

The Status of Women in Türkiye and Legal and Criminal Regulations for the Protection of Women*

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Abstract

Since the dawn of humanity, with few exceptions, almost all cultures and civilisations have exhibited a perspective that regards men as superior and women as inferior. However, in the Qur'an, Allah swears by the creation of both men and women, thereby attributing value to both. If men and women were not equally dignified as His servants, Allah would not have sworn by their creation. According to the Qur'an, the creation of women is not different from that of men; both were created from the same "nafs" (essence). The distinction between men and women lies in their abilities and roles. In Türkiye, legal and institutional mechanisms developed to combat violence against women and to protect the institution of the family are primarily addressed within the framework of Law No. 6284 on the Protection of the Family and Prevention of Violence Against Women. Crimes committed against women are regulated under the Turkish Penal Code, a general legislative instrument. Within the systematic structure of the Turkish Penal Code, the type of crime, the manner in which it is committed, its nature, and the identity of the victim are all considered in determining the basic and aggravated forms of penalties. The Code also provides for increased penalties in cases where crimes are committed against women. There are specific provisions for aggravated penalties in cases of intentional injury of women, torture and ill-treatment against women, and crimes against sexual inviolability when the victim is a woman. This study examines how the Court of Cassation, the highest court of appeal in Türkiye, interprets issues specific to criminal law—such as the element of premeditation, the concept of reasonable time, and the reduction of sentences due to unjust provocation—in crimes committed against women. The study also addresses practical problems arising from the interpretation of the law and offers solutions to issues observed in the case law of the Court of Cassation. Emphasis is placed on ensuring consistency in judicial decisions regarding crimes against women and on enhancing the predictability of the criminal justice system for individuals.

Keywords: Woman; Woman in Islam; Violence; Spouse; Gender Equality

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A. INTRODUCTION

It can be said that, throughout history and across various cultures and civilisations, there has generally been an attitude that regards men as superior and women as inferior ([Harman, 2001](#)). For example, among the Israelites, women were not even permitted to enter temples (Sha'rani). Similarly, the preference for male children was a characteristic common to almost all cultures. It is well known that the birth of a male child was celebrated with joyful ceremonies, whereas the birth of a female child was often regarded as a disappointment ([Schimmel, 2004](#)). In the Qur'an, Allah swears by the creation of both men and women, thereby attributing value to both (Al-Layl 92:1–3). In the sight of Allah, the creation of men and women is not different; if both genders were not equally dignified as His servants, Allah would not have sworn by their creation.

When we look at Greek mythology, Indian beliefs, and the names of deities during the pre-Islamic period of ignorance, we encounter numerous female goddesses. Humanity has often first deified what it admired or feared, but unfortunately, once it gained the power to dominate, it began to denigrate those very entities ([Güloğlu & Keloğlu, 2016](#)). Women are not only biological beings but also individuals, mothers, spouses, and citizens who serve as the pillars of the social structure. Violence against women, gender-based discrimination, and the dissolution of the family structure are structural problems that directly affect social stability. ([Kocaağalar, 2025](#))

In Türkiye, policies aimed at protecting women have become more prominent, especially since the 2000s, and the concepts of women's rights and gender equality have started to occupy an important place in public policy agendas. However, despite this progress, women continue to be exposed to various forms of physical, psychological, economic, and sexual violence, and there remain significant gaps and implementation problems within protection systems. The Law No. 6284 on the Protection of the Family and Prevention of Violence Against Women, which is among the most significant legal developments for the protection of women in Türkiye, covers not only violence against women but also children, the elderly, the disabled, and other individuals subjected to domestic violence. The most notable aspect of this law is that it allows for the rapid implementation of preventive and protective measures against individuals who are likely to perpetrate violence. In particular, the ability to issue protective orders without requiring a complaint or evidence has been considered a significant step in safeguarding victims. ([Erbuğ, 2021](#))

There are, however, numerous obstacles encountered in the implementation of Law No. 6284. Despite restraining orders being issued against perpetrators of violence, many women continue to live under threat, indicating that the system is effective only at the normative level and is not sufficiently robust in practice ([Ministry of Family and Social Services, 2023](#)). This situation highlights not only the adequacy of the law itself but also issues related to the training of public officials, the level of awareness, and the lack of institutional coordination.

At times, a perception of conflict arises between the empowerment of women's rights and the preservation of family unity. In some segments of society, the emphasis on women's individual rights is perceived as a threat that could lead to the dissolution of the family. This demonstrates the need to establish a careful balance between legal and social approaches. In reality, a healthy and sustainable family structure is only possible through relationships based on equality and free from violence. Therefore, the empowerment of women's rights does not weaken the family structure; on the contrary, it lays the foundation for healthier and stronger relationships. ([Karagöz, 2022](#))

B. METHODS

In Türkiye, women's rights are regulated by the Constitution, laws, and international treaties. With the amendment made in 2004, Article 10 of the Constitution, under the heading "Equality before the Law," was supplemented with the statement: "Women and men shall have equal rights. The State is obliged to ensure that this equality is realised in practice." The Law No. 6284 on the Protection of the Family and Prevention of Violence Against Women, which entered into force in 2012, encompasses regulations aimed at preventing violence not only against women but also against children, the elderly, the disabled, and other individuals subjected to domestic violence. Amendments to the Turkish Penal Code (TPC) have introduced aggravating circumstances for certain types of offences in order to prevent crimes committed against women and to ensure that perpetrators are punished with more severe sanctions. Additionally, certain situations arising from domestic relationships have been classified as qualified forms of offence.

Within the scope of this study, aggravating circumstances prescribed for offences such as intentional injury, torture and ill-treatment, and crimes against sexual inviolability committed against women are first evaluated. Subsequently, in light of the decisions of the Court of Cassation, the practical

effects, challenges, and the role of these legal provisions in combating violence against women are analysed in detail.

This study aims to provide a theoretical and practical evaluation of the aggravating circumstances that ensure protection and deterrence in crimes committed against women under Turkish criminal law, and to offer solutions to the problems encountered, particularly in the prosecution and punishment of femicides.

C. RESULTS AND DISCUSSION

1. Legal Regulations for the Protection of Women

Historically, women have often been relegated to a secondary position within social structures and have been subjected to various forms of physical, sexual, economic, and psychological violence. Ensuring the protection of women's rights has necessitated the alignment of all legislation, especially the Constitution, with the principle of gender equality. In Türkiye, the legal basis for women's rights is established through the Constitution, the Turkish Civil Code, the Turkish Penal Code, special legislative provisions, and international conventions. However, regardless of the strength of the legal framework, deficiencies in implementation, the weakness of oversight mechanisms, and the lack of societal transformation continue to threaten the safety of women. ([Erbuğ, 2021](#))

a. The Principle of Constitutional Equality and Protection

To protect women, Article 10 of the Constitution, under the heading "equality before the law," was amended to include the statement: "Women and men have equal rights. The State is obliged to ensure that this equality is realised in practice." This provision imposes on the State not only a formal but also a substantive obligation to develop policies that ensure de facto equality. Therefore, the State is required to implement affirmative action measures to compensate for gender-based disadvantages.

Article 41 of the Constitution states, "The family is the foundation of Turkish society and is based on equality between spouses." This provision guarantees the equal status of women within the family and their protection as individuals. In particular, ensuring women's economic and social security in areas such as divorce, alimony, and custody is a direct constitutional duty of the State. ([Karagöz, 2022](#))

b. The Status of Women in the Turkish Civil Code

The Turkish Civil Code (TCC) is the primary legislation that determines the legal status of women within private life and the family structure. With the enactment of Law No. 4721 in 2002, the principle of equality within marriage was strengthened, and many rights for women were redefined. The previous provision, which stated “the husband is the head of the family,” was abolished, and a joint decision-making obligation for spouses was introduced. ([TCC, 2002](#))

Article 185 of the Civil Code stipulates, “Spouses shall jointly conduct the union of marriage,” thereby establishing equality in decision-making between men and women. Article 186 regulates the right of spouses to determine the marital residence jointly, thus securing women’s rights over their living space within the home.

Reforms regarding the property regime are also significant for women’s economic security. Since 2002, the regime of participation in acquired property has been adopted as the legal property regime. This provision ensures the equal sharing of property acquired during marriage. In particular, this regulation empowers women by recognising the value of domestic labour, which is often invisible. ([Yetim, 2023](#))

2. Provisions in Criminal Law for the Protection of Women

Violence against women has persisted for centuries as a social problem at both national and international levels, beyond being merely an individual crime. In Türkiye, crimes committed against women—especially domestic violence and femicides—have become a primary focus of criminal law. In an environment where gender inequality deepens and violence against women remains a systemic issue, the protective and deterrent functions of the criminal justice system become even more prominent.

The Turkish Penal Code (TPC) has introduced aggravating circumstances for certain types of offences to prevent crimes against women and to ensure that perpetrators are punished with more severe sanctions. The legislator, taking into account the closeness and trust between the perpetrator and the victim, aims to provide stricter protection for victims and impose harsher penalties on perpetrators in cases where crimes are committed due to such relationships.

Crimes against women are not only violations of individual freedoms but also social problems that disrupt the general structure of society and have significant public repercussions. Such crimes highlight the protective and

deterrent functions of criminal law. While the TPC contains special provisions to prevent crimes against women and protect victims, it also emphasises that the perpetrator's familial or close relationship with the victim increases the gravity of the offence. (Güneş, 2024)

The protective function of criminal law secures the fundamental rights and freedoms of individuals, while its deterrent function aims to break the perpetrator's will to commit crimes. The existence of aggravating circumstances and qualified forms of offences in the TPC, specifically regarding violence against women, is a concrete reflection of these functions (Şahin, 2024). In particular, the aggravating circumstances stipulated in Articles 86 and 82 of the TPC for offences committed against a spouse or former spouse have been introduced to prevent domestic violence and femicides.

It is frequently emphasised in the literature that criminal law alone is insufficient to protect women and that it must be supplemented by special laws, such as Law No. 6284 on the Protection of the Family and Prevention of Violence Against Women (Çirak, 2017). In cases of violence, the safety of the victim must be ensured not only through criminal sanctions but also through protective measures and preventive mechanisms (Özgül, 2019). Despite all these legal measures, the perpetrator's "close relationship" with the victim remains a special aggravating factor in the TPC system for crimes committed against women.

a. Aggravating Circumstances in the Crime of Intentional Injury

a.1. Intentional Injury Committed Against Ascendants, Descendants, Spouse, Former Spouse, and Siblings

Article 86 of the Turkish Penal Code is one of the fundamental provisions protecting the bodily integrity of individuals. Intentional injury encompasses any act that violates the physical or mental health of the victim (Şahin, 2021). According to Article 86/1, "Anyone who intentionally injures another person, causing impairment of the victim's health or perception, shall be punished." However, in some instances, the perpetrator's special relationship with the victim or the victim's particular vulnerability qualifies the offence, and the law prescribes increased penalties.

Article 86/3-a, considering specific social ties between the perpetrator and the victim, provides: "If the crime of intentional injury is committed against an ascendant, descendant, spouse, former spouse, or sibling, the penalty shall be increased by half." This provision aims both to protect the "close family

bond” of the victim and to combat domestic violence as a reflection of societal values. ([Balci & Gökçen, 2015](#); [İltaş, 2022](#))

There is debate in the doctrine as to whether Article 86/3-a should be considered a qualified form of the offence or an aggravating circumstance. The prevailing view is that it constitutes an aggravating circumstance. Notably, the provision groups “ascendant, descendant, spouse, former spouse, and sibling” together. Offences committed against these individuals are considered more serious in terms of public order and the protection of the family structure. This regulation is relevant not only in cases of domestic violence but also in situations involving care obligations and hierarchical relationships. For example, intentional injury against a spouse is evaluated not only as bodily harm to the victim but also within the broader context of combating violence against women. The risk of victimisation in cases of intentional injury against a spouse or former spouse is taken into account, and this legal provision serves as a preventive mechanism against domestic violence. ([İltaş, 2022](#))

Intentional injury against a spouse is among the most common forms of domestic violence in practice. Such offences, committed within the marital union, are considered not only violations of individual rights but also breaches of public order and morality ([Balci & Gökçen, 2015](#)). The Court of Cassation carefully examines whether the marital relationship between the victim and the perpetrator is ongoing when applying Article 86/3-a. The law explicitly includes “former spouse,” and other provisions, such as Article 82/2-d, treat the concept of former spouse as an aggravating factor. Thus, in cases of intentional injury against a former spouse, the offence is directly considered a qualified form, similar to cases of intentional homicide, and serves as a mechanism to reduce the social pressure and authority of the ex-husband over the woman. ([Sahin, 2021](#))

The application of aggravating circumstances to crimes of violence against women in criminal law is particularly significant within the framework of international and national norms such as the Istanbul Convention and Law No. 6284. ([Güneş, 2024](#))

In the Turkish Civil Code, the concept of “ascendant” includes parents, grandparents, and similar relatives. In the application of Article 86/3-a, intentional injury against ascendants is subject to harsher penalties due to the perpetrator’s breach of respect and responsibility towards the victim ([İltaş, 2022](#)). “Descendant” covers the perpetrator’s children and grandchildren. Intentional injury against descendants is especially considered within the context of violence against children. The law treats intentional injury against

descendants as an aggravating circumstance, emphasising the protection of children. ([Sahin, 2021](#))

In cases of injury against siblings, it can be controversial whether simple altercations should be considered “domestic violence.” The Court of Cassation generally evaluates such cases based on the personal relationship and physical power imbalance between the parties. ([Güneş, 2024](#))

In cases involving step-parents or step-siblings, courts may interpret the law differently; in some decisions, a stepmother is considered an ascendant, while in others, judges exercise discretion based on the provisions of the Civil Code. ([Balci & Gökçen, 2015](#))

a.2. Intentional Injury of a Vulnerable Person

Article 86/3-b of the Turkish Penal Code prescribes harsher penalties for intentional injury committed by exploiting the victim’s vulnerability. According to this provision, “If the crime of intentional injury is committed against a person who is unable to defend himself or herself, the penalty shall be doubled.” This regulation takes into account the perpetrator’s physical and psychological superiority over the victim, and the victim’s vulnerability transforms the offence into a more serious crime. Vulnerability refers to situations such as old age, illness, childhood, pregnancy, disability, unconsciousness, or loss of consciousness ([Kaymaz, 2012](#)). The victim must be vulnerable “at the time of the act.” Thus, temporary states such as drunkenness or unconsciousness, as well as chronic conditions, are included. ([Sartk, 2013](#))

While Article 82/1-e considers “the victim’s inability to defend himself or herself” as a qualified form of homicide, Article 86/3-b treats it as an aggravating circumstance for intentional injury ([Yetim, 2006](#)). This provision underscores the necessity of protecting vulnerable individuals both in practice and in law. In Turkish criminal law, “vulnerability” is regarded as both a threat to human dignity and a special area of danger to the victim’s physical integrity. ([Kaymaz, 2012](#))

Judicial decisions particularly recognise the following groups as vulnerable persons: Elderly or seriously ill individuals, Pregnant women (vulnerability due to pregnancy), Children (especially young children), Victims experiencing loss of consciousness (drugged, unconscious, etc.), and Individuals unable to protect themselves due to disability.

Crimes committed against vulnerable persons are punished more severely under Article 86/3-b and in the case law of the Court of Cassation, as

they are considered to reflect a higher degree of moral culpability. Due to the “ambiguity of vulnerability criteria”, how vulnerability is assessed in concrete cases and the criteria for determining the victim’s condition are frequently discussed in the literature and case law, with courts evaluating each case on its own merits. For example, suppose an elderly victim is physically capable of self-defence under normal circumstances but is unconscious or incapacitated at the time of the incident. In that case, the perpetrator is subject to the aggravating circumstance if the victim is unable to defend themselves ([Sartık, 2013](#)). Courts distinguish between temporary vulnerability (such as unconsciousness, shock, etc.) and permanent vulnerability (disability, childhood, old age). In temporary cases, courts also inquire whether the perpetrator was aware of the victim’s condition. For instance, the Court of Cassation has applied Article 86/3-b when the perpetrator knew the victim was unconscious at the time of the offence, but not when the perpetrator was unaware of the victim’s vulnerability. ([Yetim, 2006](#))

The Court of Cassation has consistently recognised pregnant women, elderly individuals, and seriously ill persons as vulnerable. However, the situation of individuals with minor disabilities or partial self-defence capacity is examined in more detail. For example, suppose a victim with a 30% physical disability actively defends himself or herself during the incident. In that case, the aggravating penalty is not applied ([Sartık, 2013](#)), whereas if the victim is unconscious, the aggravating circumstance is applied. The concept of vulnerability has become a flexible norm in legal practice, carefully adapted to the specifics of each case.

a.3. Intentional Injury Resulting in the Miscarriage of a Pregnant Woman

Suppose an act of intentional injury is committed against a pregnant woman and causes the premature birth or miscarriage of her child. In that case, the perpetrator is sentenced to imprisonment for a term of not less than five years. The purpose of this provision is to protect both the mother and the fetus, taking into account the victim’s pregnancy.

“Miscarriage” may have different meanings in medical and legal contexts. In criminal law, miscarriage refers to the expulsion of the fetus from the womb in a manner that it cannot survive outside the womb. However, even if the baby is born healthy as a result of premature birth caused by injury, the aggravating circumstance is still applied ([Kaymaz & Bozbayındır, 2011](#)). The perpetrator’s primary act is intentional injury, but if this act harms the pregnancy and results in miscarriage, the perpetrator faces an additional penalty ([Balci & Gökçen, 2015](#)). This provision simultaneously protects two

legal interests: the bodily and reproductive rights of the expectant mother and the right to life and development of the fetus.

The fetus is not considered a separate legal subject; however, in addition to the violation of the mother's bodily integrity, the loss of the fetus is also separately punished. Whether the perpetrator was aware of the victim's pregnancy and whether the perpetrator's act directly caused the miscarriage are issues examined explicitly by the courts. The Court of Cassation has stated that this provision may be applied even if the perpetrator was unaware of the victim's pregnancy, provided that a miscarriage occurs ([Kaymaz & Bozbayındır, 2011](#)). For example, if the perpetrator pushes a woman during a simple argument and she falls and miscarries, direct intent is not required; liability is aggravated due to the result. ([Balci & Gökçen, 2015](#))

b. Aggravating Circumstances in the Crimes of Torture and ill-Treatment

b.1. Aggravating Circumstance in Cases of Torture Committed Against a Spouse or Children

Article 96 of the Turkish Penal Code (TPC) regulates the crime of torture, a distinct criminal act designed to penalise systematic and persistent mistreatment that severely threatens the physical and mental health of the victim. While Article 96(1) provides the general definition of torture, Article 96(2) prescribes a harsher penalty when the victim is the offender's spouse or child. According to Article 96(2), "If the crime of torture is committed against a spouse or child, the offender shall be sentenced to imprisonment for a term of three to eight years."

The crime of torture encompasses behaviours that systematically cause the victim to suffer physical or psychological pain. It is not a single act but a series of continuous or intensified violent acts that are punishable ([Şahin, 2019](#)). The legislator takes into account the power imbalance created by familial ties and the vulnerable position of the victim. The continuous control, pressure, or violence inflicted by the perpetrator within the family unit triggers the application of this provision ([Balci, 2023](#)). The term "child" includes both biological and adopted children, and in practice, stepchildren are also considered within this scope. The perpetrator's actions must demonstrate continuity and intensity.

There are clear distinctions between the crimes of torture, intentional injury, and ill-treatment (TPC 232). Intentional injury involves direct physical

attacks through isolated acts, while ill-treatment refers to milder, isolated acts often intended for disciplinary purposes. Torture, on the other hand, involves systematic violence and oppression to make the victim's life unbearable. For example, continuous insults, psychological pressure, and occasional physical violence against a spouse are sufficient to constitute the crime of torture.

In a decision by the 14th Criminal Chamber of the Court of Cassation (E.2020/2465, K.2020/4786), where the perpetrator systematically beat his wife, restricted her social life, and constantly threatened her, the court decided to increase the sentence by half under Article 96/2. The crime of torture against children is frequently encountered in cases of domestic abuse. In the case law of the Court of Cassation, systematic physical and psychological abuse by a parent against a child has been evaluated within the scope of Article 96/2. In the same decision, where a father subjected his 7-year-old child to prolonged physical violence and severe insults, the aggravating circumstance under Article 96/2 was applied, and the perpetrator's sentence was increased.

Acts by parents that deliberately cause illness or harm to a child are also considered within the scope of the crime of torture ([Balci, 2023](#)). While there are similarities between the crime of torture under Article 96 and the crime of torture under Article 94 (which concerns public officials), the latter applies to acts committed by public officials, whereas the former arises particularly within private relationships, especially familial ties.

b.2. Aggravating Circumstance in the Crime of Domestic ill-Treatment Committed Against a Spouse or a Child: TPC 232/2

Article 232 of the Turkish Penal Code regulates the crime of "ill-treatment," with a particular focus on domestic relationships. While Article 232/1 provides a general definition, Article 232/2 prescribes an increased penalty due to the familial relationship between the perpetrator and the victim.

The crime of ill-treatment covers acts by the perpetrator that are degrading, humiliating, and not systematic, usually consisting of isolated physical or psychological harm ([Horozgil, 2011](#)). Unlike torture, continuity or intensity is not required; a single incident or isolated act may suffice. With Article 232/2, the legislator aims to punish more severely those who commit ill-treatment against individuals with whom they have a relationship of dependency and authority, particularly spouses and children, who may be more physically and psychologically vulnerable. This provision is thus an extension of policies to combat domestic violence. Ill-treatment includes isolated acts such as minor insults, light violence, or humiliation. ([İltaş, 2022](#))

In practice, cases of ill-treatment against a spouse usually occur within the marital union or before divorce. In a decision by the 14th Criminal Chamber of the Court of Cassation (E. 2018/1741, K. 2019/4210), where a mother repeatedly shouted at her child due to poor school performance and occasionally pushed the child, the court sentenced the perpetrator under Article 232/2, applying the aggravating circumstance. The Court of Cassation requires that the ill-treatment be of a certain severity. Whether minor, isolated acts are included within this scope is at the discretion of the courts. Some acts performed “for child discipline” have been considered controversial.

The Court of Cassation states that if the perpetrator’s act harms both the victim’s bodily integrity and dignity, the penalties should be combined under the principle of “concurrence of offences.”

c. Aggravating Circumstances in Crimes Against Sexual Inviolability and Freedom

Articles 102, 103, and 109 of the Turkish Penal Code regulate crimes against sexual inviolability and personal freedom. The legislator has stipulated aggravating circumstances if these crimes are committed by the perpetrator against a spouse. According to Article 102/2, prosecution is subject to the victim’s complaint. With these provisions, the legislator has taken into account the assumption that the victim is more vulnerable within a marital or former marital relationship and has prescribed harsher penalties due to the special relationship between the perpetrator and the victim. ([Korkmaz, 2024](#))

Under Article 109/3, the crime of “deprivation of liberty” is considered a qualified form if committed against a spouse or former spouse: Article 109/3-e states, “If the crime is committed against a spouse or former spouse, the penalty shall be increased.” Here, if the victim’s freedom of movement is violated, mainly due to domestic ties, the crime is subject to a more severe penalty. ([Kahveci, 2019](#))

By considering the commission of these crimes against both current and former spouses as aggravating circumstances, the legislator has strengthened criminal protection in the fight against domestic and gender-based violence. It is recognised that domestic and sexual crimes within the family have more severe consequences for victims. What is important here is that the perpetrator abuses his emotional and social authority over the victim, whether the victim is a current or former spouse, which increases the penalty.

In the case law of the Court of Cassation, emotional or marital ties that create a power imbalance between the perpetrator and the victim are considered. The Court of Cassation pays particular attention to the existence or termination of the marital relationship in cases of sexual assault against a spouse. Especially in cases where the crime is committed against a former spouse, the application of this qualified form has become established case law. ([Korkmaz, 2024](#))

In crimes of deprivation of liberty, if the victim is detained at home or in a private place within a pattern of domestic control and coercion, the aggravating circumstance under Article 109/3-e is applied. In cases of “forced detention” against a former spouse, this provision is frequently invoked. In the case law of the Court of Cassation, the concept of “former spouse” is interpreted in light of social realities that render the victim defenceless against the perpetrator. The risk that the perpetrator may continue to exert psychological, social, or economic pressure on the victim is one of the main grounds for the aggravating circumstance. ([Korkmaz, 2024](#))

d. Aggravating Circumstances in the Crime of Intentional Homicide Committed Against a Spouse or Former Spouse under Article 82/1-d of the Turkish Penal Code

Under the Turkish Penal Code, a perpetrator who commits intentional homicide is sentenced to life imprisonment pursuant to Article 81. However, Article 82/1-d considers it a qualified form of the offence if the victim is an “ascendant, descendant, spouse, former spouse, or sibling,” and the penalty is increased from simple life imprisonment to aggravated life imprisonment. In particular, intentional homicides committed against a spouse or former spouse constitute a special area of protection in Turkish law, both in terms of safeguarding family unity and the right to life of women.

Intentional homicides committed against a spouse or former spouse are regarded as the most severe manifestation of domestic violence. If the victim had previously been threatened or subjected to violence by the perpetrator, or if the killing occurs as a continuation of such threats, Article 82/1-d is directly applied. The long-standing problem of violence against women in Türkiye is also supported by statistical data, especially in the context of femicides. Spouses or former spouses commit a significant proportion of femicides in Türkiye. The individuals who pose the greatest threat to women are often their partners,

spouses, or ex-spouses within their close circles. The risk of violence by an ex-spouse after divorce is a frequently encountered phenomenon.

With Article 82/1-d, the legislator has classified homicides committed against a spouse or former spouse as a crime that poses a greater threat to both social order and the victim's right to life, and has opted for a more deterrent sanction. Femicides should not be regarded merely as "individual crimes," but as a form of gender-based violence, and the legislator has concretised this perspective in Article 82/1-d. Due to the perpetrator's close relationship with the victim, the act of killing is considered more serious than ordinary intentional homicide, and in most femicide cases, the penalty is aggravated. In this way, the aim is to prevent acts of violence against women and, in particular, to deter the severe risk of violence that women face from their spouses or ex-spouses.

This provision makes it mandatory to provide exceptional protection for women's right to life, especially within the cycle of domestic violence and post-divorce violence. In its decision numbered 2011/24 E., 2011/124 K., the General Criminal Assembly of the Court of Cassation emphasised that the element of "committing the act against a spouse" continues even after divorce. That divorce does not end the cycle of violence, with women remaining at risk from their ex-spouses.

The purpose of Article 82/1-d is to deter femicides and to instil a sense of security in society regarding the protection of women. This provision serves not only to protect the individual victim but also the family order and public order in general. The potential of violence and homicide within or after the dissolution of marriage to threaten social peace is among the justifications for this qualified form.

d.1. The Court of Cassation's Interpretation of the Concepts of "Spouse" and "Former Spouse"

The terms "spouse" and "former spouse" in Article 82/1-d of the Turkish Penal Code are of critical importance in practice. The term "spouse" refers to a legally valid marriage established by official registration. According to the case law of the Court of Cassation, physical separation or the filing of a divorce case does not terminate the marital relationship unless the divorce is finalised. In practice, "former spouse" refers to acts committed by the perpetrator against the ex-spouse after the legal termination of the marriage. The legislator, taking into account the risk of continued violence after divorce and the fact that a significant portion of femicides occur post-divorce, has extended this protection

as a societal safeguard. The Court of Cassation emphasises that *de facto* separation does not terminate the status of “spouse”; what matters is the legal divorce decision.

d.2. The Court of Cassation’s Approach in Practice

The crime of premeditated homicide is regulated under Article 82/1-a of the Turkish Penal Code. According to this article, if the act of killing is committed in a planned manner, it constitutes a qualified form of intentional homicide, and the perpetrator is sentenced to aggravated life imprisonment.

Premeditation means that the perpetrator plans the crime, makes the decision to commit the crime, reflects on it for a reasonable period, and maintains composure throughout the process. The Court of Cassation defines premeditation as the perpetrator deciding to commit the crime not impulsively or in a moment of emotional outburst, but after careful consideration and deliberation. According to the General Criminal Assembly, premeditation requires a reasonable period between the decision and the act, during which the perpetrator maintains composure and does not abandon the decision, ultimately carrying out the act in a deliberate and planned manner ([CGK, 2011/24 E., 2011/124 K.](#)).

Intentional homicide committed against a spouse or former spouse under Article 82/1-d is already a qualified form. However, in practice, the Court of Cassation applies both Article 82/1-a (premeditation) and Article 82/1-d (spouse/former spouse) together, treating the case as a double qualified form. For example, if the perpetrator plans (such as obtaining a weapon, luring the victim to a specific location, etc.), maintains composure throughout the planning and execution, and kills the spouse or former spouse after a reasonable period, both qualified forms are applied. In femicide cases, the Court of Cassation also considers factors such as the perpetrator’s history of domestic violence, threats, and the divorce process to determine the existence of premeditation.

In the case numbered 2009/200 E., 2009/290 K., the perpetrator threatened his ex-wife and killed her 12 days later, with the Court ruling that premeditation was present. In another decision (1st Criminal Chamber, 2017/3031 E., 2019/2999 K.), the perpetrator followed his ex-wife for five days, lured her to a meeting under pretences, and killed her, with the Court accepting the existence of premeditation. Conversely, in cases where the killing occurred during a sudden quarrel or emotional outburst, the Court has ruled that premeditation was not present.

There is no fixed time limit for what constitutes a “reasonable period.” Depending on the circumstances, a few hours, days, or weeks may be considered reasonable. The Court of Cassation requires that the perpetrator not abandon the intention to commit the crime during this period and maintain composure. In the decision numbered 2020/2364 E., 2020/2239 K., the perpetrator waited for his ex-wife in front of her house and killed her in a planned manner, with the Court accepting the existence of premeditation.

d.3. Application of Article 82/1-d in the Case Law of the Court of Cassation

The Court of Cassation interprets the qualified form broadly in cases where the “cycle of domestic violence” or “close relationship” continues even after legal divorce. In the decision numbered 2017/3635 E., 2019/4940 K., the perpetrator continued acts of violence and threats against the victim during a custody case after divorce and subsequently killed the victim. The Court considers the social impact of such acts and regards these as “the most severe form of femicide.” In post-divorce killings, Article 82/1-d becomes even more decisive, primarily when the victim had previously obtained protection orders or had a history of violence.

The Court of Cassation holds that the status of “spouse” continues as long as the marriage is legally valid, even if the marital union has de facto ended. The defence argument that “we were living separately, so the status of spouse had ended” is rejected by the Court, which maintains that the status does not end until the legal marriage is dissolved.

d.4. The Court of Cassation’s Interpretation of “Reasonable Period” and Inconsistencies

When evaluating the concept of a reasonable period, the Court of Cassation considers the time interval between the decision and the act, the perpetrator’s mental state (composure/persistence), and concrete planning activities (obtaining a weapon, following the victim, committing the crime in a prearranged setting, etc.). The case law shows that the reasonable period varies from case to case.

Theoretically, premeditation and unjust provocation are mutually exclusive. Premeditation requires the perpetrator to act with composure and planning, while unjust provocation involves the perpetrator acting impulsively due to the victim’s wrongful conduct. However, in practice, the Court of Cassation has sometimes applied a reduction for unjust provocation even when premeditation was found, especially if the victim had previously insulted the perpetrator’s personal honour. This has led to significant debate.

In some decisions, the Court has held that premeditation and unjust provocation cannot coexist, while in others, both have been applied together, resulting in a reduction of the sentence. Situations such as the perpetrator being forced into divorce by the victim's family, being constantly excluded, or being subjected to humiliating behaviour have led to the application of unjust provocation alongside premeditation. This mixed approach has resulted in a lack of consistency in the case law. Even in cases where premeditation was definitively established, some courts have applied a reduction for unjust provocation, indicating inconsistencies among different chambers and decisions of the Court of Cassation.

For example, in a case where the perpetrator, after being rejected by his legally married but long-separated spouse, began monitoring her daily life, obtained a weapon three days before the incident, followed her route home from work, and ambushed and killed her near her home, the Court found that both premeditation (Article 82/1-a) and the qualified form of killing a spouse (Article 82/1-d) were present. Similarly, in another case, the perpetrator continued to threaten his ex-wife during custody and property disputes after divorce, obtained a weapon a few days before the incident, waited for the victim in front of her apartment, and killed her, with the Court accepting the existence of premeditation.

d.5. Judgments Applying Article 82/1-d to Crimes Committed Against a Former Spouse

Article 82/1-d of the Turkish Penal Code covers not only intentional homicides committed against a current spouse but also those committed against a former spouse as a qualified form of the offence. In particular, in post-divorce homicide cases, this provision serves a broad protective function in the context of domestic violence and femicide. The continuation of violence against women after divorce is interpreted as an extension of the cycle of domestic violence between the perpetrator and the victim.

In the decision of the 1st Criminal Chamber of the Court of Cassation, 2020/2364 E., 2020/2239 K., the perpetrator continued to threaten his former spouse but did not personally commit the homicide. Instead, he incited a third party to kill the victim. The Court of Cassation held that the element of "committing the act against a former spouse" also applies to the instigator, even if the perpetrator did not personally commit the crime.

In another decision (1st Criminal Chamber, 2018/4031 E., 2019/146 K.), the perpetrator encountered his ex-wife by chance, and after a sudden argument,

killed her in a fit of rage. The Court ruled that Article 82/1-d should be directly applied as a qualified form. The case law of the Court of Cassation demonstrates that the application of the qualified form in homicides committed against a former spouse is based not only on the legal status of the perpetrator-victim relationship but also on the principles of combating domestic violence and deterrence. The Court consistently applies Article 82/1-d in such cases, taking into account the risk of post-divorce violence and the dynamics of domestic violence, even in the absence of premeditation, due to the victim's status as a "former spouse."

d.6. The Debate on Premeditation and Unjust Provocation

In criminal law theory, premeditation and unjust provocation are considered to be mutually exclusive elements. Premeditation, as defined under Article 82/1-a, requires the perpetrator to decide to commit the crime in advance, plan it with composure over a reasonable period, and then execute the plan. Unjust provocation, under Article 29, refers to the perpetrator committing the crime in a moment of anger caused by the victim's wrongful conduct.

The Court of Cassation has accepted that the perpetrator acted with premeditation. However, it has also been considered that the victim's insults during the incident had a provocative effect on the perpetrator's mental state. As a result, the court applied both Article 82/1-a (premeditation) and Article 29 (reduction for unjust provocation) concurrently. Different chambers of the Court of Cassation weigh these elements differently and may reach different conclusions in similar cases. This situation has deepened the debate on the lack of uniformity in practice, especially given the theoretical incompatibility of premeditation and provocation ([Akbulut, 2024](#)). Some academic commentators argue that the joint application of premeditation and provocation creates a double benefit for the perpetrator and is problematic in terms of criminal justice ([Akbulut, 2024](#)). On the other hand, some chambers of the Court of Cassation and local courts, citing the history of domestic violence and the psychological impact of the victim on the perpetrator, may evaluate both elements together. In practice, the Court's approach to premeditation and unjust provocation is not uniform, and decisions vary. This variation is shaped by factors such as the perpetrator's psychological state before the act and the social background of the incident.

e. Problems and Criticisms

e.1. The Issue of Consistency in the Application of Premeditation in the Case Law of the Court of Cassation

- In the decision of the 1st Criminal Chamber of the Court of Cassation, 2018/4031 E., 2019/146 K., the element of premeditation was rejected in a case where the killing occurred suddenly during an argument on the day of the incident.
- In the decision 1st Criminal Chamber, 2019/793 E., 2019/1513 K., it was ruled that premeditation did not exist because the perpetrator planned and committed the crime on the same day.

The Court of Cassation's flexible and case-based interpretation of the reasonable period and planning criteria in premeditation directly affects the nature of the penalty imposed on the perpetrator. While similar behaviours by the perpetrator are considered premeditation in some cases, in others, they are evaluated independently of this qualified form. This situation emerges as a problem that undermines the principle of predictability in the criminal justice system.

e.2. Divergent Interpretations in the Application of Article 82/1-d to Crimes Committed Against Spouses and Former Spouses

In the practice of local courts and some chambers of the Court of Cassation, de facto separation is sometimes considered a mitigating factor depending on the circumstances of the case. In some local courts, the defence of de facto separation is taken into account in favour of the perpetrator, and different assessments are made regarding the "social dimension" of the incident. However, in some cases—especially where the victim has established a new life after divorce and has no contact with the perpetrator—such defences may be effective, leading to different interpretations.

Although it is generally accepted in the practice of the Court of Cassation and local courts that the status of spouse continues until the legal divorce is finalised, in some cases, long-term de facto separation is treated as a mitigating factor; the concept of "former spouse" is interpreted differently because the victim is "living a completely independent life." Such variations in interpretation create inconsistencies within the criminal justice system and undermine legal predictability and uniformity in the application of Article 82/1-d.

e.3. Divergent Interpretations of the Unjust Provocation Reduction in the Case Law of the Court of Cassation

According to criminal law theory, premeditation (under Article 82/1-a of the Turkish Penal Code) and unjust provocation (Article 29) are inherently contradictory legal constructs. Premeditation requires the offender to plan the act and act with composure. In contrast, unjust provocation refers to a sudden emotional reaction by the offender in response to the victim's wrongful conduct. Despite this conceptual contradiction, in the practice of the Court of Cassation, both elements have occasionally been accepted together in the same case, resulting in sentence aggravation due to premeditation while also granting a sentence reduction due to unjust provocation.

There is no consistent jurisprudence in how the Court of Cassation handles the concurrent application of these two elements. In some cases, provocation by the victim is acknowledged and results in a reduction of sentence even when premeditation is established. In similar cases, however, the offender's calculated actions and composure have led to the rejection of the provocation defence. This contradiction leads to disparities in sentencing for similar actions and gives rise to the following issues: In some cases, an offender who displays similar conduct may benefit from both premeditation and unjust provocation being applied, whereas in another case, the same behavior results in a heavier sentence solely due to premeditation; Judicial decisions fluctuate based on the social dynamics of the case and the psychological influence of the victim on the offender.

This inconsistency undermines the principles of predictability and equality that form the foundation of criminal justice. In classical criminal law doctrine, the simultaneous application of premeditation and unjust provocation is generally deemed incompatible: premeditation signifies prolonged planning and resoluteness before committing the act, whereas provocation is a defence grounded in a sudden emotional reaction. Nevertheless, the Court of Cassation often adopts a flexible stance, considering the social realities of the case and the psychological impact of the victim's actions on the perpetrator. Some academic commentaries argue that this flexibility grants offenders a dual advantage, thereby weakening the deterrent function of criminal justice and potentially compromising fairness in sentencing. ([Soyaslan, 2024](#))

e.4. General Legal Assessment and Consequences in Criminal Justice

The divergent case law of the Court of Cassation regarding premeditation, Article 82/1-d, and unjust provocation creates problems of foreseeability and consistency within the criminal justice system. Such differences in decisions create severe imbalances that directly affect the amount of punishment imposed on the perpetrator. Especially in femicide cases committed against a spouse or former spouse, there are significant discrepancies between the decisions of the Court of Cassation and local courts in terms of criminal justice. In one case, the perpetrator may receive aggravated life imprisonment solely due to premeditation. In contrast, in another, the perpetrator may receive a reduced sentence due to unjust provocation, even if premeditation is accepted. Similarly, in homicides committed against a former spouse, a perpetrator may receive a harsher sentence for incitement in one case. At the same time, in another, a different decision may be made by considering *de facto* separation after divorce. Such variability particularly undermines the standardisation of legal protection in crimes committed against women.

The fundamental principles of the criminal justice system require that crimes and penalties be based on clear and precise rules, and that individuals should be able to foresee the legal consequences of their actions. Similar acts should be evaluated similarly, and penalties should be proportionate to the gravity of the act. These differences in interpretation in practice, especially in terms of foreseeability and equality, undermine the balance of the system. The imposition of variable sentences for the same act also casts a shadow over the deterrent and just functions of criminal justice.

The following recommendations are prominent for solving the identified problems: The Court of Cassation should ensure consistency in its case law and issue guiding decisions on critical issues such as premeditation and unjust provocation. Clear criteria should be established regarding the conditions under which premeditation and unjust provocation can be applied together. The concepts of spouse and former spouse should be interpreted in all courts in line with the principle of the “continuation of the cycle of domestic violence,” thereby providing broader protection. Especially in femicide cases, a standardized approach should be adopted that takes into account the social and legal dynamics of the perpetrator-victim relationship.

The inconsistency between the decisions of the Court of Cassation and local courts regarding premeditation, Article 82/1-d, and unjust provocation undermines the reliability of the criminal justice system, jeopardises legal

security for both victims' families and defendants, and negatively affects the perception of social justice.

D. CONCLUSION

In the Qur'ân, no essential distinction is made between men and women in terms of the fundamental rights and responsibilities bestowed upon human beings. However, it is essential to acknowledge that certain specific rights and duties assigned to men and women differ in accordance with their physiological structures, primarily within the context of sustaining life in this world. Ultimately, in the sight of God, the most honoured of you is the most righteous (Qur'ân, al-Ḥujurât 49:13).

Aggravating factors for crimes committed against women are designed as significant instruments in criminal law to reinforce victim protection. These provisions, scattered across various articles of the Turkish Penal Code (TPC), aim to provide exceptional protection for women, particularly in the face of systematic violence and threats encountered in social life, including domestic violence. In circumstances involving familial ties, the relationship between the perpetrator and the victim serves as a basis for enhanced sentencing.

Articles TPC 86/3-a and TPC 86/3-b qualify intentional injury as an aggravated offence when the victim is a spouse or is unable to resist the offence. In domestic violence cases, the fact that the victim is the spouse elevates the offence beyond simple bodily harm. The Court of Cassation tends to interpret these provisions broadly in favour of enhanced protection of female victims.

Articles TPC 96/2 and TPC 232/2 introduce specific aggravating factors for acts of torture and maltreatment against spouses or children. The frequency of such acts being committed by spouses or former spouses underscores the practical relevance of these provisions. In crimes of torture, family ties are considered aggravating elements.

A similar protective stance is taken in offences involving sexual integrity. The victim's vulnerability, the closeness of the relationship between the perpetrator and the victim, or the victim's domestic status are acknowledged as aggravating factors. The Court of Cassation consistently applies the qualified forms of such offences when the victim is the spouse or former spouse. Article TPC 82/1-d renders intentional homicide committed against a spouse or former spouse a qualified offence, punishable by aggravated life imprisonment. The Court of Cassation systematically applies this provision in cases where the

crime occurs within a cycle of domestic violence or after the continuation of threats post-divorce. In cases of femicide, it is observed that the terms "spouse" and "former spouse" are interpreted broadly, with victim protection being the paramount objective.

Judicial decisions show that the legal status of the relationship (i.e., officially married or divorced) significantly influences sentencing. The fact that the perpetrator and victim were living separately or had divorced does not preclude the application of Article 82/1-d. Instead, the Court affirms the victim's ongoing status as "spouse" or "former spouse" and applies the qualified provision. The perpetrator's history of violence or threatening behaviour is likewise treated as an aggravating factor, indicating a broad protective rationale in favour of the victim.

The Court of Cassation often applies both Article 82/1-a (premeditation) and 82/1-d (spouse/former spouse victim) together. When the perpetrator acts with premeditation over a reasonable period and carries out the offence with composure, this is accepted as premeditation and leads to a more severe penalty. Evidence such as planning, stalking the victim, or preparing for the crime is viewed as proof of premeditation, and such reasoning is also applied in homicide cases involving former spouses. Although the Court generally adopts a victim-centred and protective approach, it lacks consistency in the application of premeditation and unjust provocation. In some similar cases, both elements were applied together; in others, only premeditation was recognised, and provocation was rejected. This inconsistency points to a lack of jurisprudential uniformity among the various criminal chambers and local courts.

The Court's divergent interpretations regarding what constitutes "reasonable time" and sufficient planning for premeditation contribute to a predictability problem. While several days are deemed sufficient in some decisions, similar durations are rejected in others, undermining legal certainty. From the standpoint of the principles of legality and foreseeability in criminal law, this creates grounds for criticism. Although the Court of Cassation tends to apply Article 82/1-d in crimes committed against spouses who are legally married but living separately, some lower court decisions treat *de facto* separation as a mitigating factor. Similarly, while the Court adopts a broader and more protective interpretation in crimes involving former spouses, local courts sometimes reach divergent conclusions.

Despite the theoretical opposition between premeditation and unjust provocation, the Court has occasionally applied both elements concurrently. When the perpetrator acts deliberately and calmly, the acceptance of unjust

provocation—especially from the victim’s family’s perspective—can be seen as undermining the perception of justice. Therefore, a uniform standard of interpretation must be established for all courts. A unified jurisprudence should be developed by the Court of Cassation’s Criminal General Assembly, providing clear sentencing guidelines on the concurrent application of premeditation and unjust provocation. Legislative measures could also define the requirements for applying Articles 82/1-d and 82/1-a, and provide a statutory definition or criteria for “reasonable time.” This would mitigate subjective interpretation risks in lower courts and strengthen the principle of foreseeability in criminal law.

For marriages that are legally ongoing despite physical separation, a clarification may be added to the statute explicitly affirming the persistence of “spouse” status. Similarly, to ensure consistent application of Article 82/1-d in crimes involving former spouses, it is recommended that this provision be unequivocally enforced with a broad protective rationale. Considering the systematic nature of domestic violence against women, further amendments introducing clearer aggravating factors and special provisions for punishing violence within the cycle of abuse are also proposed.

In theory, the aggravating provisions in the TPC regarding crimes against women reflect a protection-oriented legal framework. However, inconsistencies and divergent interpretations in Court of Cassation decisions undermine the stability and fairness of criminal justice. To remedy these issues, jurisprudential unity must be established, and the relevant legislation should be strengthened with more transparent and more precise language.

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