

Musawah: For Equality in the Family

Turkey National Report

Introduction:

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.

Immediately following the Civil Code reform in 2001, 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. The long term campaigns led by the women's movement through intensive efforts and close solidarity, led to the development of sustainable networks and cooperation mechanisms among the women's organizations.

WWHR – New Ways coordinated the Women's Platform for the Reform of the Turkish Penal Code from a Gender Perspective for a continuous three years. After the achievements of the campaign, the Platform has decided to continue to work on the implementation of the new law, as well as to follow up with the necessary legal reforms for gender equality in Turkey. Currently, the platform works through an active e-mail list serve, and the members of the Platform come together for ongoing advocacy and lobbying efforts in Turkey, including reforms of the national legislation (such as the Constitution, Social Security Law, etc.), and others such as the regular reviews of Turkey by the UN Committee on the Elimination of All Kinds of Discrimination Against Women (CEDAW). The Platform calls for other relevant women's organizations and networks according to the issues.

During the preparation of this report, several e-mail consultations were made through the e-mail list serve, and a round table discussion was held.

Equality and Justice are Necessary

In Turkey, many women's lives are shaped by customary practices and patriarchal traditions rather than official laws. Those patriarchal practices do not take into consideration the needs and the expectations of women, including sexual and reproductive rights, and usually consider women as second class citizens, whose bodily autonomy, relations, sexuality should be controlled by the society. The principles such as equality between men and women mentioned in the Constitution, equality of the spouses in the marriage union guaranteed by the Civil Code do not apply to women's everyday lives.

The gap between legislation and implementation of laws is reflected in the findings that, for example in South-eastern Turkey 51% of the women were married against their will despite the law and 52% were subject to marital rape at the time of our research.

Over the past 10 years, Turkey has witnessed major reforms in the sphere of women's human rights and violence against women. However, ground implementation of these laws has been very limited largely because majority of women (and men) do not have the knowledge regarding the existence of these legal mechanisms and lack the skills to enforce their implementation. On the other hand, the existing laws also need to be reformed further in order

to comply with the international standards for the promotion and protection of women's human rights. This can be realised with the involvement of women themselves, confronting the limitations and discriminative provisions of the recent laws and implementations.

Equality and Justice are Possible¹

The founding of the Turkish Republic in 1923 after the war of independence was followed by the introduction of several revolutionary reforms, including drastic changes regarding equality of women and men in the legal sphere; secularization of the state; the abolishment of the Sultanate, the shari'a and the caliphate and the adoption of Latin letters as the Turkish alphabet.

Turkish Civil code, modeled upon the Swiss Civil code, banned polygamy and granted women equal rights in matters of divorce and child custody. The Civil code in particular was an important victory over the advocates of shari'a. However, even this widely acknowledged and celebrated reform of the Turkish Civil code, which has been widely acknowledged as progressive both by academic circles and the Turkish public, was in fact far from bringing actual equality for women in Turkey. Until the reform of the Turkish Civil code in 2001, several laws, especially those in the marriage and family section of the old Civil code, reduced 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 as well as the final say concerning children.

Even decades after the legal reform of the new republic aiming at equality between women and men, little had changed in the everyday life of the majority of women living in Turkey. Yet, traditional and contemporary patriarchy has continued to dominate other areas of life. Although primary education has been mandatory since 1924, 20 per cent of women living in Turkey are still illiterate, according to the population census of 2000. The percentage of paid women workers is still 24 per cent. The representation of women at the Parliament remains under ten per cent.

Yet the official discourse of the state held that the problem of the status of women has been solved and that Turkish women should consider themselves 'lucky' because they were granted specific rights in the public sphere even before their European counterparts. Unfortunately, this discourse has been internalized by many of the women who have been able to benefit from the new possibilities of the young Republic, such as professional women living in big cities or women of the bureaucratic elite. As a result, most of the women's groups and associations formed during the post-Republican era have concentrated on 'helping' or 'educating' women living in the rural areas, instead of questioning their own status or advocating for further rights. Moreover, the dichotomy they perceived between themselves and the rural women hindered their understanding of the problems and potentials of these women, whom they were supposedly trying to 'help,' thus their efforts and strategies have been quite ineffective.

In the 1960s and 1970s, right and left-wing political movements dominated Turkish political debate and action in reaction to strong state controls. In this environment, women's issues

¹ This chapter was formulated by using the two publications:

Turkish Civil and Penal Code Reforms from a Gender Perspective: The Success of Two Nationwide Campaigns; WWHR – New Ways, 2005 <http://www.wwhr.org/files/CivilandPenalCodeReforms.pdf>

Ilkcaracan Pinar; Re/Forming the Penal Code in Turkey from a Gender Perspective: The Case of a Successful Campaign; Web Version September, 2007 <http://www.ids.ac.uk/ids/Part/proj/pnp.html>

were subsumed into Marxist discourses, as leftist women activists were incorporated into the Marxist movement. The 1970s in Turkey witnessed an armed conflict between right and left wing groups, which resulted in a tragic atmosphere of violence and the deaths of hundreds of activists and civilians. The 1980 military intervention, which was justified by the military as the only way to put an end to the anarchic atmosphere, suppressed leftist opposition by force, applied a systematic de-politicization of the masses and set the stage for neo-liberalist policies proposed by the IMF (International Monetary Fund) and other capitalist forces. In this atmosphere of repression and fear, the first new social movement, which demonstrated the courage, to oppose the government actions and articulate its demands was the women's movement.

The new feminist movement of the 1980s brought private sphere women's human rights violations in Turkey to public attention for the first time. The first widespread campaign of the new feminist movement targeted domestic violence. This campaign was followed a year later by another widespread and energetic feminist campaign against sexual harassment and sexual violence, which began in November 1989. The highlight of the press conference was the selling of pins sporting purple ribbons, to be used by women to prick harassers.

The campaign brought an important achievement in the legal arena. Article 438 of the Turkish Penal Code, which reduced by one-third the sentence given to rapists if the victim were a sex-worker, was repealed by the Grand National Assembly in 1990. After this date, despite the success of the first campaigns and the foundation of numerous feminist NGOs in the 1990s, no other significant legal change regarding gender equality was realized in Turkey, except for a special law concerning protection orders, aimed at protecting victims of domestic violence, which passed in 1998 as a result of another feminist campaign.

Throughout the 1990s, feminist advocacy and lobbying for legal reform in Turkey concentrated mainly on the reform of the civil code, which declared husbands as the head of the family and contained several provisions violating both the constitutional guarantee for gender equality and international conventions to which Turkey was signatory, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Although the reform of the civil code and amendments for gender equality became an issue on the public agenda and several drafts were prepared by various governments after 1984, none of these attempts were concluded until the full pledged reform of the civil code in 2001, a result of a broad and intensive campaign by the women's movement.

Reform of the Turkish Civil Code:

After several attempts by previous governments to reform the civil code, in 2000 the coalition government of social democrats, liberals and nationalists finally prepared a draft of a civil code integrating women's demands for full gender equality. Women's groups perceived the civil code reform providing full gender equality as fail-safe. This perception was based on several facts: for one, their years of advocacy for full equality in the civil code seemed finally to be recognized by the government, which had integrated their demands into the draft. Moreover, the government enjoyed an absolute majority in parliament, thus even if all of the opposition, including the religious right Welfare Party, voted against the new civil code, the votes of the MPs in the coalition parties would be sufficient for the acceptance of the government's draft by parliament.

Despite the evidence that supported it, it soon became clear that women's optimism was unfounded. As soon as the draft law was submitted to parliament for discussion in April 2000, an alliance of male MPs belonging to the coalition parties took the lead in opposing the clauses aimed at gender equality proposed by their own government. The opposition was led by the Nationalistic Action Party, but strongly supported not only by the members of the Islamist Welfare Party, but also numerous MPs from all other parties. The opponents argued that provisions aiming at equality between men and women would create anarchy and chaos in the family and thus threaten the foundations of the Turkish nation.

After its initial shock, the women's movement was quick to respond. Within a very short time, more than 120 women's NGOs from all around the country joined together to initiate a major campaign, the widest coalition ever formed for a common cause since the emergence of the new feminist movement in the 1980s. The campaign was effective in gaining the support of the media and the public, creating an atmosphere where resistance to equality between men and women was viewed with scorn. In consequence, the opposition had to step back, and the campaign played a key role in the ultimate realization of the civil code reform. The new Turkish Civil Code was approved by the Turkish Parliament on November 22, 2001

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 term "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. 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 new approach to the family in the new Turkish Civil Code 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.

Reform of the Turkish Penal Code

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 and equality in the family are regulated in national contexts, whereas penal codes are regarded as less relevant to women's rights and gender equality. However, the private sphere and family life is not governed solely by the civil code. 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. As we all know, several violations of women's sexual and bodily rights may take place within the family through various forms of violence against women such as marital rape, honor crimes, sexual abuse of children. Therefore, a progressive penal code does not only promote gender equality within public life, but also is of crucial importance for gender equality in the private sphere, within private relations and within the family. Women's daily experiences prove that for the realization of egalitarian family relations, women should have the control over their own bodies and sexuality, which can be safeguarded by legislation such as the Penal law.

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 in 1926 after the foundation of the Turkish Republic in 1923, as a part of legal and political reforms aiming at secularization and westernization, including radical changes for women. The most striking evidence of the divergence between the rhetoric and practice of the new republic regarding women can be found in the patriarchal construction of women's sexuality and bodies in the 1926 penal code, which included several articles that aimed to protect men's honor and the so-called moral values; sanctioned practices such as honor crimes, abduction and rape of women, and constructed women's bodies as property of their families, husbands and society.

In the 78 years following its first introduction in 1926, until its full-fledged reform in 2004, several articles in the old Turkish penal code were amended, but except for one, none of these amendments concerned women's human rights or sexuality. The only amendment regarding women was the abolishment of article 438 granting sentence reductions of one-third to rapists if the victim were a sex-worker. This came as a result of a widespread feminist campaign against sexual violence and violence against women in 1990.

Many articles in the Turkish penal code of 1926 - henceforth referred to as the old penal code - reflect the construction of sexuality, in particular women's sexuality, as a potential threat to public order and morality, and in need of regulation by laws. For instance, all sexual crimes were regulated under the section 'crimes against society', sub-section 'adab-ı umumiye and nizam-ı aile' (crimes against traditions of morality and family order) instead of under the section 'crimes against individuals'. The regulation of crimes such as rape, abduction or sexual abuse against women as crimes against society, and not as crimes against individuals, was a manifestation of the code's foundational premise that considered women's bodies and sexuality as a property of men, family or society.

The terminology and phrasing in several articles of the old penal code regarding sexuality referred to traditional notions, all adapted into Turkish from Arabic, and commonly associated with religious, i.e. Islamic morality. The notion of ırz, defined by the Ottoman-Turkish dictionary as 'honor' or 'purity', was the key concept in definition of sexual crimes. For example, the term used for rape in the code was ırza geçmek (penetrating one's honor) instead of the common word used for rape in Turkish, tecavüz (violation, attack). The use of the term ırza geçmek for rape implies that rape was viewed in the code primarily as a violation of honor, and not as a crime committed against an individual's bodily integrity. This view alone disallowed criminalization of marital rape, as sexual acts within the context of marriage – even if forced or brutal – could not be considered an assault against one's honor. The definition of rape or attempted rape using ırz instead of tecavüz was in line with the main

intention of the law to protect men's or the family's honor, as opposed to protecting women and girls from sexual crimes.

In a parallel way, if a man who had raped or abducted a woman subsequently married his victim, the code granted a suspension of the sentence, the underlying logic being that while a raped woman suffered a loss of honor, if the rapist ultimately married her, her honor was restored and the offence undone. Even in cases where a woman or even a girl under 15 was abducted or raped by a group of men, if one of the perpetrators accepted to marry the victim, charges against all of them would be dropped. These provisions not only sanctioned the crimes of rape or abduction, but also encouraged men to abduct or rape women who refused them, thus virtually forcing women to marry their rapists in order to preserve their honor.

Sexual attack, including sexual abuse of children under 15 that did not involve penetration was defined as an act against ırz and namus (honor). Sexual intercourse with a person between 15 and 18 years, even if consensual, constituted a crime and carried a punishment of six months to three years of imprisonment. The law also sanctioned the murder of women in the name of honor. Article 462 of the Turkish Criminal Code granted a sentence reduction of up to seven-eighths to male and female perpetrators of honor crimes if the victim were caught in the act of committing adultery or 'illegitimate sexual relations,' or if there was evidence beyond doubt that the victim had just completed such an act.

Certain articles in the code assigned less value to unmarried women compared to married women. For instance, if a married woman was abducted, the minimum sentence required was seven years of imprisonment, but if the abducted woman was unmarried, the sentence could be anywhere from three to ten years.¹⁷ Virginity was a value protected by law, thus article 423 stipulated imprisonment of six months to two years for men who had sexual relations with a virgin based on misleadingly promising marriage; however, the sentence was to be suspended if the perpetrator agreed to marry the woman.

Notions of haya (shame) and ar (things to be ashamed of, especially related to sexuality) were the main criteria for specification of criminal sexual behavior. An article in the old penal code referring to a general, undefined notion of shameless behavior (hayasızca hareketler) provided for up to a one-year imprisonment 'for anyone who acts or engages in a sexual relationship without haya (shame)'. In practice, this article was often used to justify human rights violations by police against LGBT people, although homosexuality is not criminalized in the law.

Additionally, all materials, including publications, literature, music, etc, which 'severed the public's feelings of haya and ar' or 'served to provoke or abuse feelings of sexual desire' were considered to be criminal. It is interesting to note this article even applied to publications aiming to convey the experiences of women who have experienced sexual violence in their childhood. A novel, titled 'It's Enough, Don't Hurt My Skin!' about victims of sexual violence was banned and collected by a decision of the criminal court in Istanbul based on this article. While the code included a very broad definition of sexual behaviors considered criminal, it failed to penalize crimes of marital rape, sexual harassment in the workplace, virginity tests, discrimination based on sexual orientation or sexual crimes by security forces.

The Campaign

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 witnessed an unexpected development, the early elections and the victory of the religious right Justice and Development Party (AKP) in Turkey. 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.

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.

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.

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 regulating "indecent behavior" has been amended to include only sexual intercourse in public and exhibitionism.

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, 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.

2007: The Attempt of the Government for the Annulment of the Constitution

The most recent effort of the women's movement in Turkey for equality in laws was around the attempt of the Justice and Development Party (AKP) government for the annulment of the Constitution. In summer 2007, a draft was prepared by a group of academicians commissioned by the AKP government and later disclosed to the public. The draft that includes the governing AKP's opinions has not been revealed to the public.

Short after, in October 2007, it was declared that the clause "Men and women have equal rights. State is responsible for ensuring this equality," which was added to the present Constitution Article 10 in 2004 following the efforts of the independent women's movement in Turkey was taken out of the draft Constitution. Removal of the statement "Men and women are equal" that is present in our current Constitution was embodying a step back in every shape and form. There wouldn't be any justification to the cancelation of an article that openly regulates gender equality constitutionally, and it is clear that this is an article the scope of which was supposed to be enhanced not altogether canceled.

Immediately gathering around a new initiative, the women's movement declared annulment of the present Constitution's Article 10 brought by the draft Constitution to be completely unacceptable, and that, we will not allow for the draft Constitution to take away our acquired rights. Duty of the states and the constitutions is to eliminate the inequality between its man and woman citizens; its duty is not to try to make one dependent on the other by using the Constitution.

In order to ensure that the laws guarantee gender equality and to instate an actual and complete equality in practice the women's movement demanded the Constitution's "Equality before the Law" article to be formulated as follows:

"Everyone, regardless of language, race, color, ethnicity, gender, sexual orientation, political thought, philosophical belief, religion, sect and marital status is equal before the law without discrimination based on these and similar reasons.

All kinds of direct or indirect gender discrimination against women are prohibited.

Men and women have equal rights. State is responsible for ensuring the actual implementation of gender equality. Until the targeted gender equality of opportunities and practices in every field of life is reached, the state takes legal and institutional temporary and special measures

including quota to ensure this actual equality. These measures cannot be perceived as discrimination.”

The prompt response of the women’s movement, as well as several other stake holders of the civil society in Turkey made the Government to stop the process. The draft law has been put in shelves, and the working group is abolished.