

THE NEW LEGAL STATUS OF WOMEN IN TURKEY

April, 2002

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

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PREFACE

The efforts to reform the Turkish Civil Code, which started in the 1950s, have finally born fruit. A whole year of intensive lobbying and widespread campaigning by the women's movement throughout 2001 has resulted in reforms which have drastically changed the legal status of women in the family and in the promulgation of the new Turkish Civil Code, which was passed by the Turkish Grand National Assembly on November 22, 2001.

In this booklet, we, Women for Women's Human Rights (WWHR) – NEW WAYS, attempt to offer a comprehensive yet concise overview of the new legal status of women in Turkey. The booklet describes the key gains the new Civil Code has brought to women's lives. But its contents are not limited to a description of (new) laws defining women's status in the family. It aims rather to provide information on the laws and regulations shaping all spheres of women's lives in Turkey. The issues covered range from domestic violence to women's political participation, and from abortion to a woman's right to economic independence. We hope that this booklet serves as a useful resource and advocacy tool for activists, researchers, scholars, feminists and all those interested in issues of social justice and women's legal status throughout the world.

While we celebrate the gains of the new Civil Code, we are also well aware that legal changes are not enough to enable women to enjoy full human rights in their everyday lives. There are still tensions and contradictions between official laws and customary practices. Within this context, we believe that our mission to link local, national, regional and international action for social change assumes critical importance. It is only through enhanced solidarity between women's groups that we can continue the struggle for equality. At this point, one must pay tribute to the widespread collaboration between women's groups and activists in Turkey in the campaign to reform the Civil Code. Over the last year, Turkey witnessed the coming together of 126 women's groups to voice their common demands concerning the new law. The success of the campaign of the women's movement against the religious right and the nationalists in the Parliament during negotiations on the draft law was rooted in the extensive solidarity of women with different visions fighting for a common goal.

INTRODUCTION

The new Turkish Civil Code, which abolishes the supremacy of men in marriage and thus establishes the full equality of men and women in the family, was approved by the Turkish Parliament on November 22, 2001. The new Code, which consists of 1,030 articles covering important amendments to the family law, was published in the Official Gazette on December 8, 2001. It came into effect on January 1, 2002. 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 states that: “The family is the foundation of Turkish society and is based on equality between spouses.”

The new Code sets the equal division of the property acquired during marriage as a default property regime, assigning an economic value to women’s hitherto invisible labor for the well-being of the family household. It also sets 18 as the legal minimum age for marriage for both women and men (it was previously 17 for men and 15 for women), gives the same inheritance rights to children born outside marriage as those born in marriage, and allows single parents to adopt children.

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

The reform of the Turkish Civil Code: a 50-year story

In the legal domain, the first effort to reform the Turkish Civil Code of 1926 to the advantage of women took place in 1951. Since 1951 there have been numerous commissions formed by the Ministry of Justice and several proposals prepared by them aimed at a comprehensive reform of the Civil Code; but until 2001 none had succeeded. The scope of this publication does not allow for a comprehensive analysis of this long period. We shall, therefore, concentrate here on a few main points which, in our analysis, have played an important role in the delay of the final realization of this reform.

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

The impact of the new feminist movement

The rise of a new strong feminist movement after the 1980s and its success in the revision or annulment of certain articles of the Civil Code, as well as its advocacy and lobbying

on several issues of women's human rights, played a key role in the final enactment of the reform and its acceptance by society. In the last two decades, the actions and advocacy of the feminist movement succeeded in achieving the annulment by the Constitutional Court of Article 159 of the Civil Code, which had stated that women needed their husbands' consent to work outside the home, the repeal by the National Assembly of Article 438 of the Criminal Code, which provided for a reduction of one-third in the punishments for rapists if the victim was a sex worker, and a new law on domestic violence, enabling a survivor of domestic violence to file a court case for a "protection order" against the perpetrator of the violence.

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

In 1984, four years after the military coup of 1980 and coinciding with the rise of the new feminist movement, the reform of the civil code again became an issue of public debate as the Ministry of Justice published a draft law. Several women's groups combined their strength and submitted a series of petitions to the National Assembly urging its acceptance. However, the draft law could not make its way to the parliament despite the ratification of CEDAW in 1985 and a promise to remove reservations within a short time. By promising to remove these reservations, Turkey had underlined its commitment to changing the discriminatory provisions in its legislation. These commitments were reiterated in the country report presented to the UN Committee on CEDAW in 1993.

In 1994 a new commission was formed to prepare a new draft of the civil code. In the same year, we, as Women for Women's Human Rights (WWHR), initiated an international letter and fax campaign demanding full equality for women in the Civil Code. The campaign was joined by hundreds of NGOs which supported our demands from all over the world. Turkey's commitments to CEDAW were repeated in the UN Conference on Women held in Beijing in 1995 and in the second and third combined reports to CEDAW in 1997. A new draft law was finally prepared by the commission and presented to the National Assembly in September 1998. However, due to the general elections held in April 1999, a new commission had to be formed which finalized the draft code and prepared a law governing its enforcement and implementation before presenting it to the National Assembly at the end of the same year. There was some speculation in the Western media that the reform of the Turkish Civil Code was a result of Turkey's EU accession process. However, Turkey was officially named as a candidate for EU accession in December 1999, after the preparation of the draft Civil Code. This shows that Turkey's accession to the EU might have accelerated the process, but it cannot be considered to be its primary driving force. Moreover, the resistance of the religious conservatives and the nationalists in the parliament, which is discussed below, took place despite the EU accession process and could only be overcome by a major campaign initiated by women's groups all over the country.

Women's groups all around the country campaign together

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

Thus, at the beginning of 2001, 126 women's groups from all around the country joined together to initiate a major campaign. Soon after the start of the campaign, the most controversial issue became the reform of the clause regulating matrimonial property. The original draft of the new civil code foresaw that all matrimonial property should be split 50/50. The nationalists and the religious conservatives insisted on the Division of Property Regime, which has been the rule in Turkey since 1926. They claimed that the equal sharing between spouses of property acquired during the marriage would be against Turkish traditions, change the family from a matrimonial union to a corporation, destroy love and affection in the family and increase the rate of divorce and consequently ruin Turkish society.

As a result of the campaign initiated and coordinated by women's groups, the opposing groups were forced to accept the new property regime, which entitles women to an equal share of the assets accumulated during the marriage. However, due to a last minute law formulated by the opposition parties, this clause was deemed to be valid only for property acquired after January 1, 2002. At the time of writing, women's groups were continuing their campaign for the annulment of this law.

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

A new approach to the family

The new Civil Code has taken a new approach to the family and to women's role in the family. The old legal approach, which assigned women a legislatively subordinate position in the family with rights and duties defined in respect to the husband, has been abandoned in favor of one that defines the family as a union based on equal partnership. Consequently, this new concept is also reflected in the language of the new Code. The terms 'the wife' and 'the husband' are replaced by 'the spouses'. Moreover, the legal language has been considerably simplified and out-of-date terminology replaced by comprehensible, modern terms, which have made the law more accessible for everyone.

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

- The husband is no longer the head of the family; spouses are equal partners, jointly running the matrimonial union with equal decision-making powers
- Spouses have equal rights over the family abode
- Spouses have equal rights over property acquired during marriage

- Spouses have equal representative powers
- The concept of ‘illegitimate children’, which was used for children born out of wedlock, has been abolished; the custody of children born outside marriage belongs to their mothers.

The next steps

The reform of the Turkish Civil Code constitutes a major accomplishment towards establishing gender equality in Turkey. Yet this step has to be followed by several other reforms and measures in the legal, social and political domains which aim at eliminating inequality between sexes. In the legal domain, the next steps should include the reform of the Penal Code, the Citizenship Act, the Labor Code and the Social Security Code, as well as changes in various statutes and regulations. To establish a constitutional basis for gender equality, several women’s NGOs, including WWHR, have initiated a campaign. The campaign calls for the amendment of Article 10 of the Turkish Constitution to include a clause on gender equality as the basis of the law, making the state responsible for taking all legal and institutional measures to realize equality between women and men.

It is clear that the reforms and accomplishments in the legal domain are not sufficient to prevent gender discrimination and eliminate violations of women’s human rights. In Turkey, women’s lives continue to be shaped by several customary and religious practices which contradict existing laws, such as early and forced marriages, honor crimes, polygamous marriages and restrictions on women’s mobility.

For example, research conducted by WWHR in the eastern and south-eastern regions of Turkey has shown that 16.3% of women living in the region were married at under 15, the minimum legal age for marriage according to the old Civil Code. One out of ten women were living in polygamous marriages even though polygamous marriages were banned by the Civil Code of 1926. More than half of the women (50.8%) were married without their consent although the consent of both the woman and the man is a precondition for marriage according to Turkish law.

Violence against women in its various manifestations – within and outside the home – continues to be one of the most widespread violations of human rights in Turkey although it is a crime and a new law passed in 1998 allows for protection orders.

Thus there is a need for all kinds of coordinated state programs and services for women: for example, those aiming to eliminate violence against women, prevent discrimination against women in the educational and economic spheres, and increase their participation in the political domain. Despite pressure from the women’s movement, the Turkish state has been extremely reluctant to allow, and has even actively resisted, the establishment of such programs. In fact, in most developing countries, including Turkey, although there has been an improvement in women’s rights on paper on both national and international levels, this progress is very poorly reflected in women’s lives at the local level. A key tool, which might be useful in overcoming the state’s resistance to increasing financial resources for women and developing coordinated programs aimed at gender equality, would be the inclusion of specific measures and targets in international UN documents related to women’s human rights.

CONDITIONS FOR MARRIAGE

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

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

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

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

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

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

Under extraordinary circumstances and for very important reasons, an exception can be made and the minimum age limit can be lowered to 16. The only person authorized to make such an exception is a judge of the Court of Peace. In making such a decision, the judge hears the opinions of the parents or the guardian whenever he or she has the opportunity.

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

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

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

Circumstances under which marriage is forbidden

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

- The immediate family: parents cannot marry their children, brothers and sisters cannot marry each other
- Close relatives: aunts and uncles cannot marry their nieces or nephews, ex-spouses cannot marry each other’s parents or children
- An adoptee cannot marry an adopted person; an adoptee and the adopted cannot marry each other’s ex-spouses or children.

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

Enforced waiting period of three hundred days: This waiting period is foreseen under Article 132 of the Civil Code to guarantee that women are not with child from a previous marriage. Women who do not want to wait have to produce medical proof that they are not pregnant before they can remarry. These three hundred days are calculated starting from the date of the court decision terminating the previous marriage or on the date of the death of the ex-husband (Article 15 of the Marriage Regulations). In our view, this stands as a discriminatory and humiliating provision which violates women’s basic human rights and freedoms with the sole aim of establishing fatherhood which, if requested by the involved parties, could easily be established through DNA tests.

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

MARRIAGE: THE CIVIL CEREMONY

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

VALIDITY OF PRE-NUPTIAL AGREEMENTS (Mahr)

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

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

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

The Civil Code clearly states that a religious marriage ceremony can only be held after the civil ceremony (Article 143 of the Civil Code), otherwise, the couple is in breach of the Penal Code (Article 237 of the Penal Code). Furthermore, if a religious ceremony is conducted without documentary proof (i.e. the family book) that the civil ceremony has already been completed in accordance with the law, the person who conducts it, too, is considered to have committed a crime.

BRIDE PRICE: A CUSTOMARY PRACTICE

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

The woman can always reject the match. Whether she is an adult or legally classed as a minor, the bride price offered to her family does not oblige her to marry anyone. However, in some cases families put pressure on their daughters to accept the offer of marriage in order to acquire the bride price. Legally she has the right to resist her family's pressure. When the official carrying out the marriage ceremony asks her if she wants to marry of her own free will, she has the right and the opportunity to refuse. If she does this, no one can make her marry.

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

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

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

Getting married abroad

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

Marriages with or between foreigners in Turkey

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

THE RELIGIOUS MARRIAGE CEREMONY

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

In order to undergo a religious marriage ceremony the couple must document that the official ceremony has been conducted. Violation of this rule is considered a crime under Article 237 of the Penal Code, which stipulates that both the person who conducts such a ceremony without verifying that the official ceremony has been concluded and the couple involved will be punished.

WOMEN IN THE FAMILY: THE LEGAL FRAMEWORK

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

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

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

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

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

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

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

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

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

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

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

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

MATRIMONIAL PROPERTY REGIME

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

Regime Regarding the Ownership of Acquired Property

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

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

According to the Regime Regarding Ownership of Acquired Property, which is regulated in Articles 218-241 of the Civil Code, property that has been acquired by either of the spouses in return for payment in money or in kind after the formalization of the marriage union (acquired property) shall, upon termination of the regime (e.g. by divorce or death), be equally shared between the spouses. Economic integrity will be taken into consideration in the case of property related to the practice of a profession or business. Personal property and possessions shall remain with the owner.

This is an achievement in terms of the economic empowerment of women. Married women now have good reason to feel economically stronger as equal partners. This will increase their self-esteem and self-confidence.

The other property regimes that may be selected are:

Division of Property

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

DOWRY

There are no specific legal provisions regarding dowries brought by the bride. However, the new Civil Code has established the Regime Regarding the Ownership of Acquired Property as the legal property regime between spouses (Article 202 of the Civil Code). According to this regime, dowries brought by the bride fall under the category of personal possessions and are regarded as the legal property of the bride. This means that the bride retains them in case of termination of the marriage, regardless of the reason.

Division of Shared Property

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

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

Joint Property Regime

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

The women's movement has intensively lobbied against Article 10 of Law No. 4722 Governing the Enforcement and Implementation of the Civil Code, which stipulates that the new legal property regime will be available for implementation by default only for property acquired after January 1, 2002. This clause was a last minute addition as a result of pressure from religious conservative and nationalist members of Parliament who initially opposed the acquired property regime. Previously acquired property will remain under the old property regime. To render the new regime operative from the inception of their marriages, couples are given until December 31, 2002 to go to a notary and sign a contract to that effect. The women's movement in Turkey argues that the new legal regime should be operative by default for all property acquired during marriage, regardless of the time of acquisition.

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

The Turkish Citizenship Act provides descriptions of the procedures for acquiring, changing or losing nationality for men and women. In addition to general provisions, which apply to both men and women, there also are special provisions for women, which differentiate between men and women in the terms of their ties of citizenship or nationality to their countries. Both Turkish and foreign women are given a choice where simple notification to the authorities and the presentation of relevant documents will

entitle them to acquire the citizenship of their husbands (Articles 5, 19 and 42 of the Turkish Citizenship Act). Turkish women choosing to undergo this procedure lose their Turkish citizenship. No such procedure is foreseen for men. To change nationality, men have to go through the procedures regarding either the renunciation of citizenship or getting permission to acquire the citizenship of another country, which are available to women too. To be finalized these procedures require the approval of the Council of Ministers.

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

Under Articles 19 and 42 of the Turkish Citizenship Act, marriage entitles a Turkish woman to acquire her husband's citizenship once she notifies the specified authorities of her intention within a specified period of time, provided that the laws of the foreign country in question allow such an acquisition. In which case, she will lose her Turkish citizenship.

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

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

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

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

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

Children from bi-national marriages

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

According to Article 1 of the Turkish Citizenship Act, children who are born to a mother or father of Turkish citizenship, in or outside of Turkey, are Turkish citizens from birth. Children born to a foreign mother out of wedlock will be considered Turkish citizens if their connection to their Turkish father is established through a court order or recognition (Article 2 of the Turkish Citizenship Act).

In provisions concerning the acquisition of Turkish citizenship, the children of men acquiring Turkish citizenship directly become Turkish citizens; while in the case of

women they become Turkish citizens under certain conditions (Articles 14 and 17 of the Turkish Citizenship Act).

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

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

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

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

DE FACTO RELATIONSHIPS

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

The new Turkish Civil Code has discarded the term 'illegitimate'. There is no longer a question of 'legitimizing' children born out of wedlock, but one of establishing descent. According to Article 282 of the Civil Code, maternal descent is established by birth. Under the same article, paternal descent is established in three ways: through marriage with the mother, recognition or court ruling. The children of unmarried couples bear their mother's surname (Article 321). According to Article 337 of the Turkish Civil Code, the custody of these children belongs to the mother. If she is the one looking after the children, the mother, according to Article 329, has the right to claim alimony in the name of the children. Article 498 of the Civil Code states that children whose paternal descent has been established enjoy the same rights of inheritance to their fathers' estate as children born in wedlock. All these changes serve to end discrimination against children born out of wedlock.

CUSTODY

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

As long as the mother and the father are married, the custody of children is shared equally between the mother and the father. If they separate or divorce, the judge may decide to give the custody of the children to one of the spouses. In the event of the death

of one of the spouses, custody belongs to the surviving spouse (Article 336 of the Civil Code). In the old Civil Code there used to be a clause stating that, in the event of disagreement over matters related to children, the final word was the father's. With the cancellation of this clause, women have obtained equal say under the law in decisions concerning their children.

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

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

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

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

ADULTERY

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

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

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

Article 462 of the Penal Code explicitly rules that the sentence of a person killing or wounding a family member who has committed adultery may be reduced under certain circumstances.

SEPARATION

A married woman may choose to live apart from her husband. According to Article 197 of the Civil Code, “Either of the spouses has the right to live apart from the other as long as living together seriously endangers his or her personality and economic security or family harmony”.

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

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

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

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

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

RIGHTS OF WOMEN DESERTED BY THEIR HUSBANDS

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

A new clause has been added to Article 164 in the new Civil Code. According to this, the spouse who forces the other to abandon the shared abode or prevents him or her from returning without rightful reason is understood to have deserted the other.

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

DIVORCE

In the Turkish Civil Code, there is no distinction between the grounds for divorce for men and women. The rule is that applications for divorce are filed by the party who has less responsibility for the collapse of the matrimonial union against the party who has the greater responsibility. Therefore, if the party at greater fault files the case for divorce, and if the other party does not want to get divorced, the case may be dismissed, provided that the defendant can prove his or her relative or total innocence as regards the failure of the marriage. However, if the couple are not reconciled and have not begun to live together within three years of the application for divorce, the matrimonial union is considered to have irretrievably broken down and the court rules in favor of a divorce upon the request of one of the parties (Article 166 of the Civil Code).

Grounds for divorce

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

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

Or if:

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

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

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

The law protects the personal legal status that a woman obtained in marriage (e.g. majority, nationality). By default on divorce, her surname reverts to the one she had before her last marriage. If that surname is not her maiden name and if she wishes to revert to her maiden name, she may do so with the judge’s permission. If she wishes to retain her immediate ex-husband’s surname, she needs to prove to the judge that this is in her best interest and will not harm the man concerned (Article 173 of the Civil Code).

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

Damages in divorce

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

Alimony

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

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

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

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

ADOPTION

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

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

INHERITANCE

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

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

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

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

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

Under Turkish law, male and female children inherit equal shares of their parents' estate without discrimination. This equal share corresponds to three quarters of the legal inheritance and is divided equally among the children. The only apparent case of explicit discrimination, which existed in the inheritance of agricultural land, has been corrected after the change to Article 661 of the Civil Code. The previous article on how and to whom an agricultural holding was to be assigned in the event of there being more than one contender stated that first the sons of the deceased would be asked if they wished to take over the holding. And only if none of the sons wanted to take it over would the daughters of the deceased be able to ask that the holding be assigned to them. The new article has removed all reference to sons and daughters. Priority is given to the heir who wants to run the holding him- or herself and is capable of doing so. In assessing competence, the capabilities of the spouse of the contending heir are also taken into account.

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

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

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

WOMEN'S RIGHT TO ECONOMIC INDEPENDENCE

Until 1990, a married woman could work outside the home only with the permission of her husband. The Constitutional Court annulled this article on the grounds that it violated the Constitution. This decision became operative in 1992. Until January 2002, women's right to work was governed only by the Constitution, which stated: "Everyone has the right and duty to work." In the new Civil Code it is explicitly stated: "Neither of the spouses is obliged to seek permission from the other regarding the choice of work or profession" (Article 192). However, the article also includes the following clause, which in daily life has negative repercussions for women's right to work: "But the harmony and welfare of the marriage union should be borne in mind when choosing and subsequently performing a job or profession".

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

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

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

There are no specific legal provisions regarding offering employment to women or sexual discrimination in the workplace. There are very general provisions related to equality and objectiveness, which cover women too. These can be employed to fight back when discrimination occurs. However, the presence of deeply implanted sexist attitudes against women means that there is a need for very clear cut legislation specifically addressing the issue of discrimination against women and taking specific measures to prevent it.

Article 26 Paragraph 4 of the Labor Code stipulates that different wages cannot be paid to men and women workers working with equal productivity in jobs of the same quality in the same workplace solely on the basis of their being of different sexes. The Turkish state has ratified the Convention on the Payment of Equal Wages to Women and Men Workers for Work of Same Value. However, in the absence of an objective evaluation system to determine equal value and equal productivity, traditional biases dominate and de facto discrimination prevails.

Women cannot be forced to work for six weeks before and six weeks after delivery of a baby. Six weeks after delivery, the woman may take six months leave without pay (Article 70 of the Labor Code).

The article which defines the employer's right to dismiss workers without prior notice says that, in the case of delivery, the employer's entitlement to dismiss women workers starts at the end of the period specified in Article 70, cited above (Article 17 Paragraph 1/b of the Labor Code).

There are specific laws listing the places where women cannot work. Women cannot be employed to work underground or underwater (Article 68 of the Labor Code). Women cannot work in some arduous and dangerous jobs (Article 78 of the Labor Code). There are some jobs where women are not permitted to work night shifts (Article 69 of the Labor Code).

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

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

WOMEN'S RIGHT TO POLITICAL PARTICIPATION

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

All violations of political rights and freedoms are liable to punishment under Article 174 of the Penal Code, which deals with crimes against political freedoms.

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

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

However, standing in elections requires considerable expenditure and strong backing in the de facto male-dominated milieu of political parties. To stand in elections, those wishing to be candidates have first to go through preliminary elections in their respective

parties. The party administration then prepares the election lists, where the candidate's ranking on the list largely determines whether or not he or she stands a chance of being elected. There being a lot at stake, the struggle to secure a favorable position on the election lists turns into a ruthless power game with all the maneuvering this implies. Another obstacle to women was the ban on establishing women's branches or youth branches in political parties. Law No. 4445, passed in 1999, has removed this obstacle.

Taking into consideration the fact that women, burdened with traditional domestic responsibilities and traditionally discouraged from becoming too visible and participating in public life, are starting from a fundamentally disadvantageous position, the necessity for quotas is self-evident. The women's movement in Turkey is working to achieve the establishment of quotas, which would be the next step towards the political empowerment of women and the translation of constitutional and legislative equality into equality in practice.

REPRODUCTIVE RIGHTS AND HEALTH

Contraception and sterilization

In Turkey there is no obligatory birth control or sterilization. All contraception services are legalized (Population Planning Law, May 24, 1983). If a person is married, spousal consent is required for sterilization. Anyone who performs sterilization on a man or woman without his or her consent is sentenced to imprisonment (Article 471 of the Penal Code).

Abortion

Abortion is legal until the end of the tenth week of pregnancy provided that it is performed with the consent of the pregnant woman. After the first ten weeks of pregnancy, abortion is only permitted to save the life or preserve the health of the woman or in the case of fetal impairment. In such cases, an obstetrician or gynecologist must have confirmed that the woman's health is threatened (Article 468 of the Turkish Penal Code). This requirement is waived if the pregnancy poses an immediate risk to the woman's life (Article 5 of the Population Planning Law).

Under Turkish law, a legal abortion must be performed by a gynecologist or obstetrician. A person without medical qualifications who performs an abortion is sentenced to imprisonment regardless of whether the woman has given her consent or not (Article 470 of the Penal Code).

If the pregnant woman is a minor or mentally incompetent, the consent of her legal guardians and a justice of the peace, as well as her own consent are required for an abortion. If the woman is married, the law requires her spouse's consent prior to abortion. The consent requirements can be waived if pregnancy poses an immediate risk to the woman's life (Article 6 of the Population Planning Law).

It is a criminal offence for a woman to obtain an abortion after ten weeks of pregnancy if there is no evidence of health threatening factors. In this case, both the person who performs the abortion and the woman (if she has consented to the abortion) are sentenced to imprisonment. If an illegal abortion has led to the death of or has caused physical harm to the woman, the jail sentence is increased (Article 468 of the Penal Code). According to

the same article, anyone who forces a woman to have an abortion is sentenced to imprisonment.

If a woman and her husband are covered by the national social security system, the social security institution meets the woman's hospital and abortion expenses.

Pre-natal determination of the sex of a fetus

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

VIOLENCE AGAINST WOMEN

Domestic violence

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

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

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

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

According to Article 1 of this law, if a spouse or child or another member of the family living under the same roof is subject to abuse, and notification is made either by the victim or by the Public Prosecutor, a Justice of the Peace can pass one or more of the following rulings or take any other measures that are deemed appropriate in addition to the provisions of the Civil Code.

The accused spouse can be ordered:

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

The above-mentioned measures can be applied for a period not exceeding six months and, if the accused does not abide by the rulings, he or she will be warned that he or she is liable to arrest and confinement. The judge shall take into account the standard of

living of the victim and rule on maintenance payments accordingly. Under the first paragraph of the statute, no fee is charged for applications.

According to Article 2 of the law, the court entrusts a copy of the protection order to the Public Prosecutor. The Public Prosecutor monitors the application of the order through the police. In the event of the order being issued, the police, without the need for the victim to submit a written application, will themselves conduct an investigation and transfer the documents to the Public Prosecutor within the shortest possible time.

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

Domestic violence and the Penal Code

The Turkish Penal Code does not contain special provisions relating to the use of violence against women in marriage, but several general provisions of the Penal Code call for an increase in penalties in cases where violence is perpetrated against family members. Article 478 Paragraph 1 of the Penal Code provides for imprisonment of up to 30 months for the maltreatment of a family member in a manner that contravenes the accepted understanding of affection or mercy. The second paragraph of the same article states that violence against children, grandchildren, parents and grandparents constitutes aggravating circumstances and provides for imprisonment of up to three years. In order to make use of this law, a woman who was subjected to violence must file a complaint unless she has received a medical report from a court-approved doctor specifying that she has to rest for at least 10 days as a result of an assault by her husband. If this is the case, or if the husband's assault has left a permanent scar on the woman's body or if the offence is committed with a weapon or by chemical substance, then the case is deemed to be of public interest and charges will be filed by the Public Prosecutor. In cases filed upon the complaint of the victim, if the victim withdraws his or her complaint before the ruling is made, the charges are dropped (Article 456 of the Penal Code).

Sexual abuse in the family and marital rape

There is no legislation specifically addressing the issue of sexual abuse in the family. The law foresees only third persons as the perpetrators of this crime and its provisions are designed for cases of assault by third parties (Articles 414, 415 and 416 of the Penal Code, see below). However, if sexual abuse is extended to include rape or attempted rape, then Article 417 of the Penal Code provides for a 50 percent increase in the punishment for rape or attempted rape if the offender is a blood relative. There are no special provisions relating to marital rape.

Sexual violence against women and girls

Articles 414-424 of the Turkish Penal Code, under a section entitled 'Felonies against Public Decency and Family Order', deal with crimes of sexual assault. The fact that these crimes are grouped under Section 8 dealing with crimes against 'Public Decency and Family Order', instead of under Section 9 dealing with crimes against individuals, reflects the patriarchal notion that women's bodies and sexuality are issues of public order and family and sanctions the concept of 'honor' in Turkish society in which the honor of family or community is linked to a woman's sexuality.

A Human Rights Watch report states:

The designation of sex crimes as violations of community or family morality has two consequences. First, it identifies the community and not the individual woman as the party that suffers harm consequent to the crime. Second, it defines the harm done in terms of a woman's honor rather than her physical integrity. The investigation and prosecution of sex crimes thus stress not the physical harm to the woman but rather whether her honor and thus public decency and family order have been compromised. (Human Rights Watch, 'A Matter of Power: State Control of Women's Virginitly in Turkey', Vol. 6, No. 7, June 1994).

Rape: Punishment for rape varies according to the age of the victim (i.e. whether she is younger or older than 15). In other words, the law considers that a woman older than 15 is capable of initiating sexual relations of her own free will. Article 414 of the Penal Code states that "whoever rapes a minor under the age of 15 shall be sentenced to a minimum of 5 years imprisonment. If force, violence, threats or abuse of minors are involved then the minimum sentence is 10 years imprisonment." Article 415 of the Penal Code states that "whoever attempts to rape a minor under the age of 15 shall be sentenced to imprisonment of 2 to 4 years".

If the rape victim is older than 15, the sentence should be a minimum of seven years imprisonment (Article 416 of the Penal Code). In this case, the use of force or violence must be proved.

Sexual abuse and harassment: The Turkish Penal Code has no provisions specifically governing cases of sexual abuse. Such cases are dealt with under Article 421 of the Penal Code on verbal and physical abuse. Acts considered to be verbal or physical abuse include: improper sexual remarks; fervent, forcible kissing on the lips; conscious display of the male organ in a lewd manner; and harassment by offensive written material. Under Article 421, physical contact is not a prerequisite for behavior to be considered abuse. Article 421 provides for:

- Imprisonment for three months to one year for verbal abuse of women or men;
- Imprisonment from six months to two years for the physical abuse of women or men.

Sexual abuse and harassment in the workplace: Article 421 of the Penal Code is also applied in cases of sexual harassment in the workplace. Moreover, if a female civil servant is sexually harassed or abused by a fellow civil servant to whom she is subordinate, the punishment is liable to an increase of one third to one half (Article 251 of the Penal Code). In the case of sexual abuse or harassment of subordinates in the private sector, the punishment is liable to an increase of one half (Article 417 of the Penal Code). Sexual harassment or abuse of a female worker is not explicitly regulated in the Labor Code but it can be considered as falling within the scope of 16b and ç of the Labor Code, which give workers the right to rightfully terminate the work contract without prior notice in the event of the employer harassing or insulting the worker verbally or physically in a manner that injures the worker's honor and pride. Termination of the contract on this basis gives the worker the right to claim both redundancy payment and general damages (Articles 14/1, 14/2 and 18/2 of the Labor Code).

VIRGINITY TESTING

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

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

In 1999, following protests from women's human rights groups, the Ministry of Justice issued a statute to eliminate virginity testing by differentiating it from legally required vaginal or anal examinations. The statute, which was passed on January 13, 1999, defines such circumstances as: alleged rape, sexual conduct with minors, and encouraging or acting as an intermediary for prostitution. In the case of such crimes, if there are no other means of proving the alleged crime or if the passage of time may interfere with gathering evidence for the case, the judge may order a vaginal or anal examination without the consent of the woman. The judicial decree must be accompanied by written approval from the public prosecutor. The statute further states that women must not be examined for reasons of disciplinary punishment against their consent or in a manner which will hurt or torment them.

HONOR CRIMES

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

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

There are no specific references to honor crimes in the Turkish Penal Code. However, there are certain articles in the law, which are systematically used to reinforce the traditional notion that a woman deserves to be punished or killed if she brings dishonor upon the family. One of these articles is Article 462 of the Penal Code. It grants a reduction in a murder sentence if the murder is committed by a relative of the person who has been caught immediately before or during an extra-marital sexual relationship. The punishment for the murderer is reduced from a life sentence to 4-8 years imprisonment, or from the death penalty to 5-10 years imprisonment. Other penalties are reduced to 1/8 of the original sentence. Although honor killings are premeditated murders and are not committed immediately before or during a woman's extra-marital sexual activity, this article is wrongly applied to such killings. The woman's transgression of traditional norms is perceived as severe provocation. Also, Article 51 Paragraph 2 of the Penal Code regulates all reductions in the sentences for crimes committed under mitigating circumstances, such as severe provocation. The nature of the honor killing – that it is premeditated murder and as such should receive more severe punishment – is systematically overlooked and the punishment for the murderer can be reduced to 1/3 of the original sentence. When it is combined with other reductions in penalties the murderer can get away with a couple of years in prison.

In the process of planning an honor killing, the so-called 'family assembly', which is formed of the men of the extended family, usually picks a male minor from the family to commit the murder. Therefore, because the murderer is less than 18 years of age, he either cannot be charged at all (if below age 11) or is granted a reduction in his sentence. The adult male members of the family have no charges pressed against them.

HOMOSEXUALITY

There are no references to homosexuality in Turkish Law, for either lesbians or gay men. By implication, same-sex relationships between women do not constitute offences in and of themselves. However, the law also does not protect lesbians from discrimination on the basis of sexual orientation. Anti-lesbian prejudice is pervasive in Turkish society. There are several broad ranging provisions in the Penal Code and Labor Law that prohibit 'indecent and offences against public morality'. These laws can be enforced against sexual minorities (Articles 419, 547 and 576 of the Penal Code).

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

TRANSSEXUALITY

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

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

- Be at least 18 years of age
- Be unmarried
- Be of "transsexual nature"

- Prove that a sex-change is absolutely necessary for his or her mental health
- Prove that he or she is chronically infertile.

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

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

SEX WORKERS

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

Articles 55-62 of the Regulation Regarding the Struggle Against Venereal Diseases Infected Through Prostitution and Provisions Governing Prostitutes and Brothels, which is based on Article 128 of the Public Health Law, makes brothel owners responsible for taking the necessary measures to prevent sexually transmitted diseases. However, Article 129 of the Public Health Law states that if a sex worker is diagnosed with a sexually transmitted disease, she will be prevented from continuing her work and treated, if necessary with the use of force. According to the Regulation, sex workers may be sent to a court-approved doctor for examination in order to protect public health.

Even though sex work is legal in Turkey, forcing women into sex work is illegal. The penalty varies according to the age of the women and their relationship to the party forcing them into sex work. If the woman forced into sex work is younger than 15, the person forcing her is liable to a prison sentence of not less than two years. The sentence is increased if the guilty party is a relative of the young woman or has influence over her – e.g. a teacher or legal guardian (Article 435 of the Penal Code).

If the woman in question is at least 15 but younger than 21, the sentence is 6-24 months in jail. Those attempting to force women older than 21 into sex work are liable to prosecution if they are members of the woman's immediate family (e.g. her husband, father or brother) according to Article 435 of the Turkish Penal Code.

If somebody rapes, supplies, dispatches or transports a virgin or a woman younger than 21 years old on behalf of another and with the purpose of initiating prostitution, he or she is liable to prosecution even if the woman concerned gives her consent. The same offence is punished if it is committed against a virgin or a woman older than 21 years old by using force and violence or by threat or deception (Article 436 of the Penal Code). The

woman concerned has the right to submit a complaint, regardless of her age, and the case can be brought to court in the public interest.

Violence against sex workers

Sex workers who have been subjected to violence while performing a sexual act can file charges against their assailant under Article 456 and the following articles of the Turkish Penal Code. Until 1990, Article 438 of the Penal Code provided for a reduction of one-third in the punishment of rapists if the victim was a sex worker. In 1990, this article was cancelled as a result of widespread protests and intensive efforts by the women's movement.

PORNOGRAPHY

There is no legislation in Turkey dealing specifically with pornography. Articles 426 to 428 of the Penal Code provide for punishment for "indecent or obscene material". Indecent and obscene materials include a wide range of materials such as advertisements, illustrations, movies, documents, photographs, performances, songs, newspapers and records. There is no explicit reference in these articles to the offence being against women.

The Penal Code states that the penalty for displaying, disseminating or performing indecent or obscene material ranges from 1 month to 2 years in prison. In the case of an 'indecent' photograph, the law will punish the publisher or disseminator of the photograph, not those who appear in it.