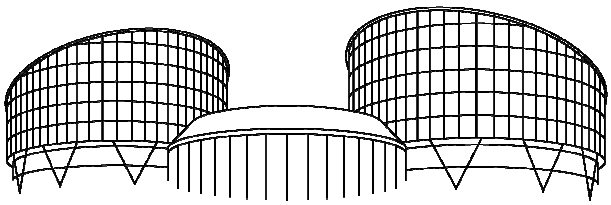

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

THIRD SECTION

CASE OF OPUZ v. TURKEY

(Application no. 33401/02)

JUDGMENT

STRASBOURG

9 June 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Opuz v. Turkey,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Işıl Karakaş, *judges*,
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 7 October 2008 and 19 May 2009,

Delivers the following judgment, which was adopted on the latter date:

PROCEDURE

1. The case originated in an application (no. 33401/02) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mrs Nahide Opuz ("the applicant"), on 15 July 2002.

2. The applicant was represented by Mr M. Beştaş, a lawyer practising in Diyarbakır. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged, in particular, that the State authorities had failed to protect her and her mother from domestic violence, which had resulted in the death of her mother and her own ill-treatment.

4. On 28 November 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. Third-party comments were received from Interights, which had been given leave by the President to intervene in the procedure (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court). The Government replied to those comments (Rule 44 § 5).

6. A hearing on the admissibility and merits of the case took place in public in the Human Rights Building, Strasbourg, on 7 October 2008 (Rule 59 § 3 of the Rules of Court).

There appeared before the Court:

(a) *for the respondent Government*
Ms Ms Deniz Akçay, *Co-Agent*,
Ms Ms Esra Demir,
Ms Zeynep Gökşen Acar,
Mr Gürçay Şeker,
Ms Gülsün Büker,
Ms Elif Ercan,
Mr Murat Yardımcı, *Advisers*;

(b) *for the applicant*
Mr Mesut Beştaş,
Ms Arzu Başer, *Lawyers*;

(c) *for the intervening third party Interights*
Ms Andrea Coomber, *Senior Lawyer*,
Ms Doina Iona Straisteanu, *Lawyer*.

The Court was addressed by Ms Akçay, Mr Beştaş and Ms Coomber.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1972 and lives in Diyarbakır.

8. The applicant's mother married A.O. in a religious ceremony. In 1990 the applicant and H.O., A.O.'s son, started a relationship and began living together. They officially married on 12 November 1995. They had three children, in 1993, 1994 and 1996. The applicant and H.O. had heated arguments from the outset of their relationship. The facts set out below were not disputed by the Government.

1. The first assault by H.O. and A.O. against the applicant and her mother

9. On 10 April 1995 the applicant and her mother filed a complaint with the Diyarbakır Public Prosecutor's Office, alleging that H.O. and A.O had been asking them for money, and had beaten them and threatened to kill them. They also alleged that H.O. and his father wanted to bring other men home.

10. On the same day, the applicant and her mother were examined by a doctor. The applicant's medical report noted bruises on her body, an ecchymosis and swelling on her left eyebrow and fingernail scratches on the neck area. The medical report on the applicant's mother also noted bruises and swellings on her body. On 20 April 1995 definitive reports were issued, which confirmed the findings of the first report and stated that the injuries in question were sufficient to render both the applicant and her mother unfit to work for five days.

11. On 25 April 1995 the public prosecutor filed indictments against H.O. and A.O. for death threats and actual bodily harm. On 15 June 1995 the Diyarbakır 1st Magistrate's Court discontinued the assault case, as the applicant and her mother had withdrawn their complaints and had thereby removed the basis for the proceedings under Article 456 § 4 of the Criminal Code.

12. On 11 September 1995 the Diyarbakir 2nd Magistrate's Court also acquitted the defendants of making death threats on account of the lack of evidence, and again discontinued the assault case, noting that it had been previously heard by the Diyarbakır 1st Magistrate's Court.

2. The second assault by H.O. against the applicant

13. On 11 April 1996, during an argument, H.O. beat the applicant very badly. The medical report drawn up on that occasion recorded surface bleeding on her right eye, bleeding on her right ear, an ecchymosis on the applicant's left shoulder and back pain. The report concluded that the applicant's injuries were sufficient to endanger her life. On the same day, at the request of the public prosecutor and by a decision of a single judge, H.O. was remanded in custody.

14. On 12 April 1996 the public prosecutor filed a bill of indictment with the Diyarbakır Criminal Court, accusing H.O. of aggravated bodily harm under Articles 456 § 2 and 457 § 1 of the Criminal Code.

15. On 15 April 1996 H.O. filed a petition with the Presidency of the 1st Magistrate's Court, requesting his release pending trial. He explained that during an argument with his wife he had become angry and had slapped his wife two or three times. Then his mother-in-law, who worked at a hospital, had obtained a medical report for his wife and that report had led to his detention for no reason. He stated that he did not want to lose his family and business and that he regretted beating his wife.

16. On 16 April 1996 the 2nd Magistrate's Court dismissed H.O.'s request for release pending trial and decided that his pre-trial detention should be continued.

17. At the hearing on 14 May 1996, the applicant repeated her complaint. The public prosecutor requested that H.O. be released pending trial, considering the nature of the offence and the fact that the applicant had regained full health. Consequently, the court released H.O.

18. At a hearing of 13 June 1996, the applicant withdrew her complaint, stating that she and her husband had made their peace.

19. On 18 July 1996 the court found that the offence fell under Article 456 § 4 of the Criminal Code, for which the applicant's complaint was required in order to pursue the proceedings. It accordingly discontinued the case on the ground that the applicant had withdrawn her complaint.

3. The third assault by H.O. against the applicant and her mother

20. On 5 February 1998 the applicant, her mother, her sister and H.O. had a fight, in the course of which H.O. pulled a knife on the applicant. H.O., the applicant and her mother received injuries. The medical reports certified injuries which rendered them unfit to work for seven, three and five days respectively.

21. On 6 March 1998 the public prosecutor decided not to prosecute anyone in respect of this incident. He concluded that there was insufficient evidence to prosecute H.O. in connection with the knife assault, and that the other offences such as battery and damage to property could be the subject of private-law suits. There was thus no public interest in pursuing the case.

22. The applicant went to stay with her mother.

4. The fourth assault by H.O. against the applicant and her mother: threats and assault (using a car) leading to initiation of divorce proceedings

23. On 4 March 1998 H.O. ran a car into the applicant and her mother. The applicant's mother was found to be suffering from life-threatening injuries. At the police station, H.O. maintained that the incident had been an accident. He had only wished to give the applicant and her mother a lift, which they had refused before they continued walking. They had then thrown themselves in front of the car. The applicant's mother alleged that H.O. had told them to get into his car and that he would kill them if they refused. Since they did not want to get into the car and had started running away, H.O. had driven his car into the applicant, who had fallen. While the applicant's mother tried to help her daughter, H.O. reversed and then drove forward, this time into the mother. The applicant's mother regained consciousness in hospital. In her statements to the police the applicant confirmed her mother's statements and alleged that her husband had tried to kill them with his car.

24. On 5 March 1998 a single judge at the Diyarbakır Magistrate's Court remanded H.O. in custody.

25. On 19 March 1998 the public prosecutor initiated criminal proceedings against H.O. in the Diyarbakır 3rd Criminal Court for making death threats and inflicting grievous bodily harm. On the same day the Forensic Medicine Institute submitted a medical report which noted grazes on the applicant's knees. The report concluded that the applicant's injuries rendered her unfit to work for five days.

26. On 20 March 1998 the applicant brought divorce proceedings against H.O. on the ground that they had intense disagreements. She alleged that her husband was evading his responsibilities as a husband and a father. He was mistreating her, as proved by medical reports. She also alleged that her husband was bringing other women to their home. The applicant submits that she later dropped the divorce case due to threats and pressure from her husband.

27. On 2 April 1998 the applicant and her mother filed a petition with the Diyarbakır Chief Public Prosecutor's Office, asking for protective measures from the authorities subsequent to the death threats issued by H.O. and his father.

28. On 2 and 3 April 1998 police officers took statements from the applicant, her mother, her brother and the latter's wife as well as H.O. and his father. The applicant and her mother stated that H.O. had attempted to kill them with his car and that he had threatened them with death if the applicant did not return to H.O. They noted that the applicant had already commenced divorce proceedings and that she did not want to return to live with H.O. The applicant's brother and his wife alleged that the applicant was discouraged by her mother from going back to her husband and that they knew nothing about the threats issued by H.O. and his father. H.O. contended that his only intention was to bring his family together, but that his mother-in-law was preventing this. He also alleged that he had gone to the applicant's brother and family elders for help, but to no avail. He maintained that he had never threatened the applicant or her mother and that their allegations were slanderous. H.O.'s father maintained that the applicant's mother wanted her daughter to divorce H.O. and to marry somebody else.

29. In a report dated 3 April 1998 the Director of the Law and Order Department of the Diyarbakır Security Directorate informed the Chief Public Prosecutor's Office of the outcome of the investigation into the allegations made by the applicant and her mother. He concluded that the applicant had left her husband and gone to live with her mother. H.O.'s repeated requests for the return of his wife had been turned down by the applicant's mother and the latter had insulted H.O. and made allegations that H.O. had issued death threats against her. H.O. had spent 25 days in prison for running a car into his mother-in-law and, following his release, had asked a number of mediators to convince his wife to return home. However,

the mother did not allow the applicant go back to H.O. Both parties had issued threats against each other. Furthermore, the mother had wished to separate her daughter from H.O. in order to take revenge on her ex-husband, had constantly made slanderous allegations and had also “wasted” the security forces' time.

30. On 14 April 1998 the Diyarbakır Chief Public Prosecutor's indicted H.O. and his father A.O. and charged them with issuing death threats against the applicant and her mother, contrary to Article 188 § 1 of the Criminal Code.

31. On 30 April 1998 the Diyarbakır Criminal Court released H.O. pending trial. It further declared that it had no jurisdiction over the case and sent the file to the Diyarbakır Assize Court.

32. On 11 May 1998 the Assize Court classified the offence as attempted murder. During the hearing of 9 July 1998, H.O. repeated that the incident had been an accident; the car door was open, and had accidentally hit the complainants when he moved the car. The applicant and her mother confirmed H.O.'s statement and maintained that they no longer wished to continue the proceedings.

33. On 23 June 1998 the Diyarbakır Assize Court acquitted H.O. and his father of the charges of issuing death threats, for lack of sufficient evidence. The court noted that the accused had denied the allegations and the complainants had withdrawn their complaints. The applicant again resumed living with H.O.

34. On 9 July 1998 the applicant's mother was given another medical examination, which found that her injuries were not life-threatening but were sufficient to render her unfit for work for 25 days.

35. At the hearing of 8 October 1998 the applicant and her mother withdrew their complaints. They stated that the car door had been open and that H.O. had accidentally hit them. When questioned about their complaints against H.O., the applicant and her mother stated that they had had a fight with H.O. and that they had made those allegations in anger.

36. On 17 November 1998 the Diyarbakır Assize Court concluded that the case should be discontinued in respect of the offence against the applicant, as she had withdrawn her complaint. However, it decided that, although the applicant's mother had also withdrawn her complaint, H.O. should still be convicted of that offence, since the injuries were more serious. Subsequently, the court sentenced H.O. to three months' imprisonment and a fine; the sentence of imprisonment was later commuted to a fine.

5. The fifth assault of the applicant by H.O. causing grievous bodily harm

37. On 29 October 2001 the applicant went to visit her mother. Later that day H.O. telephoned and asked the applicant to return home. The applicant, worried that her husband would again be violent towards her, said to her mother "this man is going to tear me to pieces!". The applicant's mother encouraged the applicant to return home with the children. Three-quarters of an hour later one of the children came back, saying that his father had stabbed and killed his mother. The applicant's mother rushed to the applicant's house. She saw that the applicant was lying on the floor bleeding. With the help of neighbours, she put the applicant into a taxi and took her to the Diyarbakır State Hospital. The hospital authorities told her that the applicant's condition was serious and transferred her to the Dicle University Hospital, which was better equipped. The medical report on the applicant noted seven knife injuries on different parts of her body. However, the injuries were not classified as life-threatening.

38. At about 11.30 p.m. on the same day H.O. handed himself in at a police station. The police confiscated the knife which he had used during the incident. H.O. maintained that his wife and children were still not at home when he came back at 6.00 p.m. He had telephoned them and asked them to come back. On their return, he asked the applicant, "Why are you wandering outside? Why haven't you cooked anything for me?" The applicant replied, "We ate at my mother's", and brought him a plate of fruit. They continued arguing. He told her, "Why are you going to your mother so often? Don't go there so much, stay at home and look after the children!" The argument escalated. At some point, the applicant attacked him with a fork. They started fighting, during which he lost control, grabbed the fruit knife and stabbed her; he did not remember how often. He claimed that his wife was bigger than him, so that he had to respond when she attacked him. He added that his wife was not a bad person and that they had lived together peacefully until two years' previously. However, they started fighting when the applicant's mother began interfering in their marriage. He stated that he regretted what he had done. H.O. was released after his statement had been taken.

39. On 31 October 2001 the applicant's mother's lawyer petitioned the Diyarbakır Public Prosecutor's Office. In her petition, she stated that the applicant's mother had told her that H.O. had beaten her daughter very badly about five years' earlier, after which he was arrested and detained. However, he was released at the first hearing. She maintained that her client and the applicant had been obliged to withdraw their complaints due to continuing death threats and pressure from H.O. She further stated that there was hearsay about H.O. being involved in trafficking women. Finally, she

referred to the incident of 4 March 1998 (see above), arguing that, following such a serious incident, H.O.'s release was morally damaging and requested that he be detained on remand.

40. On 2 November 2001 the applicant's lawyer filed an objection with the Chief Public Prosecutor's Office against the medical report of the Dicle Medical Faculty Hospital, which had concluded that the applicant's injuries were not life-threatening. The lawyer requested a new medical examination.

41. On 9 November 2001 the applicant filed a petition with the Diyarbakır Chief Public Prosecutor's Office, complaining that she had been stabbed many times by H.O. subsequent to an argument with him. She asked the public prosecutor to send her to the Forensic Institute for a new medical examination.

42. On 8 November 2001 the applicant underwent a new medical examination at the Forensic Institute in Diyarbakır on the instructions of the public prosecutor. The forensic medical doctor noted the presence of wounds caused by a knife on the left hand wrist (3 cm long), on the left hip (5 cm deep), another 2 cm-deep wound on the left hip and a wound just above the left knee. He opined that these injuries were not life-threatening but would render the applicant unfit for work for seven days.

43. On 12 December 2001 the public prosecutor filed a bill of indictment with the Diyarbakır Magistrate's Court, charging H.O. with knife assault under Article 456 § 4 and 457 § 1 of the Criminal Code.

44. By a criminal decree of 23 May 2002, the Diyarbakır 2nd Magistrate's Court imposed a fine of 839,957,040 Turkish liras on H.O for the knife assault on the applicant. It decided that he could pay this fine in eight instalments.

6. The sixth incident whereby H.O. threatened the applicant

45. On 14 November 2001 the applicant lodged a criminal complaint with the Diyarbakır Public Prosecutor's Office, alleging that H.O. had been threatening her.

46. On 11 March 2002 the public prosecutor decided that there was no concrete evidence to prosecute H.O. apart from the allegations made by the applicant.

7. The applicant's mother filed a complaint with the public prosecutor's office alleging death threats issued by H.O. and A.O.

47. On 19 November 2001 the applicant's mother filed a complaint with the public prosecutor. In her petition, she stated that H.O., A.O. and their relatives had been consistently threatening her and her daughter. In particular, H.O. told her, “I am going to kill you, your children and all of your family!” He was also harassing her and invading her privacy by wandering around her property carrying knives and guns. She maintained

that H.O. was to be held liable should an incident occur involving her and her family. She also referred to the events of 29 October 2001, when the applicant was stabbed by him (see above). In response to this petition, on 22 November 2002, the public prosecutor wrote a letter to the Security Directorate in Diyarbakır and asked them to take statements from the complainant and H.O. and to submit an investigation report to his office.

48. In the meantime, on 14 December 2001 the applicant again initiated divorce proceedings in the Diyarbakır Civil Court.

49. On 23 December 2001 the police took statements from H.O. in relation to the applicant's mother's allegations. He denied the allegations against him and claimed that his mother-in-law, who had been interfering with his marriage and influencing his wife to lead an immoral life, had issued threats against him. The police took further statements from the applicant's mother on 5 January 2002. She claimed that H.O. had been coming to her doorstep everyday, showing a knife or shotgun and threatening her, her daughter and grandchildren with death.

50. On 10 January 2002 H.O. was charged under Article 191 § 1 of the Criminal Code with making death threats.

51. On 27 February 2002 the applicant's mother submitted a further petition to the Diyarbakır Public Prosecutor's Office. She maintained that H.O.'s threats had intensified. H.O., together with his friends, had been harassing her, threatening her and swearing at her on the telephone. She stated that her life was in immediate danger and requested that the police tap her telephone and take action against H.O. On the same day, the Public Prosecutor's Office instructed the Directorate of Turkish Telecom in Diyarbakır to submit to his office a list of all the numbers which would call the mother's telephone line over the following month. In the absence of any response, the public prosecutor repeated his request on 3 April 2002.

52. On 16 April 2002 the Diyarbakır Magistrate's Court questioned H.O. in relation to his knife assault on his mother-in-law. He repeated the statement he had made to the police, adding that he did not wish his wife to visit her mother, as the mother had been pursuing an immoral life.

8. The killing of the applicant's mother by H.O.

53. The applicant had been living with her mother since the incident of 29 October 2001.

54. On an unspecified date the applicant's mother made arrangements with a transport company to move her furniture to Izmir. H.O. learned of this and allegedly said, “Wherever you go, I will find and kill you!” Despite the threats, on 11 March 2002 the furniture was loaded onto the transport company's pick-up truck. The pick-up truck made two trips between the company's transfer centre and the house. On its third trip, the applicant's mother asked the driver whether she could drive with him to the transfer

centre. She sat on the front seat, next to the driver. On their way, a taxi pulled up in front of the pick-up and started signalling. The pick-up driver, thinking that the taxi driver was going to ask for an address, stopped. H.O. came out of the taxi. He opened the front door where the applicant's mother was sitting, shouted something like, “Where are you taking the furniture?” and shot her. The applicant's mother died instantly.

9. The criminal proceedings against H.O.

55. On 13 March 2002 the Diyarbakır Public Prosecutor filed an indictment with the Diyarbakır Assize Court, accusing H.O. of intentional murder under Article 449 § 1 of the Criminal Code.

56. In his statements to the police, the public prosecutor and the court, H.O. claimed that he had killed the applicant's mother because she had induced his wife to lead an immoral life, like her own, and had been taking his wife and children away from him. He further alleged that on the day of the incident, when he asked the deceased where she was taking the furniture and where his wife was, the deceased had replied “F... off, I will take away your wife, and sell [her]”. He stated that he had lost his temper and had shot her for the sake of his honour and children.

57. In a final judgment dated 26 March 2008, the Diyarbakır Assize Court convicted H.O. of murder and illegal possession of a firearm. It sentenced him to life imprisonment. However, taking into account the fact that the accused had committed the offence as a result of provocation by the deceased and his good conduct during the trial, the court mitigated the original sentence, changing it to 15 years and 10 months' imprisonment and a fine of 180 new Turkish liras. In view of the time spent by the convict in pre-trial detention and the fact that the judgment would be examined on appeal, the court ordered the release of H.O.

58. The appeal proceedings are still pending before the Court of Cassation.

10. Recent developments following the release of H.O.

59. In a petition dated 15 April 2008, the applicant filed a criminal complaint with the Kemalpaşa Chief Public Prosecutor's Office in Izmir, for submission to the Diyarbakır Chief Public Prosecutor's Office, and asked the authorities to take measures to protect her life. She noted that her ex-husband,[1] H.O., had been released from prison and that in early April he had gone to see her boyfriend M.M., who worked at a construction site in Diyarbakır, and had asked him about her whereabouts. Since M.M. refused to tell him her address, H.O. threatened him and told him that he would kill him and the applicant. The applicant claimed that H.O. had already killed

[1] On an unspecified date subsequent to the killing of her mother, the applicant obtained her divorce from her husband.

her mother and that he would not hesitate to kill her. She had been changing her address constantly so that H.O. could not find her. Finally, she asked the prosecuting authorities to keep her address, indicated on the petition, and her boyfriend's name confidential and to hold H.O. responsible if anything untoward happened to her or her relatives.

60. On 14 May 2008 the applicant's representative informed the Court that the applicant's husband had been released from prison and that he had again started issuing threats against the applicant. She complained that no measures had been taken despite the applicant's request. She therefore asked the Court to request the Government to provide sufficient protection.

61. In a letter dated 16 May 2008, the Registry transmitted the applicant's request to the Government for comments and invited them to inform the Court of the measures to be taken by their authorities.

62. On 26 May 2008 the Director of the International Law and Relations Department attached to the Ministry of Justice faxed a letter to the Diyarbakır Chief Public Prosecutor's Office in relation to the applicant's complaints to the European Court of Human Rights. He informed the Chief Public Prosecutor's Office of the applicant's pending application before the Court and asked them to provide information on the current state of execution of H.O.'s sentence, the state of proceedings with regard to the applicant's criminal complaint filed with the Kemalpaşa Chief Public Prosecutor's Office in Izmir and the measures taken to protect the applicant's life.

63. On the same day, a Public Prosecutor from the Diyarbakır Chief Public Prosecutor's Office wrote to the Diyarbakır Governor's Office and asked him to take measures for the protection of the applicant.

64. By a letter of 28 May 2008 from the Diyarbakır Chief Public Prosecutor's Office to the Şehitler Central Police Directorate in Diyarbakır, the Public Prosecutor (A.E.) asked the police to summon H.O. to his office in relation to an investigation.

65. On 29 May 2008 A.E. questioned H.O. in relation to the criminal complaint filed by the applicant. H.O. denied the allegation that he had issued threats against the applicant and claimed that she had made such allegations in order to disturb him following his release from prison. He maintained that he did not feel any enmity towards the applicant and that he had devoted himself to his family and children.

66. On 3 June 2008 A.E. took statements from the applicant's boyfriend, M.M. The latter stated that H.O. had called him and asked him for the applicant's address, and had told him that he would kill her. M.M. did not meet H.O. Nor did he file a criminal complaint against H.O. He had however called the applicant and informed her about the threats issued by H.O.

67. In a letter dated 20 June 2008, the Government informed the Court that the applicant's husband had not yet served his sentence but that he had been released pending the appeal proceedings in order to avoid exceeding the permissible limit of pre-trial detention. They also stated that the local Governor's Office and the Chief Public Prosecutor's Office had been informed about the applicant's complaint and that they had been instructed to take precautions for the protection of the applicant.

68. Finally, on 14 November 2008 the applicant's legal representative informed the Court that his client's life was in immediate danger since the authorities had still not taken any measures to protect her from her former husband. The Registry of the Court transmitted this letter on the same day to the Government, inviting them to provide information about the measures they had taken to protect the applicant.

69. On 21 November 2008 the Government informed the Court that the police authorities had taken specific measures to protect the applicant from her former husband. In particular, the photograph and fingerprints of the applicant's husband had been distributed to police stations in the region so that they could arrest him if he appeared near the applicant's place of residence. The police questioned the applicant in relation to the allegations. She stated that she had not been threatened by her husband over the past month and a half.

II. RELEVANT LAW AND PRACTICE

A. Domestic law and practice

70. The relevant domestic law provisions relied on by the judicial authorities in the instant case are set out below.

1. The Criminal Code

Article 188

"Whoever by use of force or threats compels another person to do or not to do something or to obtain the latter's permission to do something ... will be sentenced to between six months' and one year's imprisonment, and a major fine of between one thousand and three thousand liras..."

Article 191 § 1

"Whoever, apart from the situations set out in law, threatens another person with severe and unjust damage will be sentenced to six months' imprisonment."

Article 449

"If the act of homicide is:

a. Committed against a wife, husband, sister or brother, adoptive mother, adopted child, step-mother, step-father, step-child, father-in-law, mother-in-law, son-in-law, or daughter-in-law... the offender will be sentenced to life imprisonment..."

Article 456 § 1, 2 and 4

"Whoever torments another person physically or damages his or her welfare or causes cerebral damage, without intending murder, will be sentenced to between six months' and one year's imprisonment.

Where the act constitutes a danger to the victim's life or causes constant weakness in one of the organs or senses, or permanent difficulty in speech or permanent injuries to the face, or physical or mental illness for twenty or more days, or prevents [the victim] from continuing his regular work for the same number of days, the offender will be sentenced to between two and five years' imprisonment.

...

If the act did not cause any illness or did not prevent [the victim] from continuing his regular work or these situations did not last for more than ten days, the offender will be sentenced to between two and six months' imprisonment or to a heavy fine of twelve thousand to one hundred and fifty thousand liras, provided that the injured person complains..."

Article 457

"If the acts mentioned in Article 456 are committed against the persons cited in Article 449 or if the act is committed by a hidden or visible weapon or harmful chemical, the punishment shall be increased by one third to a half of the main sentence."

Article 460

"In situations mentioned under Articles 456 and 459, where commencement of the prosecution depends on the lodging of a complaint [by the victim], if the complainant waives his/her claims before the pronouncement of the final judgment the public prosecution shall be terminated."

2. The Family Protection Act (Law no. 4320, 14 January 1998)

Section 1

"If a spouse or a child or another family member living under the same roof is subjected to domestic violence and if the magistrate's court dealing with civil matters is notified of the fact by that person or by the chief public prosecutor's office, the judge, taking account of the nature of the incident, may on his or her own initiative

order one or more of the following measures or other similar measures as he or she deems appropriate. The offending spouse may be ordered:

(a) not to engage in violent or threatening behaviour against the other spouse or the children (or other family members living under the same roof),

(b) to leave the shared home and relinquish it to the other spouse and the children, if any, and not to approach the home in which the other spouse and the children are living, or their workplaces,

(c) not to damage the property of the other spouse (or of the children or other family members living under the same roof),

(d) not to disturb the other spouse or the children (or other family members living under the same roof) through the use of communication devices,

(e) to surrender any weapons or similar instruments to law-enforcement officials,

(f) not to arrive at the shared home when under the influence of alcohol or other intoxicating substances, or not to use such substances in the shared home.

The above-mentioned measures shall be applied for a period not exceeding six months. In the order, the offending spouse shall be warned that in the event of failure to comply with the measures imposed, he or she will be arrested and sentenced to a term of imprisonment. The judge may order interim maintenance payments, taking account of the victim's standard of living.

Applications made under section 1 shall not be subject to court fees."

Section 2

"The court shall transmit a copy of the protection order to the chief public prosecutor's office. The chief public prosecutor's office shall monitor implementation of the order by means of the law-enforcement agencies.

In the event of failure to comply with the protection order, the law-enforcement agency shall conduct an investigation on its own initiative, without the victim being required to lodge a complaint, and shall transmit the documents to the chief public prosecutor's office without delay.

The chief public prosecutor's office shall bring a public prosecution in the magistrate's court against a spouse who fails to comply with a protection order. The location and expeditious holding of the hearing in the case shall be subject to the provisions of Law no. 3005 on the Procedure governing *in flagrante delicto* Cases.

Even if the act in question constitutes a separate offence, a spouse who fails to comply with a protection order shall also be sentenced to 3 to 6 months' imprisonment."

3. Implementing Regulations for the Family Protection Act, dated 1 March 2008

71. These regulations, which were drawn up to govern the implementation of Law no. 4320, set out the measures to be taken in respect of the family members perpetrating violence and the procedures and principles governing the application of those measures, in order to protect family members subjected to domestic violence.

B. Relevant international and comparative law material

1. The United Nations' position with regard to domestic violence and discrimination against women

72. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), was adopted in 1979 by the UN General Assembly and ratified by Turkey on 19 January 1986.

73. The CEDAW defines discrimination against women 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." As regards the States' obligations, Article 2 of the CEDAW provides, in so far as relevant, the following:

> "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
>
> ...
>
> (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
>
> (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;"

74. The Committee on the Elimination of All Forms of Discrimination Against Women (hereinafter "the CEDAW Committee") has found that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" and is thus prohibited under Article 1 of CEDAW. Within the general category of gender-based violence, the Committee includes violence by

"private act"[1] and "family violence".[2] Consequently, gender-based violence triggers duties in States. The General Recommendation no. 19 sets out a catalogue of such duties. They include a duty on States to "take all legal and other measures that are necessary to provide effective protection of women against gender-based violence[3] including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence."[4] In its Concluding Comments on the combined fourth and fifth periodic report of Turkey (hereinafter "Concluding Comments"), the CEDAW Committee reiterated that violence against women, including domestic violence, is a form of discrimination (see, CEDAW/C/TUR/4-5 and Corr.1, 15 February 2005, § 28).

75. Furthermore, in its explanations of General Recommendation no. 19, the CEDAW Committee considered the following:

> "...6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.
>
> 7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.
>
> Comments on specific articles of the Convention
>
> ...
>
> Articles 2(f), 5 and 10(c)
>
> 11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in

[1] See the Committee's General Recommendation No. 19 on "Violence Against Women," (1992) UN doc. CEDAW/C/1992/L.1/Add.15 at § 24 (a).
[2] Ibid, at § 24 (b); see also § 24 (r).
[3] Ibid, at § 24 (t).
[4] Ibid, at § 24 (t) (i); see also paragraph 24 (r) on measures necessary to overcome family violence.

subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities."

76. In the case of *A.T. v. Hungary* (decision of 26 January 2005), where the applicant had alleged that her common-law husband and father of her two children had been physically abusing and threatening her from 1998 onwards, the CEDAW Committee directed Hungary to take measures "to guarantee the physical and mental integrity of the applicant and her family", as well as to ensure that she was provided with a safe place of residence to live with her children, and that she received child support, legal assistance and compensation in proportion to the harm sustained and the violation of her rights. The Committee also made several general recommendations to Hungary on improving the protection of women against domestic violence, such as establishing effective investigative, legal and judicial processes, and increasing treatment and support resources.

77. In the case of *Fatma Yıldırım v. Austria* (decision of 1 October 2007), which concerned the killing of Mrs Yıldırım by her husband, the CEDAW Committee found that the State Party had breached its due diligence obligation to protect Fatma Yıldırım. It therefore concluded that the State Party had violated its obligations under Article 2 (a) and (c) through (f), and Article 3 of the CEDAW read in conjunction with Article 1 of the CEDAW and General Recommendation 19 of the Committee and the corresponding rights of the deceased Fatma Yıldırım to life and to physical and mental integrity.

78. The United Nations General Assembly Declaration on the Elimination of Violence against Women (1993), in its Article 4(c), urges States 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 private persons".

79. In his third report, of 20 January 2006, to the Commission on Human Rights of the UN Economic and Social Council (E/CN.4/2006/61), the Special Rapporteur on violence against women considered that there is a rule of customary international law that "obliges States to prevent and respond to acts of violence against women with due diligence".

2. The Council of Europe

80. In its Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe stated, *inter alia*, that member States should introduce, develop and/or improve where necessary national policies against violence based on maximum safety and protection of victims, support and assistance, adjustment of the criminal and civil law, raising of public awareness, training for professionals confronted with violence against women and prevention.

81. The Committee of Ministers recommended, in particular, that member States should penalise serious violence against women such as sexual violence and rape, abuse of the vulnerability of pregnant, defenceless, ill, disabled or dependent victims, as well as penalising abuse of position by the perpetrator. The Recommendation also stated that member States should ensure that all victims of violence are able to institute proceedings, make provisions to ensure that criminal proceedings can be initiated by the public prosecutor, encourage prosecutors to regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest, ensure where necessary that measures are taken to protect victims effectively against threats and possible acts of revenge and take specific measures to ensure that children's rights are protected during proceedings.

82. With regard to violence within the family, the Committee of Ministers recommended that Member states should classify all forms of violence within the family as criminal offences and envisage the possibility of taking measures in order, *inter alia*, to enable the judiciary to adopt interim measures aimed at protecting victims, to ban the perpetrator from contacting, communicating with or approaching the victim, or residing in or entering defined areas, to penalise all breaches of the measures imposed on the perpetrator and to establish a compulsory protocol for operation by the police, medical and social services.

3. The Inter-American System

83. In *Velazquez-Rodriguez*, the Inter-American Court stated:

> "An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of an act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."[1]

84. The legal basis for the ultimate attribution of responsibility to a State for private acts relies on State failure to comply with the duty to ensure human rights protection, as set out in Article 1(1) of the American Convention on Human Rights.[2] The Inter-American Court's case-law reflects this principle by repeatedly holding States internationally responsible on account of their lack of *due diligence* to prevent human

[1] *Velasquez-Rodriguez v. Honduras*, judgment of July 29, 1988, Inter-Am. Ct. H.R. (ser. C) No. 4, para. 172.

[2] Signed at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 November 1969. Article (1) provides as follows: "1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. 2. For the purposes of this Convention, 'person' means every human being".

rights violations, to investigate and sanction perpetrators or to provide appropriate reparations to their families.

85. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 1994 (Belém do Pará Convention)[1] sets out States' duties relating to the eradication of gender based violence. It is the only multilateral human rights treaty to deal solely with violence against women.

86. The Inter-American Commission adopts the Inter-American Court's approach to the attribution of State responsibility for the acts and omissions of private individuals. In the case of *Maria Da Penha v. Brazil*,[2] the Commission found that the State's failure to exercise due diligence to prevent and investigate a domestic violence complaint warranted a finding of State responsibility under the American Convention and the Belém do Pará Convention. Furthermore, Brazil had violated the rights of the applicant and failed to carry out its duty (*inter alia*, under Article 7 of the Convention of Belém do Pará, obliging States to condemn all forms of violence against women), as a result of its failure to act and its tolerance of the violence inflicted. Specifically, the Commission held that:

> "... tolerance by the State organs is not limited to this case; rather, it is a pattern. The condoning of this situation by the entire system only serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women.
>
> Given the fact that the violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfil the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices. That general and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts."[3]

4. Comparative-Law material

87. In 11 member States of the Council of Europe, namely in Albania, Austria, Bosnia and Herzegovina, Estonia, Greece, Italy, Poland, Portugal, San Marino, Spain and Switzerland, the authorities are required to continue criminal proceedings despite the victim's withdrawal of complaint in cases of domestic violence.

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[1] which was adopted by the Organisation of American States (OAS) and came into force on 5 March 1995.

[2] Case 12.051, Report No. 54/01, Inter-Am. C>H.R., Annual Report 2000, OEA/Ser.L/V.II.111 Doc.20 rev. (2000)

[3] *Maria da Penha v. Brazil*, §§ 55 and 56.

88. In 27 member States, namely in Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, England and Wales, Finland, the Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Hungary, Ireland, Latvia, Luxembourg, Malta, Moldova, the Netherlands, the Russian Federation, Serbia, Slovakia, Sweden, Turkey and Ukraine, the authorities have a margin of discretion in deciding whether to pursue criminal proceedings against perpetrators of domestic violence. A significant number of legal systems make a distinction between crimes which are privately prosecutable (and for which the victim's complaint is a pre-requisite) and those which are publicly prosecutable (usually more serious offences for which prosecution is considered to be in the public interest).

89. It appears from the legislation and practice of the above-mentioned 27 countries that the decision on whether to proceed where the victim withdraws his/her complaint lies within the discretion of the prosecuting authorities, which primarily take into account the public interest in continuing criminal proceedings. In some jurisdictions, such as England and Wales, in deciding whether to pursue criminal proceedings against the perpetrators of domestic violence the prosecuting authorities (Crown Prosecution Service) are required to consider certain factors, including: 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; the effect on that relationship of continuing with the prosecution against the victim's wishes; the history of the relationship, particularly if there was any other violence in the past; and the defendant's criminal history, particularly any previous violence. Direct reference is made to the need to strike a balance between the victim's and any children's Article 2 and Article 8 rights in deciding on a course of action.

90. Romania seems to be the only State which bases the continuance of criminal proceedings entirely, and in all circumstances, on the wishes/complaints of the victim.

B. Reports concerning domestic violence and the situation of women in Turkey

1. The opinion of Purple Roof Women's Shelter Foundation (Mor Çatı Kadın Sığınağı Vakfı) on the implementation of Law no. 4320, dated 7 July 2007

91. According to this report, Law no. 4320 (see paragraph 70 above) is not yet being fully implemented. In recent years there has been an increase in "protection orders" or injunctions issued by family courts. However, some courts, in response to applications made to them by women in mortal danger, are still setting hearings two or even three months ahead. Under these circumstances, judges and prosecutors treat an action under Law no. 4320 as if it were a form of divorce action, whereas the point of the law is to take urgent action on behalf of women who are seeking to protect their own lives. Once the injunction has been issued, women are confronted with a number of problems with its implementation.

92. In the two years before the Report was released approximately 900 women have applied to Mor Çatı and made great efforts to use Law no. 4320, but of this number only 120 have succeeded. Mor Çatı has identified serious problems with the implementation of Law no. 4320. In particular, it was observed that domestic violence is still treated with tolerance at police stations, and that some police officers try to act as arbitrators, or take the side of the male, or suggest that the woman drop her complaint. There are also serious problems in serving the injunction issued by a court under Law no. 4320 on the husband. In the case of a number of women wishing to work with Mor Çatı, injunctions were not implemented because their husbands were police officers or had friendly relations with officers at the police station in question.

93. Furthermore, there are unreasonable delays in issuing injunctions by the courts. This results from the attitude of the courts in treating domestic violence complaints as a form of divorce action. It is considered that behind such delays lies a suspicion that women might be making such applications when they have not suffered violence. The allegations that women abuse Law no. 4320 are not correct. Since the economic burden of the home lies almost 100% with men, it would be impossible for women to request implementation of Law no. 4320 unless they were confronted with mortal danger. Finally, the injunctions at issue are generally narrow in scope or are not extended by the courts.

2. Research Report prepared by the Women's Rights Information and Implementation Centre of the Diyarbakır Bar Association (KA-MER) on the Implementation of Law no. 4320, dated 25 November 2005

94. According to this report, a culture of violence has developed in Turkey and violence is tolerated in many areas of life. A survey of legal actions at a magistrate's court dealing with civil matters (*sulh hukuk mahkemesi*) and three civil courts (*asliye hukuk mahkemesi*) in Diyarbakır identified 183 actions brought under Law no. 4320 from the date on which the law entered into force in 1998 until September 2005. In 104 of these cases, the court ordered various measures, while in the remaining 79 actions the court held that there were no grounds for making an order, or dismissed the action, or ruled that it lacked jurisdiction.

95. Despite the importance of the problem of domestic violence, very few applications have been made under the said law, because either the public is not generally aware of it or the level of confidence in the security forces is very low in the region. The most important problems were caused by the delay in issuing injunctions and the authorities' failure to monitor the implementation of injunctions.

96. Moreover, the negative attitude of police officers at police stations towards victims of domestic violence is one of the obstacles preventing women from using this law. Women who go to police stations because they are subjected to domestic violence *are confronted with attitudes which tend to regard the problem as a private family matter into which the police are reluctant to interfere.*

97. This report makes recommendations to improve the implementation of Law no. 4320 and to enhance the protection of victims of domestic violence.

3. Diyarbakır KA-MER Emergency helpline statistics regarding the period between 1 August 1997 and 30 June 2007

98. This statistical information report was prepared following the interviews conducted with 2,484 women. It appears that all of the complainants were subjected to psychological violence and approximately 60% were subjected to physical violence. The highest number of victims are from the age group 20-30 (43%). 57% of these women are married. The majority of victims are illiterate or have a low educational level. 78% of the women are of Kurdish origin. 91% of the victims who called the emergency helpline are from Diyarbakır. 85% of the victims have no independent source of income.

4. Amnesty International's 2004 Report entitled "Turkey: Women Confronting Family Violence"

99. According to this Report, statistical information about the extent of violence against women in Turkey is limited and unreliable. Nonetheless, it appears that a culture of domestic violence has placed women in double jeopardy, both as victims of violence and because they are denied effective access to justice. Women from vulnerable groups, such as those from low-income families or who are fleeing conflict or natural disasters, are particularly at risk. In this connection, it was found that crimes against women in southeast Turkey have gone largely unpunished.

100. It was noted that women's rights defenders struggle to combat community attitudes, which are tolerant of violence against women and are frequently shared by judges, senior government officials and opinion leaders in society. Even after legislative reforms have removed the legal authorisation for discriminatory treatment, attitudes that pressure women to conform to certain codes of behaviour restrict women's life choices.

101. The Report states that at every level of the criminal justice system the authorities fail to respond promptly or rigorously to women's complaints of rape, sexual assault or other violence within the family. The police are reluctant to prevent and investigate family violence, including the violent deaths of women. Prosecutors refuse to open investigations into cases involving domestic violence or to order protective measures for women at risk from their family or community. The police and courts do not ensure that men, who are served with court orders, including protection orders, comply with them. They accord them undue leniency in sentencing, on the grounds of "provocation" by their victim and on the flimsiest of evidence.

102. There are many barriers facing women who need access to justice and protection from violence. Police officers often believe that their duty is to encourage women to return home and "make peace" and fail to investigate the women's complaints. Many women, particularly in rural areas, are unable to make formal complaints, because leaving their neighbourhoods subjects them to intense scrutiny, criticism and, in some cases, violence.

103. Furthermore, although some courts appear to have begun implementing the reforms, the discretion accorded to the courts continues to accord the perpetrators of domestic violence unwarranted leniency. Sentences in such cases are still frequently reduced at the discretion of the judges, who continue to take into account the "severe provocation" of the offence to custom, tradition or honour.

104. Finally, this Report makes a number of recommendations to the Turkish Government and to community and religious authorities with a view to addressing the problem of domestic violence.

5. Research Report on Honour Crimes, prepared by the Diyarbakır Bar Association's Justice For All Project and the Women's Rights Information and Implementation Centre

105. This report was prepared in order to look into the judicial dimensions of the phenomenon of so-called "honour crimes". A survey was carried out of judgments in cases before the Diyarbakır assize courts and children's courts. The purpose of the survey was to identify the proportion of such unlawful killings referred to the courts, the judiciary's attitude to them, the defendants' lines of defence in these cases, the role of social structure (i.e. family councils and custom) and the reasons for the murders. To that end, cases in the Diyarbakır assize courts and children's courts between 1999 and 2005 were examined. In these seven years, 59 cases were identified in which a judgment was given. In these cases, there were 71 victims/persons killed, and 81 people were tried as defendants.

106. According to the researchers, in cases where the victim/person killed was male, it was observed that defendants claimed, in their defence, that the victim/person killed had raped, sexually assaulted, or abducted a relative of the defendant, or had attempted to draw a relative of the defendant into prostitution. In cases where the victim/person killed was a woman, defendants alleged, in their defence, that the victim/person killed had been talking to other men, had taken up prostitution, or had committed adultery. In 46 of the judgments, mitigating provisions concerning unjustified provocation were applied. In cases of 61 convictions, the provisions of Article 59 of the Turkish Criminal Code concerning discretionary mitigation were applied.

THE LAW

I. ADMISSIBILITY

107. The Government contested the admissibility of the application on two grounds.

1. Failure to observe the six-month rule under Article 35 § 1 of the Convention

108. The Government submitted that the applicant had failed to observe the six-month time-limit in respect of the events which had taken place before 2001. They argued that the events which had taken place between 1995 and 2001 should be considered as out of time. If the applicant was not satisfied with the decisions given by the domestic authorities subsequent to

the events which had taken place during the aforementioned period, she should have submitted her application to the Commission or, following the entry into force of Protocol No. 11, to the Court within six months of each decision.

109. The applicant claimed that she had lodged her application within six months of the impugned events. In her opinion the events should be taken as a whole and should not be examined separately.

110. The Court reiterates that the purpose of the six-month rule under Article 35 § 1 of the Convention is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time (see *Kenar v. Turkey*, no. 67215/01 (dec.), 1 December 2005). According to its well-established case-law, where no domestic remedy is available the six-month period runs from the date of the act complained of.

111. In that regard the Court notes that from 10 April 1995 the applicant and her mother had been victims of multiple assaults and threats by H.O. against their physical integrity. These acts of violence had resulted in the death of the applicant's mother and caused the applicant intense suffering and anguish. While there were intervals between the impugned events, the Court considers that the overall violence to which the applicant and her mother were subjected over a long period of time cannot be seen as individual and separate episodes and must therefore be considered together as a chain of connected events.

112. This being so, the Court notes that the applicant has submitted her application within six months of the killing of her mother by H.O., which event may be considered as the time that she became aware of the ineffectiveness of the remedies in domestic law, as a result of the authorities' failure to stop H.O. committing further violence. Given that these circumstances do not disclose any indication of a delay on the part of the applicant in introducing her application once it became apparent that no redress for her complaints was forthcoming, the Court considers that the relevant date for the purposes of the six-month time-limit should not be considered to be a date earlier than at least 13 March 2002 (see paragraph 54 above). In any event, the applicant's former husband had continued to issue threats against her life and well-being and, therefore, it cannot be said that the said pattern of violence has come to an end (see paragraphs 59-69 above).

113. In the specific context of this case, it follows that the applicant's complaints have been introduced within the six-month time-limit required by Article 35 § 1 of the Convention. The Court therefore dismisses the Government's preliminary objection in this regard.

2. Failure to exhaust domestic remedies

114. The Government further contended that the applicant had failed to exhaust domestic remedies since she and her mother had withdrawn their complaints many times and had caused the termination of the criminal proceedings against the applicant. They maintained that the applicant had also not availed herself of the protection afforded by Law no. 4320 and that she had prevented the public prosecutor from applying to the family court, in that she had withdrawn her complaints. They submitted further that the applicant could have availed herself of the administrative and civil law remedies whose effectiveness had been recognised by the Court in previous cases (citing *Aytekin v. Turkey*, 23 September 1998, *Reports of Judgments and Decisions* 1998-VII). Finally, relying on the Court's judgments in the cases of *Ahmet Sadık v. Greece* (15 November 1996, § 34, *Reports* 1996-V) and *Cardot v. France* (19 March 1991, § 30, Series A no. 200), the Government claimed that the applicant had failed to raise, even in substance, her complaints of discrimination before the national authorities and that therefore these complaints should be declared inadmissible.

115. The applicant claimed that she had exhausted all available remedies in domestic law. She argued that the domestic remedies had proven to be ineffective given the failure of the authorities to protect her mother's life and to prevent her husband from inflicting ill-treatment on her and her mother. As regards the Government's reliance on Law no. 4320, to the effect that she had not availed herself of the remedies therein, the applicant noted that the said law had come into force on 14 January 1998, whereas a significant part of the events at issue had taken place prior to that date. Prior to the entry into force of Law no. 4320, there was no mechanism for protection against domestic violence. In any event, despite her numerous criminal complaints to the Chief Public Prosecutor's Office, none of the protective measures provided for in Law no. 4320 had been taken to protect the life and well-being of the applicant and her mother.

116. The Court observes that the main question with regard to the question of exhaustion of domestic remedies is whether the applicants have failed to make use of available remedies in domestic law, particularly those provided by Law no. 4320, and whether the domestic authorities were required to pursue the criminal proceedings against the applicant's husband despite the withdrawal of complaints by the victims. These questions are inextricably linked to the question of the effectiveness of the domestic remedies in providing sufficient safeguards for the applicant and her mother against domestic violence. Accordingly, the Court joins these questions to the merits and will examine them under Articles 2, 3 and 14 of the Convention (see, among other authorities, *Şemsi Önen v. Turkey*, no. 22876/93, § 77, 14 May 2002).

117. In view of the above, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

118. The applicant complained that the authorities had failed to safeguard the right to life of her mother, who had been killed by her husband, in violation of Article 2 of the Convention, which provides as relevant:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law..."

A. Parties' submissions

1. The applicant

119. The applicant asserted at the outset that domestic violence was tolerated by the authorities and society and that the perpetrators of domestic violence enjoyed impunity. In this connection, she pointed out that, despite their numerous criminal complaints to the Diyarbakır Chief Public Prosecutor's Office, none of the protective measures provided for in Law no. 4320 had been taken to protect the life and well-being of herself and her mother. Conversely, on a number of occasions, the authorities had tried to persuade the applicant and her mother to abandon their complaints against H.O. The domestic authorities had remained totally passive in the face of death threats issued by H.O. and had left her and her mother to the mercy of their aggressor.

120. The applicant pointed out that by a petition dated 27 February 2002 her mother had applied to the Chief Public Prosecutor's Office and had informed the authorities of the death threats issued by H.O. However, the Public Prosecutor had done nothing to protect the life of the deceased. In the applicant's opinion, the fact that the authorities had not taken her mother's complaint seriously was a clear indication that domestic violence was tolerated by society and the national authorities.

121. The applicant also claimed that, although H.O. had been convicted of murder, the punishment imposed on him was not a deterrent and was considerably less than the normal sentence imposed for murder. The imposition of a lenient sentence had resulted from the fact that, in his defence submissions before the Assize Court, the accused had claimed to have killed her mother in order to protect his honour. It was the general

practice of the criminal courts in Turkey to mitigate sentences in cases of "honour crimes". In cases concerning "honour crimes", the criminal courts imposed a very lenient punishment or no punishment at all on the perpetrators of such crimes.

2. The Government

122. The Government stressed that the local authorities had provided immediate and tangible follow-up to the complaints lodged by the applicant and her mother. In this connection, subsequent to the filing of their complaints, the authorities had registered the complaints, conducted medical examinations, heard witnesses, conducted a survey of the scenes of the incidents and transmitted the complaints to the competent legal authorities. When necessary and depending on the gravity of the incident, the aggressor had been remanded in custody and had been convicted by the criminal courts. These proceedings had been carried out within the shortest time possible. The authorities had displayed diligence and were sensitive to the complaints, and no negligence had been shown.

123. However, by withdrawing their complaints, the applicant and her mother had prevented the authorities from pursuing criminal proceedings against H.O. and had thus contributed to the impunity enjoyed by the aggressor. In this regard, it did not appear from the case file that the applicant and her mother had withdrawn their complaints as a result of any pressure exerted on them either by H.O. or the public prosecutor in charge of the investigation. The pursuit of criminal proceedings against the aggressor was dependent on the complaints lodged or pursued by the applicant, since the criminal acts in question had not resulted in sickness or unfitness for work for ten days or more, within the meaning of Articles 456 § 4, 457 and 460 of the Criminal Code. Furthermore, in most cases the criminal courts had not convicted H.O. because the evidence against him was insufficient. Accordingly, the authorities could not be expected to separate the applicant and her husband and convict the latter while they were living together as a family, as this would amount to a breach of their rights under Article 8 of the Convention.

124. As regards the petition filed by the applicant's mother on 27 February 2002, the Government claimed that the content of this petition was no different to the previous ones and was of a general nature. There was no tangible fact or specific indication that her life was indeed in danger. In the petition the mother had failed to request any protection at all but she had merely requested a speedy examination of her complaint and the punishment of the applicant's husband. Nonetheless, subsequent to the receipt of the petition dated 27 February 2002, the authorities had registered the complaint and had held a hearing on 27 May 2002, which had been followed by other hearings. Finally, following the killing of the applicant's

mother by H.O., the latter had been convicted and had received a heavy punishment.

3. Interights

125. Referring to international practice, Interights submitted that where the national authorities failed to act with due diligence to prevent violence against women, including violence by private actors, or to investigate, prosecute and punish such violence, the State might be responsible for such acts. The *jus cogens* nature of the right to freedom from torture and the right to life required exemplary diligence on the part of the State with respect to investigation and prosecution of these acts.

126. In the context of domestic violence, victims were often intimidated or threatened into either not reporting the crime or withdrawing complaints. However, the responsibility to ensure accountability and guard against impunity lay with the State, not with the victim. International practice recognised that a broad range of interested persons, not just the victim, should be able to report and initiate an investigation into domestic violence. Further, international practice increasingly suggested that where there was sufficient evidence and it was considered in the public interest, prosecution of perpetrators of domestic violence should continue even when a victim withdrew her complaint. These developments indicated a trend away from requiring victim participation towards placing the responsibility for effective prosecution squarely on the State.

127. While a decision not to prosecute in a particular case would not necessarily be in breach of due diligence obligations, a law or practice which automatically paralysed a domestic violence investigation or prosecution where a victim withdrew her complaint would be. In respect of these obligations and with reference to the *Fatma Yıldırım v. Austria* decision of the CEDAW Committee (cited in the relevant international material section), it was submitted that the State had not only to ensure an appropriate legislative framework, but ensure effective implementation and enforcement practice.

B. The Court's assessment

1. Alleged failure to protect the applicant's mother's life

a) Relevant principles

128. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports*

1998-III). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII, cited in *Kontrová v. Slovakia*, no. 7510/04, §49, ECHR 2007-... (extracts)).

129. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life, therefore, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention (see *Osman*, cited above § 116).

130. In the opinion of the Court, where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Furthermore, having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case (Ibid.).

b) Application of the above principles to the present case

i) Scope of the case

131. On the above understanding, the Court will ascertain whether the national authorities have fulfilled their positive obligation to take preventive operational measures to protect the applicant's mother's right to life. In this connection, it must establish whether the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of the applicant's mother from criminal acts by H.O. As it appears from the parties' submissions, a crucial question in the instant case is whether the local authorities displayed due diligence to prevent violence against the applicant and her mother, in particular by pursuing criminal or other appropriate preventive measures against H.O. despite the withdrawal of complaints by the victims.

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

prosecution was commenced against him for aggravated bodily harm. However, following the release of H.O., the applicant withdrew her complaint and the charges against H.O. were dropped (see paragraphs 13-19 above);

(iii) On 5 February 1998 H.O. assaulted the applicant and her mother using a knife. All three were severely injured and the public prosecutor decided not to prosecute anyone on the ground that there was insufficient evidence (see paragraphs 20 and 21 above);

(iv) On 4 March 1998 H.O. ran his car into the applicant and her mother. Both victims suffered severe injuries, and the medical reports indicated that the applicant was unfit for work for seven days and that her mother's injuries were life-threatening. Subsequent to this incident, the victims asked the public prosecutor's office to take protective measures in view of the death threats issued by H.O., and the applicant initiated divorce proceedings. The police investigation into the victims' allegations of death threats concluded that both parties had threatened each other and that the applicant's mother had made such allegations in order to separate her daughter from H.O. for the purpose of revenge, and had also "wasted" the security forces' time. Criminal proceedings were instituted against H.O. for issuing death threats and attempted murder, but following H.O.'s release from custody (see paragraph 31 above) the applicant and her mother again withdrew their complaints. This time, although the prosecuting authorities dropped the charges against H.O. for issuing death threats and hitting the applicant, the Diyarbakır Assize Court convicted him for causing injuries to the mother and sentenced him to three months' imprisonment, which sentence was later commuted to a fine (see paragraphs 23-36 above);

(v) On 29 October 2001 H.O. stabbed the applicant seven times following her visit to her mother. H.O. surrendered to the police claiming that he had attacked his wife in the course of a fight caused by his mother-in-law's interference with their marriage. After taking H.O.'s statements the police officers released him. However, the applicant's mother applied to the Chief Public Prosecutor's Office seeking the detention of H.O., and also claimed that she and her daughter had had to withdraw their complaints in the past because of death threats and pressure by H.O. As a result H.O. was convicted of knife assault and sentenced to a fine (see paragraphs 37-44 above);

(vi) On 14 November 2001 H.O. threatened the applicant but the prosecuting authorities did not press charges for lack of concrete evidence (see paragraphs 45 and 46 above);

(vii) On 19 November 2001 the applicant's mother filed a petition with the local public prosecutor's office, complaining about the ongoing death threats and harassment by H.O., who had been carrying weapons. Again the police took statements from H.O. and released him, but the Public

Prosecutor pressed charges against him for making death threats (see paragraphs 47-49).

(viii) Later, on 27 February 2002, the applicant's mother applied to the public prosecutor's office, informing him that H.O.'s threats had intensified and that their lives were in immediate danger. She therefore asked the police to take action against H.O. The police took statements from H.O. and the Magistrate's Court questioned him about the allegations only after the killing of the applicant's mother. H.O. denied the allegations and claimed that he did not wish his wife to visit her mother, who was living an immoral life (see paragraphs 51-52 above).

134. In view of the above events, it appears that there was an escalating violence against the applicant and her mother by H.O. The crimes committed by H.O. were sufficiently serious to warrant preventive measures and there was a continuing threat to the health and safety of the victims. When examining the history of the relationship, it was obvious that the perpetrator had a record of domestic violence and there was therefore a significant risk of further violence.

135. Furthermore, the victims' situations were also known to the authorities and the mother had submitted a petition to the Diyarbakır Chief Public Prosecutor's Office, stating that her life was in immediate danger and requesting the police to take action against H.O. However, the authorities' reaction to the applicant's mother's request was limited to taking statements from H.O. about the mother's allegations. Approximately two weeks after this request, on 11 March 2002, he killed the applicant's mother (see paragraph 54).

136. Having regard to the foregoing, the Court finds that the local authorities could have foreseen a lethal attack by H.O. While the Court cannot conclude with certainty that matters would have turned out differently and that the killing would not have occurred if the authorities had acted otherwise, it recalls that a failure to take reasonable measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State (see *E. and Others v. the United Kingdom*, no. 33218/96, § 99). Therefore the Court will next examine to what extent the authorities took measures to prevent the killing of the applicant's mother.

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; 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 in 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 recalls 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*, no. 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; i.e. Articles 456 § 4, 457 and 460 of the now

defunct Criminal Code, which prevented the prosecuting authorities to pursue 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 aforementioned 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, §§ 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 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, § 82 above). On the contrary, in response to the applicant's mother's repeated requests for protection, the police and the 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, ECHR 2002, § 51). 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*, cited above, §§ 69 and 71). 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, §§ 102-104, *Reports* 1998-VI; *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 (extracts)).

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 v. the United Kingdom*, cited above, § 116). There has therefore been a violation of Article 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

154. The applicant complained that she had been subjected to violence, injury and death threats several times but that the authorities were negligent towards her situation, which caused her pain and fear in violation of Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Parties' submissions

155. The applicant alleged that the injuries and anguish she had suffered as a result of the violence inflicted upon her by her husband had amounted to torture within the meaning of Article 3 of the Convention. Despite the ongoing violence and her repeated requests for help, however, the authorities had failed to protect her from her husband. It was as though the violence had been inflicted under state supervision. The insensitivity and tolerance shown by the authorities in the face of domestic violence had made her feel debased, hopeless and vulnerable.

156. The Government argued that the applicant's withdrawal of complaints and her failure to cooperate with the authorities had prevented the prosecuting authorities from pursuing the criminal proceedings against her husband. They further claimed that, in addition to the available remedies under Law no. 4320, the applicant could have sought shelter in one of the guest houses set up to protect women with the co-operation of public institutions and non-governmental organisations. In this respect, the applicant could have petitioned the Directorate of Social Services and Child protection Agency for admission to one of the guest houses. The addresses of these guesthouses were secret and they were protected by the authorities.

157. Interights maintained that States were required to take reasonable steps to act immediately to stop ill-treatment, whether by public or private actors, of which they have known or ought to have known. Given the opaque nature of domestic violence and the particular vulnerability of women who are too often frightened to report such violence, it is submitted that a heightened degree of vigilance is required of the State.

B. The Court's assessment

1. Applicable principles

158. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C).

159. As regards the question whether the State could be held responsible, under Article 3, for the ill-treatment inflicted on persons by non-state actors, the Court recalls that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (see, *mutatis mutandis*, *H.L.R. v. France*, 29 April 1997, § 40, *Reports* 1997-III). Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI).

2. Application of the above principles to the case

160. The Court considers that the applicant may be considered to fall within the group of "vulnerable individuals" entitled to State protection (see, *A. v. the United Kingdom*, cited above, § 22). In this connection, it notes the violence suffered by the applicant in the past, the threats issued by H.O. following his release from prison and her fear of further violence as well as her social background, namely the vulnerable situation of women in south-east Turkey.

161. The Court observes also that the violence suffered by the applicant, in the form of physical injuries and psychological pressure, were sufficiently serious to amount to ill-treatment within the meaning of Article 3 of the Convention.

162. Therefore, the Court must next determine whether the national authorities have taken all reasonable measures to prevent the recurrence of violent attacks against the applicant's physical integrity.

163. In carrying out this scrutiny, and bearing in mind that the Court provides final authoritative interpretation of the rights and freedoms defined in Section I of the Convention, the Court will consider whether the national authorities have sufficiently taken into account the principles flowing from its judgments on similar issues, even when they concern other States.

164. Furthermore, in interpreting the provisions of the Convention and the scope of the State's obligations in specific cases (see, *mutatis mutandis*, *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 85 and 86, 12 November 2008) the Court will also look for any consensus and common values emerging from the practices of European States and specialised international instruments, such as the CEDAW, as well as giving heed to the evolution of norms and principles in international law through other developments such as the Belém do Pará Convention, which specifically sets out States' duties relating to the eradication of gender-based violence.

165. Nevertheless, it is not the Court's role to replace the national authorities and to choose in their stead from among the wide range of possible measures that could be taken to secure compliance with their positive obligations under Article 3 of the Convention (see, *mutatis mutandis*, *Bevacqua and S. v. Bulgaria*, cited above, § 82). Moreover, under Article 19 of the Convention and under the principle that the Convention is intended to guarantee not theoretical or illusory, but practical and effective rights, the Court has to ensure that a State's obligation to protect the rights of those under its jurisdiction is adequately discharged (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 61, 20 December 2007).

166. Turning to its examination of the facts, the Court notes that the local authorities, namely the police and public prosecutors, did not remain totally passive. After each incident involving violence, the applicant was taken for medical examination and criminal proceedings were instituted against her husband. The police and prosecuting authorities questioned H.O.

in relation to his criminal acts, placed him in detention on two occasions, indicted him for issuing death threats and inflicting actual bodily harm and, subsequent to his conviction for stabbing the applicant seven times, sentenced him to pay a fine (see paragraphs 13, 24 and 44 above).

167. However, none of these measures were sufficient to stop H.O. from perpetrating further violence. In this respect, the Government blamed the applicant for withdrawing her complaints and failing to cooperate with the authorities, which prevented the latter from continuing the criminal proceedings against H.O., pursuant to the domestic law provisions requiring the active involvement of the victim (see paragraph 70 above).

168. The Court reiterates its opinion in respect of the complaint under Article 2, namely that the legislative framework should have enabled the prosecuting authorities to pursue the criminal investigations against H.O. despite the withdrawal of complaints by the applicant on the basis that the violence committed by H.O. was sufficiently serious to warrant prosecution and that there was a constant threat to the applicant's physical integrity (see paragraphs 137-148 above).

169. However, it cannot be said that the local authorities displayed the required diligence to prevent the recurrence of violent attacks against the applicant, since the applicant's husband perpetrated them without hindrance and with impunity to the detriment of the rights recognised by the Convention (see, *mutatis mutandis*, *Maria da Penha v. Brazil*, cited above, §§ 42-44). By way of example, the Court notes that, following the first major incident (see paragraphs 9 and 10), H.O. again beat the applicant severely, causing her injuries which were sufficient to endanger her life, but he was released pending trial "considering the nature of the offence and the fact that the applicant had regained full health". The proceedings were ultimately discontinued because the applicant withdrew her complaints (see paragraphs 13 and 19 above). Again, although H.O. assaulted the applicant and her mother using a knife and caused them severe injuries, the prosecuting authorities terminated the proceedings without conducting any meaningful investigation (see paragraphs 20 and 21 above). Likewise, H.O. ran his car into the applicant and her mother, this time causing injuries to the former and life-threatening injuries to the latter. He spent only 25 days in prison and received a fine for inflicting serious injuries on the applicant's mother (see paragraphs 23-36 above). Finally, the Court was particularly struck by the Diyarbakır Magistrate's Court's decision to impose merely a small fine, which could be paid by instalments, on H.O. as punishment for stabbing the applicant seven times (see paragraphs 37 and 44).

170. In the light of the foregoing, the Court considers that the response to the conduct of the applicant's former husband was manifestly inadequate to the gravity of the offences in question (see, *mutatis mutandis*, *Ali and Ayşe Duran v. Turkey*, no. 42942/02, § 54, 8 April 2008). It therefore observes that the judicial decisions in this case reveal a lack of efficacy and

a certain degree of tolerance, and had no noticeable preventive or deterrent effect on the conduct of H.O.

171. As regards the Government's assertion that, in addition to the available remedies under Law no. 4320, the applicant could have sought shelter in one of the guest houses set up to protect women, the Court notes that until 14 January 1998 – the date on which Law no. 4320 entered into force – Turkish law did not provide for specific administrative and policing measures designed to protect vulnerable persons against domestic violence. Even after that date, it does not appear that the domestic authorities effectively applied the measures and sanctions provided by that Law with a view to protecting the applicant against her husband. Taking into account the overall amount of violence perpetrated by H.O., the prosecutor's office ought to have applied on its own motion the measures contained in Law no. 4320, without expecting a specific request to be made by the applicant for the implementation of that law.

172. This being said, even assuming that the applicant had been admitted to one of the guest houses, as suggested by the Government, the Court notes that this would only be a temporary solution. Furthermore, it has not been suggested that there was any official arrangement to provide for the security of the victims staying in those houses.

173. Finally, the Court notes with grave concern that the violence suffered by the applicant had not come to an end and that the authorities had continued to display inaction. In this connection, the Court points out that, immediately after his release from prison, H.O. again issued threats against the physical integrity of the applicant (see paragraph 59 above). Despite the applicant's petition of 15 April 2008 requesting the prosecuting authorities to take measures for her protection, nothing was done until after the Court requested the Government to provide information about the measures that have been taken by their authorities. Following this request, on the instructions of the Ministry of Justice, the Diyarbakır Public Prosecutor questioned H.O. about the death threats issued by him and took statements from the applicant's current boyfriend (see paragraphs 60-67 above).

174. The applicant's legal representative again informed the Court that the applicant's life was in immediate danger, given the authorities' continuous failure to take sufficient measures to protect her client (see paragraph 68 above). It appears that following the transmission of this complaint and the Court's request for an explanation in this respect, the local authorities have now put in place specific measures to ensure the protection of the applicant (see paragraph 69 above).

175. Having regard to the overall ineffectiveness of the remedies suggested by the Government in respect of the complaints under Article 3, the Court dismisses the Government's objection of non-exhaustion of domestic remedies.

176. The Court concludes that there has been a violation of Article 3 of the Convention as a result of the State authorities' failure to take protective measures in the form of effective deterrence against serious breaches of the applicant's personal integrity by her husband.

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

177. The applicant complained under Article 14, in conjunction with Articles 2 and 3 of the Convention, 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, etc. 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 15 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 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

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 the case *D.H. and Others v. Czech Republic* ([GC], no. 57325/00, 13 November 2007, §§ 175-180) 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 (*Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV; and *Okpisz v. Germany*, no. 59140/00, § 33, 25 October 2005). ... It 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-...)....

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*, cited above, § 57).

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* (cited above, § 147) 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 – *Aktaş v. Turkey (extracts)*, 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 the case of *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 (*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 (*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 the *Hoogendijk* decision 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 at §§ 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 91-104 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*, cited above; and *Zarb Adami*, cited above, §§ 77-78).

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 aforementioned 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 aforementioned 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 the Law 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, cited at paragraph 187 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, in conjunction with Articles 2 and 3 of the Convention, in the instant case.

V. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

203. Relying on Articles 6 and 13 of the Convention, the applicant complained that the criminal proceedings brought against H.O. were ineffective and had failed to provide sufficient protection for her and her mother.

204. The Government contested that argument.

205. Having regard to the violations found under Articles 2, 3 and 14 of the Convention (see paragraphs 153, 176 and 202 above) the Court does not find it necessary to examine the same facts also in the context of Articles 6 and 13.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

206. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

207. The applicant claimed 70,000 Turkish liras (TRL) (approximately 35,000 euros (EUR)) in respect of pecuniary damage resulting from the death of her mother and TRL 250,000 (approximately EUR 125,000) for non-pecuniary damage. She explained that subsequent to the killing of her mother she had been deprived of any economic support from her. The killing of her mother and ongoing violence perpetrated by her former husband had caused her stress and anguish, as well as irreparable damage to her psychological well-being and self-esteem.

208. The Government submitted that the amounts claimed were not justified in the circumstances of the case. They claimed, in the alternative, that the amounts were excessive and that any award to be made under this heading should not lead to unjust enrichment.

209. As regards the applicant's claim for pecuniary damage, the Court notes that while the applicant has demonstrated that on a number of occasions she had sought shelter at her mother's home, it has not been proven that she was in any way financially dependent on her. However, this does not exclude an award in respect of pecuniary damage being made to an applicant who has established that a close member of the family has suffered a violation of the Convention (see *Aksoy v. Turkey*, 18 December 1996, § 113, *Reports* 1996-VI, where the pecuniary claims made by the applicant prior to his death in respect of loss of earnings and medical expenses arising out of detention and torture were taken into account by the Court in making an award to the applicant's father, who had continued the application). In the present case, however, the claims for pecuniary damage relate to alleged losses accruing subsequent to the death of the applicant's mother. The Court is not convinced that the applicant's mother incurred any losses before her death. Thus, the Court does not find it appropriate in the circumstances of this case to make any award to the applicant in respect of pecuniary damage.

210. On the other hand, as regards the non-pecuniary damage, the Court notes that the applicant has undoubtedly suffered anguish and distress on account of the killing of her mother and the authorities' failure to undertake sufficient measures to prevent the domestic violence perpetrated by her husband and to give him deterrent punishment. Ruling on an equitable basis,

the Court awards the applicant EUR 30,000 in respect of the damage sustained by her as a result of violations of Articles 2, 3 and 14 of the Convention.

B. Costs and expenses

211. The applicant also claimed TRL 15,500 (approximately EUR 7,750) for the costs and expenses incurred before the Court. This included fees and costs incurred in respect of the preparation of the case (38 hours' legal work) and attendance at the hearing before the Court in Strasbourg as well as other expenses, such as telephone, fax, translation or stationary.

212. The Government submitted that in the absence of any supporting documents the applicant's claim under this head should be rejected.

213. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,500 for costs and expenses for the proceedings before the Court, less EUR 1,494 received by way of legal aid from the Council of Europe.

C. Default interest

214. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection concerning the alleged failure to observe the six-month rule;

2. *Joins* to the merits of the complaints under Articles 2, 3 and 14 of the Convention the Government's preliminary objections on non-exhaustion of domestic remedies and *dismisses* them;

3. *Declares* the application admissible;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the death of the applicant's mother;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the authorities' failure to protect the applicant against domestic violence perpetrated by her former husband;

6. *Holds* that there is no need to examine the complaints under Articles 6 and 13 of the Convention;

7. *Holds* that there has been a violation of Article 14 read in conjunction with Articles 2 and 3 of the Convention;

8. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:

(i) a total sum of EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 6,500 (six thousand five hundred euros), less EUR 1,494 received by way of legal aid from the Council of Europe, plus any tax that may be chargeable to the applicants, for costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President