



Written Input for SR VAW's Country Visit to Turkey

Submitted by: Women for Women's Human Rights – New Ways

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- **Capacity of the different institutions to prevent, detect, monitor and respond to situations of violence against women and girls, including capacity building initiatives.**

Turkey's unlawful, unconstitutional and illegitimate withdrawal from the Istanbul Convention with a presidential decision, against all the objections, even from the women in the AKP, has further weakened the mechanisms to prevent VAW, which were already uncoordinated, under budgeted, and ineffective. This decision has even further encouraged perpetrators of VAW, that their actions will be met with impunity. The national machinery such as the human rights and equality institution (TİHEK) did not follow up any due process, and even advocated for the withdrawal of the Istanbul Convention, organizing "family symposiums" to advocate against the term gender¹; gender equality, LGBTI+ rights and the Convention. The pressure and violence increased on women's and LGBTI+ organizations after the withdrawal. Directorate of Women's Status under the Ministry of Family which is responsible for the coordination and production of relevant policies with regards to women's rights, excludes independent women's civil society organizations from the policy making and monitoring processes.

There is a significant backlash on human rights, especially on the rights of LGBTI+, Kurdish, migrant, refugee and disabled women. There is no legal security, separation of powers has been eroded, and the rule of law has been dismantled. WHRDS and LGBTI+ activists are harassed by arbitrary detentions for joining peaceful protests. Misogynistic, homophobic and transphobic discourses from high level politicians result in increased violence against women on public and private spheres. Economic crisis has deeply affected women, who are already disadvantaged,

¹ <https://kadinininsanhaklari.org/tihek-2021-yili-ayrimcilikla-mucadele-raporu-bilgi-belge-talebine-cevabimiz/>



and there are no temporary special measures to protect women from being deeply affected from these circumstances. Even the right to poverty alimony is attacked by so called men's rights groups who are so small in numbers but have all the means to be vocal and visible, which advocate against women's rights, and advocate for a restriction in the law, and the government has been trying to amend the law since 2018. They have not made the amendment yet, but in implementation we see that judges are more reluctant to rule for alimony. The term "gender" has been erased from all policy documents, and policy papers such as the 4th National Action Plan on Combating VAW², or the Human Rights Action Plan³ has defined important roles to the Directorate of Religious Affairs, which is used as a tool dismantle secularism in Turkey and confining women into patriarchal and traditional gender roles using religion.

- **Legal, institutional and policy frameworks related to VAW and domestic violence**

Constitution: Although the Article 10 prohibits discrimination and guarantees equality between women and men, it does not prohibit discrimination based on sexual orientation and gender identity. Such deliberate exclusion from constitutional protection makes lesbian, bisexual and trans women more vulnerable towards discrimination and violence, as well as provides impunity to perpetrators of discrimination, violence and hate crimes committed against LBT women.⁴

Penal Code: There is no specific and separate crime on VAW or domestic violence or discrimination in Turkish Penal Code (TPC). Accordingly, TPC does not contain a definition of VAW or domestic violence or discrimination. Also, physiological or economical violence is not regulated. Hence, one of the main issues in the TPC is that general provisions are applied in VAW and domestic violence cases without a gender based perspective which consider unequal power relationships based on gender. In addition, the most problematic part in the TPC is about the sexist interpretation and implementation of "the grounds for discretionary

² <https://kadinininsanhaklari.org/brief-note-on-the-4th-national-action-plan-on-combatting-violence-against-women/>

³ <https://kadinininsanhaklari.org/wp-content/uploads/2021/04/HRAP-Brief-Note.pdf>

⁴ <https://www.cambridge.org/core/books/abs/lgbt-rights-in-turkey/lack-of-legal-protections-for-the-lgbti-community-in-turkish-law/66F146965F20B263D075E62F415F1576>



mitigation” (known by the public as the ‘good conduct mitigation’) (article 62) and “unjust provocation” (article 29).

Article 29 of the TPC on unjust provocation establishes as a general mitigating circumstance if the offence was committed “in a state of anger or severe distress caused by an unjust act”. An unjust provocation reduces by one to three quarters the penalty. In practice, courts apply unjust provocation reduction from a very sexist perspective in favor of the perpetrator. For instance, reasons of the perpetrators of VAW like “she did not prepare cook to eat”⁵, “she did not add salt to the meal”⁶, “she assaulted to my manhood honor”⁷, “she had a mini skirt”⁸ or “I got jealous”⁹ have been considered as a ground for “unjust provocation” mitigation by judiciary. Very recently, a court granted unjust provocation mitigation to the murderer of Pınar Gültekin, who killed her and then burned her body.¹⁰

In addition to unjust provocation mitigation, “discretionary mitigation” (article 62) is another obstacle in judicial struggle against VAW. This article regulates the grounds on which judges may mitigate penalties at their discretion. These include the background, social relations and the behavior of the offender during the trial, and the potential effects of the penalty on the future of the offender. In practice, having a respectful stance (for example wearing a suit and tie) before the courts suffices for perpetrators of violence against women to benefit from this reduction. As it is reaffirmed by the GREVIO, the prevalence of discretionary mitigation in cases of VAW is in fact mirror sexist prejudice and victim-blaming attitudes of courts.¹¹

Recent amendments in the Turkish Penal Code

On 12 March 2022, some provisions of the TPC have been amended. The aim of the amendments was introduced as "to increase the effectiveness of the fight against domestic violence and violence against women." The amendments are, however, far away to introduce a

⁵ <https://tr.euronews.com/2019/08/23/kadinlar-hangi-bahanelerle-olduruluyor-katiller-icin-nasil-ceza-indirimi-uygulaniyor>

⁶ <https://ekmekvegul.net/gundem/yemegin-tuzu-az-siddetin-bahanesi-oldu>

⁷ <https://www.evrensel.net/haber/110377/erkekligime-laf-etti-diyen-katil-koca-haksiz-tahrik-indirimi-aldi>

⁸ <https://www.gazeteduvar.com.tr/pinar-gultekin-davasinda-indirimli-hapis-bugun-burada-hukuk-olmustur-haber-1570093>

⁹ <https://www.cnnturk.com/turkiye/deger-denizin-katilinden-sasirtmayan-savunma-erkekligime-laf-soyledi>

¹⁰ <https://m.bianet.org/english/print/263582-unjust-provocation-reduction-granted-to-pinar-gultekin-s-murderer>

¹¹ <https://rm.coe.int/eng-grevio-report-turquie/16808e5283>



holistic and inclusive roadmap in the fight against gender-based violence, on the contrary, they will continue the existing problems in practice and may even add new problems.

One of the main changes is made on “the grounds for discretionary mitigation” regulated under Article 62. By the amendments, it is announced that the perpetrator's attitudes and behaviors aiming to influence the court will not be considered as grounds for discretionary mitigation anymore. However, it should be emphasized that “good conduct” or issues such as wearing a tie or a suit never legally existed as a ground for mitigation. The reason which makes Article 62 a tool for immunity for perpetrators was not the formulation, but the gendered misinterpretations by the judges. Thus, the amendment, which does not focus on the patriarchal point of view of the judiciary's interpretation is dysfunctional as it stands.

With the amendment, the crimes of deliberate killing, deliberate injury, torture, and threat “committed against women” is regulated as a qualified form which requires a higher punishment. Although it may seem positive at first glance, it should be noted that there is still no definition of VaW, and VaW is still not regulated as a separate crime within TPC. In other words, the amendments do not divide VaW and crimes committed against women, and, consider bodily harm that occurred as a result of violence against women and, for instance, a car accident, as the same. Besides, no regulation was introduced regarding psychological violence or economic violence to which women are frequently and systematically exposed.¹²

6284 on the Protection of Family and Prevention of Violence against Women:

Law 6284 was enacted just after the ratification of the Istanbul Convention to make domestic law comply with the Istanbul Convention thanks to the enormous efforts of the feminist movement in Turkey. The problem, as constantly stressed by feminists in Turkey, and reaffirmed by the GREVIO, is the (mis)implementation of law. Since it is the only domestic law which the Istanbul Convention had constituted a legal foundation for, following the withdrawal decision, the previously existing implementation challenges have deteriorated as mentioned below.

¹² <https://kadinininsanhaklari.org/turk-ceza-kanunu-ile-ceza-muhakemeleri-kanununda-yapilan-degisikliklere-iliskin-degerlendirmelerimizi-iceren-bilgi-notu/>



Women are not effectively protected even though they got protective measure under the Law 6284. In 2021, at least 33 women who had protective measure under the Law 6284 and/or filed a criminal complaint before the courts have not been effectively protected by the state, and were murdered.¹³ Women who apply to law enforcement to report violence are misinformed, or not fully informed about their rights.¹⁴ Women are pushed to reconcile with perpetrators (mostly their husbands) and go home without taking any action. In some cases, women are rejected by the police and misdirected to the prosecutor's office, by saying that they are not authorized to apply the Law 6284.¹⁵ There are several cases similar to Özlem Dursun, who was killed by her husband, in spite of the fact that she had called the police on the same day through the Ministry of Interior Affairs' KADES (Women' Support) app, and after staying in the police car for an hour, was convinced to return to her house where her abusive husband was.¹⁶

It is also observed that family courts and police are reported to refrain from ruling on protective and preventive measures or for the extension of these measures following the withdrawal decision.¹⁷ For instance, a Court in Ankara had granted a protective measure to a woman in 2020 and extended once, the application for the extension of it was arbitrarily rejected after the withdrawal from Istanbul Convention.¹⁸ Also, it is observed an increase in practice that women are asked to provide evidence for the violence, in contrary to the Law 6284.¹⁹

Shelters and hotlines are inaccessible for women (lack of awareness, not being able to access via phone) and do not provide proper information and support.²⁰ Services provided are reported to be insufficient, misleading, slow and often put women at further risk.²¹

¹³ <https://kadincinayetlerinidurduracagiz.net/veriler/3003/kadin-cinayetlerini-durduracagiz-platformu-2021-yillik-veri-raporu>

¹⁴ Turkish Grand National Assembly, Written Question No. 7/44265 submitted by MP Filiz Kerestecioğlu, https://www5.tbmm.gov.tr/develop/owa/yazili_soru_sd.onerge_bilgileri?kanunlar_sira_no=292858

¹⁵ <https://www.gazeteduvar.com.tr/emniyet-yanlanladi-ama-avukatlar-istirarli-koruma-karari-icin-basvuran-kadinlar-geri-cevriliyor-haber-1518562>

¹⁶ <https://t24.com.tr/haber/ozlem-dursun-kocasi-ramazan-dursun-tarafindan-darp-edilerek-olduruldu-kadinin-fotograflarini-cekip-ailesine-gondermis,1039930>

¹⁷ Footnote 10

¹⁸ Ibid.

¹⁹ <https://www.gazeteduvar.com.tr/emniyet-yanlanladi-ama-avukatlar-istirarli-koruma-karari-icin-basvuran-kadinlar-geri-cevriliyor-haber-1518562>

²⁰ The Executive Committee on NGO Forum for CEDAW, Shadow Report on the 8th Periodic Review of Turkey for submission to the 81st Session of CEDAW <https://kadinininsanhaklari.org/wp-content/uploads/2022/02/8.-Golge-Raporu-2022-yilinda-guncellenmis-versiyonu.pdf>

²¹ Ibid.



- **Adherence to international and regional human rights frameworks on women's rights and the elimination of VAW**

Turkey became the only state to withdraw from a human rights convention, namely the Istanbul Convention, in which it prepared, signed, ratified, and implemented for years. The reason for the withdrawal has been presented as “the Istanbul Convention was hijacked by a group of people attempting to normalize homosexuality – which is incompatible with Turkey’s social and family values.”²² It is highly dangerous in a country like Turkey where hate crimes against LGBTIQ’s are awarded with impunity. Although Turkey is a party of the ECHR, the Istanbul Convention has much more practical importance for especially LBT women in Turkey since the Convention has a direct effect on the domestic law. Thus, the withdrawal means that no legal protection based on SOGI will exist in Turkish law, in combating domestic violence.²³

Moreover, Turkey fails to implement the binding judgements of the European Court of Human Rights. It is extremely alarming that, the government officials at the highest level publicly announced that Turkey is not bound with the ECHR judgments, hence will not apply them.²⁴ As the monitoring reports²⁵ on the implementation of the Opuz Case, the groundbreaking Strasbourg judgement on VaW and domestic violence, the reasons of failure of the implementation is not limited with legislative and institutional deficiencies, but also closely linked with policies which reject the gender equality as a notion.²⁶

Lastly, it must be noted that observations and recommendations of the CEDAW Committee are disregarded/not adequately implemented. As the CEDAW Committee addressed during the 8th periodic review in June 2022, structural deficiencies on combatting against VAW , stereotyping

²² <https://www.iletisim.gov.tr/english/haberler/detay/statement-regarding-turkeys-withdrawal-from-the-istanbul-convention#:~:text=The%20Istanbul%20Convention%2C%20originally%20intended,Hence%20the%20decision%20to%20witdraw.>

²³ “Withdrawal from the Istanbul Convention: War on Gender Equality in Turkey” https://freedomhouse.org/sites/default/files/2021-06/06292021_Freedom_House_Turkey_Policy_Brief-2-Withdrawal-from-the-Istanbul-Convention.pdf

²⁴ <https://www.reuters.com/world/middle-east/turkeys-erdogan-says-will-not-respect-council-europe-after-kavala-move-2022-02-03/>

²⁵ http://www.aihmiz.org.tr/files/en_opuz_report.pdf

²⁶ <https://www.bbc.com/news/world-europe-30183711>



and prejudices based on gender, access to abortion, implementation of law, impunity and lack of official data persists.²⁷

- **Violence against women based on sexual orientation and gender identity or expression**

As mentioned above, there is no legal protection for LBT women or intersexes in Turkey. Furthermore, in Turkey, hate crimes against LGBTIs are awarded with impunity.²⁸ After the withdrawal from the Istanbul Convention with a direct hate speech towards LGBTI+s, attacks towards the most basic human rights of LBTI women has dramatically increased. It is even more worrisome that the government targets the very existence of the LGBTIQ community in its reasoning since it is a clear indication that hate and discrimination towards LGBTIQ individuals have now become official state policy.²⁹

- **Online violence against women, particularly women human rights defenders and women journalists and women politicians**

In Turkey, feminists, WHRDs and women journalists face online violence from anti-gender, anti- rights groups and actors, as well as misogynistic men. Women journalists are being targeted and threatened by militarist, nationalists accounts or some AKP MPs on social media for reporting on violence against migrants, femicides, VAW and impunity. Even if women journalists report the online violence to the legal authorities, verdict of non-prosecution causes violence to prevail.

- **Gender stereotyping and biases in judicial processes**

²⁷ https://wwwhr.org/wp-content/uploads/2022/02/INT_CEDAW_LIT_TUR_45257_E2-.pdf

²⁸ <https://kaosgidernegei.org/images/library/lgbti-larin-i-nsan-haklari-raporu-2021-web.pdf>

²⁹ <https://kaosgl.org/en/single-news/suleyman-soylu-said-34-lgbt-is-perversion-34-on-the-live-broadcast>



The biggest problem that women experienced in violence cases is systematic impunity. Statistics proves that the ratio of decision of conviction in every 1000 gender based violence incidents is only 0.7% in Turkey.³⁰

In Turkey, at least in 42% of the applications made to the police, the police had not referred the application to the prosecution office.³¹ In 29% of the applications made to the police, women were reconciled with their husbands, 41% of them resulted in referral of the police to other institutions (like NGOs) and in 13% of the applications nothing was done.

Impunity is established by gender stereotyping and biases in judiciary and police. Indeed, in sexual offences, police, prosecutors and judges acting with sexist bias feel free to make assessments in favor of the perpetrator, for instance when women wear tight jeans or shirts showing cleavage³², if they did not go and report the offence to the police immediately³³ or if did get alcohol during New Year's Eve,³⁴ when did not prepare cook to eat".³⁵ As mentioned above, very recently, a court granted unjust provocation mitigation to the murderer of Pınar Gültekin, who killed and then burned her body.³⁶

- **Women's sexual and reproductive health and rights**

Abortion on demand up to 10 weeks of gestational limit is legal in Turkey. If the pregnancy is a result of sexual assault, the abortion time limit can be extended up to 20 weeks if supported by a judge's decision. The law also requires spousal consent for married women to have an abortion and parental consent for those under the age of 18. The consent of pregnant women with mental disabilities is not sought, but rather the consent of their guardian and a permission of a magistrate are required for an abortion.

³⁰ "A Feminist Response Against Impunity In Gender Based Violence: Whom The Presumption Of Innocence Protects?" <https://dergipark.org.tr/en/download/article-file/1631941>

³¹ Ibid.

³² <https://www.ntv.com.tr/turkiye/yargitay-dekolte-ile-siddet-esit-olamaz,liG5qlZHNUGKJDDxJqUOpg>

³³ <https://www.sinerjimevzuat.com.tr/index.jsf?dswid=6066>

³⁴ Istanbul 2nd Heavy-Penal-Court, 2019/154 E., 2019/622 K., 20.11.2019.

³⁵ <https://tr.euronews.com/2019/08/23/kadinlar-hangi-bahanelerle-olduruluyor-katiller-icin-nasil-ceza-indirimi-uygulaniyor>

³⁶ <https://m.bianet.org/english/print/263582-unjust-provocation-reduction-granted-to-pinar-gultekin-s-murderer>



Although the law has discriminatory articles, abortion is legally safeguarded to some extent. However in practice access to abortion is subject to de facto restrictions and prohibitions. According to a research, out of 295 public hospitals only 10 of them provide abortion services on demand without any restrictions.³⁷ Also as research shows, access to contraceptive methods has diminished in the latest years, and the problems with regards to access to SRHR services have increased with the pandemic. According to the regulations, primary health services such as the Family Health Centers modern contraceptive methods should be provided, however this is not the case in [practice](#). Pro-natalist policies has highly restricted access to abortion and SRHR services in the last 20 years of their governance.

³⁷ <https://gender.khas.edu.tr/sites/gender.khas.edu.tr/files/inline-files/Abortion-Report-2020-ENG-new.pdf>