

## TURKEY<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES<sup>2</sup>

(Updated as at 2 April 2022)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws</i></p>	<p>Article 10 of the Constitution states that:<sup>3</sup></p> <ul style="list-style-type: none"> <li>• Everyone is equal before the law without distinction as to several basis, including sex;</li> <li>• Women and men have equal rights and measures that the State is obligated to take to achieve this purpose are not to be interpreted as contrary to the principle of equality.</li> </ul> <p>Article 41 of the Constitution</p>	<p>The Constitutional Court's decision on 27 May 2015 annulled Articles 230(5) of the Penal Code which obligates any person who conducts a religious marriage ceremony to register the marriage as a civil marriage</p>	<p>Turkey has a reservation to Article 29 of CEDAW.<sup>14</sup></p> <p>The Government of Turkey in its 2003 report to the CEDAW Committee asserted that women and men share equal right to enter into marriage under the law. Couples who wish to get married jointly apply to the marriage registry office located in the place of residence of either one of the partners and</p>		<p>According to the 2020 UNDP Human Development Report, Turkey ranked 54 both on the UNDP Human Development Index and the UNDP Gender Inequality Index<sup>17</sup>.</p> <p>According to reports by civil society and the media as well as information on the</p>

<sup>1</sup> This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Turkey country table, we would also like to thank Cassandra Rasmussen from Harvard Law School, and Pınar Çetinkaya and the Executive Committee for NGO Forum on CEDAW-Turkey for their inputs in its preparation

<sup>2</sup> Although the "Muslim Law" title is relevant in the case of countries with a predominantly Muslim population, and with a family law rooted in Islamic law, in the Turkish context, the family law is rooted in secular Civil Law and use only secular sources since the beginning of the 20th century.

<sup>3</sup> Article 10 of Turkey's Constitution (1982), [https://www.constituteproject.org/constitution/Turkey\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en)

<sup>14</sup> United Nations Treaty Collection Website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)

<sup>17</sup> UNDP, "Human Development Report 2020", Table 1, pp. 343, Table 5, pp. 361

<p><i>for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>declares that family is the foundation of Turkish society and states that it is based on the equality between the spouses.<sup>4</sup></p> <p>The Second Book of the Civil Code is the main codified law that governs marriage and family relations in Turkey,<sup>5</sup> a country with a predominantly Muslim population.</p> <p>The Civil Code exclusively recognises civil marriages and applies to all citizens regardless of religion.<sup>6</sup> Under the Penal Code:<sup>7</sup></p> <p>The Civil Code provides for a marital framework that is based on equality between the two spouses.<sup>8</sup> Thus:<sup>9</sup></p>	<p>and failure to do so is punished with imprisonment from two to six months and annulled Article 230(6) which provides that any person who conducts a religious marriage without first having sight of the civil marriage certificate is punished with imprisonment from two to six months. The reason was that they are</p>	<p>openly declare their freedom in the presence of the official performing the marriage and two witnesses.<sup>15</sup></p> <p>-For the last two decades, in parallel to the anti-gender movements across the world, in Turkey, the discourse of “saving families” has been promoted. Women’s rights have then been sacrificed by the state policies for the sake of the goal of preserving the institution of the family. Within this scope,</p> <p>(i) In 2012, the “Ministry for Women and Family”</p>		<p>ground, while the law and stated policies promote equality of spouses within the family, there is disconnect between the law and stated policies and actual implementation. For years, many political and religious leaders, including President Erdogan, have defined the roles of women and how women “should behave” based on patriarchal norms. Such elite rhetoric is</p>
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<sup>4</sup> Article 41 of Turkey’s Constitution (1982), [https://www.constituteproject.org/constitution/Turkey\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en)

<sup>5</sup> Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; Esin Orucu, “Recent Developments in Turkish Family Law”, (Recht van de Islam, 21, 2004), p. 2, [http://www.verenigingrimo.nl/wp/wp-content/uploads/recht21\\_orucu.pdf](http://www.verenigingrimo.nl/wp/wp-content/uploads/recht21_orucu.pdf)

<sup>6</sup> Article 174 of Turkey’s Constitution (1982), [https://www.constituteproject.org/constitution/Turkey\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en); Article 143 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; Umut Uras, “Turkey court ruling on religious marriages spurs uproar”, *Al Jazeera*, 31 May 2015, <http://www.aljazeera.com/news/2015/05/turkey-court-ruling-religious-marriages-spurs-uproar-150530151909516.html>; Esin Orucu, “Recent Developments in Turkish Family Law”, (Recht van de Islam, 21, 2004), pp. 2-3, [http://www.verenigingrimo.nl/wp/wp-content/uploads/recht21\\_orucu.pdf](http://www.verenigingrimo.nl/wp/wp-content/uploads/recht21_orucu.pdf)

<sup>7</sup> Articles 230(5), 230(6) of the Penal Code (2004), <http://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>

<sup>8</sup> Esin Orucu, “Recent Developments in Turkish Family Law”, (Recht van de Islam, 21, 2004), p. 2, [http://www.verenigingrimo.nl/wp/wp-content/uploads/recht21\\_orucu.pdf](http://www.verenigingrimo.nl/wp/wp-content/uploads/recht21_orucu.pdf)

<sup>9</sup> Articles 185, 186 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>

<sup>15</sup> Turkey State party report, U.N. Doc CEDAW/C/TUR/4-5 (2003), p. 46, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>

	<ul style="list-style-type: none"> <li>Article 185 of obligates spouses to work together for the happiness of the marriage union and the care and education of the children; they had to live together in fidelity and help each other;</li> <li>Article 186 provides that the home is chosen together; the union is managed together, the spouses contribute to the expenses in proportion to their abilities through their work and possessions.</li> </ul> <p>With regard to surnames, women and men are not equal in Turkey. Article 187 of the Turkish Civil Code (Law No. 4721) stipulates,</p> <p>‘Married women shall bear their husband's name. However, they can make a written declaration to the Registrar of Births, Marriages and Deaths on signing the marriage deed, or at the Registry</p>	<p>unconstitutional because they are contrary to the right to demand respect for private and family life and religion and conscience (‘May 2015 Decision’).<sup>11</sup> Although the Constitutional Court only annulled the crime and punishment for marrying by way of a religious ceremony without executing official marriage transactions or conducting a religious ceremony without seeing the certificate of marriage, the decision has been perceived</p>	<p>was replaced with the “Ministry of Family and Social Policies” which focuses more on issues of concern relating to the family and less on women’s rights. (ii); In 2010, the tasks of the Presidency of Religious Affairs were expanded. This institution began to work in collaboration with the other ministries and pro-government NGOs in governing the women and family in line with the conservative norms based on gender hierarchy. (iii)In 2016, a Divorce Committee charged by the parliament was established in order to investigate divorce cases and this commission has published a report including suggestions of legal changes which attack women’s rights.</p>		<p>being circulated so frequently despite Turkish laws envisioning equality both in the public and private spheres. The general public increasingly embrace patriarchal norms in their daily interactions to the detriment of women. In this context:</p> <p>(i)Women are defined only in terms of motherhood and expected to give birth to at least four children<sup>18</sup>.</p> <p>(ii)While women are told to bear many children, neoliberal policies have shifted care labour from the state’s responsibility and placed it on the shoulders of</p>
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<sup>11</sup> Pasinler Criminal Court of Peace, *Judgment of the Constitutional Court*, Judgement No. 2015/51, 27 May 2015,

<sup>18</sup> “Erdogan: 1-2-3-4 Children, The rest is Allah Karim” *Bianet*, 22 December 2014, <https://bianet.org/bianet/siyaset/160991-erdogan-1-2-3-4-cocuk-gerisi-allah-kerim>

	<p>of Births, Marriages and Deaths after the marriage, if they wish to keep their maiden name in front of their surname. Women who previously carried two surnames can only benefit from this law for one name.<sup>1</sup></p> <p>This rule is in conflict with the Turkish Constitution and with the international agreements to which Turkey became a party. The Turkish courts have changed their application of Article 187 in the last few years. The courts do not apply Article 187 but administrative authorities adhere to it. Although Article 187 is considered practically void by the courts, there is no amendment to the article so far. Therefore, a woman who does not wish to bear a family name is forced to file a lawsuit to use this right. Article</p>	<p>by the public as if the Court ruled that registration of a religious marriage as a civil marriage is no longer a legal requirement. Consequently, there are concerns that the May 2015 Decision may lead to higher prevalence of child and polygamous marriages, both prohibited under the Civil Code.<sup>12</sup></p> <p>With regard to surname inequality, there</p>	<p>The state has been seeking to actualize these suggestions for the last few years<sup>16</sup>.</p>		<p>women.<sup>19</sup> Conservative values and neoliberal policies then compel women not to work, which in turn, creates great inequalities between men and women. (iii) The idea of fitra has been strongly promoted and it has been argued that equality contradicts with women's "fitra", which is considered only in terms of women's maternal capacity<sup>20</sup>.</p>
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<sup>12</sup> Riada Asimov Akyol, "Turkish Courts stirs Marriage Debate", *Al Monitor*, 1 June 2015,

<http://www.al-monitor.com/pulse/originals/2015/06/turkey-top-court-stirs-debate-on-religious-marriage.html>

<sup>16</sup> "Report of the Parliamentary Research Commission Established for Family Integrity, Divorce Events and Strengthening the Family Institution", 13 December 2016

<https://icisleri.gov.tr/399-sira-sayili-meclis-arastirmasi-komisyonu-raporu>

<sup>19</sup> Yazıcı, Berna (2012), *The Return To the Family: Welfare, State and the Politics of the Family in Turkey*, *Anthropological Quarterly*, Winter 2012, Vol. 85, No. 1 (Winter 2012), pp. 103-140

<sup>20</sup> "Turkey President: Women Are Not Equal To Men", BBC, 24 November 2014, <https://www.bbc.com/news/world-europe-30183711>

	<p>187 should be amended in order to overcome the inequality between husband and wife concerning surname."<sup>10</sup></p>	<p>are three pivotal case laws:</p> <ul style="list-style-type: none"> <li>-Decision of the European Court of Human Rights: Ünal Tekeli v. Turkey</li> <li>-Decision of the Turkish Constitutional Court in 10.03.2011 (Official Gazette: 21.11.2011)</li> <li>-The Decision of Turkish Constitutional Court (dated 25.6.2015 and numbered 2013/3434) with regards to a personal application stated that the</li> </ul>			
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<sup>10</sup> Dilsah Busra Kartal, 2020. "Recent Developments In Turkish Law Regarding The Surname Of A Married Woman," [Proceedings of International Academic Conferences 10212734](#), International Institute of Social and Economic Sciences.

		<p>woman's request to change the surname of the child whose right of parental custody was given to her is rightful and valid.</p> <p>In Ünal Tekeli v. Turkey, The European Court of Human Rights concluded that the prohibition of use of the surname Ünal had a negative impact on professional activities as well as on other social fields. In the court decision the applicant was found injured. The purpose of reflecting family unity with a common family name was not found as an adequate ground for the discrimination</p>			
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		<p>based on sex subject to complaint in said case. Discussions on the fact that the change of women's surname depending upon marriage and divorce caused distress in women's life persisted and the subject matter was also brought before the Constitutional Court of Turkey. The action for annulment of the Article 187 of the Turkish Civil Code which stipulates that women shall take their husband's surname upon marriage was examined by the Constitutional Court and rejected. Yet after the individual application right to the Constitutional</p>			
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		<p>Court of Turkey was brought with the referendum in 2010, the Constitutional Court has not assessed the women's compulsory taking of their husband's surname upon marriage in terms of equality principle in its individual application decisions.<sup>13</sup></p>			
	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>
<p><b>Minimum and equal legal age for marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of</i></p>	<p>The minimum legal age for marriage is 17 for females and males based on Article 124 of the Civil Code. However, Article 124 also provides that a judge may permit girls and boys below 17 to marry in extraordinary circumstances and with a very important reason. If possible, the judge is also obligated to hear the</p>	<p>Concerns have been expressed that the Constitutional Court's May 2015 Decision will remove protections intended to prevent child</p>	<p>In 2013, the Head of Turkey's Religious Affairs Directorate (Diyanet), offered the following censure of child marriage: "...fathers and families who forcibly marry off girls to much more older men, without girls' consent, without them still</p>	<p>To register a marriage, women and men have to submit an application together with their identity documents and other relevant documents to the Marriage Office in</p>	<p>The official marriage statistics show that the age of marriage has increased both for men and women. The average age of first marriage has increased from 23.7 to 24.8 for women</p>

<sup>13</sup> Helvacı, Serap (2015) ,Public and Private International Law Bulletin, Volume: 35, Issue: 1, 157-169, <https://dergipark.org.tr/tr/download/article-file/411028>



<p><i>marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>father, the mother or the guardian before making a decision.<sup>21</sup></p> <p>Article 124 of the Civil Code absolutely prohibits the marriage of girls and boys below 16.<sup>22</sup></p> <p>The minimum legal age for marriage is below the legal age of civil majority. Under Article 11 of the Civil Code, the legal age of civil majority is 18 for both females and males. A minor attains adulthood by marriage.<sup>23</sup></p> <p>Article 103 of the Turkish Penal Code stipulates that</p>	<p>marriage.<sup>25</sup></p> <p>The Constitutional Court annulled the provision stating that "any sexual behavior against any child under the age of 15 shall be considered sexual abuse" (dated 14.07.2016)<sup>26</sup>, .</p>	<p>having gained the maturity for being a mother, or grasping the meaning of a spouse [are] ruthless." He also said "Whoever tries to find an argument or justification [for child brides] in any Islamic source, does injustice both to religion and that girl child. That is why it is all of our responsibility to take all these [historical facts] again and share them with society anew."<sup>27</sup></p>	<p>one of their residential places. The marriage officer is the Mayor (or an officer authorised by the Mayor) in the cities and the village head (<i>mukhtar</i>) in the villages. The marriage officer examines the documents and, if he/she finds out a legal obstacle, rejects the application.<sup>28</sup></p>	<p>and from 27.0 to 27.8 for men during the time period 2010 to 2018<sup>29</sup>.</p> <p>According to 2018-TDHS (Turkey Demographic and Health Surveys), 64% of women married before age 18 had a religious ceremony first; 7% of them have only had religious ceremony<sup>30</sup>. It is difficult to access</p>
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<sup>21</sup> Article 124 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; Riada Asimovic Akyol, "New Focus on Child Brides in Turkey", *AI Monitor*, 8 January 2014, <http://www.al-monitor.com/pulse/originals/2014/01/turkey-marriage-child-brides-poverty-education-religion.html>

<sup>22</sup> Article 124 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; Riada Asimovic Akyol, "New Focus on Child Brides in Turkey", *AI Monitor*, 8 January 2014, <http://www.al-monitor.com/pulse/originals/2014/01/turkey-marriage-child-brides-poverty-education-religion.html>

<sup>23</sup> Article 11 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>

<sup>25</sup> Riada Asimov Akyol, "Turkish Courts stirs Marriage Debate", *AI Monitor*, 1 June 2015, <http://www.al-monitor.com/pulse/originals/2015/06/turkey-top-court-stirs-debate-on-religious-marriage.html>

<sup>26</sup> AYM: Sexual behavior to every child under the age of 15 is not abuse, BBC News Turkey, 14 July 2016, <https://www.bbc.com/turkce/haberler-turkiye-36798378>

<sup>27</sup> Riada Asimovic Akyol, "New Focus on Child Brides in Turkey", *AI Monitor*, 8 January 2014, <http://www.al-monitor.com/pulse/originals/2014/01/turkey-marriage-child-brides-poverty-education-religion.html>

<sup>28</sup> Articles 134-137 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>

<sup>29</sup> Turkish Statistical Institute (TurkStat) (2020).

<sup>30</sup> Hacettepe University and UNFPA, Child, Early and Forced Marriage in Turkey,, p43, figure 33, [p://fs.hacettepe.edu.tr/hips/dosyalar/yayinlar/ENG/eng\\_tdhs\\_cefm\\_findings\\_report\\_ENG.pdf](p://fs.hacettepe.edu.tr/hips/dosyalar/yayinlar/ENG/eng_tdhs_cefm_findings_report_ENG.pdf)

	<p>Any person who abuses a child sexually is sentenced to an imprisonment from eight years to fifteen years. If the said sexual abuse ceases at the level of sexual importunity, the term of imprisonment shall be from three years to eight years. If offender of the offence ceased at the level of importunity is a child, commencement of an investigation and prosecution depends on the complaint of the victim' parents or guardian.</p> <p>The government proposed a bill on November 17, 2016 that would grant amnesty to the perpetrators of sexual abuse if they married their victims, and later had to withdraw it following widespread uproar from the autonomous women's organizations. However, Article 13 of omnibus Draft Law No. 438, which proposed amendments to Article 103 of the Turkish Penal Code (TPC), passed through parliament on</p>	<p>This decision paved the way for the change in Article 103.</p>			<p>the statistical data related to child, early and forced (CEFM) marriages in Turkey since these marriages mostly occur as religious marriages and are not legally registered. Notwithstanding, available data suggest a relatively high prevalence of (CEFM) in Turkey.</p> <p>According to UNICEF's State of the World's Children 2016 report, 15% of women aged 20- 24 in Turkey were first married by 18 and 1% by 15;<sup>31</sup></p> <p>The findings of TDHS shows that, in the 40-year period between 1978 and 2018, prevalence of</p>
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<sup>31</sup> UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153

	<p>November 24, 2016. Accordingly, there is now an age categorization for 12-to-15-year-olds in Article 103 of the TPC, which could cause courts to question the consent of children in this age range and “force them to marry the person who abused them.”<sup>24</sup>.</p>			<p>marriage before age 15 among women aged 20-24 declined from 10% to 2%. Also, 41% of women aged 20-24 married before age 18 in 1978 and this percentage decreased to 15% in 2018. In that period, there has been a decline in the prevalence of marriage before the ages of 15 and 18 in all age groups; but in the past 10 years, data did not follow this downward trend<sup>32</sup>. According to TDHS, in the past 10 years, the proportions of CEFM increased in</p>
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<sup>24</sup> “Article 103 of The Turkish Penal Code, Recently Amended and Passed Through Parliament, Runs The Risk of Seeking Consent from Children Between 12 and 15 Years of Age” 20 November 2016  
<https://cinselsiddetlemucadele.org/en/2016/11/26/article-103-of-the-turkish-penal-code-recently-amended-and-passed-through-parliament-runs-the-risk-of-seeking-consent-from-children-between-12-and-15-years-of-age/>

<sup>32</sup> Hacettepe University and UNFPA, Child, Early and Forced Marriage in Turkey, p27., figure 2-3  
[p://fs.hacettepe.edu.tr/hips/dosyalar/yayinlar/ENG/eng\\_tdhs\\_cefm\\_findings\\_report\\_ENG.pdf](p://fs.hacettepe.edu.tr/hips/dosyalar/yayinlar/ENG/eng_tdhs_cefm_findings_report_ENG.pdf)

				<p>West Marmara, Aegean, Mediterranean and Southeast Anatolia. Child marriage is more prevalent among young women who grew up and still live in rural areas.<sup>33</sup></p> <p>According to the 2018-TDHS Syrian Migrant Sample, among Syrian migrant women aged 20-24, the proportion of marriage before age 18 was 44.8% and the proportion of marriage before age 15 was 9.2%.<sup>34</sup></p> <p>According to a 2018 household survey by</p>
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<sup>33</sup> Hacettepe University and UNFPA, Child, Early and Forced Marriage in Turkey, p29, figure 6, [p://fs.hacettepe.edu.tr/hips/dosyalar/yayinlar/ENG/eng\\_tdhs\\_cefm\\_findings\\_report\\_ENG.pdf](p://fs.hacettepe.edu.tr/hips/dosyalar/yayinlar/ENG/eng_tdhs_cefm_findings_report_ENG.pdf)

<sup>34</sup> Hacettepe University and UNFPA, Child, Early and Forced Marriage in Turkey, p28, [p://fs.hacettepe.edu.tr/hips/dosyalar/yayinlar/ENG/eng\\_tdhs\\_cefm\\_findings\\_report\\_ENG.pdf](p://fs.hacettepe.edu.tr/hips/dosyalar/yayinlar/ENG/eng_tdhs_cefm_findings_report_ENG.pdf)

					the Ministry of Family and Social Policies and Hacettepe University, among women in the 25-49 age group, 39% married by age 20, 21% marry by age 18, and 4% enter marriage before their 15th birthday. <sup>35</sup>
	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>
<b>Women's consent to marriage</b> <i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that</i>	Regardless of their age, both prospective brides and grooms must consent to the marriage. <sup>36</sup> Consequently, <i>ijbar</i> marriages are prohibited.  There is no specific article in the Penal Code that relates to forced marriages. However, "Offenses against Sexual Immunity" are		The Government of Turkey in its 2003 report to the CEDAW Committee informed that according to the law, the basic condition of marriage is the full and free consent of the couples getting married,	<ul style="list-style-type: none"> <li>During the civil marriage ceremony, the marriage officer asks the parties individually</li> </ul>	<b>Women's consent to marriage</b> <i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is</i>

<sup>35</sup> Ministry of Family and Social Policies and Hacettepe University, Turkey Demographic and Health Survey 2018, p.46, figure 4.2, [https://fs.hacettepe.edu.tr/hips/dosyalar/Ara%C5%9Ft%C4%B1malar%20-%20raporlar/2018%20TNSA/TDHS2018\\_mainReport\\_compressed.pdf](https://fs.hacettepe.edu.tr/hips/dosyalar/Ara%C5%9Ft%C4%B1malar%20-%20raporlar/2018%20TNSA/TDHS2018_mainReport_compressed.pdf)

<sup>36</sup> Articles 142, 143 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; Seda Irem Cakirca, "Turkish Civil Code and CEDAW: Never Shall the Twain Meet?", (Annales XLV, 62, 2013), pp. 170-171; Women for Women's Human Rights, "The New Legal Status of Women in Turkey", 2002, p.9

<p><i>ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>regulated by Chapter 6, and "Offenses against Liberty" are regulated by Chapter 7.<sup>37</sup></p> <p>The mandatory registration of marriages is provided for in Articles 142 and 143 of the Civil Code.<sup>38</sup></p>		<p>whether a minor or an adult.<sup>39</sup></p>	<p>y if they would like to marry each other and gets their oral answers in front of two witnesses.<sup>40</sup></p> <ul style="list-style-type: none"> <li>• While the Constitutional Court in its May 2015 Decision annulled the crime and punishment relating to religious marriages that are not registered</li> </ul>	<p><i>there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>
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<sup>37</sup> Chapters 5, 7 of the Penal Code (2004), <http://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>

<sup>38</sup> Articles 142, 143 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>

<sup>39</sup> Turkey State party report, U.N. Doc CEDAW/C/TUR/4-5 (2003), p. 47, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>

<sup>40</sup> Articles 142 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html> Women for Women's Human Rights, "The New Legal Status of Women in Turkey", 2002, p. 11

				<p>as civil marriages, it is important for women to officially register a marriage not only because it is a legal requirement, but also because women who do not register their marriage would be deprived from claiming certain rights that would have been available to them had their marriages been officially</p>	
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				<p>registered. The Constitutional Court itself in its May 2015 Decision asserted as follows when explaining the reason for there being no need to impose penal sanctions in that regard: "In accordance with the relevant provisions of Turkish Civil Code, it is mandatory for spouses to have their official marriage certificate</p>	
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				<p>issued by the relevant officials stated in the law in order to claim their rights arising from the matrimony .</p> <p>Otherwise, they cannot claim a number of rights arising from the conjugal community. In other words, there are legal sanctions that people may be subject to if they do not execute</p>	
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	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>
				<p>civil marriage transactions, and these sanctions are adequate to ensure that people execute these transactions.<sup>41</sup></p>	
<p><b>Women's capacity to enter into marriage</b></p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman</i></p>	<p>Prospective brides and grooms over 18 do not require the consent of a guardian to enter into marriage. Prospective brides and grooms below 18 require the consent of their guardian to enter into marriage.<sup>42</sup></p>			<p>Marital agreements are limited to the election of the matrimonial property regime.<sup>43</sup></p>	

<sup>41</sup> Pasinler Criminal Court of Peace, *Judgment of the Constitutional Court*, Judgement No. 2015/51, 27 May 2015

<sup>42</sup> Articles 126, 127 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; Women for Women's Human Rights, "The New Legal Status of Women in Turkey", 2002, p. 9

<sup>43</sup> International Comparative Legal Guide, "Marital Agreements", *Family Law*, 2017, <https://iclg.com/practice-areas/family-law/family-law-2017/turkey>

<p><i>negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>				
<p><b>Polygamous marriages</b></p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the</i></p>	<p>Polygamy is a criminal offense.</p> <p>Article 230(1) states that a person who marries another person although he/she is legally married at that time is punished with imprisonment from six months to two years.<sup>44</sup></p> <p>Article 230(2) of the Penal Code states that any person who officially gets married to a person known as married to another person although he is bachelor, is punished according to the provisions of the above</p>	<p>The Constitutional Court's May 2015 Decision has been viewed by many as implicitly enabling polygamous marriages.<sup>46</sup></p>		<p>According to a 2011 report, 186,000 women are in polygamous marriages. These unsanctioned marriages have given them few legal protections. The 2011 report found that 452,139 women are in non-legally binding marriages.<sup>47</sup> Since these marriages are not protected under the</p>

<sup>44</sup> Article 230(1) of the Penal Code (2004), <http://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>

<sup>46</sup> Riada Asimov Akyol, "Turkish Courts stirs Marriage Debate", *Al Monitor*, 1 June 2015, <http://www.al-monitor.com/pulse/originals/2015/06/turkey-top-court-stirs-debate-on-religious-marriage.html>

<sup>47</sup> Hurriyet Daily News, "Report Sheds Light on Widespread Polygamy in Turkey", *Hurriyet Daily News*, 1 November 2011, <http://www.hurriyetaidailynews.com/default.aspx?pageid=438&n=some-186000-women-live-with-their-8216sister-wives8217-2011-01-11>

<p><i>marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>subsection.<sup>45</sup></p>				<p>Civil Code, the women entering these marriages do not have marital rights (such as alimony, participation of acquired property, inheritance in the event of husband's death etc.).<sup>48</sup></p> <p>According to the Turkey Demographic and Health Survey 2018, %2 of currently married women stated that their husbands have another wife.<sup>49</sup></p>
<p><b>Divorce rights</b></p> <p><i>Is there equal right to divorce between women and men? Can</i></p>	<p>Divorce rights between women and men are equal.</p> <p>Under the Civil Code.<sup>50</sup></p>		<p>In 2016, the Turkish Parliament established a Commission to investigate the causes of</p>	<p>The court that orders the divorce also notifies the Registration</p>	<p>According to the media reports and information on the ground, many</p>

<sup>45</sup> Article 230(2) of the Penal Code (2004), <http://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>

<sup>48</sup> Information obtained from Turkish advocate, February 2017

<sup>49</sup> Ministry of Family and Social Policies and Hacettepe University, Turkey Demographic and Health Survey 2018, p 48, table 4.6, [https://fs.hacettepe.edu.tr/hips/dosyalar/Ara%C5%9Ft%C4%B1rmalar%20-%20raporlar/2018%20TNSA/TDHS2018\\_mainReport\\_compressed.pdf](https://fs.hacettepe.edu.tr/hips/dosyalar/Ara%C5%9Ft%C4%B1rmalar%20-%20raporlar/2018%20TNSA/TDHS2018_mainReport_compressed.pdf) )

<sup>50</sup> Article 161-166 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; International Comparative Legal Guide, "Marital Agreements", *Family Law*, 2017, <https://iclg.com/practice-areas/family-law/family-law-2017/turkey>; Esrin Orucu, "Recent Developments in Turkish Family Law", (Recht van de Islam, 21, 2004), pp. 2-3, [http://www.verenigingrimo.nl/wp/wp-content/uploads/recht21\\_orucu.pdf](http://www.verenigingrimo.nl/wp/wp-content/uploads/recht21_orucu.pdf)

<p><i>the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<ul style="list-style-type: none"> <li>• Divorce can only take place in court;</li> <li>• The two main forms of divorce (contested and uncontested) are equally available to both women and men.</li> <li>• The grounds for divorce are the same for the husband and wife and are as follows: <ul style="list-style-type: none"> <li>- Adultery;</li> <li>- Threat to life, extreme cruelty and serious insult;</li> <li>- Committing a humiliating crime, leading a dishonourable life;</li> <li>- Desertion;</li> <li>- Incurable mental illness; and</li> <li>- Irretrievable breakdown.</li> </ul> </li> </ul> <p>The law does not allow unilateral divorce.</p>		<p>the rising divorce rates in Turkey, The report of this Commission was criticised by many feminist groups for neglecting violence against women for the sake of reserving marriages, and for legitimising child marriages and women being forced to marry men who raped them.<sup>51</sup> This parliamentary commission proposed the removal of the right of alimony of the spouse who will suffer from poverty due to divorce (usually women), but the women's movement pushed back and prevented it.</p> <p>As of November 2021, Women's organizations (such as TCK103 Platform and ESIK) prevented multiple</p>	<p>Office.<sup>52</sup></p>	<p>women are reluctant to divorce their husbands although there are valid grounds to do so for fear of threats from their husbands, social pressure, adverse economic conditions etc. Turkish society does not welcome divorce, and many women suffer from the disapproval of her own family upon a divorce.</p> <p>Even though talaq is not legal, the Directorate of Religious Affairs' fatwas recognizes talaq. It also recognizes the three times of expression of divorce by man as unilateral divorce. Even though we do</p>
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<sup>51</sup> Information obtained from Turkish advocate, February 2017; Pinar Tremblay, "Is this the last nail in coffin of women, minors' rights in Turkey?", *Al Monitor*, 27 May 2016, [http://www.al-monitor.com/pulse/originals/2016/05/turkey-women-and-minor-rights-misogynistic-law.html?utm\\_source=English+List+-+052616&utm\\_campaign=9bdf79d1e9-May\\_30\\_2016&utm\\_medium=email&utm\\_term=0\\_7ec6b191fc-9bdf79d1e9-102789889](http://www.al-monitor.com/pulse/originals/2016/05/turkey-women-and-minor-rights-misogynistic-law.html?utm_source=English+List+-+052616&utm_campaign=9bdf79d1e9-May_30_2016&utm_medium=email&utm_term=0_7ec6b191fc-9bdf79d1e9-102789889)

<sup>52</sup> Information obtained from Turkish advocate, February 2017

			<p>suggested law changes in the report (such as pardoning perpetrators of child abuse if they marry the victim) from passing in the parliament.</p>	<p>not have data on the prevalence of this practice in the society, it is safe to say that as a government institution, the Director of Religious Affairs' fatwas that contradict with the secular civil law create a dichotomy in the legal system.</p> <p>There are reports of many cases of husbands physically abusing their wives or even killing them upon their wives seeking a divorce.</p> <p>According to statistics by Bianet (an independent communication network which compiles statistics from local, national and internet news regarding violence against women), in 2020, men killed 284 women; 20% of these women were</p>
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					killed for seeking a divorce or breakup. <sup>53</sup>
	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>
<p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can</i></p>	<p>Generally, upon divorce, a woman may be entitled to: (i) financial maintenance; (ii) financial compensation; and (iii) a share of the matrimonial assets.<sup>54</sup></p> <p>Pursuant to Article 175 of the Civil Code, if a spouse is going to be poor due to divorce, s/he is entitled to financial maintenance until the former spouse's death or remarriage or the former spouse no longer needs it or lives dishonourably. Fault or guilt is not necessary for financial maintenance to be ordered. The amount of financial maintenance available to the former spouse needing it is dependent on the financial capacity of the other</p>	<p>The Civil Code requires that the division of matrimonial assets takes place no later than one year after the official divorce, and sets the statute of limitations at one year after the divorce decree is made absolute for any right of action arising from divorce. However, in 2013, the Supreme Court</p>	<p>Current government has shown signals of support to the proposed removal of the right to demand permanent alimony.<sup>62</sup> Although courts hardly decide women to get the permanent alimony and women lose this alimony if their economic situation changes, the AKP government and anti-gender movements (conservative movements such as by ultra right wing Saadet Party and some religious communities) frame men as "victims" of the current law.</p>		<p>According to legal practitioners, academic research and information on the ground.<sup>63</sup></p> <p>Although financial maintenance and compensation are regulated by the Civil Code, many men avoid paying some or all of these amounts. Common ways to avoid alimony include unregistered work or to concealing the real income;</p>

<sup>53</sup> Bianet, Jan 2021 <https://bianet.org/bianet/toplumsal-cinsiyet/237549-erkekler-2020-de-en-az-284-kadini-oldurdu> .

<sup>54</sup> International Comparative Legal Guide, "Finance on Divorce", *Family Law*, 2017, <https://iclg.com/practice-areas/family-law/family-law-2017/turkey>

<sup>62</sup> Mengü, Dec 2019 <https://www.duvarenglish.com/columns/2019/12/11/turkish-women-have-a-tough-road-ahead>

<sup>63</sup> Information obtained from Turkish advocate, February 2017; Seyhan Law Office, "Division of Property during Divorce Proceedings", Seda Irem Cakirca, "Turkish Civil Code and CEDAW: Never Shall the Twain Meet?", (Annales XLV, 62, 2013), p. 145, <http://dergipark.gov.tr/download/article-file/7075>

<p><i>the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>former spouse.<sup>55</sup></p> <p>Pursuant to Article 174 of the Civil Code, a spouse who claims to have suffered material or moral damage can make a request to the court for an order that compensation be paid by the other party to him/her for the damage suffered.<sup>56</sup></p> <p>The share of matrimonial assets available to the parties is dependent on the asset regime that the couple is attached to at the time of the divorce i.e. the legal matrimonial property regime, the regime of separation of property, the regime of separation of property with distribution and the regime of community of property.<sup>57</sup></p> <p>Article 202 of the Civil Code states that the default arrangement is that all assets acquired during the marriage are</p>	<p>ruled that the process could be extended to 10 years.<sup>61</sup></p> <p>In July 2021, the Court of Appeal overturned the poverty alimony decision given in favor of the woman (who is a teacher) on the grounds that the woman had sufficient and permanent income.</p>	<p>There have been a few new small social collectives, such as “divorced victim dads”, that pushes for the removal of the right to permanent alimony.</p>	<p>Generally, the amount of both financial maintenance and compensation have been low and do not provide a living to a woman who does not have any other income;</p> <p>There are cases where spouses have attempted to hide the assets (e.g. by registering the property in the name of a third person) or sell them before the process of matrimonial liquidation regime starts. Since the power relations in a marriage is</p>
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<sup>55</sup> Article 175 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; International Comparative Legal Guide, “Finance on Divorce”, *Family Law*, 2017, <https://iclg.com/practice-areas/family-law/family-law-2017/turkey>

<sup>56</sup> Article 174 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; International Comparative Legal Guide, “Finance on Divorce”, *Family Law*, 2017, <https://iclg.com/practice-areas/family-law/family-law-2017/turkey>

<sup>57</sup> Articles 202, 203, 205 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; International Comparative Legal Guide, “Finance on Divorce”, *Family Law*, 2017, <https://iclg.com/practice-areas/family-law/family-law-2017/turkey>; Zeynab Derya Tarman and Basak Basoglu, “Matrimonial property regime in Turkey”, (Buitenlands IPR/Foreign PIL, 3, 2014), p. 360, <http://nipr-online.eu/pdf/2014-309.pdf>

<sup>61</sup> Article 178 of the Civil Code, <https://www.tbmm.gov.tr/kanunlar/k4721.html>



	<p>considered to be jointly acquired unless the spouses gave agreed to another arrangement within the boundaries of the law.<sup>58</sup></p> <p>Under the default matrimonial property regime, the marital assets are divided equally between the women and men during and after the dissolution of the marriage. Although the woman's role as wife and mother is not explicitly stated as contributing to acquisition of assets, the unpaid work of the wife is implicitly recognised.<sup>59</sup></p> <p>Following a divorce, regardless of custody arrangements, both parents are responsible for the financial maintenance of their children. Parents are able to request this care maintenance from each other.<sup>60</sup></p>				<p>generally in favour of men, often the party who do not benefit from the participation of acquired property regime after a divorce as a result of such actions is the woman;</p> <p>The matrimonial property regime does not apply retroactively. As such, millions of women who were married before 2002 (i.e. before the regime came into force) and unable to apply to the authorities within the following year to change their matrimonial property regime do not enjoy</p>
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<sup>58</sup> Article 175 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; International Comparative Legal Guide, "Finance on Divorce", *Family Law*, 2017, <https://iclg.com/practice-areas/family-law/family-law-2017/turkey>

<sup>59</sup> Women for Women's Human Rights, "The New Legal Status of Women in Turkey", 2002, p. 14

<sup>60</sup> Articles 327-330 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; International Comparative Legal Guide, "Child maintenance", *Family Law*, 2017, <https://iclg.com/practice-areas/family-law/family-law-2017/turkey>

				<p>the equal division of property acquired during marriage.</p> <p>Since 2018, alimony laws have been under attack. Turkish far right political party Saadet, and far right media, “Yeni Akit”, have been aggressively campaigning for the removal of the law that gives the right to women to demand permanent alimony.</p> <p>Current government has shown signals of support to the proposed removal of the right to demand permanent alimony. <sup>64</sup>As of Nov 2021, women’s movements have managed to push back against the proposed removal of women’s right to</p>
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<sup>64</sup> Mengu, Dec 2019 <https://www.duvarenglish.com/columns/2019/12/11/turkish-women-have-a-tough-road-ahead>

					<p>demand permanent alimony.</p> <p>Research shows that, as of October 2019, the average poverty alimony ordered by the courts is 370 TL (the poverty threshold is 2058 TL) and more than 50% of men do not pay the alimony ordered by the courts. There is also data showing that women receive alimony due to traditional gender roles, pay gap and lack of access to the labor market, which makes them more economically dependent on their partners.”<sup>65</sup></p>
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<sup>65</sup> UN Women, 2020 <https://eca.unwomen.org/en/digital-library/publications/2020/05/research-on-permanent-alimony-in-turkey-summary-of-the-report>

	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Custody of Children</b></p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>During marriage, both parents have custodial rights over their children. In the event of a divorce, custody is entrusted to either the mother or father, even if parents have agreed to joint custody or have divorced in another country in which they were granted joint custody. The criteria for determining custody is the “best interest of the child” and the “capacity of the parent for raising the child.” Mothers have sole custody of children born outside of marriage.<sup>66</sup></p> <p>Remarriage of the mother, her infidelity, or the aging of the child do not automatically cause custody to change to the father, but they can be seen as reasonable grounds for the custody case of a father.<sup>67</sup></p>			<p>In divorce and custody cases generally judges ask the child expert (in the law referred to as a pedagogue, a social worker, or a psychologist) to interview the children and take into account their reports in deciding parental custody.<sup>68</sup></p>	<p>According to information on the ground, generally after a divorce, fathers do not file for the custody of the children and mothers are awarded the custody. In instances where a father files for custody:<sup>69</sup></p> <p>If the children are young and need a mother’s care, mothers are usually awarded custody of the children;</p> <p>If the children are older, fathers who have better socio-economic means could be</p>

<sup>66</sup> Articles 182, 335-336 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; Cam & Kaya Law Associates, “Turkish Family Law: Custody”, *Cam & Kaya Law Associates*, <https://turkisfamilylaw.wordpress.com/consequences-of-divorce/custody/>

<sup>67</sup> Information obtained from Turkish advocate, February 2017

<sup>68</sup> Information obtained from Turkish advocate, February 2017

<sup>69</sup> Information obtained from Turkish advocate, February 2017

					<p>awarded custody.</p> <p>On November 25, 2021, the 5th Judicial Package, which envisages a change in the law regulating delivery of the child to the parent who does not have the custody, was passed in the parliament.<sup>70</sup> Accordingly, if the parent who has the custody (usually women), does not fulfill the requirements of children's right to establish a personal relationship with the other parent, the custody can be changed. Claiming that the old law failed to serve "the best interests of the child and caused additional conflicts between</p>
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<sup>70</sup> Gazete Duvar, 2021, in Turkish. <https://www.gazeteduvar.com.tr/icrayla-cocuk-tesliminde-degisiklik-de-iceren-5-yargi-paketi-tbmmde-kabul-edilerek-yasalasti-haber-1543084>

					<p>the parents”, the new law says an institution will be developed for the execution of the court decisions regarding the delivery of a child to the other parent. Finally, the parent who does not abide by court decisions on the delivery of the child to the other parent will face disciplinary prison. Opposition and women’s organizations did not support this change. They suggested that this law change does not prioritize children’s best interest – it rather prioritizes the interest of the parent who does not hold custody of the child. They argued that the new law fails to grant children</p>
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					agency. <sup>71</sup>
	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>
<p><b>Guardianship of Children</b></p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>In the event of a divorce, both parents have equal right to guardianship. The criteria for determining guardianship is the “best interest of the child”.<sup>72</sup></p>		<p>The Government of Turkey in its 2008 report to the CEDAW Committee explained that in cases of divorce, the judge can place the children under the guardianship of either parent. In practice, judges tend to award guardianship of younger children to mother, unless there are exceptional circumstances. The parent that fails to gain the child’s guardianship has to share the monetary equities incurred by the upbringing of the child. Right to visit the children is regulated for the parent failing to gain their</p>		

<sup>71</sup> Evrensel, 2021, in Turkish. <https://www.evrensel.net/haber/448676/5inci-yargi-paketini-de-iceren-kanun-teklifi-tbmm-genel-kurulunda-yasalasti>

<sup>72</sup> Article 182 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; Cam & Kaya Law Associates, “Turkish Family Law: Custody”, *Cam & Kaya Law Associates*, <https://turkishfamilylaw.wordpress.com/consequences-of-divorce/custody/>

			guardianship by the judge. <sup>73</sup>		
<p><b>Family Planning</b></p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Article 41 of the Constitution obligates the State to take the necessary measures and establish the necessary organisation to protect peace and welfare of the family, especially mother and children, and to ensure the instruction of family planning and its practice.<sup>74</sup></p> <p>Abortion is permitted in Turkey provided the requirements are met.<sup>75</sup></p> <p>If a pregnant woman is married, abortion requires permission of the “spouse” (i.e. husband). For married couples, sterilisation of a spouse also requires permission of the other spouse.<sup>76</sup></p>		<p>The Government of Turkey in its 2014 report to the CEDAW Committee stated that its intention is to continue to decrease abortions, crediting modern contraceptives for decreases in abortions up to that point. They also initiated The Programme on Follow-Up of Women 15 to 49 Years of Age and Pre-Marriage Consultancy Program to provide education on family planning.<sup>77</sup></p>		<p>According to World Bank data, the total fertility rate decreased from 6.3 children per woman in 1960 to 2.04 in 2020.</p> <p>According to the UN Population Division’s 2020 Trends in Contraceptive Use Worldwide:</p> <ul style="list-style-type: none"> <li>• 71.2% of married women aged 15-49 are using a method of contraception, with 49% of women using a modern method;</li> </ul>

<sup>73</sup> Turkey State party report, U.N. Doc CEDAW/C/TUR/6 (2008), p. 77, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>

<sup>74</sup> Article 41 of Turkey’s Constitution (1982), [https://www.constituteproject.org/constitution/Turkey\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en)

<sup>75</sup> Section 5 of the Population Planning Law No. 2827/1983; Centre for Reproductive Rights, “The World’s Abortion Laws”, 2014, <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap2014.PDF>

<sup>76</sup> Section 6 of the Population Planning Law No. 2827/1983, <http://www.lawsturkey.com/law/the-population-planning-law-2827>

<sup>77</sup> Turkey State party report, U.N. Doc CEDAW/C/TUR/7 (2014), paras. 176-179, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>



					<p>• 9% of married women aged 15-49 have an unmet need for family planning services; and • 63.7% of marriage women aged 15-49 had their demands for family planning satisfied by modern methods of contraception.</p> <p>In 2012, a draft law that provides doctors with the right to refuse performing an abortion on the ground of their conscience and a mandatory “consideration time” for women requesting a termination was</p>
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					<p>introduced. The draft law was subsequently dropped but according to feminists groups, the attitude of doctors and other health professionals changed nevertheless. A survey was conducted by feminist groups on 184 state-hospitals found that only nine hospitals out of the 184 agreed to provide abortion services regardless of the marital status of the woman; 65 said that they could provide the service only if there was a ground such as a medical emergency, court order etc., 28</p>
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					<p>refused to provide information on the matter and remaining 76 refused to carry out the termination irrespective of the reason.<sup>70</sup></p> <p>According to research conducted by Kadir Has University's Gender and Women's Studies Center in 2020, out of 295 public hospitals contacted in the research, only 10 hospitals were providing abortion service without any restriction. 185 hospitals stated they were not providing abortion service. Remaining hospitals did not give a clear answer. In other words, the</p>
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					<p>research finds that only 3% of the public hospital conducts abortion. Some research also finds that the most frequent explanation given by the hospitals as to why they can't perform abortion is it being "illegal or forbidden".</p> <p>This data shows despite the legality of abortion since 1983, access to abortion has been severely restricted by the government. This impacts women with lower socioeconomic status the most, since their access to contraception and/or private hospitals for abortion is</p>
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					more difficult. <sup>78</sup>
<p><b>Personal rights of spouses</b></p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>Article 19 of the Constitution provides that everyone has the right to personal liberty.<sup>79</sup></p> <p>Article 23 of the Constitution provides that everyone has freedom of residence and movement.<sup>80</sup></p> <p>Article 48 of the Constitution guarantees everyone the freedom to work and conclude contracts in the field of his/her choice.<sup>81</sup></p> <p>Article 192 of the Civil Code provides that each spouse does not have to get permission from the other one when choosing an occupation or a job. Nevertheless, the tranquillity and the benefit of the marriage unity is taken into consideration in choosing an occupation or a job.<sup>82</sup></p>	<p>In 2014, the Constitutional Court, citing CEDAW as authority, ruled that women can use only their surnames after marriage.<sup>84</sup></p>			<p>According to World Bank 2019 data<sup>85</sup>, female labor force participation rate increased to its 1990 level, 34.3% In 2012, it was 28.9%. Male labor force participation rate was 79.7% in 1990, 70.3% in 2012. According to 2019 data, it is 71.9%.</p> <p>According to the 2020 UNDP Human Development Report:<sup>79</sup></p>

<sup>78</sup> Kadir Has University, 2020. <https://gender.khas.edu.tr/sites/gender.khas.edu.tr/files/inline-files/Abortion-Report-2020-ENG-new.pdf>

<sup>79</sup> Article 19 of Turkey's Constitution (1982), [https://www.constituteproject.org/constitution/Turkey\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en)

<sup>80</sup> Article 23 of Turkey's Constitution (1982), [https://www.constituteproject.org/constitution/Turkey\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en)

<sup>81</sup> Article 48 of Turkey's Constitution (1982), [https://www.constituteproject.org/constitution/Turkey\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en)

<sup>82</sup> Article 192 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>

<sup>84</sup> Oya Armutcu, "Top Court Allows Married Women to Use only Maiden Surname", *Hurriyet Daily News*, 30 May 2015, <http://www.hurriyetdailynews.com/top-court-allows-married-women-to-use-only-maiden-surname.aspx?pageID=238&nID=83191&NewsCatID=341>

<sup>85</sup> World Bank, 2019. <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?locations=TR>

	<p>Article 187 of the Civil Code states that women must take their husbands' last name after marriage. However, a married woman may use her previous surname in front of her husband's surname by making an application to the marriage officer or, later, to the Civil Registry Office. If a woman has two last names prior to marriage, she can only use one of them with her husband's last name.<sup>83</sup></p>				<ul style="list-style-type: none"> <li>• 50.2% of women over 25 have at least some secondary education as compared to 72.2% of men of the same age group.</li> </ul>
<p><b>Inheritance rights</b></p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their</i></p>	<p>Generally, inheritance rights between women and men are equal.</p> <p>Based on 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:<sup>86</sup></p> <ul style="list-style-type: none"> <li>• If the other heirs are the children of the deceased, the surviving spouse receives one quarter of the estate;</li> </ul>				<p>According to information on the ground:<sup>88</sup></p> <ul style="list-style-type: none"> <li>• In the event that a man and woman are not legally married (for instance, they married with a religious ceremony) they cannot be legal</li> </ul>

<sup>83</sup> Article 187 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>

<sup>86</sup> Article 499 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; Women for Women's Human Rights, "The New Legal Status of Women in Turkey", 2002, p. 22

<sup>88</sup> Information obtained from Turkish advocate, February 2017

<p><i>inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<ul style="list-style-type: none"> <li>• If the other heirs are the parents of the deceased, the spouse receives one half of the estate;</li> <li>• If the other heirs are the grandparents and the children of the grandparents of the deceased, the spouse receives three quarters of the estate;</li> <li>• If there is no other heir except the spouse, he or she receives all of the estate.</li> </ul> <p>Article 506 of the Civil Code specifies a minimum share of the deceased's estate, which must go to the surviving spouse, children, parents or grandparents.<sup>87</sup></p>				<p>inheritors. This affects women negatively due to unequal power relations;</p> <ul style="list-style-type: none"> <li>• In rural areas where the custom is to register property in the name of sons, women cannot fully enjoy their inheritance rights. In the event of a sale of heritage property (family estate), brothers get authorisation to be power of attorneys and often do not pay the women their full share.</li> </ul>
	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>
<b>Violence against women in the</b>	Although types of violence against	IN 2014, a	Since 2007, The Turkish		According to reports

<sup>87</sup> Article 506 of the Civil Code (1926), <https://www.tbmm.gov.tr/kanunlar/k4721.html>; Women for Women's Human Rights, "The New Legal Status of Women in Turkey", 2002, p. 22

<p><b>family</b></p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 &amp; 19 Para. 40 GR21</p>	<p>women are not regulated as separate crime categories in the Penal Code, Article 17 of the Constitution provides that no one shall be subjected to torture or maltreatment or other treatment that incompatible with human dignity.<sup>89</sup></p> <p>Even though Turkey was the first country to sign the Council of Europe's Convention on preventing and combating violence against women and domestic violence (the "Istanbul Convention") with strong support from President Erdogan's Justice and Development Party and women's human rights groups in 2011, President Erdogan, announced the country's withdrawal from the Istanbul Convention by presidential decree in On 20 March 2021. According</p>	<p>Turkish court ruled that a woman who was attacked and wounded with a knife by her ex-husband had "provoked" him by wearing leggings, therefore providing "mitigating circumstances."<sup>95</sup> This is not a singular decision but only one of the many examples. Reductions are often applied on the basis of "unjust provocations" or "good behaviour" in cases of violence against</p>	<p>government has developed four National Action Plan (NAP) to combat violence against women and girls (2007-2010, 2012-2015, 2016-2020, 2021-2025). Nevertheless, the last NAP excludes all international agreements and entitled The Presidency of Religious Affairs as the main actor in combating against domestic violence. As main actor, Diyanet promotes the concepts of "compassion" and "mercy" as a strategy of combating against domestic violence. This strategy ignores</p>		<p>by UN Women and the media, violence against women is one of the biggest challenges with regard to achieving gender equality in Turkey.<sup>97</sup></p> <p>According to a 2014 household survey by the Ministry of Family and Social Policies and Hacettepe University.<sup>98</sup></p> <ul style="list-style-type: none"> <li>• Overall, 38% of women reported having experienced physical and/or sexual violence from their husbands or intimate partners</li> </ul>
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<sup>89</sup> Article 17 of Turkey's Constitution (1982), [https://www.constituteproject.org/constitution/Turkey\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en)

<sup>95</sup> Constanze Letsch, "The Bizarre Debate over Female Laughter shows Turkey's women need a new deal", *The Guardian*, 2 August 2014, <https://www.theguardian.com/world/2014/aug/02/turkey-women-absurd-debate-female-laughter-new-deal>

<sup>97</sup> UN Women, "Turkey Reviews Progress on Ending Violence Against Women", 17 March 2016, <http://eca.unwomen.org/en/news/stories/2016/03/turkey-reviews-progress-on-ending-violence-against-women>; DW, "Domestic violence in Turkey reaches boiling point", *DW*, 11 July 2015, <http://www.dw.com/en/domestic-violence-in-turkey-reaches-boiling-point/a-18576377>

<sup>98</sup> Ministry of Family and Social Policies and Hacettepe University, "Research on Domestic Violence Against Women in Turkey", 2015, Tables 5.1, 6.1, 7.3, pp. 86, 130, 158, [http://www.hips.hacettepe.edu.tr/eng/english\\_main\\_report.pdf](http://www.hips.hacettepe.edu.tr/eng/english_main_report.pdf)



	<p>to the last paragraph of the Article 90 of the Constitution, the convention was a part of the legislation as an international contract held superior even when it conflicted with Turkish laws. Due to the many experts in Turkey this procedure was unconstitutional. The government justified its decision with spurious claims that the Istanbul Convention was being used to “normalize homosexuality”, and that, as such, it was “incompatible with Turkey’s social and family values’ . The Convention remained in force until July 1 when the withdrawal decree had come into effect.</p> <p>Law No. 6284/2012 on Protection of Family and Prevention of Violence Against Women makes provision for protection orders and other protective and preventive measures with regard to domestic violence.<sup>90</sup></p> <p>Article 2(1)(b) of the Protection of Family and Prevention of Violence</p>	<p>women.</p> <p>Within the period of withdrawal from the Istanbul Convention, significant problems have been experienced concerning the enforcement of the Law no 6284. One of the most striking cases was that, appointed as the rector of Boğaziçi University by a Presidential decision on August 20, 2021 and facing the requests for his release by the university constituencies, Naci İnci had a protection order</p>	<p>the structural problems; individualizes and psychologizes the violence against women.</p>		<p>at least once in their lifetime, and 11% reported having experienced one or more of these forms of violence in the past 12 months;</p> <ul style="list-style-type: none"> <li>• 36% of women reported having experienced physical violence from their husbands or intimate partners at least once in their lifetime, and 11% reported having experienced such violence within the 12 months prior to the survey;</li> <li>• 12% of women reported having experienced sexual violence</li> </ul>
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<sup>90</sup> Law to Protect Family and Prevent Violence Against Women (2012), <http://www.lawsturkey.com/law/law-to-protect-family-and-prevent-violence-against-woman-6284>

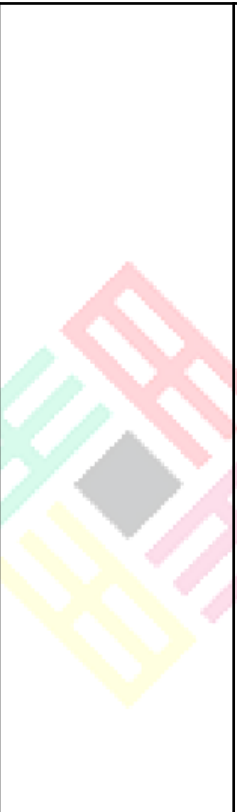
	<p>Against Women defines “domestic violence” as “Any physical, sexual, psychological and economical violence between the victim of violence and the perpetrator of violence and between the family members and the people who are considered as a family member whether they live or do not live in the same house.”<sup>91</sup></p> <p>The Penal Code contains prohibitions that are applicable to domestic violence e.g. Article 230-234 on Crimes Against Family Orders.<sup>92</sup></p> <p>Marital rape is criminalised under the Penal Code.<sup>93</sup></p> <p>A back step in legislative area on combat against violence against women was the amendment in the Turkish Code of Criminal Procedure. Turkish parliament</p>	<p>issued against 14 students as a "victim of stalking" as per the Law no. 6284.”<sup>96</sup></p>			<p>from their husbands at least once, and 5% reported having experienced such violence within the 12 months prior to the survey;</p> <ul style="list-style-type: none"> <li>• Among women who had experienced violence (physical or sexual) from their husband or intimate partner in the past 12 months, 26% reported experiencing physical injuries; and</li> </ul>
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<sup>91</sup> Article 2(1)(b) of the Law to Protect Family and Prevent Violence Against Violence (2012), <http://www.lawsturkey.com/law/law-to-protect-family-and-prevent-violence-against-woman-6284>; *Morcati Women’s Shelter Foundation*, <https://www.morcati.org.tr/en/links/19-mor-cati-women-s-shelter-foundation/115-you-can-keep-away-who-applied-violence>

<sup>92</sup> Articles 230-234 of the Penal Code (2004), <http://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>

<sup>93</sup> Article 102(2) of the Penal Code (2004), <http://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>; Huriyet Daily, “A legal first in Turkey in marital rape”, *Huriyet Daily*, 22 April 2008, <http://www.hurriyetdailynews.com/a-legal-first-in-turkey-in-marital-rape.aspx?pageID=438&n=a-legal-first-in-turkey-in-marital-rape-2008-04-22>

<sup>96</sup> ‘Enforce the Law No 6284 for women, not for appointed rectors’, *Bianet*, 2 November 2021 <https://bianet.org/english/women/252716-enforce-the-law-no-6284-for-women-not-for-appointed-rectors>

	<p>passed a legal reform package on July 8 that will require "concrete proof" of child abuse and child sexual assault. The new amendment (the new article 100/3 in Crimiminal Procedure Code) will require concrete proof for crimes that can lead to protective measures such as arrests and restraining orders, as well as for the reversal of detentions. The petitioners will need to prove that probation will not be a strict enough measure to ensure their safety in cases where courts rule to let go of the perpetrators.<sup>94</sup></p>			<ul style="list-style-type: none"> <li>● It is not very common for women in Turkey seek assistance from any source for violence they have experienced. 44% of women never sought help and never told anyone about the violence they have experienced.</li> </ul> <p>According to civil society reports and information on the ground, more can be done for victims of domestic violence and this include:<sup>99</sup></p> <p>Taking a more serious approach in</p>
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<sup>94</sup> Turkish 'legal reform' will require 'concrete proof' for child abuse" 8 July 2021

<https://www.duvarenglish.com/turkish-legal-reform-will-require-concrete-proof-for-child-abuse-news-58109>

<sup>99</sup> Executive Committee for NGO Forum on CEDAW Turkey, "Shadow NGO Report on Turkey", *Submission to the CEDAW Committee for the 64<sup>th</sup> Session*, 2016, pp. 13, 15, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TUR/INT\\_CEDAW\\_NGO\\_TUR\\_24253\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TUR/INT_CEDAW_NGO_TUR_24253_E.pdf); Ozgul Kaptan, "A Decade of Violence Against Women", *The Foundation for Women's Solidarity*, 15 September 2015; DW, "Domestic violence in Turkey reaches boiling point", *DW*, 11 July 2015, <http://www.dw.com/en/domestic-violence-in-turkey-reaches-boiling-point/a-18576377>; Le Figaro, "In Turkey, the Double-Edged Sword of Domestic Violence" *Le Figaro*, 16 May 2011, <http://plus.lefigaro.fr/note/in-turkey-the-double-edged-sword-of-domestic-violence-20110516-462766>; Federation of Women Associations of Turkey, "Shadow Report on Turkey", *Submission to the CEDAW Committee for the 46<sup>th</sup> Session*, 2010, p. 9, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TUR/INT\\_CEDAW\\_NGO\\_TUR\\_46\\_10195\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TUR/INT_CEDAW_NGO_TUR_46_10195_E.pdf)

				<p>addressing femicide. Femicide has been a burning issue for the last decade. Data by the Platform to Stop Violence against Women shows that in 2008, there were 80 female murder victims. The number of victims increased and reached 474 in 2019 and 300 in 2020<sup>100</sup>.</p> <p>The number of women's shelters are not adequate to provide the needs of the women exposed to violence. Increasing the number of shelters and counselling centres for victims of domestic violence and the number of qualified staff manning these are necessary;</p>
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<sup>100</sup> We Will Stop Femicides Platform of Turkey Report - 2020 and 2021 <http://kadincinayetlerinidurduracagiz.net/kategori/veriler>

				<p>Greater and more effective enforcement of the law by the relevant authorities, particularly the police and prosecutor as well as the judiciary. In relation to the police and prosecutor, there is a need for them to take women's complaints on violence more seriously and in relation to the judiciary, there is a need for speedier dispensation of cases relating to domestic violence.</p> <p>In November 2016, a bill was introduced that would pardon men convicted of having sex with underage girls if they married them. The bill was later withdrawn after significant protests against the measure.<sup>101</sup></p>
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<sup>101</sup> BBC News, "Turkey Withdraws Child Rape Bill After Street Protests," *BBC News*, 22 November 2016, <http://www.bbc.com/news/world-europe-38061785>

					According to information on the ground, the 2016-2020 NAP was developed with limited civil society participation. In addition, the report regarding the outcomes and efficiency of the previous NAP to combat violence against women and girls have not yet been shared. <sup>102</sup>
<p><b>Nationality rights</b></p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9</p>	<p>A Turkish woman or man may pass their nationality to their non-Turkish spouse provided they: (i) have been married for a minimum of three years and continue to live within the unity of marriage; (ii) have abstained from acts incompatible with the unity of marriage; and (iii) do not have quality constituting an obstacle in respect of national security and public order.<sup>103</sup></p>		•		

<sup>102</sup> Information provided by Turkey advocate, February 2017

<sup>103</sup> Article 16 of the Turkish Citizenship Law No. 5901/2009, <http://www.lawsturkey.com/law/turkish-citizenship-law-5901>

<p>Para. 6 GR21</p>	<p>The nationality of an adult woman cannot be removed because of her marriage or dissolution of marriage, or because her husband or father changes his nationality.<sup>104</sup></p> <p>Both a Turkish mother and father may pass their citizenship to their children regardless of where the child is born.<sup>105</sup></p> <p>If a child is born in Turkey to foreign parents and is not granted citizenship through them, the child becomes a Turkish citizen.<sup>106</sup></p>				
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<sup>104</sup> Article 27(2) of the Turkish Citizenship Law No. 5901/2009, <http://www.lawsturkey.com/law/turkish-citizenship-law-5901>

<sup>105</sup> Article 7 of the Turkish Citizenship Law No. 5901/2009, <http://www.lawsturkey.com/law/turkish-citizenship-law-5901>

<sup>106</sup> Article 8 of the Turkish Citizenship Law No. 5901/2009, <http://www.lawsturkey.com/law/turkish-citizenship-law-5901>

**ACCESS TO JUSTICE (please include sources to information as much as possible)**

SYSTEM	PROCEDURES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p><i>How are Muslim family law (i.e. marriage and family related) cases administered in your country? (E.g. Do you have a Quazi/Kadhi court system, family courts or civil courts?)</i></p> <p>There is no separate Islamic Family Law practice in the courts. Family law disputes are handled in Family Courts pursuant to Article 4. of the Law No. 4787 on the Establishment, Duties and Proceedings of Family Courts. There are family courts in every district with a population over a hundred thousand. In places where family courts can not be established, the cases and matters covered by Civil Courts of First Instance determined by the High</p>	<p><i>Are the procedures pertaining to family matters (e.g. divorce, maintenance etc) are defined in the family law and/or are there guidelines/policies available for judges/Kadhis?</i></p> <p>According to Article 7 of the Law No. 4787 on the Establishment, Duties and Proceedings of Family Courts, the procedural provisions of the Turkish Civil Code regarding family law and the provisions of the Code of Civil Procedure shall apply to the provision of this law and to matters for which there is no provision in this Law. This law, which is essential in private law proceedings, was changed in 2011 and named the Law of Civil Procedure.</p>	<p><i>What are some key challenges that Muslim women face in accessing justice on family law matters?</i></p> <p><i>(E.g. lack of accessibility, costly, bad procedures, delayed processes, gender insensitive judges, etc?)</i></p> <p>In practice, although the procedures determined within the framework of the law are followed, procedural methods can be operated too quickly and ineffectively due to the workload and lack of experts, however, the duration of the lawsuits can take long enough to cause problems in terms of fair trial.<sup>108</sup> Domestic violence cases</p>	<p><i>Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases?</i></p> <p><i>(E.g. prioritising certain types of cases, timely delivery of decisions, clear procedure, etc)</i></p> <p>Public data on courts prioritising certain types of cases over others is not available. Some of the recent court decisions could be considered good legal practices to resolve divorce related conflicts.</p> <p>For instance, on May 17, 2021, the Court of Appeal recently made a precedent regarding divorce cases. It considered the husband, who hindered the woman's right to education, at full fault in the case. The court decided that the husband's behavior was an "attack on the woman's personal rights" and decided that the man should pay compensation to the women.<sup>110</sup></p>

<sup>108</sup> Ankara Barosu, <http://www.ankarabarusu.org.tr/siteler/ankarabarusu/tekmakale/2007-3/14.pdf>

<sup>110</sup> "Education decision for married woman from Supreme Court" Sozcu, 17 May 2021 <https://www.sozcu.com.tr/2021/ekonomi/yargitaydan-evli-kadina-egitim-karari-6434970/>

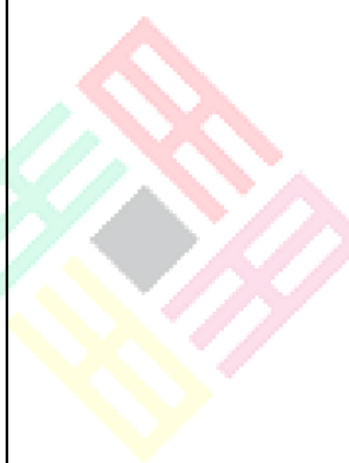


<p>Council of Judges and Prosecutors (Art 2.)</p> <p><i>How many courthouses/court rooms around the country that administer Muslim family law cases?</i></p> <p>Since there is no separate Islamic family law practice in Turkey, there isn't any separate authority and court authorized and responsible for this issue.</p> <p><i>If civil or Kadhi courts - what cases are handled by what courts?</i></p> <p>There is only one Family Law based on the Civil Code.</p> <p><i>How many Muslim family law-related judges? Are there women working within the court system as judges/marriage registrars e.t.c?</i></p>	<p><i>In general practice do judges/Kadhis follow procedures?</i></p> <p>Although the procedures determined within the framework of the law are followed in practice, the lack of resources and experts can sometimes cause the procedural practices to be followed only on paper. (See Challenges for women)</p> <p><i>How much judicial discretion do judges/Kadhis have over marriage and family matters?</i></p> <p>Regulations regarding family law are regulated in the Civil Code No. 8049. In civil law, judges have been given discretionary power in different matters regarding family law disputes. For example, the judge may grant a marriage license in cases of emergency and in important cases in terms of prohibited situations. (md.124) Another important situation in which the judges can exercise discretion is to determine the relations between the parents and</p>	<p>encountered in almost every divorce case can be ignored, alimony and other financial determinations are made without considering social conditions, and the approach of protecting the family, especially in the prevention of violence against women and domestic violence, can prevent efforts to achieve gender equality.<sup>109</sup></p>	<p>Another case seen by the Court of Appeal in November 2021, found fault with the husband who neglected his home - in the decision; It was stated that the husband, who spent a lot of time in front of the computer and played gambling games, was seriously flawed in the divorce case.<sup>111</sup></p> <p>Another case seen by the Court of Appeal in September 2021, reversed a decision of a lower court which decided women to be at fault for using her maiden surname on her social media accounts. The Court of Appeal overturned the decision, stating that the use of her maiden name on social media cannot be described as a distrust-shattering behavior towards men.<sup>112</sup></p>
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<sup>109</sup> Poverty Alimony Report - 2019 <https://www.kadindayanismavakfi.org.tr/yayinlar/yoksulluk-nafakasi-raporu-2019/>

<sup>111</sup> "Precedent decision from the Supreme Court: Spending a lot of time at the computer and playing games of chance is the reason for divorce" Cumhuriyet, 7 November 2021 <https://www.cumhuriyet.com.tr/turkiye/yargitaydan-emsal-karar-bilgisayar-basinda-cok-vakit-gecirip-sans-oyunu-oyynamak-bosanma-sebebi-1882721>

<sup>112</sup> "It is not a crime for a woman to use her maiden name on social media", Sabah, 6 December 2021 <https://www.sabah.com.tr/yasam/mahkeme-kararini-verdi-evli-kadinin-sosyal-medyada-kizlik-soyadini-kullanmasi-suc-degil-5774804>

<p>According to 2020 data, while the number of male judges is 8054, the number of female judges is 6855. Also, the number of male prosecutors is 5847 and the number of female prosecutors is 1016<sup>107</sup>.</p> <p><i>Do lawyers represent clients?</i></p> <p>In the context of the right to a fair trial in Article 36 of the Constitution, everyone has the right to be represented by a lawyer before the judicial organs. However, in terms of exercising this right, the obligation of the party to be represented by a lawyer is not stipulated in the law of civil procedure.</p> <p>According to the Code of Civil Procedure, which regulates the procedure in civil proceedings, anyone who has the capacity to sue in Turkey can file and pursue his or her case by himself or through his representative. (art. 71) However, pursuant to Article</p>	<p>the child and to determine the custody in the divorce case. (art. 182)</p> <p>In the Law No. 6284 on the Protection of the Family and the Prevention of Violence Against Women, another important regulation regarding family law, judges have considerable discretion in determining protective and preventive injunctions. (art. 4 and 5)</p> <p><i>Are there appeal processes?</i></p> <p>There is a three-level legal jurisdiction in Turkey. According to the Code of Civil Procedure, it is possible to appeal primarily against the decisions of the Civil Courts of First Instance or Family Courts, which are the first instance courts. An appeal can be made to the relevant Regional Court of Justice against the final judgments and interim injunctions of these courts. If the subject of the case is above a certain monetary limit, the decisions of the Regional Court of Justice can</p>		
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<sup>107</sup> "Number of Judges and Prosecutors 2021" Türkiye Hukuk, 2021 <https://www.turkiyehukuk.org/hakim-ve-savci-sayilari-2021/>

<p>35 of the Attorneyship Law, litigating and defending the rights of real and legal persons, following the legal proceedings, and arranging all the documents pertaining to these matters, belong only to the lawyers registered with the bar association.</p>	<p>be appealed to the Court of Cassation. (art. 341, art. 362)</p>		
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