

Struggling With Domestic Violence: The Turkish Model

Dr. Mehmet ERDEM

Associate Professor

Galatasaray University, School of Law

Department of Civil Law

Istanbul-Turkey

Abstract

Domestic violence, especially violence against women and children, is an important issue in all around the World. Children and women are the victims of violence and usually there are no protective measures. It is one of the governments' main tasks to take the necessary measures to minimize domestic violence and to protect the family members against violence. This article discusses the Turkish model of fight against the domestic violence, especially focusing on the legal instruments. In the article, the Law 4320 and the Law 6284 on the protection of family and on the protection of women will be examined.

Key Words: Family, Violence, Domestic violence, Protection, Children, Woman, Turkish Law, Beijing Platform

1. In General

Violence, which is seen in all aspects of social life, reflects its most important effects and the most lasting results when committed in the family. If violence occurs within the family, the family member who is the subject of the violence, especially from one of the parents, his/her position makes the violence more severe. The effects of violence may continue for so many years, even may last for a lifetime, particularly if committed upon children (Bilgel and Orhan (2006), p. 643; Polat (2004), p. 148; Uçar (2003), p. 102). This fact is a social and psychological reality. Occurrence of violence which takes place in an institution that should be founded on love and attention naturally produces this result. Another social reality is that, individuals resorting to violence are the ones who had been exposed to violence and/or witnessed the violence in their childhood (Bilgel and Orhan (2006), p. 643).

Even though the act of domestic violence constitutes a crime in terms of penal code or grounds for a divorce in terms of the Civil Code, it is not always possible for victims to apply these expedients. Sometimes various causes create obstacles to use these rights (Doğan (2006), p. 3395). Especially in Turkish social structure, the position of the family and the economic dependence of the women to the husband creates a significant obstacle against enjoyment of these rights.

Another reason for not having recourse for the measures to be taken in terms of civil law or penal provisions is that the spouse subjected to violence doesn't comprehend the violence exactly and/or even justify it (Aktaş (2006), p. 46). Moreover, the belief of reacting to violence would increase the violence, the traditional moral conceptions, the spouse's family's not supporting the women or evaluating the situation as an ordinary one, results in bearing with the violence as much as possible (According to 'The Causes and Consequences of Domestic Violence' (1994) Survey of Family Research Council (Turkey) 80% of those exposed to violence, believe that there is nothing much to do). Also the belief that the violence is deserved is a reason which avoids the prevention of violence. Likewise, whenever the violence would happen in rare intervals it would even be ignored.

The fact that the violence is taking place for the first time doesn't mean that it doesn't exist. Moreover it is difficult to predict whether the violence will continue or not. However, to remain unresponsive to the first act of violence against the violent family member (usually the spouse) is one of the main reasons for the continuation of the violence. In most cases, the individual who is exposed to acts of violence for the first time, remains motionless and speechless and doesn't know how to react. Such a silence causes the continuation of the violence.

While violence is seen more often in families with lower levels of education, contrary to popular belief, it is extremely high within families with higher level of education as well (Uçar (2003), p. 87). It is also known that the women exposed to violence in families with higher level of education hides the situation more, ignores this situation ashamedly due to her social and economic position, or doesn't notify this to at least people around her or an authority who can provide protection for her.

Domestic violence leaves deep scars on the individuals subject to violence. These scars can be seen in many different ways, from a simple and temporary psychological disturbance, to suicide, even to death (Uçar (2003), p. 82). The effects of violence and the individual's inability to combat these effects, not being able to enjoy the rights granted to the individual because of variety reasons, has led, especially in western societies, the family members merely, to make regulations to prevent violence occurring in the family.

In fact, there exists a provision for the protection of the unity of marriage in the second part of the Turkish Civil Code, untitled General Provisions of Marriage, which is with respect to Family Law. The nature of this regulation and the cases that the protection covers are mentioned in Article 195 of the Civil Code. The relevant provision is as follows;

“In case the obligations arising from marriage unity are not complied with a dispute regarding a significant marriage-unity related issue, the spouses may request separately or together the intervention of the judge.

The judge warns spouses about their obligations, tries to reconcile them and by common consent of the spouses may request the help of experts.

The judge, if necessary, on the request of one of the spouses, takes measures stipulated by law.”

It is seen that, considering this provision and the measures to be taken regarding the preservations in sequel, this provision is brought in order to ensure the fulfillment of the obligations of the spouses arising from the marriage union. One of the measures to be taken among the same related to this protection is the suspension of cohabitation, which is stipulated in art.197 of the Civil Code. However, even for the application of this sole and insufficient provision, one of the spouses, the spouse that is exposed to violence, must make such request. Yet, in the presence of domestic violence, when the abused spouse justify the violence or admits the violence as right or finds the exposure to this situation shameful, combined with the traditional perceptions and economic concerns, it hampers her/his to ask for the intervention of the judge. For this reason, it is a fact that the provisions in question, which are to be applied in the case of domestic violence as well, cannot and will not be able to provide the requested protection.

Due to the reasons explained above, when domestic violence is involved, there is need to protect individuals against violence even without the individuals' requests who are the subjects of the violence. Even though, it is not possible to completely eliminate the violence, which is peculiar to human and exists since the beginning of the human existence, it is one of the governments' main tasks to take the necessary measures to minimize it and especially to protect the family members against domestic violence. States, that are aware of this task, especially in the last 30 years, have begun to take several steps down the road (Constituting the most important part of domestic violence, domestic violence against women is mentioned for the first time in 1995 as a prior challenge in the international arena at The Fourth World Conference on Women. Beijing Platform for Action proposals which are accepted at this conference have been adopted by 189 countries, including Turkey.). The Turkish legislator, taking this trend into account, also enacted on January 14, 1998, the Law 4320 on the Protection of the Family to prevent domestic violence.

In spite of this regulation, which is necessary and appropriate for the fight against domestic violence, it would be a highly optimistic approach to think that domestic violence can be prevented only by a statutory regulation. The data related to the application of the law and to the domestic violence have also shown that this approach is not realistic. According to the data provided by the Turkish National Police, 2 deaths, 2836 injuries occurred out of 4586 cases in 2001, 4 deaths, 3150 injuries out of 5142 cases in 2002, 2 deaths, 3529 injuries out of 5682 cases in 2003, 5 deaths, 3548 injuries out of 5284 cases in 2004, as a result of domestic violence. Still, in addition to this, it is undeniable that the Law 4320, even if partially, fulfills certain functions and it is one of the cornerstones of the fight against the domestic violence.

But the insufficiency of the first version of the law has led the Turkish legislator to make a variety of amendments. The first of these amendments took place in 2007 and the scope of the victims of the violence was expanded from the spouse to other family members.

The most important amendment took place in March 2012 and the scope of the application of the law was expanded. In the first article of the “Law on the Protection of the Family and the Prevention of the Violence Against Women” dated 2012 and numbered 6284, the aim of the Law was expressed as the protection of the women, children, family members who are exposed to or under threat of violence and one-sided persistent follower victims, and determination of methods and principles regarding precautions to be taken to prevent the violence against mentioned people above.

Likewise, some basic principles are mentioned in the second part of the same article. According the provision in question the following basic principles shall be pursued for the implementation of the law and the provision of the necessary services:

- i. The ‘Constitution of the Republic of Turkey’, international conventions to which Turkey is a party of, in particular “Council of Europe Convention on Preventing and Combating of Violence against Women and Domestic Violence” and other legal regulations shall prevail.
- ii. In the provision of services and support to be given to the violence victims, a procedure based on fundamental human rights, sensitive to human equality, in accordance with the social state tenet, fair, effective and expeditious shall be followed.
- iii. Preliminary injunctions granted for the victim of violence and the person resorting to violence as well, shall be implemented, in a way compliant with human dignity.
- iv. Under this law, special measures preventing gender-based violence against women and those protecting women against gender-based violence shall not be interpreted as discrimination.

VIOLENCE is defined in Article 2 of the Law, expressively as all kinds of physical, sexual, psychological, verbal or economical attitudes and behaviors that occur in society, public or private areas including the acts resulting in getting the person harmed physically, sexually, psychologically or economically or resulting in suffering or the acts resulting possibly in suffer, threat and pressure for this or the acts that hinders the freedom arbitrarily.

DOMESTIC VIOLENCE (Art 2.) is defined as all kinds of physical, sexual, psychological or economical violence occurred among the victim of violence, person who commits the violence and people in the family or at home deemed as the family member, even though these persons do not occupy the same home.

VIOLENCE DIRECTED TO THE WOMEN (Art 2.) is defined as all kinds of attitudes and acts which are defined as violence in this law and which are applied to women just because they are women or which lead to human rights infringement of women with gender based discrimination that affects women.

INJURED PARTY OF THE VIOLENCE (Art 2.) is defined as the persons who are, directly or indirectly, exposed to the acts and behaviors described as violence in the law or those persons who are under risk of these acts or the persons who are affected by violence or those who are under risk of being affected.

VIOLENT (Art 2.) is defined as the persons who resort to acts and behaviors defined as violence in the law or those persons who are likely to resort those.

PRELIMINARY INJUNCTION (Art.2) is defined as, within the scope of law, the decisions which are given on request or on its own motion, on the victims and the committers, by judge or law enforcement agencies or administrative chiefs.

2. Injunctions in case of Violence

The Law, in terms of some precautions that it foresees if domestic violence occurs, authorizes the civilian authority besides the judges. For that reason, it is helpful to mention their duties separately.

2.1. Injunctions to be granted by the Judge

The Law entitles the judge to take two kinds of injunction decisions: the protective and the preventive injunctions.

2.1.1. Protective Preliminary Injunctions

The Law, in its 4th Article, authorizes the judge to apply one or more of the measures stated below or for similar measures deemed appropriate, as protective preliminary injunction.

- i) Change of the workplace.
- ii) In case the person is married, to determine a different place of domicile than from the mutual domicile.
- iii) In case the conditions stated in the Turkish Civil Code are met and on request of the person being protected, inserting the family residence enforcement in the land registry records.
- iv) In case of life jeopardy pertaining to the protected person and to prevent this jeopardy changing the identity and the other related information and documents according to Witness Protection Law Provisions, on occasion that the other precautions proved not to be sufficient and being based on the lightened consent of the related person.

2.1.2. Preventive Injunctions

The judge's power on taking preventive preliminary injunctions is stated in Article 5 of the law. According to this provision, the judge can, in relation to the people resorting to violence, decide on one or several of the below precautions or on proper- deemed measures similar to those:

- i) (For the person committing violence) not to act verbally or behaviorally in a violence threat, insult, insolence, humiliation manner against the victim of violence.
- ii) Immediate deportation of the committer out of the mutual domicile or the place where he stays and allocating the mutual domicile to the victim.
- iii) (For the person resorting to violence) not to step closer to the protected people or to the places where these persons stay or to the schools or workplaces of theirs.
- iv) If there was a personal relating verdict regarding the children before, limiting it to be realized with the presence of a companion or annulling it competely.
- v) If necessary, even if they were not exposed to violence, not to come closer to the relatives, deponents of the protected person and, without prejudice of personal relating situations, to her children.
- vi) (For the violent) not to damage to the protected person's personal property and household goods.
- vii) (For the violent) Not to disturb the protected person by means of any communication instrument or other ways.
- viii) (For the violent) to hand over the weapons that he is legally entitled to posses or carry to the authorities.
- ix) Even he performs a public duty that requires the carrying of a gun, to return this gun to the relevant employing institution.
- x) (For the violent) not to use alcohol or drugs or stimulant substances where the protected persons are or not to approach these people or the places wherever they are, whenever he is in the influence of these substances. In case of addiction, examination and treatment should be provided including hospitalization.
- xi) (For the violent) application to a health facility for examination or treatment, and provision of the treatment.

2.2. Injunctions to be taken by Civilian Authority

As we mentioned above, the Law not only entitled the judge to grant preliminary injunctions, but also entitled the administrative chiefs with respect to some injunctions as well. According to Article 3 of the Law, the administrative chief can decide for one or more of the injunctions below or similar ones deemed appropriate.

- i) To provide appropriate shelter to her and if necessary her accompanying children at the place where they are situated or somewhere else.
- ii) To ensure that temporary financial assistance is provided, without prejudice to assistances to be granted under other laws.
- iii) To give guidance and counseling services in terms of psychological, vocational, legal and social scope.
- iv) If in case of a life peril, on request of the person concerned or ex officio be taken under temporary protection.

- v) If deemed necessary; four months of day care, maximum two months for those who have a job, is provided to children of the protected persons to support the person's integration into worklife; the amount which cannot exceed the half of the net minimum wage paid to those older than 16 years of age with the condition of documenting is covered from the Ministry's related budget.

3. Granting Preliminary Injunctions and Secrecy of Such Decisions

The granting of preliminary injunctions, notification and secrecy of such decisions are regulated under Article 8 of the Law. Accordingly, the injunction is given on demand of the person concerned, request of the ministry, enforcement officers or chief public prosecutor. The injunction can be requested from the nearest and easiest accessible judge, enforcement unit or the civil authority.

Injunction can be granted for a maximum of six months for the first occurrence. However, if it is understood that the commitment of violence or threat of violence will continue, on its own motion or at the request of the protected person or the ministry or the enforcement officers, the period or the shape of the measures can be changed or these measures may be decided to be removed or continued in the same manner.

To grant protective preliminary injunctions documentary evidence shall not be required regarding the commitment of violence. Preventive preliminary injunctions shall be given without delay. The granting of the injunction cannot be delayed in a way that is likely to endanger the achievement of the purpose of the law.

Injunction shall be notified in an oral or written manner to the violent and the protected person. Rejection decision shall only be notified to the protected person. In cases where delay is prejudicial, preliminary injunctions given by the relevant enforcement unit shall be immediately notified with a written report to the violent.

While the injunction decision is being notified, it should be formally notified that in case of non-compliance with the injunction decision the violent shall be forced to confinement.

If deemed necessary, with the injunction, upon request or on its own initiative, credentials or information likely to reveal the identity of the protected person and other family members, addresses and other important information regarding the effectiveness of the protection, all official records shall be kept confidential. A separate address shall be determined for delivery of notifications. The relevant provisions of the Turkish Criminal Code shall be applied to the person who discloses, describes or gives that information to another person illegally.

4. Appeal against the Preliminary Injunction Decisions

Article 9 of the Law regulates the Appeal against the injunction decision to be rendered. Accordingly, the preliminary injunction may be appealed within two weeks following the notification of the injunction. Following the appeal against the preliminary injunction decision rendered by the judge, if there is more than one family court in that place, the file is sent to the following chamber and in case of last chamber to the first one and in case there is only one family court then it is sent to the court of first instance, in the event the judge of first instance court is the same judge with the family court then the file is sent without delay to the nearest court of first instance.

5. Notification of Preliminary Injunction and Implementation

According to the Article 9 of the Law, injunctions granted, shall be notified to the relevant departments of the ministry and, according to the nature of the decision, to the Chief Public Prosecutor's Office or law-enforcement by fastest means. Applications to the relevant authorities and the decisions regarding the acceptance or rejection of the applications, shall be notified to the relevant ministry units immediately by the applied authority.

Regarding the fulfillment of the protective preliminary injunction related to person taken under temporary protection and preventive preliminary injunction for the committer, law enforcement unit is authorized and responsible where the injunctions will be applied or where the protected person or the violent resides on whom the preventive or protective preliminary injunctions are granted.

Given that the preliminary injunction is granted and implemented by law enforcement officer or in case of the protected person being present in the law enforcement, the person is immediately transmitted to the relevant units of the ministry. If it is not possible, he and his entourage are provided with temporary shelter, provided that expenses to be covered by the ministry budget.

If the measures could not be notified to persons concerned this does not preclude the application of the decision.

The persons to whom shelter will be provided as per the decision shall be located to the places that are under the supervision of the ministry or belongs to the ministry. In cases the shelters are inadequate, the persons subject to the protection can be accommodated temporarily at social facilities of public institutions and organizations, dorms and other similar places, on request of the administrative chief, in urgent situations on request of law enforcement agency or the ministry.

Injunction pertaining to changing the workplace shall be carried out by the competent authority or person, according to the provisions of the relevant legislation that the person is subjected to.

6. Violation of the Preliminary Injunctions

If the violent violates the injunction decision and even if his act constitutes another crime, according to the nature of the injunction violated and to the severity of the disparity, the violent shall be subject from three days to ten days coercion confinement based on a judicial decision.

In each recurrence of the violation of the preliminary injunction, the duration of the coercion confinement is from up to fifteen to thirty days according to the nature of the violated injunction and severity of the violation. However, the total duration of the coercion confinement cannot exceed six months.

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