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McKenzie.**

# Fighting Domestic Violence

Pro Bono Initiative

**Europe**

In association with



# Turkey

## Domestic Violence Legislation



“The withdrawal from the Istanbul Convention constitutes an unconstitutional setback in the protection of women.”

# Turkey

## 1 Legal provisions

In recent years, significant changes have been made in Turkey to tackle the issue of violence against women. Turkey has adopted new policies and enacted important legislation in line with international regulations. In spite of this progress, there are problems with implementing existing regulations. This indicates that more needs to be done, in compliance with international standards, to prevent violence against women.

Various changes have been introduced in Turkey, including Turkish Constitution No. 2709, Turkish Criminal Code No. 5237 and the Turkish Civil Code No. 4721. In May 2011, Turkey signed the Council of Europe's Convention preventing and combating violence against women and domestic violence ("**Istanbul Convention**"). Turkey was the first country to ratify the Istanbul Convention in March 2012, with a unanimous vote from all parties represented in the Turkish Parliament, which resulted in the Law to Protect Family and Prevent Violence Against Women No. 6284.

Law No. 4320 on the Protection of the Family, which was established in 1998, was the first legal text on domestic violence in the country and was insufficient in preventing violence against women. Therefore, Law No. 6284 was adopted in 2012 on the basis of the Istanbul Convention.

### 1.1 What are the relevant statutes and codes?

- Turkish Constitution No. 2709<sup>1</sup>
- Turkish Criminal Code No. 5237<sup>2</sup>
- Turkish Criminal Procedure Code No. 5271<sup>3</sup>
- Turkish Civil Code No. 4721<sup>4</sup>
- Turkish Labor Law No. 4857<sup>5</sup>
- Juvenile Protection Law No. 5395<sup>6</sup>
- Law to Protect Family and Prevent Violence Against Women No. 6284<sup>7</sup>
- Implementation Regulation on the Law to Protect Family and Prevent Violence Against Women No. 6284<sup>8</sup>

Law No. 6284 provides protection for domestic violence in general regardless of gender. It aims to protect the women, children, family members and victims of stalking who have been subject to the violence or are at risk of violence (Article 1/1 of Law No. 6284).

### **Important remarks on the recent updates concerning the status of the Istanbul Convention and Law No. 6284 in Turkey**

Since the ratification of the Istanbul Convention, the pro-government and conservative segment in Turkey have been constantly trying to discredit it, claiming that it is a threat to Turkish family structure. They have claimed that the Istanbul Convention "damaged family unity and encouraged divorce, and that its references to equality were being used by the LGBT community to gain broader acceptance in society." On 20 March 2021, the president of the Republic of Turkey announced Turkey's withdrawal from the Istanbul Convention with a Presidential Decree,<sup>9</sup> which constitutes a usurpation of legislative powers.

Hundreds of women gathered at demonstrations all over Turkey to protest against the move. Domestic violence and femicide remain a serious problem in Turkey. Last year, 300 women were murdered and the rate is speeding up, with 225 killed so far in 2021.

The withdrawal from the Istanbul Convention constitutes an unconstitutional setback in the protection of women. As per Article 90/1 of the Turkish Constitution, international agreements are subject to adoption by the Turkish Parliament with a statutory law approving the ratification; this article does not foresee any procedure for withdrawal or termination. However, the principle of parallelism requires procedural coherency for enactment and withdrawal. In line with the principle of parallelism of competence and procedure, the Turkish Parliament should have the authority to withdraw from international agreements by enacting a statutory law. This argument is reinforced by the fact that per Article 90/5 of the Turkish Constitution, international agreements that are duly put into effect have the force of statutory law. The Turkish Constitution does not grant any explicit authority to the president to issue a Presidential Decree to terminate an international agreement.

Article 3 of Presidential Decree No. 9 regarding the termination of international agreements, which was adopted shortly after the adoption of the presidential system in 2017, served as a legal basis for the presidential decision terminating the Istanbul Convention. Yet, Article 104 of the Turkish Constitution stipulates that presidential decrees may only be issued on matters pertaining to the executive power, and fundamental rights and freedoms should be regulated exclusively by laws.

The opposition parties in Turkey applied to the Turkish Constitutional Court arguing that the presidential decree was unconstitutional. There is optimism among the opposition that the constitutional court may announce a verdict that the convention will stay in place as it was ratified by parliament. If the Turkish Constitutional Court agrees that the presidential decree is unconstitutional, the Council of State can cancel the presidential decision (statement from the Association of Research on Constitutional Law (ARCL) on the Presidential Decision on the Istanbul Convention).<sup>10</sup>

Furthermore, the Law on Amending the Criminal Procedure Code and Certain Laws, commonly known as the "4th Judicial Package," introduced by the government to the Parliamentary Justice Commission, was adopted by the Turkish Parliament and published in the Official Gazette No. 31541 dated 14 July 2021. The amendments to the Turkish Criminal Procedure Code introduce a concrete evidence condition for the catalogue offenses, which include terrorism, genocide, crimes against humanity, intentional killing as well as sexual assault and sexual harassment of children.

Intentional murder, intentional injury, torture and deprivation of liberty committed against a former spouse have also become qualified forms of the relevant crimes, as crimes committed against a spouse, and the punishment is accordingly aggravated.

## **1.2 What is the controlling case law?**

Case law is neither controlling nor binding under Turkish law. Turkey has a legal system based on codified law. Case law is mainly taken into consideration for the interpretation of laws. In addition, higher court decisions have superior influence over the lower courts to ensure uniformity in practice.

### **1.3 What are the specific parts of the court system that address domestic violence?**

Prosecutors, family courts, courts of first instance and criminal courts are involved in domestic violence cases.

In addition, special courts have been created to expedite decisions within the scope of Law No. 6284. The Supreme Council of Judges and Prosecutors has appointed special courts to accelerate the "preventive and protective injunction" as a result of the increase in violence against women and domestic violence. The decision was published in the Official Gazette on 30 December 2019.<sup>11</sup>

### **1.4 What types of proceedings (civil or criminal), submissions or orders can a domestic violence victim sue/begin against an abuser?**

Domestic violence victims can civilly sue and initiate a criminal proceeding against an abuser.

- Article 58 of the Turkish Code of Obligations No. 6098 stipulates that nonpecuniary damages can be requested due to an attack on personal rights.
- In addition, in Articles 24 and 25 of the Turkish Civil Code, it is stated that compensation can be requested in cases arising from the violation of personal rights.

## 2 Introduction: framework guiding domestic violence law

### 2.1 Are there civil and criminal legal remedies for domestic violence victims?

A domestic violence victim can begin both civil and criminal proceedings against the abuser.

### 2.2 Is protection from domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

Although domestic violence is not identified as a human right in national law explicitly, Law No. 6284 emphasizes "human right" several times and captures "human right" in other provisions.

- According to Article 1, Law No. 6284 aims to provide "a fair, effective and speedy method, **which is based on basic human rights**, sensitive to the equality of men and women."
- Article 2 defines violence against women as:  
The gender-based discrimination directed against a woman just because she is a woman or that affects women disproportionately and **any attitude and behavior violating the human rights of women** and defined as violence in this Law.
- Article 11 states that law enforcement duties should be conducted by an adequate number of personnel:  
[...] who have training on the **human rights for children and women and the equality of men and women**, and who are assigned by the related law enforcement units in central and provincial organization.
- Article 16 ensures that:  
[...] the public institutions and organizations and professional organizations with public institution status ensure their personnel and members to attend educational courses prepared and coordinated by the Ministry **on the human rights for women and the equality of women and men**  
in order to maintain an effective application of the law and the educational courses on human rights for women and the equality of women and men should be integrated into the primary and secondary education curriculum.

### 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

Turkey became the first country to sign the Istanbul Convention, on 11 May 2011 and it ratified the Istanbul Convention on 14 March 2012.<sup>12</sup>

However, please refer to "Important remarks on the recent updates concerning the status of the Istanbul Convention and Law No. 6284 in Turkey" section concerning the recent updates on the status of the Istanbul Convention.

## **2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?**

The Istanbul Convention has been implemented into national law through the Law to Protect Family and Prevent Violence Against Women No. 6284, which was published in the Official Gazette on 20 March 2012, and through Implementation Regulation on the Law to Protect Family and Prevent Violence Against Women No. 628, which was published in the Official Gazette on 18 January 2013.

## **2.5 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?**

Turkey signed and ratified CEDAW in 1985, with reservations on Articles 9, 15, 16 and 29. CEDAW was published in the Official Gazette in 1986.

Amendments have been implemented in the Turkish Constitution, Turkish Criminal Code, Turkish Civil Code and Turkish Labor Law within the scope of short and medium-term commitments in terms of equality of men and women.

### 3 Similarities and differences in terminology

Term	Definition
Domestic violence	<p>Pursuant to Article 2(1)(b) of Law No. 6284, "domestic violence" means any physical, sexual, psychological and/or economic violence between the following:</p> <ul style="list-style-type: none"><li>▪ the victim of violence and the perpetrator of violence</li><li>▪ the family members and the people who are considered family members whether they live or do not live in the same house</li></ul>
Stalking	<p>Although legislators determined that the aim of Law No. 6284 is to protect the women, children, family members and victims of stalking who have been subject to the violence or are at the risk of violence, and to regulate procedures and principles with regard to the measures of preventing the violence against those people, there is no strict legal definition of "stalking." The Turkish Criminal Code does not define the term "stalking" either.</p>
Harassment	<p>Neither Law No. 6284 nor the Turkish Criminal Code define the term "harassment." However, the Turkish Criminal Code penalizes sexual harassment and child molestation but only defines child molestation, which means all kinds of sexual attempts against children who are under the age of 15 or against those who are aged 15 but lack the ability to understand the legal consequences of such act; and the abuse of other children sexually by force, threat or fraud.</p>
Victim	<p>Pursuant to Article 2(1)(e) of Law No. 6284 a "victim" is defined as the person who is directly or indirectly subject to or at risk of the attitudes and behaviors that are defined as violence and the person who is affected by violence or at risk of being affected by violence.</p> <p>Violence will mean the acts that result or will probably result in a person having physical, sexual, psychological and financial sufferings or pain and any physical, sexual, psychological, verbal or economic attitude and behavior that include the threat, pressure and arbitrary violation of a person's freedom in a social, public and private space.</p>
Abuser	<p>Article 2(1)(g) of Law No. 6284 defines abuser as the perpetrator of violence. As such, the abuser is the person who exhibits attitudes and behaviors defined as violence.</p>
Marital rape	<p>The Turkish Criminal Code penalizes sexual abuse in general, which means the violation of the sexual immunity of a person. The abuser could be sentenced upon the complaint of the victim. Thus, the Turkish Criminal Code does not differentiate between sexual abuse of an independent individual and the sexual abuse of a spouse. As such, every provision of the Turkish Criminal Code relating to sexual abuse will also be applied to marital rape. If the sexual abuse is committed by inserting an organ or instrument into a body, the act constitutes a more severe form of the crime. The Turkish Criminal Code notes that in such</p>



Term	Definition
	<p>a case, and if the victim is the spouse, the commencement of investigation or prosecution is bound to the complaint of the victim.</p> <p>Among others — in relation to marital rape — the following circumstances could qualify as aggravating circumstances. If the sexual abuse is committed:</p> <ul style="list-style-type: none"> <li>▪ against a person who cannot protect himself/herself because of physical or mental disability</li> <li>▪ by using weapons or the participation of more than one person in the offense</li> </ul> <p>If the abuser is using force against the victim, the abuser will be punished not only for sexual abuse, but for felonious injury. When sentencing the abuser, it will be decided whether the victim had a physical or mental disability. If they had, the punishment will be more severe. Last, if the sexual abuse causes the death of the victim, the abuser could be sentenced to life in prison.</p>
Civil protection order	<p>Victims are entitled to a wide range of protective and preventive measures. These measures can be taken <i>ex officio</i> or upon the request of a judge, law enforcement officers or administrative chiefs.</p> <p>The following protective cautionary measures are available to the civilian authority or, if the delay is considered risky, to the law enforcement chief:</p> <ul style="list-style-type: none"> <li>▪ providing shelter</li> <li>▪ providing financial aid</li> <li>▪ providing psychological, professional, legal and social guidance, and counseling services</li> <li>▪ providing temporary protection in case of a life threatening danger</li> <li>▪ providing four months of day care (maximum two months for those who have a job) to the children of the victim to support the protected person's integration into working life and additional financial aid, which cannot exceed half of the net minimum wage</li> </ul> <p>The following protective measures are available to a judge:</p> <ul style="list-style-type: none"> <li>▪ making an order to change workplace</li> <li>▪ deciding a house settlement different from the shared one if the person is married</li> <li>▪ adding an annotation to the title deed categorizing the property as a family house</li> <li>▪ changing the victim's identification and other related information and documents</li> </ul> <p>The following preventive measures are available to a judge or, in case the delay is considered risky, to the law enforcement chief against the abuser:</p>

Term	Definition
	<ul style="list-style-type: none"> <li>▪ prohibiting an attempt of violence or behaviors including threats of violence, insult and humiliation against the victim of violence</li> <li>▪ requiring the abuser to move from the shared dwelling or from the neighborhood</li> <li>▪ prohibiting the abuser from approaching the protected persons and their residences, schools and workplaces</li> <li>▪ restricting personal contact between the victim and the abuser</li> <li>▪ prohibiting the abuser from approaching friends or relatives or children of the victim even though they haven't been victims of the violence, in this case the court will consider child visitation if necessary</li> <li>▪ prohibiting the abuser from damaging the personal belongings and household goods of the protected person</li> <li>▪ prohibiting the abuser from causing any distress to the protected person by means of communication instruments or alternative channels</li> <li>▪ requiring the abuser to hand over any weapons</li> <li>▪ restricting the use of alcohol, drugs or stimulants in places where the protected people are present or requiring the abuser not to approach the protected people and/or their known whereabouts while under the influence of these substances and/or requiring the abuser to have a medical examination and treatment including in-patient treatment in case of addiction</li> <li>▪ making an order for a health center examination or treatment</li> <li>▪ additionally, the judge may decide on temporary alimony by considering the living standards of the victim</li> </ul>
Causes of action	There are multiple causes of action that can be pursued depending on the nature of the abuse suffered by the victim, for example, sexual harassment, sexual abuse and felonious injury.

### 3.1 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

Law No. 6284 differentiates between violence and violence against women. Pursuant to Article 2(1)(ç) of Law No. 6284 violence against women means a gender-based discrimination directed against a woman just because she is a woman or that affects women disproportionately and any attitude and behavior violating the human rights of women and defined as violence in Law No. 6284.

## **4 Protection for domestic violence victims and relief granted**

### **4.1 Civil protection orders**

#### **4.1.1 Are there civil protection orders available to victims of domestic abuse?**

Yes, there are several civil protection orders available to the victims of domestic abuse.

#### **4.1.2 Who can petition for civil protection orders?**

The victim, law enforcement officer or public prosecutor can request a petition for a civil protection order. The request can be made to a judge, administrative chief or law enforcement unit, whichever is in the most convenient location.

#### **4.1.3 Are there temporary custody of a child or child support orders?**

The court can grant a restraining order naming the children and can prohibit the abuser from approaching the protected person's residence or school.

The court may restrict any personal contact or can completely revoke the right of the abuser to have any contact with the protected child. The court can make this decision regardless of whether the children have been subject to violence.

The judge is authorized to make a decision on the above measures in accordance with the Juvenile Protection Law and the Turkish Civil Code on the issues of guardianship, custody, alimony and personal connection.

If the perpetrator of violence is the sole or partial contributor to the family's financial livelihood, the judge may decide on temporary alimony by taking into consideration the living standards of the victim (even without request), provided that no decision on maintenance had been rendered previously as per the provisions of the Turkish Civil Code.

#### **4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?**

Yes, the judge can order the abuser to move out and remain away from the shared dwelling or the immediate vicinity. The judge can also order the abuser not to approach the protected person, their residence, school and/or workplace.

#### **4.1.5 Are there any other types of emergency, preventive and civil protection orders?**

Financial aid, psychological, professional, legal and social guidance, counseling services and temporary protection can also be ordered in favor of the victims.

In addition, a judge can order that the victim be allowed to change their workplace and/or their identity.

The judge can order the abuser not to exhibit behavior that could include threats of violence, insults and humiliation against the victim, and an order not to damage the personal belongings and

household goods of the protected person. The judge can also order the abuser not to cause any distress to the victim by means of communication instruments or alternative channels.

The judge can order the abuser to hand over his/her weapons, even if the abuser's weapons are legally owned and/or if the abuser is a person with a profession of public service that requires carrying a weapon.

The judge can also order the abuser not to use alcohol, drugs or stimulants in places where the protected people are present. In addition, the judge can order the abuser not to approach the protected people or their whereabouts while under the influence of these substances and require the abuser to undergo a medical examination and treatment including in-patient treatment in case of addiction. The application of a health center for examination or treatment could be also ordered.

#### **4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?**

If there has been violence or there is a risk of it, anyone can make a report to the official authorities. The public officials who receive the report are obliged to fulfill their duties without any delay and inform the authorities of any measures that need to be taken.

If a crime has been committed against a child, the perpetrator will be arrested without a warrant and the report is not required.

#### **4.1.7 Are there different types of civil protection orders, e.g., for a short-term period?**

The initial civil protection order will be in effect for a period of six months. However, if it is determined that there is a continued risk of violence, the order will be extended or modified upon request of the protected person, ministry officials or law enforcement agencies.

#### **4.1.8 Are *ex parte* orders permitted without the aggressor being present?**

Upon the request for preventive cautionary order, the court will hear the matter without delay. No evidence or report is necessary to initiate the procedure. If the request is granted and the judge issues the order, the abuser will be notified. The order notifies the abuser that they are subject to imprisonment if the order is violated.

However, in the case of a criminal lawsuit, the suspect or accused has the right to be present during the judicial hearing for both the witness's and expert's testimony. However, if the presence of the suspect or the accused may prevent one of the witnesses from testifying truthfully, the judge may rule that the suspect or the accused not be present during that individual's testimony.

#### **4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?**

If necessary, the emergency orders can be extended to the family members of the victim. Law No. 6284 also specifies orders that protect the victim's family members and can include provisions that provide shelter not just to the victim, but also to the children of the victim. Additionally, a judge can also order the abuser not to approach the friends, relatives and/or children of the victim even though they have not been subject to the violence.

#### **4.1.10 How long do the orders last?**

Law No. 6284 does not specify how long the orders last. However, Law No. 6284 states that if there is a continued risk of violence, the orders could be extended.

#### **4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.**

The Ministry of Family and Social Policies established Violence Prevention and Monitoring Centers. The aim of these centers is to help prevent violence and to quickly and efficiently implement the protective and preventive measures. These centers operate 24 hours a day, seven days a week.

One of the main tasks of the Violence Prevention and Monitoring Centers is to build a database by collecting data regarding the protective and preventive cautionary orders, the sentences of preventive imprisonment and the implementation of these orders and acts, and to keep a record of the cautionary orders.

Femicides in Turkey have been on a drastic rise in the past decade. COVID-19 restrictions also increased the gender-based violence and femicides in Turkey. Comparing the figures for March 2019 to March 2020, a 38.2% increase can be seen in cases of domestic violence in Turkey.

Women in Turkey are subjected to violence regardless of their socio-economic status.

According to a Turkish digital tribute platform, in 2020, 300 women died as a result of gender-based violence. Of the victims, 62% were killed by their husbands, ex-husbands or boyfriends; 28% by other male relatives, while 10% were killed by stalkers, neighbors or others.

So far in 2021, 225 women have been murdered.

For further information, please visit the website of the Ministry of Family, Labor and Social Services:

[www.ailevecalisma.gov.tr](http://www.ailevecalisma.gov.tr)

<https://www.ailevecalisma.gov.tr/ksgm/yayinlar/>

For official statistics, please visit the following website:

[www.tuikweb.tuik.gov.tr](http://www.tuikweb.tuik.gov.tr)

## **4.2 Steps for receiving a protective order**

### **4.2.1 What documentation is needed to obtain a civil protection order?**

No evidence or report proving the violence is required to obtain a civil protection order.

### **4.2.2 Does the victim need to attend a hearing?**

The victim of a crime, their attorney and a defense attorney have the right to be present during the judicial inspection, during the witness hearing and during the hearing of the expert's opinion pursuant to Article 84 of the Criminal Procedure Code.

### **4.2.3 Can you request remedies?**

The relevant person may appeal any decision made on the basis of Law No. 6284 to the family court within two week of receiving the notification. The authority for complaints will decide on the appeal within a week. The decision of the authority for complaints is final.

#### **4.2.4 Are there time limits?**

An appeal can be submitted against a decision taken on the basis of Law No. 6284 within two weeks of receiving the notification.

#### **4.2.5 Are there different rules in emergencies?**

In crucial cases when any delay could be considered dangerous, some of the measures can be taken by the law enforcement official. The law enforcement chief will present a report to the administrative chief for approval on the next working day after the decision is made. If the administrative chief does not approve the decision, the decision will be abolished within 48 hours. Where the judge is competent to decide to order the measure, the law enforcement chief will present a report to the judge on the next working day after the decision is made, and if the judge does not approve the decision, it will be abolished within 24 hours.

### **4.3 Judicial discretion**

#### **4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?**

The judge is entitled to decide which protective measures will be applied through the order.

#### **4.3.2 Are there age limits on who can obtain orders?**

There is no age limit on who can obtain orders.

### **4.4 Restitution and remedies available to victims**

#### **4.4.1 Can victims obtain reimbursement for costs and restitution paid?**

There are no court expenses, fees, mailing expenses, etc., for applications or other processes during the execution and implementation of the civil protection orders.

Victims, subject to the protective cautionary decision, who do not have general health insurance, will be considered for dependent health insurance without an income test.

If a person is required under the preventive cautionary order to participate in rehabilitation or treatment, the rehabilitation expenses that are not covered by general health insurance and the cost of other health expenses required by rehabilitation services will be covered by the budget of the Ministry of Family and Social Policies.

#### **4.4.2 Can they recover wages and profits lost?**

Pursuant to Article 17 of Law No. 6284, the victim is eligible for temporary financial aid. If financial aid is ordered, one-thirtieth of the annual national minimum wage will be provided to the victim on a daily basis if the victim is over the age of 16. If there are multiple protected people, an additional sum of 20% of this amount will be paid to every additional individual. However, the amount to be paid cannot exceed one-and-a-half times of the daily payment. If shelter is provided to the victim, the amounts stated above will be reduced by 50%. These payments are made from the ministry's fund opened for temporary financial aid.

These payments are exempt from income tax, inheritance and transfer tax. In addition, receipts of these payments are exempt from stamp duties.

Additionally, the judge may decide on temporary alimony by considering the living standards of the victim.

#### **4.4.3 Is a separate civil process required?**

No, a separate civil process is not required in relation to civil protection orders. However, pursuant to Article 24 of Section II.1. of the Turkish Civil Code, a victim of certain types of crimes may petition a judge for a civil protection order. The claimant has the ability to demand the court take action to prevent the assault, eliminate a threat, and determine the unlawful consequences of the assault even though the assault is over.

# 5 Prosecutorial considerations

## 5.1 Police procedures

### 5.1.1 When do the police get involved in domestic disputes or legal actions?

The police may get involved in the matter in various ways including the following:

- when responding to a criminal allegation/denunciation
- when called by the public prosecutor and during the investigation phase and/or
- when on duty if they encounter a criminal act or evidence thereof

Law enforcement agencies are responsible for receiving reports of violence, processing the scene and responding to any incidents.

### 5.1.2 What circumstances affect law firm involvement?

The victim and the suspect/accused are both entitled to have lawyers during the course of the investigation and prosecution proceedings. Such lawyer can be an attorney of a law firm.

The victim is not required to have a lawyer. The victim may request assignment of a lawyer for sexual assault crimes and crimes with penalties starting from five years of imprisonment. In such case, a lawyer is assigned by the relevant bar upon request.

If the victim or the individual affected by the crime is a child (under the age 18), deaf or mute, or is not mentally able to express or defend themselves, a lawyer is assigned without need for a request in this regard.

The suspect/accused can request assignment of a lawyer regardless of the crime or the penalty.

## 5.2 Standard of proof

### 5.2.1 Is proof required by any legal means?

For criminal proceedings, there is a presumption of innocence until proven guilty.

The judge is obligated to search for the factual truth; therefore, neither the public prosecutor nor the accused has the burden of proof. However, the judge is also obligated to take into consideration any factual aspects set forth by the public prosecutor or the accused during the course of criminal proceedings.

According to Article 8/3 of Law No. 6284, no proof or documents evidencing violence is required to obtain protection orders.

In addition, according to Article 190 of the Turkish Code of Civil Procedure, the burden of proof, unless otherwise set out by law, is on the party setting forth a claim and for whose interest such claim will serve.

Please note that further to the recent amendments to the Turkish Criminal Procedure Code, as set out under Article 1, strong suspicion based on concrete evidence is required for arrests for catalogue crimes including violation of the Constitution, sexual abuse and sexual abuse of



children. In addition to the existing conditions, proof showing that the application of judicial control will not be sufficient must be set out in the courts' decisions regarding the arrest, the continuation of detention or ejection of a release request in this regard.

## **5.2.2 Are there any requirements regarding evidence and documents?**

Article 217 of the Turkish Criminal Code sets out that everything may be considered as evidence provided that it is obtained lawfully.

The request to present evidence is denied if:

- evidence is unlawfully obtained
- the fact to be proven by the evidence is not relevant to the decision
- the request to present evidence is made only for the purposes of delaying the proceedings

If the public prosecutor and the accused or their lawyer agree, witnesses or certain evidence may be omitted.

The court's decision may only be based upon evidence presented and discussed at the trial.

## **5.2.3 Is proof "beyond a reasonable doubt" required?**

As per the precedents of the high courts, in order for the court to find an individual guilty, the evidence must be "sufficient," "convincing" and "free from any doubt." Furthermore, the evidence must "not be contradictory" and should "support each other," and must be of the quality and degree to show that the crime has been committed.

## **5.2.4 Is the standard of proof different for *ex parte* orders?**

The standard of proof is not different for *ex parte* orders. However, the court may not be allowed to rule on *ex parte* orders depending on the order and/or crime, etc.

## **5.3 Affirmative defenses**

### **5.3.1 Are affirmative defenses available to the accused?**

The accused can set forth their defenses by written motion and verbally during the trial. The accused can set forth any claims and evidence at any time for their defense. Note that the court may make a decision on the case based solely on the investigation and require proof relating to the alleged crime at any time.

### **5.3.2 Is willful intent required?**

Article 21 of the Turkish Criminal Code sets out that the existence of a criminal offense depends upon the presence of intent. Intent is defined as knowingly and willingly conducting the elements in the legal definition of an offense.

Probable intent, which refers to when an individual conducts an act while foreseeing that the elements in the legal definition of an offense may occur, is also punishable. Accordingly, in the case of probable intent, punishments are reduced, such as life imprisonment in place of aggravated life imprisonment (i.e., life imprisonment with tight security measures). Offenses that

require a penalty of life imprisonment are imposed for a term of 20 to 25 years of imprisonment and otherwise the penalty is reduced by one-third to one-half.

Acts committed with the intent of neglect are subject to a penalty only when explicitly prescribed by law.

### **5.3.3 Are false accusations punishable for the victim?**

According to Article 267 of the Turkish Criminal Code, any person who accuses another person of committing an act contrary to the law in order to secure the implementation of an administrative sanction or the commencement of an investigation and prosecution by submitting a complaint or notification to the relevant authorities or through the press or broadcasting, despite the person knowing that the other person did not commit such act, can be sentenced to imprisonment for a term of one to four years. If evidence was made up in respect of the crime, the penalty is increased by one-half.

Further, according to Article 271 of the Turkish Criminal Code, any person who states to the relevant authorities that an offense has been committed, knowing that it has not or makes up evidence in relation to an offense that has not been committed in order to cause the commencement of an investigation, can be sentenced to imprisonment for a term of up to three years.

### **5.3.4 How is consent discussed in the law?**

Consent is not explicitly defined in the above legislation. Article 26 of the Turkish Criminal Code states that no penalty will be imposed for an act committed as a result of the declared consent of another person, provided that such person has the full authority to give consent on the matter. To that end, however, a person cannot give consent against their right to live.

There are certain provisions of the Turkish Criminal Code that explicitly require consent (e.g., experiments on persons, organ and tissue trade) or do not consider consent as a reason to avert the crime (e.g., human trafficking, abortion without medical necessity after 10 weeks of pregnancy).

### **5.3.5 Is self-defense or insanity a defense?**

**Self-defense** is a legitimate defense under Turkish law. According to Article 25 of the Turkish Criminal Code, no penalty is imposed upon an offender when the act is necessary to repel an unjust assault that is directed, carried out, certain to be carried out or to be repeated against a right to which such offender, or another individual, is entitled, provided such acts are proportionate to the assault, taking into account the situation and circumstances applicable at the time.

Further, no penalty is imposed upon an offender if the act in question is committed out of necessity, in order to protect against a serious and certain danger not knowingly caused by the offender, which is directed at a right to which the offender or another individual is entitled and where there is no other means of protection, provided that the means used are proportionate to the gravity and subject of the danger.

According to Article 32 of the Turkish Criminal Code, no penalty is imposed on a person who, due to **mental disorder**, cannot comprehend the legal meaning and consequences of the act committed, or if, in respect of such act, the offender's ability to control their own behavior is significantly diminished. However, security measures are imposed for such persons.

## **5.4 Witness status**

### **5.4.1 What is a witness's duty to testify honestly and completely?**

Witnesses are obligated to testify honestly and completely. Presenting fictitious events and false evidence is punishable under Article 272 of the Turkish Criminal Code under the crime of perjury. Through this, the law seeks to prevent the obstruction and protect the administration of justice.

### **5.4.2 Who may abstain from testifying in certain situations?**

In cases that are clearly stated in the law, the person who has been called as a witness has the right to refuse to testify. In the event that there are grounds for refusal to testify for personal reasons, the judge must remind in advance that anyone called as a witness has the right to abstain from testifying as a witness. The abstention may also relate only to responding to certain questions, such as providing responses that may be go against the interests of the witness's close kin.

The fiancée, fiancé, spouse (even if the marriage bond is severed), lineal blood relatives or lineal kinship by marriage, foster children, adoptive parents, up to third degree blood relatives and up to second degree kinship by marriage of the suspect or accused may refuse to testify. Severity of the crime is not taken into consideration in respect of the witnesses' right to abstain from testifying.

Court practice shows that children can be called upon to testify in court; however, they would have the right to refuse if the child witness is somehow related to the suspect or accused as described above. Note that children under the age of 15 at the time of the hearing cannot be sworn in.

Further, according to Article 52 of the Turkish Criminal Procedure Code, the testimony of children who are victims must be heard as visual and audio recordings. This is to save them from having to repeat their testimony, given the delicate nature of childhood trauma. To that end, a child's testimony relating to domestic violence must be heard as a visual and audio recording.

Individuals who are not capable of understanding the importance of refraining from testimony because of their minor age, mental illness or mental weakness, may testify if their legal representatives give consent.

It is also possible to refrain from testifying due to an individual's professional relationship with the accused, including but not limited to lawyers, notaries, doctors and accountants. Note that, save for lawyers, their interns or assistants, a witness cannot refrain from testifying if the relevant individual has given consent for such testimony.

If the testimony relates to government secrets, one cannot refrain from testifying, however, the testimony must be given in the presence of only the judge and the panel, without even the court recorder being present. State secrets are defined as information that if disclosed could impose any harm to the external relations of the state, to national defense and national security, or that creates a danger with respect to the constitutional order and external relations, if revealed.

### **5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?**

In a domestic violence action, a witness can refrain from testifying if the testimony is against the witness's self-interest or they are individuals set out in our second response under 5.4.

A witness may also refrain from testifying if the information was obtained due to their profession, if the individual to whom the information relates to has not given consent for this purpose. As stated

above, lawyers and their interns and assistants are not required to testify even if consent has been given.

#### **5.4.4 Are there any laws that provide special protections to children who are testifying in domestic violence proceedings?**

There are no specific rules for children's testimony regarding domestic violence. Please see our second response under 5.4 for protection of children who are testifying.

Law on Witness Protection No. 5726 regulates the measures and rules applicable to protection of witnesses.

#### **5.4.5 Can children be called upon to testify?**

Please see our second response under 5.4 for protection of children who are testifying.

#### **5.4.6 What is the effect of a child victim on the charges against the offender?**

There is no general provision in the Turkish Criminal Code specific to charges relating to offenses against children; however, certain provisions set out increased penalties when the offense is committed against a child. For instance, terms of imprisonment for sale of drugs to children are higher than for sale to adults.

### **5.5 Penalties and sentencing; penalty enhancements**

#### **5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?**

First-time domestic violence offenders may request the postponement of the execution of prison sentences of three years for crimes committed intentionally and prison sentences of five years or less for crimes committed involuntarily. Postponement (a supervision period that the convict will have to complete in good conduct or, in certain cases, by fulfilling certain obligations) may be applied twice at most without exceeding one year each time.

Further, the sentences against those who have committed an offense for the first time or who are sentenced to imprisonment for two years or less may be executed directly in open penal execution institutions (i.e., open prison).

There is also a possibility for the defendant to be released on probation if the defendant demonstrates good behavior while in prison.

In order to be considered for release on probation, the institution in which the defendant is being held must submit a report to the court. If the court agrees, the defendant must be conditionally released. An appeal may be filed if the court does not agree to conditional release.

The conditional release may be revoked if the defendant, while on probation, deliberately commits an offense punishable by imprisonment or insists on not complying with his or her obligations despite a warning by the judge.

#### **5.5.2 Are there criminal penalties?**

Under the Turkish Criminal Code, two types of penalties may be imposed: judicial fines and imprisonment. If the Turkish Criminal Code allows for a judicial fine for the criminal action in question, the court is obliged to sentence accordingly.

The court may also sentence to judicial fines if allowed under the law. For example, for crimes committed with willful intent, prison sentences of one year or less can be converted into judicial fines. Further, the court in some cases may decide to both fine and imprison the perpetrator.

There are many crimes that may be of subject due to domestic violence including but not limited to the below.

### **Murder**

According to Article 82 of the Turkish Criminal Code, if intentional murder is committed (i) against a direct ascendant, direct descendant, spouse or sibling; (ii) against a child or against somebody who cannot protect themselves physically or mentally; (iii) against a pregnant woman, in the knowledge of such pregnancy; or (iv) with the motive of tradition; the offender will be sentenced to aggravated life imprisonment (which is a decreased penalty for intentional murder).

### **Inciting suicide**

According to Article 84 of the Turkish Criminal Code, any person who incites, or encourages, another person to commit suicide, or who strengthens an existing decision to commit suicide, or who, in any way, assists a person in committing the act of suicide, will be sentenced to imprisonment for a term of two to five years. The penalty is aggravated if (i) the person committing suicide dies or (ii) the crime is committed publicly. Further, if the crime is committed against individuals whose capacity to understand the meaning and consequences of the act is compromised or lacking, or by using threat or force, the offense will constitute intentional murder.

### **Intentional injury**

According to Article 84 of the Turkish Criminal Code, if intentional injury is committed against (i) a direct antecedent, direct descendent, spouse or sibling or (ii) against a person who cannot defend themselves physically or mentally, the penalty to be given (a penalty of imprisonment for a term of one to three years or if the injury is minor, a penalty of imprisonment for a term of four months to one year, or a judicial fine) will be increased by one-half and will not require a complaint. The penalty is increased depending on the outcome, including early labor or loss of an unborn child.

### **Torment**

According to Article 96 of the Turkish Criminal Code, torment of another person will be punished by imprisonment for a term of two to five years. If the torment is committed against a direct ascendant, direct descendant, adoptive parent or spouse, imprisonment for a term of three to eight years will be imposed.

### **Ill treatment**

According to Article 232 of the Turkish Criminal Code, any person who mistreats a person that they are living with in the same dwelling will be sentenced to imprisonment for a term of two months to one year. Any person who improperly uses the right to enforce discipline, deriving from their right to educate a person who is under their control or for whose growth, education, care, protection or training for a profession or trade that person is responsible from, will be sentenced to a penalty of imprisonment for a term of up to one year.

In addition to the above, the below crimes under the Turkish Criminal Code are also subject to imprisonment and/or judicial fines and do not constitute an extensive list of the penalties that may be applicable to domestic violence: failure in the duty of assistance or notification, illegal abortion, miscarriage and sterilization, offenses against sexual integrity (including child molestation, sexual intercourse between/with persons below the legal age, sexual harassment), offenses against

liberty (threat, blackmail, force, deprivation of liberty), prevention of the right to education and training, prevention of the right to enjoy public services, violation of the immunity of residence, disturbing an individual's peace and harmony, offenses against dignity, offenses against privacy and confidentiality.

### **5.5.3 What is the result of a violation of an existing order for protection?**

According to Article 19 of Law No. 6284, if the offender violates any provision of the order of protection, such offender will be subject to preventive imprisonment from three to 10 days by the judicial decision, depending on the nature and severity of the violated measure, even if the act constitutes another crime.

In each recurring violation, the period of the preventive imprisonment will be from 15 to 30 days. However, the period of the preventive imprisonment cannot be more than six months. The public prosecutor will make the decisions regarding the preventive imprisonment.

### **5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?**

The court may include judicial fines in the sentence, if allowed under the law. For example, in crimes committed with willful intent, prison sentences of one year or less can be converted into judicial fines. Further, in some cases the court may decide to both fine and imprison the perpetrator.

## **5.6 Post-release restrictions**

### **5.6.1 Does the law notify the victim of the offender's release from custody?**

The law does not notify the victim of the offender's release from custody.

## 6 Special issues

### 6.1 Battered woman syndrome

#### 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered woman syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

Courts in common law countries often accept evidence of battered woman syndrome as grounds to decrease or dismiss criminal liability for women who kill abusive partners.

The following three articles of the Turkish Criminal Code may enable the "battered woman syndrome" to be applicable in Turkey:<sup>13</sup>

- Article 27 of the Turkish Criminal Code states that the offender will not be subject to a penalty, if the limits were exceeded in the course of legitimate defense as a result of excitement, fear or agitation and can be regarded as excusable.
- Article 28 of the Turkish Criminal Code states that no penalty will be imposed upon a person who commits a criminal offense as a result of intolerable or inevitable violence, or serious menace or gross threat. In such cases, the person involved in the use of force, violence, menace or threat will be deemed to be the offender.
- Article 29 of the Turkish Criminal Code states that any person who commits an offense in a state of anger or severe distress caused by an unjust act will be sentenced to a penalty of imprisonment for a term of 18 to 24 years where the offense committed requires a penalty of aggravated life imprisonment and to a penalty of imprisonment for a term of 12 to 18 years where the offense committed requires a penalty of life imprisonment. Otherwise, the penalty to be imposed will be reduced by one-quarter to three-quarters.

Lawyers can easily argue that a traumatized woman exceeded the limits of self-defense due to her mental and physical conditions, and she committed the crime in question out of an excusable fear due to post-traumatic stress disorder, as well as the intense and continuous violence.

Women who have used their legitimate right of self-defense have difficulty benefiting from reduced sentences or pardons in Turkey, although it is often documented that the very same women had applied for police protection. Çilem Doğan's case sets an example on this issue, where Doğan was sentenced to an aggravated life sentence on charges of involuntary manslaughter, but the sentence was later reduced to 18 years for unjust provocation and then 15 years for her good conduct during the trial. It remains to be seen whether this will set a precedent in similar cases.<sup>14</sup> Doğan was released on bail; the defense's appeal is currently pending before the appeal court.

### 6.2 Domestic violence in the workplace

#### 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

Yes, as per Article 5 of Law No. 6284, the judge may use a protection order to change the work place of the person who is protected within the scope of Law No. 6284. The protection order

regarding changing the workplace will be implemented by the competent authority or person in accordance with the related regulations the person is subjected to.

### **6.2.2 Can departure be deemed "for good cause" if related to domestic violence?**

Not applicable, as per the Turkish Labor Law.<sup>15</sup>

### **6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?**

Not applicable, as per the Turkish Labor Law.

## **6.3 Immigration**

### **6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents of your country from using immigration laws to perpetrate domestic violence against their spouse?**

Not applicable, as per the Law on Foreigners and International Protection No. 6458.<sup>16</sup>

### **6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?**

The Law on Foreigners and International Protection defines persons who have been subjected to torture, sexual assault or other serious psychological, physical or sexual violence, as persons with special needs. In line with Article 67 of the Law on Foreigners and International Protection, sufficient medical treatment must be provided to victims of torture, sexual assault and other serious psychological, physical or sexual violence, for recovery from the damage caused by such actions.

In addition, Article 34/6 of the Law on Foreigners and International Protection regulates that in the event of a divorce, foreigners married to Turkish citizens may be granted a short-term residence permit provided that he or she has held a family residence permit for at least three years. However, in the event that the foreign spouse has been a victim of domestic violence, as proved by the relevant court judgment, the condition for holding a family residence permit for three years may not be sought.

### **6.3.3 Does domestic violence law discuss asylum accessibility?**

According to Article 95 of the Law on Foreigners and International Protection, accommodation of persons with special needs must be prioritized in reception and accommodation centers.

According to Municipal Law No. 5393, municipalities with a population of more than 100,000 have to open shelters.

## **6.4 Armed forces**

### **6.4.1 Can a victim seek a military protective order if the abuser is in active military?**

Not applicable. The victim must go through the normal case procedure.



## **6.5 Child custody and child/spousal support**

### **6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?**

According to Article 182 of the Turkish Civil Code, child custody is decided upon after testimony from the parents. The judge will also decide after receiving the opinion of the guardian and the guardianship authority, if the child is under guardianship. According to the Turkish Civil Code, the judge has discretionary power and the judge will decide to grant custody to a spouse after considering and determining the best interests of the child, with health, education and moral welfare. The spouse that is not granted custody has to contribute to the expenses of raising the child in proportion to his/her means.

If one of the spouses filed for divorce, the judge may give one of the spouses temporary custody for the duration of the trial, taking into account the age, needs and interests of the child. If the decision of the judge on temporary custody does not change and the divorce decision becomes final, the right of custody becomes permanent.

In practice, the courts usually give custody of the children to the mother, especially the custody of children who have not reached primary school age unless there is an important condition that prevents the mother from taking care of the child (severe and persistent illness, disability, etc.). The party who gets custody, on the other hand, has the right to request alimony for the child.

### **6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?**

The judge will consider the testimony of the other spouse as per Article 182 of the Turkish Civil Code.

The Law does not require that children's testimony be taken when determining custody. However, the recent Supreme Court Assembly of Civil Chambers decision dated 2018, sets a new precedent that children over the age of eight can express themselves in custody cases and that the judge should ask the children for their opinion in custody cases.<sup>17</sup>

## **6.6 Housing rights of domestic violence victims**

Landlord and tenant rights and obligations are specified in the Turkish Code of Obligations No. 6098.<sup>18</sup>

### **6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?**

Not applicable. There are no protections in the law against a landlord forcing a victim of domestic violence to move out.

### **6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?**

Not applicable.

### **6.6.3 Can an order exclude the abuser from the residence?**

Yes, as per Article 5 of Law No. 6284, the judge may decide on a preventive measure for the abuser to immediately move from the shared dwelling or the vicinity and to allocate the shared dwelling to the protected person. The judge may also decide the abuser cannot approach the protected persons and their residences, schools and workplaces.

### **6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?**

As per Article 194 of the Turkish Civil Code, unless one of the spouses has the express consent of the other spouse, it is not possible for one of the spouses to terminate the lease for the family domicile, to transfer the family domicile or to limit the rights to the family domicile. The spouse who cannot provide consent or does not give consent without a justified reason, may request the judge's intervention.

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## Endnotes

- <sup>1</sup> <https://www.anayasa.gov.tr/en/legislation/turkish-constiution/>
- <sup>2</sup> <https://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>
- <sup>3</sup> [https://www.legislationline.org/download/id/4257/file/Turkey\\_CPC\\_2009\\_en.pdf](https://www.legislationline.org/download/id/4257/file/Turkey_CPC_2009_en.pdf)
- <sup>4</sup> <https://www.icj.org/wp-content/uploads/2013/05/Turkey-Turkish-Civil-Code-Law-N.4721-2002-eng.pdf>
- <sup>5</sup> <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64083/77276/%20F75317864/TUR64083%20English.pdf>
- <sup>6</sup> <https://rm.coe.int/1680470946>
- <sup>7</sup> <http://ilo.org/dyn/natlex/docs/SERIAL/91822/106656/F-1918776246/Non-official%20translation%20-%20Law%20to%20protect%20famil.pdf>
- <sup>8</sup> <https://www.resmigazete.gov.tr/eskiler/2013/01/20130118-2.htm>
- <sup>9</sup> <https://www.resmigazete.gov.tr/eskiler/2021/03/20210320-49.pdf>
- <sup>10</sup> <http://anayasader.org/statement-from-the-association-of-constitutional-research-on-the-presidential-decision-on-the-istanbul-convention/>
- <sup>11</sup> <https://www.resmigazete.gov.tr/eskiler/2019/12/20191230-5.pdf>
- <sup>12</sup> <https://www.coe.int/en/web/istanbul-convention/turkey>
- <sup>13</sup> <http://hukuk2.baskent.edu.tr/dergi/arsiv/sayi-1/4.%C3%B6zg%C3%BCrkte%C5%9Fdemir.pdf>
- <sup>14</sup> <https://www.hurriyetdailynews.com/are-turkish-women-taking-the-law-into-their-own-hands-104970>
- <sup>15</sup> <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64083/77276/%20F75317864/TUR64083%20English.pdf>
- <sup>16</sup> [https://www.unhcr.org/tr/wp-content/uploads/sites/14/2017/02/law\\_on\\_foreigners\\_and\\_international\\_protection.pdf](https://www.unhcr.org/tr/wp-content/uploads/sites/14/2017/02/law_on_foreigners_and_international_protection.pdf)
- <sup>17</sup> Supreme Court Assembly of Civil Chambers, Decision No. 2017/3117 E., 2018/1278 K., dated 27 June 2018.
- <sup>18</sup> <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88938/101882/F1326871879/TUR88938.pdf> — English text is not available.

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