



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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SECOND SECTION

Application no. 33480/24
Şeyda TURHAN
against Türkiye
lodged on 1 November 2024
communicated on 7 September 2026

SUBJECT MATTER OF THE CASE

The application concerns the domestic courts' refusal to grant the applicant custody of her children in the context of divorce proceedings on the basis of her alleged links with a terrorist organisation.

A. The first set of custody proceedings

The applicant and her former husband, M.Y., have two children, born in 2010 and 2015.

On 24 November 2017 the applicant brought divorce and custody proceedings against M.Y. before the family court. During those proceedings, M.Y. alleged that the applicant had failed to fulfil her responsibilities as a wife and mother due to her alleged affiliation or links (*iltisak veya irtibat*) with an armed terrorist organisation described by the Turkish authorities as the “Fetullahist Terror Organisation/Parallel State Structure” (*Fetullahçı Terör Örgütü/Paralel Devlet Yapılanması* – “FETÖ/PDY”). Several witnesses for M.Y. supported these allegations in their statements before the family court.

On 28 September 2018 a board composed of social services experts, a psychologist and a pedagogue submitted a social assessment report to the family court. They concluded that custody should be granted to the applicant,

in particular due to the children's young ages and as they have been living with their mother for the past nine months.

On 26 April 2019 an indictment was filed against the applicant on charges of membership of FETÖ/PDY. During the criminal proceedings, the same witnesses repeated their statements, and one of them claimed that the applicant had once said: "*I am raising two disciples [mürid] for FETÖ.*"

On 5 November 2019 the criminal court acquitted the applicant. The criminal court held that no weight could be attached to the witnesses' statements as they had been made by persons connected to the applicant's husband for the purpose of producing evidence against her in the context of the divorce and custody proceedings.

On 6 November 2019 the Family Court pronounced the divorce of the applicant and M.Y., and granted custody of their children to the applicant.

On 18 November 2020 the Regional Court of Appeals quashed the Family Court's decision and granted custody of the children to M.Y.. It held that, even though the applicant was acquitted of the criminal charges against her, the evidence in the criminal proceedings showed that the applicant was a "sympathiser" (*sempatizan*) of FETÖ/PDY, which would threaten the children's development.

On 27 April 2021 the Court of Cassation upheld the decision.

On 17 June 2021 the applicant lodged an individual application with the Constitutional Court, complaining that the refusal to grant her custody on the basis of abstract allegations had breached her right to respect for family life under Article 8 of the Convention.

B. The second set of custody proceedings

On 11 February 2021, while the appeal proceedings concerning the first custody decision were still pending, the applicant brought new proceedings before the family court seeking a modification of the custody arrangement.

On 10 September 2021 a psychologist submitted a social assessment report to the Family Court, concluding that custody should be granted to the applicant, particularly in view of the children's young ages and their own stated wishes.

On 4 February 2022 the Family Court rejected the applicant's request on the grounds that there was no reason to depart from the decision adopted in the initial custody proceedings.

On 20 September 2022 the Regional Court of Appeals rejected the applicant's appeal against the Family Court's decision.

On 12 October 2022 the applicant lodged an individual application with the Constitutional Court, complaining that the domestic courts had failed to provide sufficient reasoning when rejecting her request for a modification of the custody arrangement, invoking Article 6 of the Convention.

C. The decision of the Constitutional Court

On 6 March 2024 the Constitutional Court joined the applicant's individual applications and examined all her complaints under the right to respect for family life. It held, by three votes to two, that there had been no violation of Article 8 of the Convention.

D. Complaints

Relying on Article 8 of the Convention, the applicant complained that the decision to award her former husband custody of their children, based solely on the assumption that she was a sympathiser of FETÖ/PDY notwithstanding her acquittal of the relevant charges, violated her right to respect for her family life. Relying on Article 6 of the Convention, the applicant further complained that the domestic courts relied on witness statements provided by persons with whom she was in conflict.

QUESTIONS TO THE PARTIES

Has there been a violation of the applicant's right to respect for her family life, contrary to Article 8 of the Convention (compare *A and Others v. Iceland*, nos. 25133/20 and 31856/20, §§ 86-88, 15 November 2022; *Petrov and X v. Russia*, no. 23608/16, §§ 98-114, 23 October 2018; and *Vujica v. Croatia*, no. 56163/12, §§ 97-103, 8 October 2015)?

In particular, was the refusal of custody in accordance with the law and necessary in terms of Article 8 § 2? Were the reasons adduced by the domestic courts relevant and sufficient in the circumstances and did they attach paramount importance to the best interests of the children involved (see *Petrov and X*, cited above, § 98)? Was the decision-making process fair and capable of ensuring due respect for the competing interests involved (see *Petrov and X*, cited above, § 101)?