

**TURKISH CIVIL AND PENAL CODE REFORMS
FROM A GENDER PERSPECTIVE: THE SUCCESS
OF TWO NATIONWIDE CAMPAIGNS**

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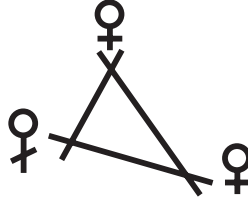


PHOTO: KARIN RONGE

MARCH 8TH DEMONSTRATION IN ISTANBUL

February, 2005

Women for Women's Human Rights (WWHR) – NEW WAYS



**TURKISH CIVIL AND PENAL CODE REFORMS FROM A GENDER PERSPECTIVE:
THE SUCCESS OF TWO NATIONWIDE CAMPAIGNS**

First edition
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An earlier version of this booklet entitled *The New Legal Status of Women in Turkey* was published by WWHR - NEW WAYS in 2002.

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PREFACE

Since 2000, major legal reforms towards gender equality have taken place in Turkey as a result of successful campaigns led by the women's movement. The new Turkish Civil Code, accepted by the Turkish Grand National Assembly in November 2001, abolished the supremacy of men in marriage and granted women with new rights.

Immediately following the Civil Code reform, Women for Women's Human Rights (WWHR) – NEW WAYS initiated the Campaign for the Reform of the Turkish Penal Code from a Gender Perspective. After a vigorous three-year campaign, on September 26th, 2004, the new Turkish Penal Code was accepted by the Turkish Parliament. Due to the success of the campaign (2002-2004), the new Turkish Penal Code includes more than thirty amendments that constitute a major step towards gender equality and protection of women's human rights, particularly sexual and bodily rights of women and girls in Turkey.

In this booklet, which is an extended and revised version of our publication *The Legal Status of Women in Turkey*, we attempt to offer a comprehensive yet concise overview of the new legal status of women in Turkey following the recent reforms. The booklet describes the key gains the new Civil and Penal Codes have brought to women's lives and provides information on the laws and regulations shaping women's lives in Turkey. The issues covered range from domestic violence to women's political participation, and from

sexual rights to women's right to economic independence. We hope that this booklet serves as a useful resource and advocacy tool for activists, researchers, scholars, feminists, and all those interested in issues of social justice and gender equality throughout the world.

While we celebrate the gains of the new Civil and Penal Codes, we are also well aware that legal changes are not enough to enable women to enjoy full human rights in their everyday lives. There are still tensions and contradictions between official laws and customary practices. Within this context, we believe that our mission to link local, national, regional, and international action for social change assumes critical importance. It is only through enhanced solidarity between women's groups that we can continue the struggle for equality. At this point, one must pay tribute to the widespread collaboration between women's groups and activists in Turkey. Over the last five years, Turkey has twice witnessed the coming together of women's groups nationwide to voice their common demands in efforts to attain their rights, despite resistance from the religious right and the nationalists in the Parliament and the prevalent conservative global atmosphere.

Women for Women's Human Rights (WWHR) - New Ways

Istanbul, February 2005

INTRODUCTION: THE REFORM OF THE TURKISH CIVIL AND PENAL CODES

The last decade has witnessed major advancements towards the realization of women's human rights in Turkey, largely due to the determined and successful advocacy efforts of the women's movement. Until the late 90's, the national legislation in Turkey contained various discriminatory provisions and an overarching patriarchal perspective, be it in civil, penal, or labor laws, despite the constitutional gender equality principal and numerous international documents Turkey is signatory to. This situation has been undergoing rapid change, however, beginning with the adoption of the law on protection orders aiming to prevent domestic violence in 1998, followed by the reform of the Civil Code in 2001, and most recently the Turkish Penal Code Reform in 2004. Through these reforms, women have attained the legal basis to exercise their human rights and lawfully demand full gender equality to a large extent. The legislative system, which previously granted men supremacy in marriage and deprived women of their civil, economic, and social rights, thereby restricting women's decision making power in the family; and which furthermore regarded women's bodies and sexuality as commodities of men, the family and society, legitimizing human rights violations like forced marriages, marital rape, honor killings etc., has been extensively changed with the Civil and Penal Code reforms, to embody principals of gender equality in accordance with global human rights norms.

None of these reforms have been easy, ready-made accomplishments for the women's movement in Turkey. Often faced with a combination of resistant conservative forces from the Parliament, government officials, and the media, women's groups had to overcome the challenge not only of finding effective and diverse strategies of advocacy, but also of making their demands heard and publicizing their agenda in a rather volatile political atmosphere. This introduction will aim to summarize the two campaigns for the Civil and Penal Code reforms, as well as to provide an outline of issues explored in this publication and an overview of further necessary measures to assure gender equality in Turkey.

THE REFORM OF THE TURKISH CIVIL CODE: A 50-YEAR STORY

The new Turkish Civil Code, which abolishes the supremacy of men in marriage and thus establishes the full equality of men and women in the family, was approved by the Turkish Parliament on November 22, 2001, and came into effect on January 1, 2002. The new Code sets the equal division of property acquired during marriage as a default property regime, assigning an economic value to women's hitherto invisible labor for the well-being of the family household. It also sets 18 as the legal minimum age for marriage for both women and men (it was previously 17 for men and 15 for women), gives the same inheritance rights to children born outside marriage as those born within marriage, and allows single parents to adopt children.

In addition, in October 2001, Article 41 of the Constitution was amended, redefining the family as an entity that is "based on equality between spouses." The new article reads: "The family is the foundation of Turkish society and is based on equality between spouses."

The old Turkish Civil Code of 1926 was translated and adapted from the Swiss Civil Code of the time and included several articles reducing women to a subordinate position in the family. For example, the husband was defined as the head of the marriage union, thus granting him the final say over the choice of domicile and children.

In the legal domain, the first effort to reform the Turkish Civil Code of 1926 to the advantage of women took place in 1951. Since 1951 there have been numerous commissions formed by the Ministry of Justice and several proposals have been drafted for a comprehensive reform of the Civil Code; but until 2001 no such reform had taken place.

In the 1960s and the 1970s, political movements with right and left-wing ideologies dominated political debates and activities in Turkey as a reaction to the extremely dominant state control which had continued since the foundation of the Turkish Republic in 1923. In this environment, women's issues were subsequently subsumed into Marxist discourses. The 1980 military coup, which was touted as the only way to put an end to the 'anarchic atmosphere' of the 1970s, suppressed all kinds of opposition by force, applied a systematic depoliticization of the masses, and implemented neo-liberalist economic policies as formulated by the IMF. In this atmosphere of repression and fear, the first new social movement which demonstrated the courage to be in opposition and articulate its demands was the feminist movement.

The impact of the new feminist movement

The rise of a new strong feminist movement after the 1980s resulted in significant gains for women and paved the way for the final enactment of the Civil Code reform. In the last two decades, the feminist movement had succeeded in achieving the annulment of Article 159 of the Civil Code, which had stated that women needed

their husbands' consent to work outside the home; the repeal by the National Assembly of Article 438 of the Criminal Code, which provided for a reduction of one-third in the punishments for rapists if the victim was a sex worker; and a new law on domestic violence enabling a survivor of domestic violence to file a court case for a "protection order" against the perpetrator of the violence.

However, at the same time, the efforts of the new feminist movement and the impact of the global women's movement which had resulted in UN treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) were countered by parallel social and political developments in Turkey such as the rise in religious-right movements and the social impact of the armed conflict between the separatist Kurdistan Workers' Party (PKK) and the Turkish Security Forces, which served to reinforce the already existing conservative, nationalistic, militaristic and traditionalist tendencies in Turkish society.

In 1984, four years after the military coup of 1980 and coinciding with the rise of the new feminist movement, the reform of the Civil Code again became an issue of public debate as the Ministry of Justice published a draft law. Several women's groups combined their strength and submitted a series of petitions to the National Assembly urging its acceptance. However, the draft law failed to make its way to the parliament despite the ratification of CEDAW in 1985 and a promise to remove reservations within a short time. With this promise, Turkey had underlined its commitment to changing the discriminatory provisions in its legislation. These commitments were reiterated in the country report presented to the UN Committee on CEDAW in 1993.

In 1994, a new commission was formed to prepare a new draft of the Civil Code. In the same year, we, as Women for Women's Human Rights (WWHR), initiated an international letter and fax campaign

demanding full equality for women in the Civil Code. Hundreds of NGOs from all over the world took part in the campaign, demonstrating their support for our demands. Turkey's commitments to CEDAW were repeated in the UN Conference on Women held in Beijing in 1995 and in the second and third combined reports to CEDAW in 1997. A new draft law was finally prepared by the commission and presented to the National Assembly in September 1998. However, due to the general elections held in April 1999, a new commission had to be formed to finalize the draft code and its enactment law. There was some speculation in the Western media that the reform of the Turkish Civil Code was a result of Turkey's EU accession process. However, Turkey was officially named as a candidate for EU accession in December 1999, after the preparation of the draft Civil Code. Thus even though Turkey's accession to the EU might have accelerated the process, it cannot be considered to be its primary driving force. Moreover, the resistance of the religious conservatives and the nationalists in the parliament, which is discussed below, took place despite the EU accession process and could only be overcome by a major campaign initiated by women's groups all over the country.

Women's groups unite for nationwide campaign

The discussion of the draft law in the Justice Commission of the National Assembly started in April 2000 and continued until June 2001. Several reforms met strong resistance from religious conservatives and nationalists in Parliament. They argued that equality between men and women would 'create anarchy and chaos in the family' and thus 'threaten the foundations of the Turkish nation.'

Thus, at the beginning of 2001, 126 women's groups from all around the country joined together to initiate a major campaign. Soon after the start of the campaign, the most controversial issue became the reform of the clause regulating matrimonial property.

The original draft of the new Civil Code foresaw that all matrimonial property should be split 50/50. The nationalists and the religious conservatives insisted on the separate property regime, which has been the rule in Turkey since 1926. They claimed that the equal sharing between spouses of property acquired during the marriage would be against Turkish traditions, change the family from a matrimonial union to a corporation, destroy love and affection in the family, and increase the rate of divorce and consequently ruin Turkish society.

As a result of the campaign initiated and coordinated by women's groups, the opposing forces had to accept the new property regime, which entitles women to an equal share of the assets accumulated throughout the duration of the marriage. However, due to a last minute law formulated by the opposition parties, this clause was deemed to be valid only for property acquired after January 1, 2002. Women's groups are still continuing their advocacy efforts for the annulment of this law.

The campaign, which was made possible by cooperation and coordination between 126 women's groups representing different sectors of society, played a key role in overcoming the resistance of the religious conservatives and the nationalists and in the ultimate realization of the reform. The campaign was successful in creating a general atmosphere where objections to equality between men and women were viewed with scorn.

A new approach to the family

The new Civil Code has taken a new approach to the family and to women's role in the family. The old legal approach, which assigned women a legislatively subordinate position in the family with rights and duties defined in respect to the husband, has been abandoned in favor of one that defines the family as a union based on equal partnership. Consequently, this new concept is also

reflected in the language of the new Code. The terms “the wife” and “the husband” are replaced by “the spouses.” Moreover, the legal language has been considerably simplified and out-of-date terminology replaced by comprehensible, modern terms, rendering the law more accessible for everyone.

The new approach to the family is reflected in several changes:

- The husband is no longer the head of the family; spouses are equal partners, jointly running the matrimonial union with equal decision-making powers;
- Spouses have equal rights over the family abode;
- Spouses have equal rights over property acquired during marriage;
- Spouses have equal representative powers;
- The concept of “illegitimate children,” which was used for children born out of wedlock, has been abolished; the custody of children born outside marriage belongs to their mothers.

CAMPAIGN FOR THE REFORM OF THE TURKISH PENAL CODE FROM A GENDER PERSPECTIVE

Immediately following the successful outcome of the Civil Code reform, in 2002, WWHR – New Ways initiated the Campaign for the Reform of the Turkish Penal Code from a Gender Perspective. Civil codes are usually considered the primary domain in which women’s human rights are regulated in national contexts, whereas penal codes are regarded as less relevant to women’s rights and gender equality. However, in reality, penal law is of crucial significance to the realization of women’s human rights and gender equality; regulating several forms of sexual crimes, one of the major forms of violence against women; and governing rights and freedoms of women

in terms of sexual, bodily, and reproductive rights. Our “Campaign on the Reform of the Turkish Penal Code from a Gender Perspective” was initiated in this context and aimed to bring a gender equality approach to the criminal law and ensure legal protection of women’s sexual, bodily, and reproductive rights.

The Turkish Penal Code was adapted from the Italian Penal Code back in 1926. Even though the law had been subject to several amendments since then, more than 50% of the law was still dated from the late 1920s and almost none of the amendments concerned women’s rights or gender equality. The complete reform of the Penal Code was repeatedly on the the Parliament’s agenda during the late 1990s, but was never pursued to the end. It was in 2002 that the 2000 Draft Law was reincluded in the government agenda, primarily in line with the EU accension process. As soon as the Penal Code Draft Law Sub-Justice Commission of the Parliament began to review the draft law, the Campaign for the Reform of the Turkish Penal Code from a Gender Perspective was launched.

At the beginning of 2002, WWHR-New Ways initiated and coordinated a national Working Group on the Reform of the Penal Code from a Gender Perspective with the participation of representatives of NGOs and bar associations, as well as academicians from various regions of Turkey. After analyzing both the Turkish Penal Code in effect and the 2000 Penal Code Draft Law, the group concluded that both the law in effect and the draft law embodied the same discriminatory, patriarchal outlook and contained numerous provisions legitimizing women’s human rights violations. Therefore, it was essential not only to focus on individual articles, such as the elimination of the article allowing for sentence reductions to perpetrators of honor crimes –which was the only issue on the public agenda– but to strive for a holistic reform, aiming to transform the entire underlying philosophy of the Penal Code, which implicitly considered women’s bodies and sexuality to be commodities of men, family,

and society; and reflected a notion that women's sexuality must necessarily be controlled and suppressed by the state.

The Working Group analyzed the draft law from this perspective and after studying penal codes from other countries, prepared its recommendations, including more than 30 amendments in the form of new articles formulated word-by-word. These recommendations and proposed articles were published as a report and sent to all MPs, NGOs and media representatives in 2002.

2002: An unexpected development, early elections, and the victory of the religious right Justice and Development Party

While the efforts of the Working Group were well underway, the three-party coalition led by the social democrats resigned unexpectedly after a political crisis in 2002, an event which was then followed by a decision for early elections. According to the Turkish Constitution, the Minister of Justice has to be replaced by an independent expert for a period of three months before a new election. A positive surprise was that a member of our Working Group, Ms. Aysel Celikel –an honored jurist and academician– was appointed as the independent Justice Minister for the pre-election period. During the brief period of her ministry, she formed a commission to revise the draft law and included members of the Working Group. In this commission, the draft law was substantially revised in accordance with women's demands. The draft law in its revised form still contained provisions contradicting the proposed amendments; however, many important alterations were made, promising a hopeful headstart for the campaign.

Immediately after the elections, our booklet containing our analysis and recommendations were sent to all MPs of the new parliament again, and we repeatedly asked for an appointment with the new Justice Minister, which he declined. As expected, the new government completely disregarded our proposals and the changes

made to the draft law by the pre-election Justice Minister. The draft law prepared by the new government foresaw reform of almost all other articles of the Penal Code other than those pertaining to women. All articles concerning women were taken verbatim from the old Turkish Penal Code, except for one. The only proposal for change concerning women was the extension of the legal abortion period from 10 to 12 weeks (which was later revoked in the Justice Sub-Commission).

The government did not consult any experts or NGO members in the process. The demands of the Working Group to obtain a copy of the draft law before it was submitted to the Parliament were ignored. In fact, we were only able to get a copy of the draft law from third parties close to the government.

The launch of a massive public campaign: 2003-2004

Faced with a dramatic backlash and government officials' persistent refusal to meet with members of the Working Group, we decided to launch a massive public campaign. The campaign was launched in May 2003 with a big press conference, at which the proposed amendments and the government's resistance to them was presented to the media. The press conference also served to expand and transform our working group into a national platform of more than 30 NGOs, including human rights and LGBT groups, who supported our demands. During 2003-2004, numerous conferences, meetings, press conferences were held in Ankara and Istanbul, as well as in smaller cities in Turkey. Platform members extensively lobbied members of the Justice Sub-Commission, the Justice Commission, EU officials, media representatives and visited the Parliament several times to voice their demands. The activities of the Justice Sub-Commission, who had the task of finalizing the draft, were followed closely on a day to day basis.

The fact that the Platform was so well prepared in advance with

the proposed amendments and employed diverse strategies, including using the media and establishing allies from the opposition party, as well as commission consultants, assisted us in having most of our demands accepted by the sub-commission.

Subsequently, while the draft law was being re-discussed in the Justice Commission, the Platform continued its advocacy efforts for the remaining demands. Major alterations had already been made in the sub-commission; however, some important demands, regarding honor crimes and virginity testing were still not included in the draft law. Moreover, with a doubled number of MPs to lobby, we had to ensure that there would be no backlashes and advocate for the remaining amendments. During the review in the Justice Commission, there was one regression: discrimination based on sexual orientation, which had been criminalized in the sub-commission due to advocacy efforts of women's and LGBT groups, was removed from the draft law due to a last minute intervention by the Minister of Justice during the Commission session. Other negative developments included new articles criminalizing consensual sexual relations of youth aged 15 -18 and the formulation of a new article on "obscenity," threatening the freedom of expression and legitimizing discrimination based on sexual orientation.

The Parliament was called for a special session in September 2004 to vote on the new Penal Code. Women throughout Turkey mobilized to lobby for the remaining demands of the platform. Our advocacy for the remaining demands were shadowed by the huge public debate caused by a last minute proposal of the Prime Minister to re-criminalize adultery (later withdrawn due to public and EU pressure). Right before the voting on the law took place, WWHR-New Ways initiated an international fax campaign to voice our remaining demands. Finally, the draft law was accepted in the Parliament on September 26th, 2004.

The gains of the campaign: More than thirty amendments

The new Turkish Penal Code contains more than thirty amendments that constitute a major step towards gender equality and protection of women's human rights in Turkey. The campaign succeeded in achieving a holistic reform to transform the philosophy and principles of the Penal Code in order to safeguard women's rights, and bodily and sexual autonomy. Below is a summary of the major amendments.

The reform of the Penal Code has transformed the philosophy of the old Penal Code by acknowledging women's right to have autonomy over their bodies and sexuality. To this end, sexual crimes are regulated as crimes against individuals/crimes against the inviolability of sexual integrity, instead of as crimes against society, family or public morality. All references to vague patriarchal constructs such as chastity, morality, shame, public customs, or decency have been eliminated and definitions of such crimes against women brought in line with global human rights norms.

The new code, which states in the first article that the aim of the law is to "protect the rights and freedoms of individuals," brings progressive definitions and higher sentences for sexual crimes; criminalizes marital rape; brings measures to prevent sentence reductions granted to perpetrators of honor killings; eliminates previously existing discrimination against non-virgin and unmarried women; criminalizes sexual harassment at the workplace and considers sexual assaults by security forces to be aggravated offences. Provisions regulating the sexual abuse of children have been amended to explicitly define sexual abuse and remove the notion of "consent of the child." Provisions legitimizing rape and abduction in cases which the perpetrator marries the victim have been abolished; the article granting sentence reduction to mothers killing the newborn children born out of wedlock is removed; and the article regu-

lating “indecent behaviour” has been amended to include only sexual intercourse in public and exhibitionism.

Remaining Demands and Backlash

Despite the overall success of our campaign, four of our demands were not accepted. These include the definition of honor crimes (not only the so-called customary crimes) as aggravated homicide; the penalization of discrimination based on sexual orientation; the criminalization of virginity testing under all circumstances; and the extension of the legal abortion period from 10 to 12 weeks.

Moreover, as explained above, during the review of the Penal Code in the Justice Commission, two new articles were added to the penal code, which constitute a backlash. One of the articles provides for the criminalization of consensual sexual relations of youth aged 15 – 18 upon complaint. The other new article criminalizes publication of obscene material thereby threatening freedom of expression and legitimizing discrimination based on sexual orientation.

FURTHER NECESSARY STEPS TOWARDS FULL GENDER EQUALITY IN TURKEY

As outlined above, the reforms of the Turkish Civil and Penal Codes constitute major accomplishments towards establishing gender equality in Turkey. Yet these have to be followed by several other reforms and measures in the legal, social, and political domains which aim at eliminating inequality between the sexes. The Labor Code was amended in 2003, introducing some improvements for women, including recognition of sexual harassment at the workplace and prohibition of dismissal on grounds of pregnancy, even though it fell short of ascertaining full equality.

Women's groups in Turkey have been advocating for a decade for the inclusion of an article on affirmative action in the Constitution. In April 2004, Article 10 of the Turkish Constitution regulating non-discrimination was amended, deeming the state responsible for establishing equality. However, despite an intensive campaign by the women's movement, the inclusion of "special temporary measures" that would pave the way for affirmative action for de facto gender equality was rejected by the government. In addition to introducing special measures for positive discrimination, the next steps should include the reform of the Citizenship Act, the Social Security Code, the Political Parties and Election Act, further amendments to the Labour Code, as well as changes in various statutes and regulations.

It is clear that the reforms and accomplishments in the legal domain are not sufficient to prevent gender discrimination and eliminate violations of women's human rights. In Turkey, women's lives continue to be shaped by several customary and religious practices that contradict existing laws, such as early and forced marriages, honor crimes, polygamous marriages, and restrictions on women's mobility. Violence against women in its various manifestations—within and outside the home—continues to be one of the most widespread violations of human rights in Turkey.

Thus there is a need for all kinds of coordinated state programs and services for women: for example, those aiming to eliminate violence against women, prevent discrimination against women in the educational and economic spheres, and increase their participation in the political domain. Despite pressure from the women's movement, the Turkish state has been extremely reluctant to allow, and has even actively resisted, the establishment of such programs. In fact, in most developing countries, including Turkey, although there has been an improvement in women's rights on paper on both national and international levels, this progress is very poorly

reflected in women's lives at the local level. A key tool, which might be useful in overcoming the state's resistance to increasing financial resources for women and developing coordinated programs aimed at gender equality, would be the inclusion of specific measures and targets in international UN documents related to women's human rights.

CONDITIONS FOR MARRIAGE

In Turkey, marriage is a registered official event which takes place within a framework set by legislation. Article 174 of the Turkish Constitution cites the principle of civil marriage as one of the fundamental Reform Laws which date back to the foundation of the Turkish Republic and makes direct reference to Article 143 of the Civil Code, which states that religious marriage ceremonies cannot be held before the civil ones. The conditions for marriage and the punishment for violations are defined by laws and regulations.

The full and free consent of the couple getting married is a basic condition for marriage. This holds both for minors and adults. In the case of minors, the permission of their legal guardians is also sought (Articles 126 and 127 of the Civil Code).

Polygamy is forbidden in Turkey. Under the Civil Code (Article 130), a person who wants to obtain authorization for remarriage must prove that his or her previous marriage has terminated. The marriage will be considered null and void if one of the spouses is already married (Article 145 of the Civil Code). Anyone whose civil status is recorded as ‘married’ in the official registers cannot remarry until this situation is corrected (Article 15 of the Marriage Regulations).

Turkish law allows only persons who are defined as ‘competent’ to get married and lays down the criteria for such competence as well as the circumstances under which people cannot get married. Conditions for marriage include both of the above and are covered by the Turkish Civil Code and Marriage Regulations. Violations of these provisions constitute a crime and are punished under the Turkish Penal Code.

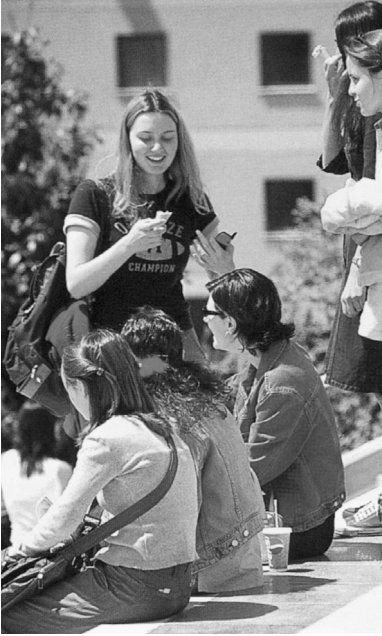


PHOTO: ERZADE ERTEM

“PROBLEMS RESULTING FROM REGIONAL DIFFERENCES IN SOCIO-ECONOMIC CONDITIONS GET WORSE AS ONE MOVES FROM WEST TO EAST. THESE HAVE A NEGATIVE IMPACT ON THE OVERALL STANDARDS OF LIVING, THE EFFECTS OF WHICH ARE EXPERIENCED MORE BY WOMEN THAN MEN.” (P. ILKKARACAN, *WOMEN AND SEXUALITY IN MUSLIM SOCIETIES*, ISTANBUL, 2000, p. 230)

There are two basic criteria for competence: age and the ability to discern.

Minimum age for marriage: According to Article 124 of the new Civil Code, men and women cannot marry before they turn 18. The new Civil Code has corrected the previous discriminatory provision, which had ruled different minimum ages for men (17) and women (15). Yet the minimum age for marriage is still below the age of simple majority (18), which is accepted as a precondition for legal competence and liability.

Under extraordinary circumstances and for very important reasons, an exception can be made and the minimum age limit can be

lowered to 16. The only person authorized to make such an exception is a judge of the Court of Peace. In making such a decision, the judge hears the opinions of the parents or the guardian whenever he or she has the opportunity.

Minors need their parents' permission to get married but if there is a complaint alleging an unjust objection on the part of the parents, the final decision is for the judge to make (Articles 126 and 128 of the Civil Code). The judge considers whether the minor in question is psychologically and physiologically mature enough to marry; pregnancy alone does not constitute a reason and justification for marriage. The girl has the right to refuse to get married even if the judge decides in favor of the marriage.

Minors who marry attain majority through marriage (Article 11 of the Civil Code).

Ability to discern: Persons who do not have the ability to discern cannot marry (Article 125 of the Civil Code). In the Marriage Regulations, having the ability to discern is defined as: "Not being deprived of the ability to act rationally and to distinguish right from wrong as a result of youth, mental disease, mental infirmity, intoxication, etc." (Article 14 of the Marriage Regulations).

Circumstances under which marriage is forbidden

Close kinship: Close relatives described in Article 129 of the Civil Code and Article 15 of the Marriage Regulations cannot marry. This closeness covers:

- The immediate family: parents cannot marry their children, brothers and sisters cannot marry each other,
- Close relatives: aunts and uncles cannot marry their nieces or nephews, ex-spouses cannot marry each other's parents or children,



PHOTO: ERZADE ERTEM

PROUD AND MORE CONFIDENT...

- An adoptee cannot marry an adopted person; an adoptee and the adopted cannot marry each other's ex-spouses or children.

Being already married: A person who wishes to remarry has to prove that his or her previous marriage has ended (Article 130 of the Civil Code). The Marriage Regulations state that a person who is recorded as married in the Population Register cannot remarry (Article 15 of the Marriage Regulations).

Enforced waiting period of three hundred days: This waiting period is foreseen under Article 132 of the Civil Code to guarantee that women are not with child from a previous marriage. Women who do not want to wait have to produce medical proof that they are not pregnant before they can remarry. These three hundred days are calculated starting from the date of the court decision terminating the previous marriage or the date of the death of the ex-husband (Article 15 of the Marriage Regulations). In our view, this stands as a discriminatory and humiliating provision which violates women's

basic human rights and freedoms with the sole aim of establishing fatherhood which, if requested by the involved parties, could easily be established through DNA tests.

Mental illness: The mentally ill cannot marry unless they obtain an official health report stating that there are no medical impediments to their marriage (Article 133 of the Civil Code). The former Civil Code stipulated affliction with a mental disease as a condition preventing authorization for marriage.

MARRIAGE: THE CIVIL CEREMONY

Article 174 of the Turkish Constitution endorses the principle of civil marriage governed by law and enacted by legally authorized officials in accordance with the procedures established by law and regulation. The Civil Code describes the procedure for application for marriage (Articles 134 and 136 of the Civil Code). The man and the woman who are going to get married jointly apply to the marriage registry office in the region where one of them is a resident. The marriage registry official is the mayor of the relevant district or a civil servant acting on his behalf. In villages, this is the village headman. This application is investigated and a decision is reached to authorize or reject the marriage (Article 137 of the Civil Code and Article 23 of the Marriage Regulations).

VALIDITY OF PRE-NUPTIAL AGREEMENTS (*MAHR*)

The pre-nuptial agreement, *mahr* in Islamic Law (an immediate or deferred endowment to the bride as a sort of social insurance for the wife in the event of divorce or widowhood), has no legal validity in the Turkish law.

The division of property in case of divorce is regulated according to the Regime Regarding the Ownership of Acquired Property as the legal property regime between spouses (Article 202 of the Civil Code).

Once legal authorization is obtained, the marriage registry official conducts the marriage ceremony. During the ceremony both the man and the woman are asked to openly declare their free will in front of the official and two witnesses, upon which they are considered married. Their marriage is registered in the marriage registry during the ceremony. Before the ceremony ends, the couple is presented with a family book (wedding certificate), which officially documents that a civil marriage ceremony has been conducted (Articles 142 and 143 of the Civil Code).

The Civil Code clearly states that a religious marriage ceremony

BRIDE PRICE: A CUSTOMARY PRACTICE

In rural areas, there is a customary practice whereby the bridegroom pays a bride price to the bride's father in recognition of the cost of raising the bride and in compensation for depriving the family of her services following her marriage. This traditional practice has no validity or place in Turkish law.

The woman can always reject the match. Whether she is an adult or legally classed as a minor, the bride price offered to her family does not oblige her to marry anyone. However, in some cases families put pressure on their daughters to accept the offer of marriage in order to acquire the bride price. Legally she has the right to resist her family's pressure. When the official carrying out

the marriage ceremony asks her if she wants to marry of her own free will, she has the right and the opportunity to refuse. If she does this, no one can make her marry.

This tradition has been dying out during the last decade. The extensive publicity given to tragic bride-price related events of past decades and the changing economic conditions have helped shape public opinion in favor of discontinuing this practice.

Even if a woman bows to pressure and is forced into marriage, she may still file to have this marriage annulled, declaring that she was coerced into matrimony (Article 151 of the Civil Code). Adults and minors alike have this right.

can only be held after the civil ceremony (Article 143 of the Civil Code), otherwise, the couple is in breach of the Penal Code (Article 230 of the Penal Code). Furthermore, if a religious ceremony is conducted without documentary proof (i.e. the family book) that the civil ceremony has already been completed in accordance with the law, the person who conducts the religious ceremony, too, is considered to have committed a crime.

The civil marriage ceremony cannot be held in places where the parties cannot freely express their will or in places of worship. Under such conditions the official postpones the ceremony (Article 26 of the Marriage Regulations).

Getting married abroad

According to the Marriage Regulations, in the case of a Turkish couple getting married in a foreign country, the competent authority is the relevant Turkish consul or ambassador (Article 10 of the Marriage Regulations). However, they may also get married before the competent authority of a foreign country. If the marriage does not contravene Turkish law, it will also be valid in Turkey. The couple has to present their marriage documents to the Turkish authorities within one month of the marriage (Article 11 of the Marriage Regulations). This requirement also applies if one of the couple is a foreign citizen.

Marriages with or between foreigners in Turkey

In Turkey, the marriage of a foreigner to a Turkish citizen, or two foreigners who are not citizens of the same state, can only be finalized by an authorized Turkish marriage registry official (Article 10 of the Marriage Regulations). The same article also stipulates that marriage between two foreigners having the same nationality may either be concluded by their countries' representatives in Turkey or by the competent Turkish authorities, if their law so permits.

THE RELIGIOUS MARRIAGE CEREMONY

A religious marriage ceremony confers no legally binding rights in Turkey. The state is not involved in these ceremonies. A woman who has only been married through a religious marriage ceremony can neither claim alimony in case of separation nor can she qualify as the legal heir to her husband's property in the event of his death.

In order to undergo a religious marriage ceremony the couple must document that the official ceremony has been conducted. Violation of this rule is considered a crime under Article 230 of the Penal Code, which stipulates that both the person who conducts such a ceremony without verifying that the official ceremony has been concluded and the couple involved will be punished.

WOMEN IN THE FAMILY: THE LEGAL FRAMEWORK

The equality of spouses within marriage is anchored in the Turkish Constitution through an amendment of Article 41 enacted in 2001. With the addition of a new phrase, the Constitution now rules that "the family is (...) based on equality between spouses." The framework for equality in the family thus being set, the new Civil Code brought about further changes in specific aspects of family life.

Decision-making power: Until the reform of the Civil Code in 2001, Turkish law designated the husband head of the family. This clause has now been removed and according to Article 186 of the new Civil Code, the spouses jointly make decisions regarding the marriage union. They contribute towards the expenditures of the union with their labor and possessions to a degree commensurate with their capabilities. This clause deletes and replaces the old principle that the husband is responsible for maintaining his wife and children.



CELEBRATING THE NEW CIVIL CODE ATTAINED THROUGH JOINT ACTION BY WOMEN'S GROUPS.

Place of residence: With the new Civil Code, spouses jointly choose where they will live (Article 186 of the Civil Code). This is a positive change from the old clause, which assigned the decision-making power concerning place of residence to the husband. Besides, the clause that the wife's place of residence is the residence of her husband has been deleted from the definition of legal domicile. Under Turkish law spouses have to live together (Article 185 of the Civil Code).

Family abode: A new provision gives spouses equal rights over all matters relating to the family home (Article 194 of the Civil Code). According to this, neither of the spouses alone can annul a rental agreement related to the family abode, transfer ownership of the family abode or limit rights related to the family abode without the explicit consent of the other. The spouse who is not the legal owner of the family abode can apply to the Land Registry to have an annotation to that effect added to the record. If the family abode has

been rented in the name of one of the spouses, the spouse who is not party to the rental agreement can become a party to the contract by means of a written statement addressed to the landlord or landlady.

Surname: A woman is free to choose either to retain and use her surname in front of her husband's surname on marriage, or to take her husband's surname (Article 187 of the Civil Code).

Representative authority: The authority to represent the union no longer rests solely with the man. Nor is he the one responsible for managing the family's savings under all circumstances. Men and women have equal rights to representation and are jointly responsible as regards third parties (Article 189 of the Civil Code). If one of the spouses abuses or displays shortcomings in using the authority to represent the union, the judge may, in response to an application from the other spouse, remove or limit this authority (Article 190 of the Civil Code).

Legal transactions: Women and men are equally entitled to engage in legal transactions with each other and with third parties (Article 193 of the Civil Code).

Work: After the women's movement's success in gaining the 1990 repeal of the article obliging women to obtain permission from their husbands to work outside their homes, no replacement law was passed until the new Civil Code. Article 192 of the new Civil Code, in its first clause, makes a clear statement that neither of the spouses is obliged to seek permission from the other regarding his or her choice of work or profession. However, a second clause added to the same article makes a vague statement to the effect that "the harmony and welfare of the marriage union should be borne in mind when choosing and performing a job or profession." Women's groups throughout Turkey are concerned that violations of women's right to work outside the home may be legitimized through

arguments revolving around “the harmony and welfare of the marriage union.”

Travel: A married woman may travel abroad whenever she wants. All she needs is her passport. Legally, she is not required to seek permission from anyone to travel in the country or abroad.

Resolving disagreements: In the case of a disagreement over an issue of importance to the marriage union or failure on the part of one of the spouses to fulfill his or her matrimonial obligations, the spouses can individually or jointly ask for judicial intervention.

Financial contribution: In a new provision dealing with the financial contribution of each of the spouses to the livelihood of the family, Article 196 of the Civil Code gives either of the spouses the right to ask a judge to specify the amount of financial contribution each should make. In establishing the amount of the contribution, the judge takes into account housework and childcare and unpaid labor in the business of the other spouse.

If the need arises and if one of the spouses makes an application, the judge, in order to protect the family’s economic assets or to secure the fulfillment of a financial responsibility resulting from the marriage union, can rule that disposals of assets specified by the judge can only be made with the consent of the applicants (Article 199 of the Civil Code).

MATRIMONIAL PROPERTY REGIME

The legal regime: The new Civil Code establishes the Regime Regarding the Ownership of Acquired Property as the legal property regime, which is valid by default if couples do not choose one of the other specified regimes before or after they get married (Articles 202, 203 and 205 of the Civil Code). To choose another property regime, the couple must jointly sign a contract before a notary or



THE NEW CIVIL CODE RECOGNIZES THE HITHERTO INVISIBLE LABOR OF WOMEN WORKING FOR THEIR FAMILIES.

declare their decision in writing while applying for authorization to marry.

Regime Regarding the Ownership of Acquired Property

This new property regime provides for an equal division of property acquired during marriage, giving equal credit to each of the spouses for it, irrespective of how and where they work. Thus, the contribution of women's hitherto invisible labor to the well being of the family household is recognized and assigned an economic value.

Under this regime, there are two types of property: acquired property (Article 219 of the Civil Code) and personal property (Article 220 of the Civil Code). Personal possessions and property accrued before the marriage are classified as personal property.

According to the Regime Regarding Ownership of Acquired Property, which is regulated in Articles 218-241 of the Civil Code,

property that has been acquired by either of the spouses in return for payment in money or in kind after the formalization of the marriage union (acquired property) shall, upon termination of the regime (e.g. by divorce or death), be equally shared between the spouses. Economic integrity will be taken into consideration in the case of property related to the practice of a profession or business. Personal property and possessions shall remain with the owner.

This is an achievement in terms of the economic empowerment of women. Married women now have good reason to feel economically stronger as equal partners, which will contribute to their empowerment.

The other property regimes that may be selected are:

Division of Property

According to this regime, each party is the owner of the goods, which are registered in his or her name. After divorce, both parties retain the goods which they owned prior to the marriage and which they acquired in their name during the marriage (Articles 242-243 of the Civil Code). This was the legal property regime under the former Civil Code.

DOWRY

There are no specific legal provisions regarding dowries brought by the bride. However, the new Civil Code has established the Regime Regarding the Ownership of Acquired Property as the legal property regime between spouses (Article 202 of the Civil Code).

According to this regime, dowries brought by the bride fall under the category of personal possessions and are regarded as the legal property of the bride. This means that the bride retains them in case of termination of the marriage, regardless of the reason.

Division of Shared Property

The property acquired by one of the spouses after the establishment of the Division of Shared Property Regime and used jointly by, or for the benefit of, the family, or investments which have been invested for the future economic benefit of the family or corresponding assets shall, in the event of the termination of the property regime, be shared equally between the spouses. For property related to a business, economic unity will be taken into consideration during the division process (Articles 244-255 of the Civil Code).

The women's movement strongly opposed attempts to establish this regime as the legal property regime on the grounds of the ambiguity involved in dividing property into that used by and for the benefit of the family and that used for other purposes.

Joint Property Regime

In the event of this regime being accepted, the spouses become joint owners of the goods and incomes included in the Joint Property Regime and neither of them can dispose of his or her share independently. The parties define what is to be included in the regime through an agreement between them at the time of marriage (Articles 256-281 of the Civil Code).

The women's movement has intensively lobbied against Article 10 of Law No. 4722 Governing the Enforcement and Implementation of the Civil Code, which stipulates that the new legal property regime will be available for implementation by default only for property acquired after January 1, 2002. This clause was a last minute addition as a result of pressure from religious conservative and nationalist members of Parliament who initially opposed the acquired property regime. Previously acquired property will remain under the old property regime. To render the new regime operative from the inception of their marriages, couples are given until

December 31, 2002 to go to a notary and sign a contract to that effect. The women's movement in Turkey argues that the new legal regime should be operative by default for all property acquired during marriage, regardless of the time of acquisition.

LEGAL STATUS OF TURKISH WOMEN MARRIED TO FOREIGNERS AND FOREIGN WOMEN MARRIED TO TURKS

The Turkish Citizenship Act provides descriptions of the procedures for acquiring, changing or losing nationality for men and women. In addition to general provisions applying to both men and women, there are also special provisions for women only. The latter provisions thus differentiate between men and women with respect to their ties of citizenship or nationality to their countries. Both Turkish and foreign women are given a choice where simple notification to the authorities and the presentation of relevant documents entitle them to acquire the citizenship of their husbands (Articles 5, 19 and 42 of the Turkish Citizenship Act). Turkish women choosing to undergo this procedure may lose their Turkish citizenship. Yet, no such procedure is foreseen for men. To change nationality, men have to go through the procedure to either the renounce their citizenship or to obtain permission to acquire the citizenship of another country. To be finalized these procedures require the approval of the Council of Ministers.

A Turkish woman who marries a foreigner does not automatically lose her Turkish citizenship. She has three alternatives as far as citizenship is concerned.

Under Articles 19 and 42 of the Turkish Citizenship Act, marriage entitles a Turkish woman to acquire her husband's citizenship once she notifies the specified authorities of her intention within a specified period of time, provided that the laws of the foreign country in

question allow such an acquisition. In this case, she will lose her Turkish citizenship.

Her second alternative is to apply for permission to retain her Turkish citizenship while acquiring her husband's citizenship (Article 22 of the Turkish Citizenship Act).

The third alternative is for her to abstain from changing nationality, which will be the case if she makes no declaration to the contrary.

Marriage will not entitle her husband to gain Turkish citizenship through simple notification and declaration of intention; he will have to go through the processes described in Articles 6 and 7 of the Turkish Citizenship Act. Being stateless will not entitle him to automatically acquire Turkish citizenship.

Article 5 of the Turkish Citizenship Act stipulates that a foreign woman married to a Turkish man is entitled to acquire Turkish citizenship upon notifying the authorities of her intention as specified in Article 42 of the same law. Furthermore, a foreign woman will automatically acquire Turkish citizenship if she is stateless or if she faces losing her native citizenship because of this marriage (Article 5 of the Turkish Citizenship Act).

A new draft law on the acquisition of citizenship through marriage will be debated in parliament in the near future.

Children from bi-national marriages

Article 66 of the Turkish Constitution states that "The child of a Turkish father or a Turkish mother is a Turk." An amendment of October 13, 2001 rescinded that statement, stipulating: "The citizenship of a child of a foreign father and a Turkish mother shall be defined by law."

According to Article 1 of the Turkish Citizenship Act, children who



PHOTO: AYŞE BERKAY HACİMİRZAOĞLU

are born to a mother or father of Turkish citizenship, in or outside of Turkey, are Turkish citizens from birth. Children born to a foreign mother out of wedlock will be considered Turkish citizens if their connection to their Turkish father is established through a court order or recognition (Article 2 of the Turkish Citizenship Act).

In provisions concerning the acquisition of Turkish citizenship, the children of men acquiring Turkish citizenship directly become Turkish citizens; while in the case of women they become Turkish citizens under certain conditions (Articles 14 and 17 of the Turkish Citizenship Act).

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) rules:

States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband.

States Parties shall grant women equal rights with men with respect to the nationality of their children. (CEDAW, Article 9)

Work is still continuing to bring Turkish legislation in line with CEDAW. The Turkish Citizenship Act is one of the laws that need revision.

***DE FACTO* RELATIONSHIPS**

In Turkey there are no official laws obliging couples to marry. However, there is no legislation defining or governing *de facto* relationships either. Hence, a *de facto* relationship does not confer upon the woman any rights to alimony, inheritance, etc. However, if the man buys property or goods for the woman and transfers the legal ownership rights to her, he cannot reclaim them after the relationship ends. Here, we should also note that a high degree of social control is exercised over women's sexuality through the traditional taboo on women having extra-marital relationships. This control is felt and exercised less in the more developed areas of big cities. As one moves away from the metropolitan centers, the taboos make themselves felt much more strongly and violently, as the discussions of virginity testing and honor crimes will show.

The new Turkish Civil Code has discarded the term 'illegitimate'. There is no longer a question of 'legitimizing' children born out of wedlock, but one of establishing descent. According to Article 282 of the Civil Code, maternal descent is established by birth. Under the

same article, paternal descent is established in three ways: through marriage with the mother, recognition or court ruling. The children of unmarried couples bear their mother's surname (Article 321). According to Article 337 of the Turkish Civil Code, the custody of these children belongs to the mother. If she is the one looking after the children, the mother, according to Article 329, has the right to claim alimony in the name of the children. Article 498 of the Civil Code states that children whose paternal descent has been established enjoy the same rights of inheritance to their fathers' estate as children born in wedlock. All these changes serve to end discrimination against children born out of wedlock.

CUSTODY

According to the Turkish Civil Code, children who have not reached majority remain in the custody of their mother and father. Custody can only be revoked for legal reasons (Article 335 of the Civil Code).

As long as the mother and the father are married, the custody of children is shared equally between the mother and the father. If they separate or divorce, the judge may decide to give the custody of the children to one of the spouses. In the event of the death of one of the spouses, custody belongs to the surviving spouse (Article 336 of the Civil Code). In the old Civil Code there used to be a clause stating that, in the event of disagreement over matters related to children, the final word was the father's. With the cancellation of this clause, women have obtained equal say under the law in decisions concerning their children.

The Civil Code has a new article stipulating that spouses are under an obligation to care for and show compassion for their young stepchildren (Article 338 of the Civil Code).



MOTHERS SHALL NOW HAVE EQUAL SAY OVER MATTERS CONCERNING THEIR CHILDREN.

Parents are responsible for providing their children with appropriate formal and religious education (Articles 340 and 341 of the Civil Code). Parents name their children, represent them in relations with third parties, educate them according to their means and also ensure and protect their physical, mental, emotional, moral and social well-being (Articles 340 and 342 of the Civil Code).

In the event of separation or divorce, the rules regarding custody treat the mother and father the same. The judge grants custody of the children to whichever parent he or she believes will look after the children better. Men do not have any superiority over women in this respect (Article 182 of the Civil Code). The spouse who has not been awarded custody is expected to share the financial burden of bringing the children up, in a manner commensurate with his or her financial means. The court will also rule on his or her visitation rights.

If the grounds for separation or divorce are the violent conduct or dishonorable lifestyle of one of the spouses, the victim of the violence can usually convince the judge that the perpetrator should not be granted the custody of the children.

ADULTERY

Adultery is no longer considered a crime under the Turkish Penal Code. As the result of a widespread campaign initiated and coordinated by women's groups all around the country, in 1996 Article 441 of the Penal Code regulating adultery by men and two years later, in 1998, Article 440 of the Penal Code regulating adultery by women were annulled by the Turkish Constitutional Court on grounds of violating the constitutional principle of equality before the law.

Proof of adultery constitutes grounds for divorce (Article 161 of the Civil Code). Filing for divorce on the grounds of infidelity entitles the injured party to claim general damages (Article 174 of the Civil Code).

There is a reference to adultery in the articles in the Civil Code pertaining to property regimes between spouses. Under both the Regime Regarding the Ownership of Acquired Property (Article 236 of the Civil Code) and the Division of Shared Property (Article 252 of the Civil Code), divorce on the grounds of adultery entitles the judge to annul or reduce the share of property due to the spouse who was at fault.

Article 462 of the old Penal Code, which granted sentence reductions to a person killing or wounding a family member who has committed adultery under certain circumstances, has been annulled in 2003 within the framework of the 6th European Union (EU) Harmonization Package.

SEPARATION

A married woman may choose to live apart from her husband. According to Article 197 of the Civil Code, "Either of the spouses has

the right to live apart from the other as long as living together seriously endangers his or her personality and economic security or family harmony”.

Depending on the rightfulness of her decision to live apart, the judge may, upon her application, take measures concerning financial contribution, management of property and use of the abode or household goods. Unjust abandonment by the husband also entitles the woman to demand the above. No one can force the woman to return to her husband’s residence. However, the husband may send her an official letter inviting her to return and thus initiate the procedural period required by law before filing a divorce case against his wife on grounds of abandonment.

The clause directly linking the woman’s residence to that of her husband’s through the statement that the wife’s place of residence is the residence of her husband has been deleted from the definition of legal domicile. Consequently, she will not encounter any legal problems in receiving official communications if she decides to change her place of residence.

A woman can apply to the court for a legal separation from her husband (Article 170 of the Civil Code). A case for legal separation can be made on the grounds necessary for divorce (Article 167 of the Civil Code). Article 170 states: “When the grounds for divorce have been established, the judge decides to grant a divorce or legal separation”.

When one of the possible grounds for divorce is established, the woman may file a case for legal separation. In such a situation, the judge may grant a legal separation for a period of one to three years. If, at the end of this period, the spouses are still not reconciled, either one of the spouses may file for divorce (Articles 171 and 172 of the Civil Code).

If the application is for divorce, the judge can rule for legal sepa-

ration instead only if he or she believes that there is a chance that the couple may re-establish joint life. But if the application is solely for legal separation, he or she cannot rule for divorce (Article 170 of the Civil Code).

RIGHTS OF WOMEN DESERTED BY THEIR HUSBANDS

The main issue here is whether the woman deserted by her husband does, or does not, want a divorce. Article 164 of the Civil Code states that desertion is considered to be one of the valid grounds for divorce. A woman has the right to file a case for divorce if her husband has deserted her in order to avoid his matrimonial obligations or has failed to return to the family home without rightful reason. This case can only be filed if the separation has lasted for at least six months and appears set to continue. After the fourth month of such *de facto* separation the woman may ask the judge to issue a warning to the man and invite him to return. Upon such invitation, the woman must wait for another two months before filing a divorce case.

A new clause has been added to Article 164 in the new Civil Code. According to this, the spouse who forces the other to abandon the shared abode or prevents him or her from returning without rightful reason is understood to have deserted the other. Article 233 of the new Penal Code states that any man who abandons a woman he has impregnated, leaving her in a dire state, regardless of whether the woman is his wife or a single woman, will be imprisoned for 3 months to a year.

The spouse who is deserted without rightful reason is accepted as the injured party in a divorce case and can demand alimony and damages.



PHOTO: ELA ANIL

MEMBERS OF THE WOMEN'S RIGHTS ENFORCEMENT CENTER OF THE ISTANBUL BAR.

DIVORCE

In the Turkish Civil Code, there is no distinction between the grounds for divorce for men and women. The rule is that applications for divorce are filed by the party who has less responsibility for the collapse of the matrimonial union against the party who has the greater responsibility. Therefore, if the party at greater fault files the case for divorce, and if the other party does not want to get divorced, the case may be dismissed, provided that the defendant can prove his or her relative or total innocence as regards the failure of the marriage. However, if the couple are not reconciled and have not begun to live together within three years of the application for divorce, the matrimonial union is considered to have irretrievably

broken down and the court rules in favor of a divorce upon the request of one of the parties (Article 166 of the Civil Code).

Grounds for divorce

According to the Civil Code, either one of the spouses can file for divorce if the other has:

- Committed adultery (Article 161),
- Plotted against his or her life, has treated him or her very badly or in a way which is severely detrimental to his or her honor (Article 162),
- Committed a humiliating crime or leads a dishonorable life, so that the plaintiff cannot be expected to live together with the defendant (Article 163),
- Deserted the family home (Article 164).

Or if:

- One of the spouses is incurably insane so as to render living together intolerable for the other (Article 165),
- The marriage has irretrievably broken down and the spouses cannot be expected to go on living together (Article 166),

“Irretrievable breakdown of marriage” is a general clause that is employed to cover a vast variety of issues. For example, one of the spouses declining to have sex with the other falls within the scope of this article and is considered the basis for grave incompatibility in marriage; it can quickly lead to divorce.

The court authorized to deal with a divorce or separation case, is the Court of First Instance in the region of domicile of either one of the spouses or in the last place where they lived together for at least six months (Article 168 of the Civil Code).

The law protects the personal legal status that a woman obtained in marriage (e.g. majority, nationality). By default on

divorce, her surname reverts to the one she had before her last marriage. If that surname is not her maiden name and if she wishes to revert to her maiden name, she may do so with the judge's permission. If she wishes to retain her immediate ex-husband's surname, she needs to prove to the judge that this is in her best interest and will not harm the man concerned (Article 173 of the Civil Code).

There are no restrictions on women remarrying or living with men whom they have previously divorced.

Damages in divorce

The party least at fault whose actual or potential interests are injured on account of the divorce is entitled to claim a reasonable amount of compensatory damages from the party at fault. The court can rule that this shall be paid in a single lump sum or periodically. The party whose personality rights have been infringed because of the events that led to the divorce can claim general damages from the party at fault. This type of damages can only be paid in a single lump sum (Articles 174 and 176 of the Civil Code).

Alimony

The party who finds him- or herself in a financially difficult position on account of divorce, may, provided that he or she is not at greater fault, claim alimony from the other side to meet his or her living costs for an indefinite period of time. The amount of the alimony has to be commensurate with the paying party's financial capacity. Previously, there was a clause stipulating that for a man to be able to claim alimony from a woman, she had to be wealthy. This was annulled on the grounds of "discrimination against men", thus rendering both spouses equally liable to pay alimony (Article 175 of the Civil Code).

Depending on the court, alimony may be paid in a single lump sum or periodically. Periodical compensatory damages and alimony

payments terminate automatically in the event of the remarriage or death of one of the parties. The same payments are canceled by court decision if the receiving party lives with someone else as man and wife without a formal marriage, ceases to be poor or leads a dishonorable life (Article 176 of the Civil Code).

The authorized court in alimony cases is the court in the region of domicile of the party who is claiming alimony (Article 177 of the Civil Code). This frees women from the former obligation to go back to the region of the family abode to claim alimony, which for various reasons discouraged women from following up alimony cases in the past.

The right to file a case related to a marriage that has ended in divorce must be exercised within one year of the date of the final divorce ruling (Article 178 of the Civil Code).

ADOPTION

The new code reduces the minimum age limit for adoption from thirty-five to thirty and enables single persons and people who already have children to adopt too.

Spouses can only jointly adopt. They must be at least thirty years old or must have been married for at least five years. Persons who are not married cannot adopt jointly. Persons can adopt small children only after taking care of and educating them for one year. A single person can also adopt if he or she is at least thirty years old (Articles 305, 306 and 307 of the Civil Code).

INHERITANCE

The introduction of two new property regimes under the new Civil Code has resulted in a significant change in terms of inheritance. One of these is the Regime Regarding the Ownership of Acquired Property, which the new Code has established as the legal property

regime, and the other is the Division of Shared Property regime. The third eligible regime is the Joint Property regime and the fourth the Division of Property regime; both of these last two regimes also existed under the former Civil Code. In terms of inheritance, the four regimes can be grouped into two basic categories: regimes that require the settlement of common assets in the event of termination and regimes that do not. In the fourth regime (the Division of Property regime) each spouse owns the property registered under his or her name. Therefore, there is nothing to be settled or calculated. Property registered under the name of the deceased constitutes the legal inheritance and, as such, is divided between the heirs as stipulated by legislation (Articles 495-501 of the Civil Code). The first three of the property regimes listed above involve common assets. Therefore, the first step is to settle the division between spouses in accordance with the rules of each specific regime. The surviving spouse gets his or her share of the common assets and retains that which is recognized as his or her personal property under the rules of the particular regime. What remains is the legal estate of the deceased, which is divided between inheritors as stipulated by law. According to Article 499 of the Civil Code, the proportion of the legal inheritance to be received by the surviving spouse varies according to with whom it will be shared:

- If the other heirs are the children of the deceased, the surviving spouse receives one quarter of the estate,
- If the other heirs are the parents of the deceased, the spouse receives one half of the estate,
- If the other heirs are the grandparents and the children of the grandparents of the deceased, the spouse receives three quarters of the estate,
- If there is no other heir except the spouse, he or she receives all of the estate.



WOMEN'S FESTIVAL, MARCH 8TH, 2002. "CIVIL CODE: SETTLE YOUR DEBTS TO WOMEN."

The law specifies a minimum share of the deceased's estate, which must go to the surviving spouse, children, parents or grandparents (Article 506 of the Civil Code).

Children born out of wedlock whose descent was established through birth, recognition or court ruling have the same inheritance rights as those born in wedlock (Article 498 of the Civil Code). Adopted children have equal rights of inheritance as any children of the person who has adopted them (Article 500 of the Civil Code).

Under Turkish law, male and female children inherit equal shares of their parents' estate without discrimination. This equal share corresponds to three quarters of the legal inheritance and is divided equally among the children. The only apparent case of explicit discrimination, which existed in the inheritance of agricultural land, has been corrected after the change to Article 661 of the Civil Code. The previous article on how and to whom an agricultural holding was to

be assigned in the event of there being more than one contender stated that first the sons of the deceased would be asked if they wished to take over the holding. And only if none of the sons wanted to take it over would the daughters of the deceased be able to ask that the holding be assigned to them. The new article has removed all reference to sons and daughters. Priority is given to the heir who wants to run the holding him- or herself and is capable of doing so. In assessing competence, the capabilities of the spouse of the contending heir are also taken into account.

A woman's marital status does not affect her right to inherit from a blood relative.

As Article 649 of the Civil Code establishes equality between heirs, women enjoy the same rights of inheritance as their brothers. Even the will of the deceased cannot change the obligatory legal share of the woman in any way. In the event of any infringement of this right, the woman has access to the courts.

There is no difference in the shares of inheritance conferred upon foreigners marrying Turkish citizens. They have the right to claim the same proportion of the total inheritance as their counterparts who are citizens of Turkey.

WOMEN'S RIGHT TO ECONOMIC INDEPENDENCE

Until 1990, a married woman could work outside the home only with the permission of her husband. The Constitutional Court annulled this article on the grounds that it violated the Constitution. This decision became operative in 1992. Until January 2002, women's right to work was governed only by the Constitution, which stated: "Everyone has the right and duty to work." In the new Civil Code it is explicitly stated: "Neither of the spouses is obliged to seek permission from the other regarding the choice of work or profes-

sion” (Article 192). However, the article also includes the following clause, which in daily life has negative repercussions for women’s right to work: “But the harmony and welfare of the marriage union should be borne in mind when choosing and subsequently performing a job or profession”.

Single women have never required permission to work outside the home.

Women do not face any restrictions regarding the purchase or sale of property or goods. All of the previous restrictions, such as needing authorization to dispose of the family’s financial assets, representative and decision-making powers, have been removed in the new Civil Code.

An amendment made to the Income Tax Act in 1998 enables married women to make independent income tax declarations.

The new Labor Code, which was accepted in the Turkish Parliament in May 2003 and came into effect in July 2003, has brought forth certain measures to enhance women’s economic independence, even though it falls short of providing the much needed comprehensive basis to increase women’s participation in the workforce. Article 5 of the Labor Code (Principle of Equal Treatment) states that it is unlawful to discriminate based on gender. However, the presence of deeply implanted sexist attitudes against women means that there is a need for very clear cut legislation specifically addressing the issue of discrimination against women and taking specific measures to prevent it.

Article 5 Paragraph 4 of the Labor Code stipulates that different wages cannot be paid to men and women workers working with equal productivity in jobs of the same quality in the same workplace solely on the basis of their being of different sexes. The Turkish state has also ratified the Convention on the Payment of Equal Wages to

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WOMEN ARTISTS...

Women and Men Workers for Work of Same Value. However, in the absence of an objective evaluation system to determine equal value and equal productivity, traditional biases dominate and *de facto* discrimination prevails.

Furthermore, Article 5 Paragraph 3 indicates that a worker cannot be treated differently or dismissed due to pregnancy or gender. Maternity leave has also been increased with the new Labor Code. Women cannot be forced to work for eight weeks before and eight weeks after delivery of a baby. Eight weeks after delivery, the woman may take up to six months leave without pay (Article 74 of the Labor Code).

Article 24 grants workers the right to immediately terminate their contract in case of sexual harassment by the employer or co-workers, another improvement for women workers.

There are specific laws listing the places where women cannot work. Women cannot be employed to work underground or underwater (Article 72 of the Labor Code). Women cannot work in some arduous and dangerous jobs (Article 85 of the Labor Code). There are some jobs where women are not permitted to work night shifts (Article 73 of the Labor Code).

Women workers who have been insured for 25 years, have paid a premium for at least 4,500 days, and have reached the age of 58 are entitled to claim an old-age pension.

Women who work without pay in their husbands' workplaces are not covered by the social security system. This provision has particularly serious consequences in the agricultural sector where such practices are the norm (Article 3 of the Social Security Act No. 2925 for Agricultural Workers).

WOMEN'S RIGHT TO POLITICAL PARTICIPATION

Legislation covering political rights and freedoms, the right to vote, be elected and engage in political activity does not differentiate between sexes but applies to all citizens, men and women. Under Article 67 of the Turkish Constitution, all Turkish citizens over 18 years of age have the right to vote in elections, to take part in referendums, to be elected, and to engage in political activities independently or in a political party in accordance with the conditions laid down by law. Under Article 68, all citizens have the right to form political parties and to join and leave them in accordance with the established procedure. One must be over 18 years of age to become a member of a party. According to Article 76, every Turk over the age of 30 is eligible to be a parliamentary deputy.

All violations of political rights and freedoms are liable to punishment under Article 114 of the Penal Code.

The Political Parties Act (Law No. 2820) prohibits gender discrimination in statutes pertaining to party membership (Article 12 of the Political Parties Act). Another article in the same law states that political parties cannot engage in activities or have goals that violate the constitutional principle that all individuals are equal without discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations (Article 83 of the Political Parties Act).

Article 5 of the Political Parties Act elaborates on the rules governing the freedom to form political parties without prior permission from the state. All Turkish citizens, regardless of their gender, are free to establish a political party. There are no restrictions on women establishing associations or parties, provided that this right is not used with the aim of violating the principles stated in the Turkish Constitution.

However, standing in elections requires considerable expenditure and strong backing in the *de facto* male-dominated milieu of political parties. To stand in elections, those wishing to be candidates have first to go through preliminary elections in their respective parties. The party administration then prepares the election lists, where the candidate's ranking on the list largely determines whether or not he or she stands a chance of being elected. There being a lot at stake, the struggle to secure a favorable position on the election lists turns into a ruthless power game with all the maneuvering this implies. Another obstacle to women was the ban on establishing women's branches or youth branches in political parties. Law No. 4445, passed in 1999, has removed this obstacle.

Taking into consideration the fact that women, burdened with traditional domestic responsibilities and traditionally discouraged from becoming too visible and participating in public life, are starting from a fundamentally disadvantageous position, the



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necessity for quotas is self-evident. The women's movement in Turkey is working to achieve the establishment of quotas, which would be the next step towards the political empowerment of women and the translation of constitutional and legislative equality into equality in practice.

REPRODUCTIVE RIGHTS AND HEALTH

Contraception and sterilization

In Turkey there is no obligatory birth control or sterilization. All contraception services are legalized (Population Planning Law, May 24, 1983). The new Penal Code no longer requires spousal consent for sterilization. Anyone who performs sterilization on a man or woman without his or her consent is sentenced to imprisonment (Article 101 of the Penal Code).

Abortion

Abortion is legal until the end of the tenth week of pregnancy provided that it is performed with the consent of the pregnant woman. After the first ten weeks of pregnancy, abortion is only permitted to save the life or preserve the health of the woman or in the case of fetal impairment. In such cases, an obstetrician or gynecologist must have confirmed that the woman's health is threatened (Article 99 of the Turkish Penal Code). This requirement is waived if the pregnancy poses an immediate risk to the woman's life (Article 5 of the Population Planning Law).

In Turkey, a legal abortion must be performed by a gynecologist or obstetrician. A person performing an abortion without medical qualifications is sentenced to imprisonment whether the woman has given her consent or not (Article 99 of the Penal Code).

Even if the woman is married, her spouse's consent is no longer required prior to abortion. If the pregnant woman is a minor or mentally incompetent, the consent of her legal guardians and a justice of the peace, as well as her own consent, are required for an abortion. The consent requirements can be waived if pregnancy poses an immediate risk to the woman's life (Article 6 of the Population Planning Law).

It is a criminal offence for a woman to obtain an abortion after ten weeks of pregnancy if there is no evidence of health threatening factors. In this case, both the person who performs the abortion and the woman (if she has consented to the abortion) are sentenced to imprisonment. If an illegal abortion has led to the death of or caused physical harm to the woman, the prison sentence is increased (Article 99 of the Penal Code). According to the same article, anyone who forces a woman to have an abortion is sentenced to imprisonment.

If a woman and her husband are covered by the national social

security system, the social security institution meets the woman's hospital and abortion expenses.

Pre-natal determination of the sex of a fetus

There is no law governing the determination of the gender of children before their birth. Since 1994 the Chamber of Doctors has expressed its concern about the morality of this practice.

VIOLENCE AGAINST WOMEN

Domestic violence

A woman assaulted by her husband may file a case for divorce, compensation or legal separation at the Court of First Instance, in addition to applying for a protection order or bringing a separate criminal lawsuit against him.

Protection orders (the Law on the Protection of the Family)

On January 14, 1998, as a result of two decades of activism and lobbying by the women's movement in Turkey, the Turkish Parliament approved a new law on domestic violence. Under the new law, any member of a family subject to domestic violence can file a court case for what is known as a 'protection order' against the perpetrator of the violence.

The law is entitled: the Law on the Protection of the Family, No: 4320.

According to Article 1 of this law, 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, a Justice of the Peace can pass one or more of the following rulings or take any other measures that are deemed appropriate in addition to the provisions of the Civil Code.

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 abode shared with the spouse or children, if there are any, and not to approach the abode occupied by the spouse and children or their places 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 abode while under the influence of alcohol or other intoxicating substances nor to use such substances in the shared abode.

The above-mentioned measures can be applied for a period not exceeding six months and, if the accused does not abide by the rulings, he or she will be warned that he or she 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.

According to Article 2 of the law, the court entrusts a copy of the protection order to the Public Prosecutor. The Public Prosecutor monitors the application of the order through the police. In the event of the order being issued, 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.



PHOTO: KARIN RONGE

STOP VIOLENCE AGAINST WOMEN.

The Public Prosecutor can file charges at the Penal Court against a spouse who does not abide by an order. A spouse who has not abided by a protection order can be sentenced to a prison sentence of three to six months.

Domestic violence and the Penal Code

In the new Turkish Penal Code, domestic violence and violence against women in marriage are addressed in two different articles.

Even though there is no specific article regulating the crime of domestic violence, Article 96 of the new Penal Code stipulates that anyone causing torment to their spouse or family members will be sentenced to three to eight years of prison. Article 232 of the Penal Code provides for imprisonment of up to one year for the maltreatment of anyone inhabiting the same abode.

SEXUAL RIGHTS AND SEXUAL VIOLENCE

Sexual abuse in the family and marital rape

With the reform of the Turkish Penal Code in 2004, two of the numerous groundbreaking amendments for women and children in Turkey have been the explicit criminalization of marital rape and sexual abuse in the family. In the new Penal Code, Article 102 entitled Sexual Assault criminalizes marital rape with a prison sentence up to 12 years upon complaint. Sexual abuse of children is regulated in the next article, Article 103, which foresees prison sentences ranging from 5 to 20 years for sexual abuse in the family.

Sexual violence against women and girls

Due to the success of the Campaign for the Reform of the Turkish Penal Code from a Gender Perspective by the women's movement, the new Turkish Penal Code entails a breakthrough for women's sexual rights. In the new Penal Code, crimes of sexual assault are explicitly named and properly defined under the section "Crimes against Sexual Inviolability." Sexual violence, which was previously regulated as "Felonies against Public Decency and Family Order" under "Crimes against Society," is now defined in crimes against individuals, thereby marking a significant break with the patriarchal notion and discriminatory outlook of the old law. Sexual crimes are regulated in articles 102-105 of the Penal Code with progressive definitions and higher prison sentences.



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8TH OF MARCH IN ISTANBUL

Rape: Rape and sexual assault have been regulated in Article 102 of the Penal Code entitled “Sexual Assault.” While punishment for sexual assault varies from two to seven years, the prison sentence for rape can be up to 12. The crime of rape now includes the insertion of a sexual organ or object into the body.

The priorly existent notions of consensual rape and consensual sexual abuse have been removed. However, Article 104 of the new Penal Code leaves room to penalize the consensual sexual relations of youth between ages of 15-18 upon complaint. Women’s groups have been protesting the adoption of this article, as it legitimizes young people’s human rights violations and may lead to the unjust prosecution of youth due to complaints by families and teachers.

Sexual abuse: Article 103 of the Penal Code regulates the sexual abuse of children under 15 years of age. Explicitly named as such, the article excludes the notion of consent and penalizes sexual

abuse of children with up to eight years of imprisonment. Aggravating circumstances with up to 15 years of sentences include sexual abuse in the family or by caretakers and legal guardians; rape of a child; damage to the child's physical or mental health.

Sexual Harassment: Sexual harassment is explicitly criminalized in Article 105 of the new Turkish Penal Code. Sexual harassment is defined as “any act of harassment with sexual intent” and penalized with a prison sentence of up to two years. Sexual harassment can be prosecuted upon the complaint of the victim.

Sexual harassment in the workplace: Article 105 Paragraph 2 criminalizes sexual harassment in the workplace. The sentence can be up to three years if it entails the abuse of the work or hierarchical relationship. It can be perpetrated by employers, superiors or co-workers. If the harassment causes the victim to leave her job, the prison sentence cannot be less than one year. Sexual harassment or abuse of a female worker is regulated in the Labor Code in Article 24, which gives workers the right to lawfully terminate the work contract without prior notice in the event of the employer sexually harassing the worker or the employer not taking the necessary measures in case of a worker being harassed by a co-worker or third party in the workplace.

VIRGINITY TESTING

Virginity testing is a traditional practice constituting a violation of women's human rights. This practice has been the issue of intensive protests by the women's movement for decades. In fact, this practice is also in violation of Article 17 of the Constitution, which states that, with the exception of medical requirements and circumstances delineated in legislation, no one's bodily integrity may be violated. Yet relevant authorities have used various provisions in the law to justify enforced virginity testing.

The new Penal Code includes an inadequate provision regarding virginity testing. Despite the efforts of the women's movement, the actual term 'virginity testing' is not employed in the Penal Code. Instead, Article 287 entitled "Genital Examination" has been included in the new law. The article stipulates that anyone who performs or takes a person for a genital examination without the proper authorization from a judge or a prosecutor can be sentenced to between three months to one year of imprisonment. Women's groups are protesting this article as it fails to explicitly name and ban the practice, and also because the article does not require the woman's consent for genital examination, thereby leaving room for forced examination and human rights violations.

An example of a statute by which virginity testing has been justified is the Statute for Awards and Discipline in the High School Education Institutions of the Ministry of Education, which came into effect on January 31, 1995. The statute stated that "proof of unchastity" is a valid reason for expulsion from the formal educational system. The usual practice for gathering evidence of "unchastity" was subjecting female students to virginity tests. In March 2002, as a result of action by women's groups, the Ministry of Education revised the wording of the Statute for Awards and Discipline in the High School Education Institutions of the Ministry of Education. In the revised statute, the explicit reference to "unchastity" was removed. The new statute now allows for the expulsion of students whose behavior "contradicts commonly accepted social values and influences the educational atmosphere in a negative way".

In 1999, following protests from women's human rights groups, the Ministry of Justice issued a statute to eliminate virginity testing by differentiating it from legally required vaginal or anal examinations. The statute, which was passed on January 13, 1999, defines



“FOR YEARS YOU ARE TAUGHT THAT SEX AND SEXUALITY IS THE DEVIL TO BE FEARED. THEN, IN ONE NIGHT, IT IS SUPPOSED TO BECOME THE ANGEL TO BE LOVED. THIS IS JUST NOT POSSIBLE!” (A PARTICIPANT FROM WWHR’S HUMAN RIGHTS TRAINING FOR WOMEN)

such circumstances as: alleged rape, sexual conduct with minors, and encouraging or acting as an intermediary for prostitution. In the case of such crimes, if there are no other means of proving the alleged crime or if the passage of time may interfere with gathering evidence for the case, the judge may order a vaginal or anal examination without the consent of the woman. The judicial decree must

be accompanied by written approval from the public prosecutor. The statute further states that women must not be examined for reasons of disciplinary punishment against their consent or in a manner which will hurt or torment them.

HONOR CRIMES

Honor crimes constitute a major violation of women's human rights. The term 'honor killing' is used to describe the murder of a woman suspected of having transgressed the limits of sexual behavior as imposed by traditions, for example engaging in a pre-marital relationship with someone of the opposite sex or having extra marital affairs.

However, honor crimes constitute violations of a wide range of human rights; e.g. women's right to mobility and bodily integrity. Through the remarkable activism of women's human rights groups from a variety of countries, the international human rights community has finally accepted honor crimes as a form of violence against women. The Outcome Document of the 23rd Special Session of the United Nations General Assembly (Beijing+5), holds all state parties responsible for taking measures including "national legislation and other protective and preventive measures aimed at the elimination of (...) crimes committed in the name of honor" (Paragraph 96(a) of the Outcome Document).

Through the vigorous efforts of the women's movement in Turkey over the past years, certain articles in the Penal Code that were used to grant sentence reductions to honor killing perpetrators have been removed. Furthermore, the new Turkish Penal Code contains two articles which address honor killings specifically, though not adequately and according to women's groups' demands.

The advocacy and lobbying efforts of the Platform on the Turkish

Penal Code have resulted in an amendment to the “Unjust Provocation” article, previously employed to grant sentence reductions in honor killing cases. The Justification of Article 29, now entitled “Unjust Acts,” states that this reduction is not applicable to killings in the name of honor. However, the Justification goes on to state that this may not be the case in all honor killings, thereby still granting room to legitimize this human rights violation.

In Article 82, which regulates aggravating circumstances for homicide, “killings in the name of custom” have been defined as an aggravated circumstance. The use of ‘custom’ instead of the internationally accepted term ‘honor killings’ limits the scope of the crime, as if it only exists in certain regions of Turkey where customs prevail, and fails to include different sorts of honor killings. Furthermore, the article also entails the possibility of an ‘unjust act’ as provocation in cases of ‘killings in the name of custom’, in which case a lifetime prison sentence is not issued.

Often in the process of planning an honor killing, the so-called ‘family assembly’, which is formed of the men of the extended family, usually picks a male minor from the family to commit the murder. Previously, because the murderer is less than 18 years of age, he either cannot be charged at all (if below age 11) or is granted a reduction in his sentence and the adult male members of the family have no charges pressed against them. However, now Article 38 of the Penal Code states that any person who forces a person to commit a crime receives the same sentence as the perpetrator, and in if the person forced is a minor, the sentence is increased.

The efforts of the women’s movement have broadly publicized honor killings as a major human rights violation. Despite the fact that honor crimes continue to affect women throughout Turkey, the last year has witnessed a change both in public attitude and judicial decision making. Two honor killing murderers have been sentenced



PHOTO: KARIN RONGE

HONOR CRIMES WAS ONE OF THE ITEMS DISCUSSED IN THE SYMPOSIUM ON WOMAN, SEXUALITY AND SOCIAL CHANGE IN THE MIDDLE EAST AND THE MEDITERRANEAN ORGANIZED BY WWHR-NEW WAYS IN 2001.

to life imprisonment; hopefully these will set precedent for severe punishment of similar crimes. Despite the inadequate measures in the Penal Code, the amendments provide an initial step in overcoming the legitimization of this practice.

HOMOSEXUALITY

There are no references to homosexuality in Turkish Law, for either lesbians or gay men. By implication, same-sex relationships between women do not constitute offences in and of themselves. However, the law also does not protect lesbians from discrimination on the basis of sexual orientation. Homosexuals do not have the right to marriage. Anti-lesbian prejudice is pervasive in Turkish society. There are still provisions in the Penal Code and Labor Law that prohibit ‘indecent and offences against public morality’. These laws can unjustly be enforced against sexual minorities (i.e. Articles 225 “Indecent Behaviors” and 226 “Obscenity” of the Penal Code).

The women’s and LGBT movements in Turkey had succeeded in getting ‘discrimination based on sexual orientation’ included as a criminal offence in the penal code draft law, however the provision



PHOTO: ERZADE ERTEM

A TRANSVESTITE IN ISTANBUL.

was later removed due to the intervention of the Minister of Justice. Women's and LGBT groups are continuing to advocate for this amendment.

Although not explicitly stated in law, in practice homosexuality constitutes grounds for divorce. In the case of divorce due to one of the spouse's homosexuality, the homosexual spouse is considered to be the spouse at fault.

TRANSSEXUALITY

The new Turkish Civil Code, which came into force on January 1, 2002, rendered a change of sex considerably more difficult, compared with the former Civil Code.

According to the new law, for a person to apply to the court for permission to change sex, the person has to:

- Be at least 18 years of age
- Be unmarried

- Be of “transsexual nature”
- Prove that a sex-change is absolutely necessary for his or her mental health
- Prove that he or she is chronically infertile.

The last three preconditions for a change of sex must be verified by an official medical report from a teaching hospital. Once the person has had a sex-change operation, this also needs to be proved by an official medical report. Only after the issuing of this report can the transsexual person apply for corrections in his or her civil status registration (Article 40 of the Civil Code).

There is no reference to transsexual women in the Turkish Penal Code. Transsexual women are only covered by the law if they are sex workers, in which case they are liable to all the rules and regulations covering sex work. In practice, however, the police frequently maltreat transsexuals. They are often arrested and taken to the local police station, where they are beaten up, insulted, their hair is cut, and they are subjected to various other forms of ill treatment.

SEX WORKERS

Sex work is legal in Turkey only if it is licensed. The Turkish Penal Code outlaws unlicensed sex work. All legal provisions regulating sex work and the establishment of brothels define sex workers only as women. Women working in brothels are also covered by the social security system. Their employers have to pay the necessary premiums like any other employer (Annexed Article 13 of the Social Security Law).

Articles 55-62 of the Regulation Regarding the Struggle Against Venereal Diseases Infected Through Prostitution and Provisions Governing Prostitutes and Brothels, which is based on Article 128 of the Public Health Law, makes brothel owners responsible for taking

the necessary measures to prevent sexually transmitted diseases. However, Article 129 of the Public Health Law states that if a sex worker is diagnosed with a sexually transmitted disease, she will be prevented from continuing her work and treated, if necessary with the use of force. According to the Regulation, sex workers may be sent to a court-approved doctor for examination in order to protect public health.

Even though sex work is legal in Turkey, forcing women into sex work is illegal. The penalty varies according to the age of the women and their relationship to the party forcing them into sex work. If the forced child is younger than 15, the person forcing her is liable to a prison sentence of four to ten years. The sentence is increased if the guilty party is a relative of the young woman or has influence over her – e.g. a teacher or legal guardian (Article 227 of the Penal Code).

Those attempting to force adult women into sex work are liable to prosecution (two to four years of prison sentence). If they are members of the woman's immediate family (e.g. her husband, father or brother), the sentence is increased according to Article 227 of the Turkish Penal Code.

If somebody supplies, dispatches or transports a woman on behalf of himself or another and with the purpose of initiating prostitution, he or she is liable to prosecution.

Violence against sex workers

Sex workers who have been subjected to violence while performing a sexual act can file charges against their assailant under Article 102 of the Turkish Penal Code. Until 1990, Article 438 of the Penal Code provided for a reduction of one-third in the punishment of rapists if the victim was a sex worker. In 1990, this article was cancelled as a result of widespread protests and intensive efforts by the women's movement.

PORNOGRAPHY

There is no legislation in Turkey dealing specifically with pornography. Article 226 of the Penal Code provides for punishment for “indecent or obscene material.” Indecent and obscene materials include a wide range of materials such as advertisements, illustrations, movies, documents, photographs, performances, songs, newspapers, and records. There is no explicit reference in this article to the offence being against women.

The article penalizes pedophilia, zoophilia, those who display obscene material to children, those who broadcast or publish obscene material, and those who use children in obscene material.

