



## The Turkish authorities failed to carry out an effective investigation into allegations of rape and sexual assault of a minor by her step-father

In today's **Chamber** judgment<sup>1</sup> in the case of [G.U. v. Turkey](#) (application no. 16143/10) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned a complaint by a young woman (G.U.), a minor at the relevant time, alleging that she had been raped and sexually assaulted by her step-father (M.S.), then aged 62.

Without expressing an opinion on the step-father's guilt, the Court found in particular that the competent authorities failed to explore the available possibilities for establishing all the surrounding circumstances, and did not taken into consideration G.U.'s particular vulnerability and the special psychological factors involved in the rape of minors committed in a family setting.

### Principal facts

The applicant, G.U., is a Turkish national who was born in 1984 and lives in Istanbul (Turkey).

On 9 October 2002 G.U. presented herself at a police station, alleging that she had been raped by her step-father (M.S.) at gunpoint. G.U. was examined in hospital on the same day. The examination revealed that her hymen had been torn some time previously but that it was impossible to determine when, and that there was no physical trace of rape. Two police officers took a statement from her. She explained to them that she had been forced to have sexual relations with her step-father on three or four occasions when her mother and sister were absent, and alleged that she had been pinched by him on the leg a year previously, in the presence of her mother.

On 18 October 2002 the public prosecutor indicted M.S. for indecent assault, rape and false imprisonment. The first hearing was held on 18 November 2002 before the Izmir Assize Court, which granted the request to join the proceedings as a civil party, made by G.U.'s lawyer; G.U. gave evidence in open court, as the Assize Court had not replied to a request that the proceedings be held in private. M.S. denied the charges, explaining that he had suffered from impotence for about a year.

On 27 December 2006 the Assize Court acquitted M.S. on the basis, in particular, of various medical reports, and considered that he had been impotent at the time of the alleged events and could not therefore have committed the offences with which he was charged. The Court of Cassation upheld that judgment, noting also that the offence of indecent assault had become time-barred.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment/lack of an effective investigation), G.U. complained of the lack of an effective procedure. Under Article 6 (right to a fair hearing), she alleged that the criminal proceedings before the Assize Court had been unfair. Under Article 8 (right to respect for private and family life), G.U. alleged that she had been the victim of a crime that had remained unpunished, and criticised the facts that she was obliged to give evidence in open court and that the report by the Institute of Forensic Medicine suggested that she might have consented to the acts of which she complained. The Court decided to examine these complaints solely under Articles 3 and 8 of the Convention.

The application was lodged with the European Court of Human Rights on 5 March 2010.

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

Julia Laffranque (Estonia), *President*,  
İşıl Karakaş (Turkey),  
Paul Lemmens (Belgium),  
Valeriu Grițco (the Republic of Moldova),  
Ksenija Turković (Croatia),  
Stéphanie Mourou-Vikström (Monaco),  
Georges Ravarani (Luxembourg),

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### [Articles 3 \(prohibition of inhuman or degrading treatment/lack of an effective investigation\) and 8 \(right to respect for private and family life\)](#)

The Court held that it was required to examine whether the State had fulfilled its obligation, under Articles 3 and 8 of the Convention, to ensure an effective investigation and procedure.

First, the Court considered that in the absence of direct proof, the domestic courts ought to have conducted a rigorous assessment of the credibility of the victim's statements. It noted, however, that during the only hearing at which G.U. found herself in the presence of her alleged assailant, the judges had merely taken statements from the protagonists, without seeking to confront their statements; nor did a face-to-face confrontation seem to have been organised in the course of the investigation. Furthermore, the Assize Court had not believed G.U.'s account, without providing any explanations for that conclusion, and had merely considered that her statements were neither sincere nor convincing. However, G.U.'s account had not been different on the two occasions when she was questioned. Moreover, the authorities had not taken any steps to question her in circumstances that would have been propitious to a more detailed account: during the investigation, G.U., then a minor, had been questioned by two male police officers; during the trial, G.U., who was still a minor, had been heard in open court, as the Assize Court had not replied to her lawyer's request that the case be heard in private. The Court consequently drew attention to the traumatic nature of a public hearing for G.U. and the fact that questioning her in a public hearing was likely to undermine her dignity and her private life, and observed that she was not supported by a female psychologist at any stage in the procedure. Indeed, neither the investigating authorities nor the courts seemed to have taken into consideration G.U.'s particular vulnerability, as a minor, nor the special psychological factors involved in the rape of minors committed in a family setting, elements that could have explained the victim's reluctance both to report the violence and to recount the events. The judges who assessed the credibility of G.U.'s statements had never seen her, since they

had not been present when she was questioned at the hearing of 18 November 2002, as the composition of the Assize Court bench was completely different.

The Court then noted that the physical build of the step-father and G.U. had been one of the arguments used to reject the rape allegations, although the Criminal Code in force at the relevant time did not contain a requirement that a rape victim had to have put up physical resistance. The Assize Court had thus asked the Institute of Forensic Medicine to investigate whether, given G.U.'s build, the accused had been capable of raping her by force, a request to which no reply was provided by the Institute. Then, in the operative provisions, the Assize Court referred to the physical build of the defendant and the victim in finding the step-father not guilty. In the Court's opinion, the question posed by the Assize Court to the Institute of Forensic Medicine and the reference to physical build in the operative provisions showed that that court wished to substantiate its demonstration of the step-father's lack of guilt by relying on concepts to which the law made no reference and which ignored the "state of shock" which could accompany certain acts of sexual violence and explain the victim's lack of reaction.

Furthermore, in acquitting M.S., the Assize Court had given decisive weight to the medical report finding that he suffered from impotence. On the basis of tests carried out several years after the offences with which he was charged, the Assize Court accepted that M.S. had been impotent at the relevant time. The objections submitted by G.U.'s lawyer in respect of the medical report and his requests for clarification were dismissed, although this report was an essential element in the process that had led to the judges' conclusion. Nor had the Assize Court given credence to the statements by G.U.'s mother concerning her husband's sexual capacity. The fact of concluding that the defendant was impotent had led the judges to dismiss the rape allegations automatically, since, under the law as it stood and was applied at the relevant time, rape could only be committed using the male sexual organ. Moreover, the Assize Court had examined solely the charge of rape and had completely failed to consider the alleged indecent assault, although M.S. was also being prosecuted on that charge. Under domestic law and practice at the relevant time, while impotence could be a decisive factor for the offence of rape, this was by no means the case for the charge of indecent assault. However, the Assize Court had made no effort to establish whether M.S.'s conduct could have amounted to the offence of indecent assault. In addition, no psychological reports were carried out on the step-father in order to identify any perverse tendencies, and no psychological report was ordered on the nature of the relationship between G.U. and her alleged assailant. Thus, the competent authorities had failed to explore the available possibilities for establishing all the surrounding circumstances.

Lastly, there had been considerable delays in the proceedings: although the Assize Court had ordered tests on the defendant's sexual capacity as early as the first hearing, more than four years passed before these were conducted; the appeal to the Court of Cassation had taken about four and a half years to be decided, and this had led to the charge of indecent assault becoming time-barred.

Without expressing an opinion on M.S.'s guilt, the Court considered that the investigation carried out in the case, and particularly the approach taken by the Assize Court, were not such as satisfy the requirements inherent in the obligations appertaining to the State with regard to the enactment of criminal-law provisions and their effective application. In consequence, it held that there had been violations of Articles 3 and 8 of the Convention.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Turkey was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage, and EUR 2,000 in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.