

Family Protection Law

Full Text of Law No. 4320

Clause 1- If a spouse or child or another member of the family living under the same roof is subject to abuse, and notification is made either by the victim or by the Public Prosecutor, in addition to the provisions of the Turkish Civil Code, taking into consideration the specific circumstances, a Justice of the Peace can pass one or more of the following rulings or take any other measures that are deemed appropriate.

The accused spouse can be ordered:

- a. Not to use violence or threatening behavior against the other spouse or children (or another member of the family living under the same roof);
- b. To leave the dwelling shared with the spouse or children if there are any and not to approach the dwelling occupied by the spouse and children or their place of work.
- c. Not to damage the property of the spouse or children (or of others living under the same roof);
- d. Not to cause distress to the spouse or children (or others living under the same roof) using means of communication;
- e. To surrender a weapon or other similar instruments to the police;
- f. Not to arrive at the shared dwelling while under the influence of alcohol or other intoxicating substances nor use such substances in the shared dwelling.

The above-mentioned measures can be applied for a period not exceeding six months and, if the accused does not abide by the rulings, s/he shall be warned that s/he is liable to arrest and confinement. The judge shall take into account the standard of living of the victim and rule on maintenance payments accordingly.

Under the first paragraph of the statute, no fee is charged for applications.

Clause 2- A copy of the protection order is entrusted to the Public Prosecutor by the court. The Public Prosecutor monitors the application of the order through the police.

In the event of the order being implemented, the police, without the need for the victim to submit a written application, will themselves conduct an investigation and transfer the documents to the Public Prosecutor within the shortest possible time.

The Public Prosecutor can file a suit at the Magistrates Court against the spouse who does not abide by the order. The location of the case and the avoidance of loss of time in its expedition are governed by Law No 3005 on the Criminal Courts.

The spouse who has not abided by the protection order can be sentenced to a prison sentence of three to six months.

Clause 3- This law comes into effect from the date on which it is promulgated.

Clause 4- The provisions of this law are implemented by the Council of Ministers.

COROLLARY TO THE CLAUSES OF THE LAW

Clause 1- The first clause of the draft provides for a member of the family who suffers abuse within the family, notification of which is either made by the victim or the Public Prosecutor, to secure one or more protective rulings, in addition to the provisions of the Turkish Civil Code. For example; if a husband arrives home under the influence of alcohol and abuses his wife and children the court can pass a ruling that he is "not to arrive home under the influence of alcohol" or, if the husband needs to be kept away from the home, it can issue more than one ruling, such as "not to approach the wife's house or workplace", "not to damage the wife's possessions", "to inform the accused spouse's superior at work or his employer" or "to forbid the accused spouse from coming to their shared home". In extraordinary circumstances the court can also pass other similar rulings in addition to those enumerated. If the Magistrate's Court considers that there is a possibility of the victim again being subject to abuse then it can pass an order immediately after the application without need for witnesses or hearing from the other side. Those who have suffered abuse are not responsible for proving to the court the possibility of being subjected to abuse. The court can issue rulings for a period of up to six months and if the accused does not abide by the court rulings s/he is warned that s/he is liable to arrest and confinement. The presiding judge can make a maintenance order so as to prevent the victim from becoming impoverished. In order to set the amount of maintenance, an expert is required to conduct an investigation and determine the standard of living of both the plaintiff and the defendant. In order for the victim not to incur any financial expense, no charge shall be made for applications to the Magistrates Court.

Clause 2- According to the second clause of the draft, a copy of the protection order shall be forwarded to the Public Prosecutor by the Magistrates Court and the responsibility for ensuring that the order is complied with shall be delegated to the police. In the event of the protection order not being complied with, the police shall conduct its own investigation, without need for the victim to submit a formal application, and forward the documents to the Public Prosecutor in the shortest possible time. The Public Prosecutor shall open a case at the Magistrates Court in the name of the state against the spouse who is not complying with the protection order. The aforementioned case shall be conducted in the manner and with the speed foreseen by the law on Criminal Courts.

At the conclusion of the trial, if the spouse who has not complied with the provisions of the protection order is guilty of another crime then s/he is liable to a prison sentence of three to six months. The passing of the prison sentence foreseen in this clause is based upon the accused being previously warned by the court of the consequences of his/her failure to abide by the protection order and the persistent endangering of the unity of the family. The aim of the setting of a six month upper limit for the prison sentence is to act as a deterrent and to ensure that the sentence does not fall within the scope of the punishments foreseen in the 119th clause of the Turkish Criminal Code.

Clause 3- The law will come into effect on its promulgation.

Clause 4- The implementation of the law is the responsibility of the competent authority.