary (Articles 52–53) (Human Rights Watch, 2011, 34); (vi) to prevent violence and to protect individuals who are at risk by specific measures, to watch and control protection actively, and to provide communication and coordination between authorized organizations and offices (Articles 7–10, 12, 50–53) (see Brookman and Maguire, 2004: 345–8); (vii) to rehabilitate and empower victims and to assist them in finding employment (Articles 12.6, 18.3, 20, 22, 25) (Peroni, 2016: 50); (viii) to investigate and prosecute violence regardless of the type of injury without delay, irrespective of the relationship between victim and perpetrator, and that such investigation and prosecutions should not be wholly dependant upon a report or complaint filed by a

victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint (Articles 33, 43, 49, 50.2, 55) (Brookman and Maguire, 2004: 342; UN, 2009: 36) and (ix) to cure, punish or/and rehabilitate offenders, which may include monitoring (Articles 16, 45, 49) (Brookman and Maguire, 2004: 343–4).

Act 6284 does not provide for criminal investigation or punishment. Rather, family court judges make the orders outside criminal procedure. For this reason, they can be called ‘civil orders’ (Hendry and King, 2016: 3–4, note 7). Breach can result in a sentence of short-term preventive detention. Hence such measures are referred to as ‘hybrid measures’ combining characteristics of civil and criminal law (Hendry and King, 2016: 2). The aim of hybrid measures is to overcome obstacles to the investigation of domestic and gender-based violence as well as to take action without delay (Hendry and King, 2016: 18–20). The measures listed in Act 6284 are divided into two types: preventive measures and protective measures. Preventive measures can be taken by only judges. They cover orders requiring someone to keep away from the protected persons, their residences, schools and/or workplaces; allocating a shared residence to the protected person; restricting or revoking personal contact with children; requiring someone to refrain from exhibiting any violent attitudes, or to communicate with the protected persons and requiring someone to undergo treatment, surrender a weapon, or pay alimony. Protective measures include provision by civil authorities of an appropriate shelter, financial aid, guidance, close protection, and day care for children. Judges can take other protective measures, such as changing employment for state employees, securing separate residences, annotating the title deeds of the home as a family home to prevent it being sold without the permission of non-owner spouse, and changing the victim’s identity (name, ID, place and date of birth, address, etc.), with the victim’s consent, if it is determined that the victim’s life is in danger and the measures available to protect it are inadequate. Judges also have the authority to take other similar measures, not only the listed ones.

In urgent cases, the police have the authority to take protective or preventive measures on behalf of the judge or civil authority. A measure taken by the police must be approved by the civil authority or judge within 48 hours, otherwise it lapses. In this way, persons who are exposed to violence are able to apply for preventive and protective measures at any time, even outside working hours. According to Article 8 of the Act, the precautionary decision can be taken upon the request of the relevant person, law enforcement officers or the public prosecutor. The decision lasts for not more than 6 months initially. However, if it is determined that there is a continued risk of violence, the measures may be extended, modified, abolished or kept on record. So a further application by the victim is not required.

According to Article 14 of the Act, the Ministry is to establish Violence Prevention and Monitoring Centres, where necessary qualified personnel are employed and support and monitoring services are provided to prevent the violence and efficiently implement the protective and preventive measures. They operate 24 hours seven days a week. According to Article 16, the Ministry is in charge of inter-agency coordination in the application of the provisions of this Law. According to Article 20, no court expenses, fees, mailing expenses, etc. are required for

Table 1. The number of cases researched

	January 2016	February 2016	March 2016	April 2016	Total
5th Family Court	53	68	47	48	216
8th Family Court	49	13	40	34	136
10th Family Court	42	24	30	18	114
Total	144	105	117	100	466

applications and for other processes during the execution and implementation of the decisions within the scope of this Law.

IV. THE AIMS, QUESTIONS AND INFERENCES OF THE QUANTITATIVE RESEARCH

1. The Aims and Questions of the Quantitative Research

The capital of Turkey, Ankara, has 11 family courts. Because of the high population (more than five million people) in Ankara, workload is distributed between the judges. Family courts work as one-judge courts in Turkey. Decisions about preventive or protective measures against violence are only appealable to another court of first instance, not to the Court of Cassation. This has improved the case-law of the courts of first instance. The judges' attitudes against violence and their interpretation of legislative regulations have an impact on the policy against violence. Moreover, since the police are the first authority to provide assistance, and because they are entitled to take temporary measures against violence, their attitudes are even more important. The family courts have the authority to ratify or dismiss temporary measures taken by police officers.

In our research, all decisions in the first 4 months of the year 2016 which were given by the fifth, eighth and tenth Family Courts were examined (Table 1). The objective was to find out whether there was any delay in taking the measures, whether there was any discrimination based on gender, marital status or affinity, whether any evidence was required to take them, whether any complaint was required for this, which type of violence was most often seen, the type of measures that were most often taken and requested, and whether the duration of these measures was sufficient.

This research can only discover how the complaints came before the court and what kinds of decisions were given, not how efficiently the measures were implemented or monitored. There is no coordination and communication between courts and executive authorities. We do not know whether sick persons were treated or whether offenders did or did not keep away from the victims. In this context, it is only stated that the decisions are forwarded to the Centres for Preventing and Monitoring Violence. The processes that are followed afterwards were not investigated. In Ankara there is only one such centre, which is far from the city, and others are not easily accessible either. They are also lack sufficient and qualified staff or an adequate budget (Mor Cati Women's Shelter Foundation, 2013).

Our questions included two open-ended questions, since every concrete case varies. One was whether there had been any special request for preventive or protective measures expressed by the applicant. In some cases, there were special or definite requests. These requests can be categorized as for therapeutic measures, economic measures, security measures, and measures concerning privacy. The other open-ended question was whether any additional information was available. This question aimed to find out events, stories, etc., which clarify the background of violence (danger). Such information can often reveal whether the applicants were still in fear of their offenders. In some of cases, the violence had occurred before or was repeated; in some the respondent had been punished, whereas in others the respondent had not been punished as the violence had not been notified to the official authorities or there had been no complaint. In such cases, violence or the danger of violence continued like a vicious circle because of a lack of deterrence. On the other hand, in other cases it is shown that offenders of violence received a medical diagnosis. In some cases, it was remarked that minors suffered from violence too. Sometimes the police or courts glossed over, and dismissed the applications. Although it is possible to take measures against the threat of violence without evidence and *ex parte*, applications have been dismissed based on a lack of evidence and no measures were taken.

2. Findings of the Quantitative Research

As the judge of the tenth Family Court stated, many of the applications were submitted for the approval of the judge after the police had taken a temporary measure outside of the judges' working hours. However, many decisions of the courts are given without full understanding and without full investigation. The judges do not even usually hear or see the applicants. Forty-one per cent of the applications were concluded in the same day and 31 per cent were concluded the following day. Five per cent were concluded five or more days after the application date. It can therefore be concluded that, in general, the courts did not delay determining applications to take the necessary measures.

In relation to the gender of the applicants, it is not surprising to find that a huge majority (92 per cent) of the applications were made by women alone (Compare with [Brookman and Maguire, 2004: 337–8](#)). One per cent of applications were made by women and men together. Accordingly, it can be seen that women were in much more need of such measures compared to men (see [Ohms, 2008: 82](#)). Forty-four per cent of the applicants requested measures against their husbands, and 9 per cent of the applications were against ex-husbands. Applications against fathers, sons or brothers, in other words close male relatives, comprise just 12 per cent of the applications, and 8 per cent were made against boyfriends. Without regarding gender, ex-partners constituted 4 per cent of all applications. Close female relatives, mothers or daughters of the applicants and wives or ex-wives made up a rare 3 per cent of all applications. As a result, it was clear that individuals were exposed to the danger of violence from persons with whom they have an emotional/familial or sexual relationship whether they are married to them or not.

According to section 8 I(3) of the Act

'No evidence or report proving the violence is required in order to take a precautionary decision. The preventive cautionary decision is taken without delay'.

Article 53.2 of Istanbul Convention also states:

Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders ... are ... available for immediate protection and without undue financial or administrative burdens placed on the victim; ... where necessary, issued on an ex parte basis which has immediate effect.

Commentators have argued that 'survivors' predictions should be incorporated into existing risk assessment models and should be taken seriously even where other markers fail to identify a risk' (Brookman and Maguire, 2004: 340). However, in practice, it is observed that judges sometimes dismissed applications because of lack of evidence. In 37 per cent of all applications, some evidence, such as reports of assaults was presented, in order for measures to be taken. That evidence can be classified into two categories: medical evidence and administrative/judicial evidence. The fact that individuals need to present evidence to prove violence or the danger of violence is a serious problem in acting against domestic violence. Applicants cannot bring evidence about a threat or danger because people resist being witnesses to familial issues. Requiring evidence to prevent the danger of violence before violence occurred and putting pressure on the applicants to bring proof or dismissing applications upon lack of evidence can be considered as an indication that the state does not concern itself about the lives of the applicants. Furthermore, this does not comply with the Istanbul Convention, CEDAW and the Constitution.

The type of violence involved can be physical, verbal/psychological, sexual, social (Baker, 2013: 161–2), or economic. It can take the form of coercion or stalking as mentioned in articles 3 (a) and (b) and 32–40 of the Istanbul Convention. Forced sexual relationships between married couples are prosecuted on complaint, according to the Turkish Penal Code 2005. In all, 39 per cent of cases took the form of verbal violence; 32 per cent physical violence; and 21 per cent coercion. On the other hand, only 3 per cent concerned social violence whereas sexual violence and economic violence were 2 per cent each. In many cases these types of violence occurred together: in 21 per cent physical and verbal violence, in 12 per cent verbal violence and coercion 12 per cent, and all three in 8 per cent. Moreover, it was not unexpected that verbal and physical violence and coercion were most common. This is because only they are perceived as types of violence in popular culture, whereas social or economic violence or stalking (defined in Article 34 of the Istanbul Convention as 'intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety') are not. The low percentage of sexual violence probably reflects the sufferer's unwillingness to notify official authorities about the incidents of sexual assault and abuse mainly because of pressure on those experiencing sexual issues and gender stereotyping norms and self-accusation (Baker, 2013: 167; compare with Bucci, 2012: 78–79).

The types of measures taken were in accordance with the Act. In some cases, they followed a template. Sometimes the court rescinded existing measures or dismissed the complaint. The most frequently taken measure was to keep away from the

protected person (31 per cent) followed by a requirement not to exhibit any violent attitudes or the allocation of the shared residence to the protected person (17 per cent). Restricting personal contact with children and temporary special protection were also frequent. That is because the victims were in fear or were not economically independent (see also *Bucci, 2012: 88*). The victims often asked for the allocation of the shared residence because of their economic dependence. The duration of the measures varied from one month (31 per cent) to three or more months. Only 9 per cent were short-term measures, such as those lasting <15 days. Measures lasting between 1 and 6 months seem appropriate to prevent the danger of violence. However, measures lasting <15 days are not appropriate for that purpose. Offenders cannot be calmed, defused, or treated in such short periods of time.

V. THE AIMS, QUESTIONS, AND FINDINGS OF THE QUALITATIVE RESEARCH

1. The Aims and Scope of the Qualitative Research

The issues regarding execution and monitoring which cannot be discerned from the files of the family court were analysed in a qualitative study. These matters have been managed by the Police, the Prosecution, and the Ministry of Family and Social Policies. To assess how these legal regulations function and how the measures have been executed, I interviewed two police officers working at Department for Combating against Domestic Violence and Violence against Women at Ankara Security Directorate and also four police officers working at police stations. In the court, four prosecutors working at the Investigation Bureau of Domestic Violence Crimes of Ankara Prosecutor's Office were interviewed and also three judges at family courts and three lawyers. Officers working at the Ministry of Family and Social Politics refused to be interviewed on this subject. They stated that sharing information about domestic violence and violence against women created problems for them. Seven questions about execution of measures (referred to as Group A), six questions about taking measures *ex officio*, ie without any request (referred to as Group B) were addressed. We had to concentrate on a limited list of problems to conduct the interviews efficiently.

2. The Questions and Inferences of the Qualitative Research

A1 Is there any supervision over requirements that the respondent keeps away from applicant? If so, is the applicant routinely visited or is the applicant called by phone?

The police say that they can only check by phone due to insufficient staff, and often do not visit the home. Prosecutors and judges do not have enough information on this issue. Lawyers say no checks are being made. One of the judges said:

'We see signed records for the supervision, but we do not know how close this supervision is. When the police see it as a simple public order problem, they are not able to combat domestic violence. They do not understand the purpose of the law.'

A2 Are the police able to reach the place where domestic violence occurs, when they receive a report? Is there any report and record made?

Responses in this regard are very contradictory, with responses being reported from 5 minutes in one case to 30–45 minutes in others. Although it is confirmed by the radio when the police arrive at the scene, it is understood that no policy has been developed to improve the service by controlling them centrally. Lawyers have not had a problem with this. Judges have the impression that the police were on time according to information in the files.

A3 Is the respondent monitored during the duration of the measures, if so, how?

According to the responses given by prosecutors, judges and police officers, the offender is usually not followed, but instead the victim is followed. However, according to the responses of the police, if an electronic clamp is applied the perpetrator can be followed to discover whether or not the removal order is complied with. The information given by the lawyers is that the perpetrator is not followed.

One of the judges said:

‘There is no harmonization between medical practice and the courts, because they have very few specialists. There are not enough psychologists in the centre of the Ministry. The Ministry has set up a centre for peaceful resolution of problems, and the couples are directed to family therapy there. Mediation is done, and spouses are persuaded to tolerate violence’.

A4 How is the security of the people in the shelter provided? Is there any legal or administrative assurance on this issue?

In this regard, it seems that there is no special police security and that security is provided through private security services. The legal practitioners generally do not know the conditions in the shelters. They report that the shelter is in contact with the police.

A5 How is coordination between authorities provided? Are the prosecutors and the judges informed how the measures are monitored?

Violations of measures requiring a person to leave are reported to the Execution Prosecutor’s Office by the police stations, and when the measure ends, the file is forwarded to the prosecutor’s office and the court. But there is no return from the Ministry of Family and Social Policy. The reports from the police stations are not intended to show how control was maintained, but rather to report that the measure had come to an end. Judges and prosecutors responding to questions about coordination are unanimous. As one of the lawyers said, there are no reports other than the judicial pronouncement of the decision and the final document stating that the measure has been concluded.

One of the judges said that:

‘Normally, the centres of the Ministry have to plan and direct all these subjects, but it is not done at all. There is no coordination with the Ministry. I do not

want to send couples to the government's therapy centre, which has no sincere policy on violence and discrimination. One of the important problems in co-ordination seems to be interdisciplinary conflict'.

A6 Is there any monitoring mechanism after the measures have been revoked?

All practitioners stated that there was no such monitoring mechanism. Some stated that the Ministry should provide constant monitoring and support, guiding and strengthening women, otherwise violence is repeated. One of the judges stated:

'In fact, there must be continuous psychological support during and after the measure. Counseling should be provided. Applications for measures are made repeatedly because the problem repeats. The state needs to put a mark on the family who is exposed to the danger of violence and to support and rehabilitate the family closely, but it is not done'.

A7 If the violent person leaves prison, is the victim notified? Is there a tracking mechanism?

All practitioners except the Ankara Security Directorate Office said that no such notification was made and the victims themselves knew this. One of the prosecutors stated that the period of the measure could have come to an end when its implementation was concluded because the process was not followed, and that a security problem could arise. Another prosecutor said that the victim wanted him to follow up and take measures again.

B1 What is the attitude of the police officers/prosecutors when the woman exposed to violence says 'do not interfere, our domestic problem is not your concern'?

The attitudes and views of prosecutors and police officers vary in this regard. One of the prosecutors stated that it depended on the facts; whether the victim was beaten, whether there was a systematic ill-treatment or constant insults, threats, etc. The two prosecutors stated that they acted solely in accordance with the wishes of the victim, and that they did not request measures *ex officio*. One of the prosecutors stated that s/he requested measures because the woman could not know her own risk. It is understood that police officers generally do not take action in these situations, and that when they see an incident warranting intervention they ask the prosecutor for instructions. The police think that they do not have power to intervene. One policeman said they could not intervene because an adult has the autonomy of the will. However, another police officer thought that while they do not have the authority in this case, they think they should intervene more and that it is wrong to be mere observers. One lawyer and one judge indicated that the police do nothing in such situations and keep no records on it.

B2 Is there any risk assessment criterion used in making the measure?

Generally, the answers indicate that no such evaluation is made. The measure is based on a template. One of the lawyers confirmed this:

'A form is filled in at the police station. However, this is considered as a compulsory matter and not to determine the level of risk'.

Only the police centres hold forms for identifying risk, which classify the risk as high or standard, based on the statements of the victim. However, the police did not disclose whether this risk situation affected the measures taken. However, according to the 'Risk Assessment Form' measures can be taken *ex officio* in case of high risk. Prosecutors and judges say that they try to determine whether there is a danger of death. One of the judges says that they cannot make a reliable risk analysis in response to the questions and that this evaluation should be performed by specialists such as social workers and psychologists. So there is no serious risk assessment. Another judge stated that:

'We provide stronger protection if the violence is severe or ongoing. The police often try to steer us to a protection measure on-call, i.e. if needed the victim calls the police, even prior protective measures were applied as protection on-call. But increasingly closer protection measures are implemented better'.

B3 If the complaint is withdrawn, are the factors influencing the victim taken into account?

Respondents stated that prosecutors are asking for more attention to be given to this issue. The prosecutors say that when they asked about the reasons for the withdrawal, they receive replies like 'for peace', 'because of economic weakness', or 'because there is no other way out'.

One of the prosecutors said, remarkably:

'We ask why. When the victim sees the threat of severe punishment, the victim can give up, and says that actually she provoked him, despite being shot with a gun. Since there is no place to go, there is no other solution, she withdraws her complaint. In fact the aim of the measure is to ensure a safer and better life. But they withdraw their complaints, because this assurance is not given to them. The Istanbul Convention is not followed in this regard. If there are only threats or insults, then compulsory mediation occurs first, and if it does not reach a solution, an investigation is opened'.

The respondents said that in such cases, the victims declare at the police station or the Public Prosecutor's Office that they are not being threatened. However, practitioners say that they do not question the accuracy of this statement. Only one police respondent said:

'When the victim withdraws her complaint, the results of the risk analysis are taken into consideration, and we report it to the prosecutor if we notice that there is a threat'.

Judges often said that they do not question it either, and that there is nothing they can do when there is said to be no conflict. The words of one of the judges are striking:

‘The woman was hanged down from the balcony. I took a measure for close protection. After a few days, the victim says, “I want to live with my husband; I do not want any protection”. What can I do? If the victim says, “I am desperate, I have no place to go”, I only remove the measure requiring separation, and continue other measures such as alimony’.

One of the judges said that even if the application is withdrawn, she takes measures in serious cases. But another judge said:

‘Most victims cannot even express themselves, but the judges do not have the knowledge and experience to understand that the victims withdrew their applications under threat. It needs to be questioned why a woman who is beaten withdraws her application. However, this is not a job for judges’.

One of the lawyers said:

‘The victim can sometimes withdraw her application for measures due to financial difficulties or because of the pressure. In these cases, I have not witnessed the investigation of the applicant’s motive’.

B4 Are preventive or protective measures taken ex officio?

Police officers understand *ex officio* to mean acting without instruction from the Prosecution Office. They say they will act without such instruction in emergencies. Prosecutors say that they seek measures without receiving any application in appropriate cases, when there is sufficient evidence. Among judges, there is a diversity of views. One stated that they did not take measures without an application. Two said that if they observe violence during the proceedings, they take preventive measures without any request. One of the lawyers stated that he had never witnessed this in a civil law case.

B5 Are the measures extended, even if the applicant does not seek any extension?

We understand from all the answers except one that measures have not been extended without any request. Even if there is such a request, no decision for extension has been taken without evidence. Practitioners declare that either the victim or the Ministry should request the extension. One of the judges said that most of the judges do not themselves initiate an extension, but he accepts requests for extension, even a few days after the original decision ends. Also he stated that he takes a positive approach to extension, because there is no upper limit to it.

B6 Does the prosecutor or the judge use measures that are not specified in the law?

According to Sections 4 and 5 of the Act, judges can take measures that are not specified in the Act but are similar to them. Do they therefore take measures which are not mentioned by the applicant, but deemed necessary?

Police officers consider it illegal to resort to measures not specified in the law or in the application. Prosecutors and judges generally state that they do not apply measures that are not listed in the Act and do not need to. One judge stated that a measure for the acquisition of personal belongings from the common residence was once taken, although it is not listed in the Act. One of the judges stated that the ability to take 'similar measures' is not effective because they do not have sufficient information about the incident. One of the lawyers explained that measures not specified in the law are sometimes taken as a result of the insistent request of the applicant's lawyer:

'In some cases decisions can be made outside the examples given in the law. There are good decisions like taking the child's toys, reconnection of interrupted electricity. The most effective factor in these decisions is that the persistence of lawyer of applicant'.

On the other hand, some prosecutors and judges say that they do request or take measures that are not mentioned in the application but which are deemed necessary.

VI. CONCLUSION

It can be argued that the qualitative and quantitative research clearly indicates a judicial and especially political passivity. Judicial and political passivity mainly affects women, so it can be argued that it causes indirect discrimination against women. It can strongly be asserted that changing legal regulations alone is not sufficient to prevent domestic violence if they are not executed properly.

Practitioners do not question whether these measures are monitored or whether the violence recurs. They do not question why an applicant withdraws her complaints or applications for measures. The main reason is a lack of facilities and policies for monitoring, controlling, and rehabilitation. For this reason, violence occurs repeatedly and measures taken by the courts do not resolve underlying problems. Many practitioners still think that they should protect the family, and do not have any vision for overcoming gender-based norms and violence. According to the majority of the practitioners, domestic violence is still a private, familial matter, and not a public one.

Combating domestic and gender-based violence requires sincere and enforceable policies. The sufferers should be provided with economic and social support such as financial aid, work opportunities, shelters, and social housing facilities. As discrimination sustains violence, making regulations without enforcing them may not lead to desired outcomes. Moreover, there is also a substantial need for judges, prosecutors, and police officers to change their state of mind if policies against domestic violence are to be a success.

NOTES

1. *Opuz v Turkey* [2009] ECtHR (Third Section), 33401/02. <http://hudoc.echr.coe.int/eng?i=001-92945> Accessed 22 December 2016; *M.G. v Turkey* [2016] ECtHR (Second Section), 646/10. <http://hudoc.echr.coe.int/eng?i=001-164220> Accessed 22 December 2016; *Halime Kilic v Turkey* [2016] ECtHR (Second Section), 63034/11; <http://hudoc.echr.coe.int/eng?i=001-169944>. Accessed 22 December 2016.
2. *Opuz v Turkey*, n 1 above, paras 128–31, 148, 150, 165.
3. The United Nations General Assembly. 1993. Declaration on the Elimination of Violence against Women A/RES/48/104, 85th Plenary Meeting, 20 December 1993. <http://www.un.org/documents/ga/res/48/a48r104.htm>. Accessed 12 December 2016.
4. *Osman v United Kingdom* [GC] [1998] ECtHR, 87/1997/871/1083, para 115. <http://hudoc.echr.coe.int/webservices/content/pdf/001-58257?TID=hhkgkntio>. Accessed 22 December 2016.
5. *Z. and the others v United Kingdom* [GC] [2001] ECtHR, 29392/95, para 70. <http://hudoc.echr.coe.int/eng?i=001-59455>. Accessed 22 December 2016.
6. *A.T. v Hungary* [2005] Views of the CEDAW, 2/2003, para 9.6. <http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf>. Accessed 22 December 2016; *Fatma Yildirim v Austria* [2007] Views of the CEDAW, 6/2005, paras 12.1.2, 12.3. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/495/37/PDF/N0749537.pdf?OpenElement> Accessed 5 January 2017.
7. *Opuz v Turkey*, n 1 above, paras 72–77, 186–8.
8. *M.G. v Turkey*, n 1 above, para 116.
9. *Opuz v Turkey*, n 1 above, para 194.
10. *Ibid* para 198.
11. *M.G. v Turkey*, n 1 above, para 114.
12. *Opuz v Turkey*, n 1 above, paras 198–200, *M.G. v Turkey* n 1 above, para 116.
13. *Durmaz v Turkey* [2015] ECtHR (Second Section), 3621/07, para 65. <https://rm.coe.int/16805a32ba>. Accessed 20 June 2017.
14. Act of 6284. The Official Gazette of Republic Turkey dated 20 March 2012. <http://www.resmigazete.gov.tr/eskiler/2012/03/20120320-16.htm>. Accessed 20 June 2017.

REFERENCES

- Akandji-Kombe, J.-F. (2007) *Positive Obligations under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights*, Belgium: Directorate General of Human Rights, Council of Europe.
- Arslan-Öncü, G. (2012) 'Avrupa İnsan Hakları Sözleşmesi sisteminde kadına karşı aile içi şiddet olgusu ve bununla mücadele araçları', *Istanbul University Journal of International Law and International Private Law* 32(2), 1–37.
- Baker, H. (2013) 'The significance of shame in the lives of women who experience male violence', *Liverpool Law Review* 34, 145–71.
- Boerefijn, I. (2009) 'Establishing state responsibility for breaching human rights treaty obligations: avenues under UN human rights treaties', *Netherlands International Law Review* 56, 167–205.
- Brookman, F. and Maguire, M. (2004) 'Reducing homicide: a review of the possibilities', *Crime, Law & Social Change* 42, 325–403.
- Bucci, L. (2012) 'An overview of the legal and cultural issues for migrant Muslim women of the European Union: a focus on domestic violence and Italy', *Crime, Law, and Social Change* 58, 75–92.
- Ertürk, Y. (2006) 'Integration of the human rights of women and the gender perspective: violence against women, the due diligence standard as a tool for the elimination of violence against women,

- report of the Special Rapporteur on violence against women, its causes and consequences', The UN Economic and Social Council, Commission on Human Rights, E/CN.4/2006/61, 20 January 2006 https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/PDF_UN_Sp_Ra_pp_report_due_diligence_standard.pdf. Accessed 12 November 2016.
- Ertürk, Y. (2009) '15 years of the UN Special Rapporteur on violence against women, its causes and consequences (1994-2009) - a critical view', OHCHR. <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>. Accessed 21 November 2016.
- Gavrielides, T. and Artinopoulou, V. (2013) 'Restorative justice and violence against women: Comparing Greece and the United Kingdom', *Asian Criminology* 8, 25-40.
- Gill, A. K. (2013) 'Feminist reflections on researching so-called "honour" killings', *Feminist Legal Studies* 21, 241-61.
- Hasselbacher, L. (2010) 'State obligations regarding domestic violence: The European Court of Human Rights, due diligence, and international legal minimums of protection'. *Northwestern Journal of International Human Rights* 8(2), 190-215.
- Hendry, J. and King, C. (2016) 'Expediency, legitimacy, and the rule of law: a systems perspective on civil/criminal procedural hybrids', *Criminal Law and Philosophy* 1-25. doi: 10.1007/s11572-016-9405-6.
- Hsieh, K.-H. (2012) 'The right to be free from domestic violence in Macau', *Liverpool Law Review* 33, 27-35.
- Human Rights Watch (HRW) (2011) 'Turkey, Europe and Central Asia: "He loves you, he beats you". Family violence in Turkey and access to protection'. <https://www.hrw.org/sites/default/files/reports/turkey0511webwcover.pdf>. Accessed 12 November 2016.
- Interights (2011) 'Non-discrimination in international law, a handbook for practitioners'. <http://www.interights.org/files/174/Non-Discrimination%20in%20International%20Law%20A%20Handbook%20for%20Practitioners%202011%20Edition.pdf>. Accessed 12 November 2016.
- Khrystova, G. (2014) 'State positive obligations and due diligence in human rights and domestic violence perspective', *European Political and Law Discourse* 1(5), 109-22.
- Korff, D. (2006) *The Right to Life: A Guide to the Implementation of Article 2 of the European Convention on Human Rights*, Belgium: Council of Europe. http://www.echr.coe.int/library/docs/hr%20handbooks/handbook08_en.pdf. Accessed 21 November 2016.
- Mor Cati Women's Shelter Foundation (2013) 'Hukuk, sosyal politika ve kadına karşı şiddetle mücadele açısından SONİM'ler (KOZA'lar) çalışmayı sonuç bildirgesi'. <https://www.morcati.org.tr/tr/neler-yapiyoruz/basin-aciklamalari/177-sonim-siddet-onleme-ve-izleme-merkezleri-calisi-tayi-sonuc-bildirgesi-21-subat-2013>. Accessed 18 December 2016.
- Ohms, C. (2008) 'Perpetrators of violence and abuse in lesbian partnerships'. *Liverpool Law Review* 29, 81-97.
- Peroni, L. (2016) 'Violence against migrant women: the Istanbul Convention through a postcolonial feminist lens', *Feminist Legal Studies* 24, 49-67.
- Sever, Ç. (2012) 'Kadına Karşı Eviçi Şiddette Devletin Sorumluluğu ve Avrupa İnsan Hakları Mahkemesi'nin Opuz v. Türkiye Kararı', *Atilim Social Sciences Journal* 1(2), 19-46.
- UN (2009) The United Nations Department of Economic and Social Affairs Division for the Advancement of Women. 2009. *Handbook for Legislation on Violence against Women, ST/ESA/329*. New York, NY: UN Publication. <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>. Accessed 11 November 2016.