

WOMEN FOR WOMEN'S HUMAN RIGHTS REPORTS NO. 1

THE LEGAL STATUS OF WOMEN IN TURKEY

by Canan Arın

(Please note that the publication date for this paper is 1997, therefore some of the information is outdated. We include its full text here to allow for comparative analysis for those interested. Precise information on the current situation can be found in our publication “The NEW Legal Status of Women in Turkey”).

PREFACE

Women for Women's Human Rights is pleased to publish the updated, second edition of this booklet, which was the first in its series of reports produced within the framework of the “Women and Law” Program, an international initiative being undertaken by the international women's network Women Living Under Muslim Laws (WLUML). WLUML's Women and Law Project is one of the several common projects of WLUML and this action-research project focuses on existing laws and social practices in approximately 25 Muslim countries/communities. Turkey is one of the countries participating in the international Women and Law Project.

Turkey occupies a unique position in the Muslim world because of its fully secular legal framework (taken directly from the Swiss civil and Italian penal codes). Although several other Muslim countries claim to utilise a secular framework in many areas governing civil and penal law, family laws have not been included in this secularisation. For example, even in Tunisia or in Senegal where both laws and social practices have undergone a process of secularisation similar to Turkey, personal status laws in these countries (i.e. laws that concern marriage, divorce, family matters, etc.) are based on or are directly taken from the sharia codes. Thus Turkey remains the only Muslim country which implements a fully secular legal system and provides the possibility for an interesting comparison with, and perhaps a unique contrast to, the legal status of women being investigated and documented by the other Women and Law Projects undertaken in collaboration with WLUML.

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INTRODUCTION

The following is an examination of rights which have been granted to women under Turkish law but which are nevertheless breached by customs and tradition.

Turkey is a secular state governed by the rule of law: i.e. people have to obey the rule of law regardless of their religious beliefs. Under the Turkish constitution everyone is equal before the law, irrespective of religion, race, language or sex.

That is the theory. In practice however, customs and tradition play a very important role in what is a predominantly Muslim society. Women are generally regarded as being inferior to men and, inevitably, their theoretical legal rights are violated. It is very difficult to deal with the type of discrimination that is observable in practice but which does not actually exist in law. It is a question of education.

Some examples of this type of discrimination that come most readily to mind are:

The dowry a bridegroom is required to pay to the bride's family;

The illegal attempt to preserve a proportional quota of women judges, even though there are other women who wish to be judges;

The rare appointment of a woman as head of the court;

Granting girls only the minimum compulsory education and regarding higher education for females as superfluous.

(A more detailed discussion of dowries is included in a special section later in this paper.)

It is very difficult, if not impossible, to prevent discrimination by means of legislation as this would require an official admission that discrimination based on sex exists; and it is not possible to elicit any such admission. However, it is possible to mobilise public opinion in the right direction through the mass media.

The most blatant example of sexual discrimination can be observed in the "Family Law". This will be discussed further later in the paper, but it is sufficient to mention here that Article 152 of the Turkish Civil Code, which names the husband as the head of the family, lays the foundations for discrimination against women. The article has a number of consequences. The legislation pertaining to the "division of property regime" also works to the disadvantage of women.

If a woman bears the child of a man other than her husband she cannot sue the father of the child unless her husband refuses to acknowledge the child as his own. Even if the husband does not acknowledge the child as his own, the woman cannot file a paternity suit against the natural father herself; only a guardian appointed for the child has the right to sue. These are all forms of sexual discrimination against women resulting from the Civil Code. A petition signed by 100,000 women has been submitted to the Turkish Grand National Assembly calling for the amendment of the above-mentioned article and containing proposals for a new article.

Since its beginnings in 1980, the greatest achievements of the Turkish women's movement have been in the amendment of certain articles in the Turkish civil and criminal codes. Article 159, which is one of the repercussions of Article 152, stated that women needed their husbands' consent before they could work outside the home. The women's movement appealed to the Constitutional Court and succeeded in having the article annulled on the grounds that it contravened the constitution.

Another achievement has been the repeal of Article 438 of the Criminal Code by the Grand National Assembly. Article 438 provided for a reduction of one third in the punishment for rapists if the victim was a sex worker.

The Turkish Civil Code does not contain any provisions taken directly from Islamic Sharia Law. It is based on the Swiss Civil Code. If the superiority granted to men in the Turkish Civil Code resembles that in Sharia Law, this can be explained more easily by the global dominance of men rather than the influence of Islamic Law. Nevertheless, the Turkish Civil Code affords women considerably more rights than they enjoy under Sharia Law. There is no discrimination between men and women in applications for divorce. Should they so wish, women can win custody of their children (in practice, custody of children is usually awarded to the woman). They enjoy equal rights of inheritance. Their children can be registered as Turkish nationals.

There are no distinct provisions to the advantage of women, which are ignored in practice. As soon as this subject is raised the government makes an ostentatious show in an attempt to demonstrate that there is no difference between theory and practice. An example of this was the appointment of a woman as governor of Mugla after the lack of female governors became widely discussed in the media. However, there still has not been a female chief of police. Nor have there been any women generals. Military academies ostentatiously admitted a few female students; but that was as far as it went. Perhaps women activists are partly to blame for not seeing issues through to their conclusion.

Another example is a decision that was published in the journal of the Bar Association in 1988. The decision had nothing to do with the suppression of an acquired right. The discrimination is in the way a court decision was expressed by one of Turkey's judges. The case concerned a pregnant woman who had filed for divorce from her husband. The judge rejected her plea and, in the minutes of the court, was quoted as using an expression that can be summarised as: "You should never leave a woman free of a slap on her back and a child in her belly". It later emerged that it was not the first time that the woman had applied for a divorce from her husband; but each time had changed her mind, returned to her husband and had a child. Finally, the judge had lost his temper with the woman when he saw that she was once again pregnant and used the expression mentioned above. In Turkey it is extremely difficult for a judge to understand how a woman can make love with her husband at the same time as she wants a divorce. What is really horrendous and unacceptable is not the suppression of an acquired right but the use of such an expression in the decision announced in a Turkish court of law. It is a clear demonstration of the attitude of the judge, as a typical member of the male-dominated society in which he lives, towards women. It is a terse expression of the most effective means of exercising control over women.

The judgement mentioned above had a catalytic impact on women's awareness, paving the way for the launch of a women's solidarity movement against beating by men and the subsequent establishment of the Purple Roof Foundation. It was almost a case of a dark cloud having a silver lining.

Since 1975 there have been several legislative amendments to women's advantage and none to their disadvantage. However, Article 152 has been extended so as to work to the disadvantage of women. The women's movement had brought the laws to the attention of conservative circles. Moreover, the pro-Islamic Welfare Party started to understand the power of women. The party intensified its domestic activities directed at women; and gained an increase in its vote as a result.

FAMILY LIFE

Restrictions on the age of marriage:

According to Article 88 of the Turkish Civil Code: "The minimum age for marriage is 17 for men and 15 for women." However, the minimum age for all other legal procedures except marriage is 18. In cases defined as extraordinary in law, a judge may grant permission for the marriage of a woman who is a minimum of 14 years old. Such a special dispensation is entirely at the discretion of the judge. The pregnancy of the girl concerned is only one factor in the judge's decision. However, if the girl is not psychologically or physically mature enough to marry, pregnancy alone cannot constitute a reason and justification for marriage.

The judge responsible for such a decision is the magistrate in the Court of First Instance, which deals with cases in the district in which the party in question resides. The question arises as to why the judge should become involved in such a relationship. The reason is that Article 41 of the Turkish constitution establishes the family as "the foundation of Turkish society".

According to Turkish law, only persons deemed "competent" may marry. Anyone suffering from any kind of mental illness is strictly forbidden from marrying (Article 89). Girls younger than 15 and boys younger than 17 can only marry if they themselves consent, have the consent of their parent or guardian or, if their parents are divorced, the person to whose custody they have been given (Articles 90-91). If the guardian withholds her/his consent, the person can apply to the court for permission from the judge. Parental consent must be in writing, indicating the name of the person their son or daughter is to marry. Oral consent is not valid.

The prospective bride or bridegroom's consent is necessary even if they have not yet reached the minimum age for marriage. Even if the person is too young for marriage her/his consent is still necessary. If the person has fulfilled the minimum age required by law, s/he may still answer in the negative to the officiating registrar's question of whether s/he wishes to marry her/his prospective spouse, and no one can force her/him to act against her/his own wishes. If s/he is younger than 18, s/he cannot be forced to marry a person against her/his will. If, despite all of these safeguards, a woman/girl is forced to marry under material or moral pressure, she may:

Refuse to consummate the marriage. If she is forced to consummate it, she may apply to the Public Prosecutor to press charges of sexual abuse by force and violence.

Apply for the dissolution of the marriage under, depending on the circumstances, Article 116, 117 or 118 of the Civil Code, if it has taken place without her consent. The application to the courts should be filed within six months of the plaintiff learning of the reason for the dissolution or after the threat disappears, but no more than five years after the date of the marriage. No such case can be filed more than five years after the date of marriage (Article 119).

In cases where parental consent is required, if the girl is younger than 15 but older than 14 she needs the permission of a magistrate from the local Court of First Instance. The judge must hear the views of both parents before making his/her final decision.

ORAL AGREEMENTS

Any profit accruing to the women due to marriage, divorce, birth of children or the dowry claimed by the parents of the bride before marriage, do not bestow any rights on persons considering themselves to be creditors since these concepts do not have any legal or institutional validity or significance.

There are no legal provisions regarding dowries brought by the bride. However, Turkish law includes a separation of property regime, according to which all persons are regarded as the legal owners of their own property. Traditionally, the bride is responsible for furnishing the bedroom. Providing that she can supply the necessary proof, the woman can recover all that she brought to the marriage as her dowry. Any kind of proof can be submitted, the best being the original invoices for the property concerned. The dowry can only be recovered in the case of divorce.

DOWRY PAID BY THE BRIDEGROOM TO THE FAMILY OF THE BRIDE

The dowry paid by the bridegroom to the father of the bride is in recognition of the cost of raising her and in compensation for the deprivation of her services following her marriage. It is a relic of a patriarchal society. It has no validity or place in Turkish law.

The woman can always reject the match. If she is an adult, she can refuse to marry a man despite pressure from her family to do so because of the large dowry he is offering them. She may also marry a man who does not pay any dowry to her family.

If she is still legally classed as a minor, she may file for the dissolution of the marriage if she has been forced to marry solely for the sake of the dowry (Articles 116, 117 and 118 of the Turkish Civil Code).

THE REALISATION OF A MARRIAGE CONTRACT

A marriage is legalised by the mayor of the relevant district or a civil servant acting with her/his authority. In villages a council composed of the village elders has to be notified of the intention to marry (Article 97 of the Turkish Civil Code). The marriage is legalised by the

village headman. In other words, the marriage can only be legalised by the competent authorities.

If the couple are both Turkish citizens and marry in a foreign country, the competent authority is the relevant Turkish consulate. If one of the couple is a citizen of a foreign country, then the marriage is legalized according to the procedures of the country concerned. If the marriage does not contravene Turkish law, then it will also be valid in Turkey.

In Turkey, the marriage of a foreigner and a Turkish citizen, or two foreigners who are not citizens of the same state, can only be legalized by an authorized civil servant (Article 12 of the Marriage Regulations).

A religious ceremony can only be held after the civil ceremony (Article 110 of the Civil Code). Otherwise, the couple is in breach of the Criminal Code (Article 237, Paragraphs 3 and 4). Furthermore, if the religious official conducts the religious ceremony without documentary proof that the civil ceremony has already been completed in accordance with the law, he too is committing an offence that is punishable under the terms of the Criminal Code.

Article 152 of the Civil Code designates the husband as the head of the marriage. It is the husband who decides where they will live and who is responsible for adequately supporting his wife and children.

Until recently, Article 153 of the Civil Code required that a wife take her husband's surname. But, under an amendment to Article 153 promulgated in May 1997, a woman is now free to choose either to retain and use her surname in front of her husband's surname on marriage, or take her husband's surname.

The husband acts as the representative of the married couple. Whatever system the couple have chosen for the management of their property, it is the husband who is responsible for their savings (Article 154).

Until 1990 the woman could work outside the home only if she received express or tacit permission from her husband. Since its inception in the 1980's, one of the most important achievements of the women's movement has been the repeal of Article 159 of the Civil Code under a ruling by the Constitutional Court of 29 November 1990. Today, a woman no longer requires permission from her husband in order to be able to work outside the home.

A married woman may travel abroad whenever she wants. All she needs is her passport. She is not required to seek permission from anyone to travel either inside or outside the country.

SEPARATION

The wife's place of residence is the residence of her husband. All official communications to be sent to the wife are sent to the residence of her husband and any time period foreseen in law is considered as beginning subsequent to that date.

A married woman may choose to live apart from her husband whenever she so wishes. No one can force her to return to her husband's residence. However, if the husband wants her to

return, he may send her an official letter inviting her to return and thus initiate the procedural period required by law before suing his wife for divorce on the grounds of abandonment.

On the other hand, it is also possible for the woman to apply to the courts for a legal separation from her husband. According to Article 138: “When one of the possible grounds for divorce has been established, the judge is responsible for deciding whether to grant a divorce or legal separation.”

When one of the possible grounds for divorce has been established, the woman may apply to the courts for a legal separation. In such a situation, the judge may grant a legal separation for a period of one to three years. If during this period the couple are still not reconciled, the judge may grant a divorce at the request of one of the couple (Articles 139-140).

If, when an application for a divorce is made, the judge believes that there is a chance that the couple will become reconciled, s/he may grant a legal separation instead. But s/he cannot grant a divorce following an application for a legal separation (Article 138).

An application for a legal separation can only be made on the grounds necessary for a divorce.

THE RIGHTS OF WOMEN DESERTED BY THEIR HUSBANDS

The first consideration should be whether the woman whose husband has left her does, or does not, want a divorce. Article 132 of the Civil Code states that desertion is considered valid grounds for divorce. It states that one party has the right to file an application for divorce if s/he has been deserted by the other party in order not to fulfil her/his marriage obligations or has not returned home, without a valid reason, for three months. If this de facto separation continues for three months and appears set to continue, an application can be filed for divorce. A certain period of time has to be allowed to pass before the application for divorce can be filed.

If the man abandons the woman, she can apply for maintenance payments as the husband is considered the head of the marriage and responsible for providing for the family.

RAPE IN MARRIAGE

Marriage is an institution that provides people with a means to fulfil their sexual needs in accordance with the law. For this reason, the issue of rape should not appear in a marriage. This is how the question is treated/considered under the Turkish Criminal Code.

The Criminal Department of the Supreme Court of Appeal considers an offence to have been committed only if violence is used to force the victim to engage in sexual relations, in which case the law requires evidence of the use of physical violence. A woman can file for divorce if she is forced to engage in sexual relations through the use of physical force. If she can prove that physical force was used, she can also claim compensation.

The Turkish Criminal Code does not contain special provisions relating to the use of violence against women in marriage, unlike the statute books in the US and Europe. The husband is usually charged under the general provisions of the Criminal Code, including Article 478,

which provides for imprisonment of up to 30 months for the maltreatment of a family member in a manner, which contravenes the accepted understanding of affection or mercy.

Pressure from the women's movement was instrumental in the formulation of draft legislation providing for Protection Orders for women at risk from domestic violence. After vigorous lobbying from the women's movement the draft was passed at the second reading by the Parliamentary Justice Committee, and approved by parliament on January 17th 1998. In February 1998, only a month after the draft law entered the statute book, it was applied for the first time in a domestic violence case in Ankara, which again received extensive media coverage.

In order to initiate the legal process the victim must first go to the nearest police station and make a statement detailing the charges, regardless of whether she is told that, as the accusation will ultimately be handled by the Public Prosecutor, she should go directly to the latter's office to make her accusation. The police will normally then send the woman to a state-approved or court-approved doctor, who will give the woman a certificate specifying how many days she must rest at home as the result of the assault by her husband. If the period is ten days or less it is up to the woman to file charges against her husband in the Court of First Instance. If the period is longer than ten days, or if the husband's assault has left a permanent scar on the woman's body, then the case is deemed to be of public interest and charges will be filed by the Public Prosecutor (Article 456 and consecutive articles of the Civil Code). In cases filed by the public prosecutor, which are dependent on evidence given by the victim, the charges are dropped if the victim withdraws the accusation before judgment has been passed.

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

POLYGAMY OR FORNICATION

Under Article 440 of the Civil Code, fornication by women is defined as sexual relations between a married woman and a man other than her husband. The term marriage refers to a civil ceremony. A marriage consisting only of a religious ceremony is not considered as being legally valid and thus a woman who has not undergone a civil ceremony cannot be found guilty of fornication. Fornication is a criminal offence because it is considered to threaten the family union and the members of the family. In order for charges to be brought, an accusation has to be made by the husband of the woman concerned. The man who engaged in sexual relations with the woman is liable to the same punishment as the woman regardless of whether or not he knew that the woman was married. The woman is considered to have committed the crime of fornication the first time that she engages in sexual relations with a man other than her husband. She is sent to the court hospital, where she undergoes tests to prove that fornication has taken place. The Court of Appeal considers a crime to have taken place only if the couple have engaged in full sexual intercourse. The discovery of the man and woman in an intimate position is not in itself evidence of fornication.

Until December 1996 fornication by married men was covered by Article 441 of the Turkish Criminal Code, although its definition was much broader. Unlike the woman, for whom one complete sexual act was sufficient for conviction of fornication, a married man could not be convicted of fornication unless it was proved that he was living together with an unmarried

woman. In December 1996 Article 441 was annulled by the Turkish Constitutional Court on the grounds that differences in the definition of fornication for the wife and the husband violated Article 10 of the Turkish Constitution, which states that men and women must be equal before the law. This annulment appeared in the Official Gazette on 12 December 1996. A one-year period was allowed for the writing of new legislation pertaining to fornication by men, however, because a new law was not prepared, fornication ceased to be a crime for men, and only for women. Since this situation caused legal discrimination between men and women, Article 440 was also annulled on 23.06.1998, and this was made official on 13 March 1999 after it appeared in the Official Gazette. Thus, fornication is no longer a crime for neither men nor women according to the Turkish Penal Code, although it is still one of the grounds for divorce according to the Turkish Civil Code.

Proof of fornication entitles the injured party to file for divorce on the grounds of infidelity, which can be proved by any means (e.g. witnesses) and enables the injured party to claim damages (Articles 129 and 143, Paragraph 2, of the Civil Code).

WOMEN'S RIGHTS UNDER A RELIGIOUS MARRIAGE CEREMONY

A religious marriage ceremony confers no legally binding rights. A woman who has only been married in a religious ceremony has no more rights than a mistress. She can neither claim maintenance in the case of separation, nor can she qualify as the legal heir to her husband's property in the event of his death.

STATUS OF CHILDREN

A child is considered illegitimate if her/his parents were unmarried from the time of her/his conception till her/his birth. Under the Turkish Civil Code there are two ways in which the child can be legitimised, namely:

- The marriage of the mother and the father;
- A court ruling legitimising the child.

Several special laws have been enacted since 1933 regarding the legitimisation of children. Illegitimate children who are legitimised can take the surname of their father and enjoy the same rights, such as inheritance, as legitimate children.

THE VALIDITY OF PRE-NUPTIAL AGREEMENTS

If the "pre-nuptial agreement" corresponds to what is termed "mehr" in Islamic Law (i.e. the donation of property with a financial value), it has no legal validity and the woman cannot exercise any rights contained in it unless her husband agrees. However, the woman may ask the man to reimburse her for some of the marriage expenses if the marriage fails for a reason unattributable to her.

THE LEGAL STATUS OF WOMEN MARRIED TO FOREIGNERS

A Turkish woman who has married a foreigner does not automatically lose her Turkish nationality. The woman may obtain the nationality of her husband if, in accordance with Article 19 of the law governing citizenship, the laws of the country of which her husband is a

national grant her nationality, she decides to take the nationality of the country concerned and declares her intention under the conditions detailed in Article 42 of the Turkish law on citizenship. Article 42 states that the party should notify:

The competent Turkish authorities during the marriage ceremony if the marriage is legalised by them.

The competent Turkish body which registers the act of marriage if the marriage has been legalised by foreign authorities (within a period of one month from the date of the marriage contract and in writing).

A woman who is a foreign national and marries a Turkish citizen can be granted Turkish nationality providing she meets the requirements laid down in Article 42 of the Turkish law governing citizenship. If the woman marrying a Turkish man is not a national of any country, or if she stands to lose her own nationality if she marries a man of another nationality, she automatically becomes a Turkish citizen.

According to Article 1 of the law governing Turkish citizenship, children born to a Turkish father or mother, whether in Turkey or abroad, are considered Turkish citizens from birth. According to Article 2 of the same law, children born to a foreign mother outside marriage are considered Turkish citizens if they any of the following conditions confirming Turkish descent are met:

Their birth is legitimised;

A court rules that their father is Turkish;

Recognition.

A foreign woman, who has married a Turkish citizen and chosen to bear Turkish nationality, may exercise all the rights enjoyed by other Turkish citizens. If she has chosen not to become a Turkish citizen and retained her own citizenship, the Turkish authorities do not create any difficulties as regards rights of residence or employment because the Turkish Civil Code defines the place of residence of the woman as the residence of her husband. In contrary, foreign men married to Turkish women have to face a lot of difficulties in these issues.

DIVORCE

The Turkish Civil Code does not provide for different grounds for divorce for men and women. They are the same for both the wife and the husband. The rule is that applications for divorce are filed by the party less responsible for the breakdown of the marriage against the party more responsible for its failure. As a result, if the party more responsible for the breakdown files an application for divorce, and the party less responsible for the failure of the marriage does not agree to the divorce, the case may be dismissed, providing that the less guilty party can prove her/his relative, or total, innocence, as regards the failure of the marriage. However, if the couple are not reconciled or do not begin to live together again as man and wife within three years of the rejection of the application for divorce, the court may rule in favour of a divorce if one of the parties submits such an application. In cases of divorce, the judge rules for the assignment of maintenance for the wife and children if there

are any, beginning from the date of application since the husband is the head of the family responsible for providing for the family.

MATERIAL RECOMPENSE IN THE CASE OF DIVORCE

Material damages (Art. 143, par.1):

Each party may demand material recompense from the other provided that the party making the application is not held responsible for the breakdown of the marriage (Article 143, Paragraph 1). For example, if the innocent party has been deprived of an existing or potential benefit as a result of the divorce, s/he may claim material recompense from the other party. Material recompense and maintenance payment may be paid periodically or in a single lump sum, depending on the situation.

The party who, by virtue of an agreement or a court decision, acquires the right to material recompense or maintenance in the form of an income, may be deprived of this income, unless agreed as otherwise by the parties, if;

s/he ceases to be poor;

s/he adopts an immoral lifestyle;

s/he lives with somebody else as wife/husband without a formal marriage;

s/he remarries;

one of the parties dies.

The Turkish Civil Code defines three different regimes for property:

Separation of goods.

Union of goods.

Aggregation of goods.

If the parties have not concluded a prenuptial agreement determining the regime applicable to property before, during and after marriage, they are considered to have accepted the separation of property regime. According to this regime, each party owns the goods and property that are registered in her/his name. S/he also retains ownership of goods and property acquired in their name prior to the marriage.

In practice, this regime works to the disadvantage of women. Even if the woman has money, she tends to follow Turkish customs and traditions and does not object to her husband managing the couple's money and accepts that goods and property bought with that money is registered in the man's name. Consequently, she does not have any claim on these goods or property in the event of separation or divorce.

The fear of being left without property or goods is a major factor in many women's decision to suffer extreme violence and maltreatment in the marriage rather than leave their husbands to seek a legal separation or divorce. A petition signed by 100,000 people has been submitted to the Turkish Grand National Assembly calling for the amendment of the relevant articles in the Civil Code so as to ensure an equitable division of all goods and property acquired during marriage, with the exception of donations to the parties individually.

If the husband does not allow the woman to enter the house where they live together, the woman has the right to rent another house and claim the rent as maintenance from the husband. If she has left her personal belongings in the house, she may obtain formal permission from the Public Prosecutor and apply to the Police Station or to the Court Bailiff's Office to enter the house and reclaim her belongings.

The property regimes also put women at a disadvantage in a number of other ways.

Most Turkish women work in the home caring for their husband and children. Even if they used to work before marriage, they usually quit their job when they get married and become housewives. Consequently, the husband, as the party who earns money outside the home, acquires control over the family finances and everything that is bought is usually registered in his name.

There are also instances where real estate has been bought with the woman's money or through financial support from the woman's family. In such cases, the Supreme Court of Appeals accepts neither the annulment of the land register nor payment of a sum of damages to the woman in question. However, the women's movement succeeded in persuading the Supreme Court of Appeals, through its decision no. 1994/564 of 28 September 1994, to acknowledge the woman's right to reclaim her share in the purchase of real-estate, providing that she is able to prove that she made a financial contribution to its purchase.

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

In Turkey marriage is considered to provide a means whereby the sexual demands of the two parties can be met in accordance with customs, traditions and the law. Therefore, if one of the parties declines to have sex with the other (e.g. if the man declares that he sees his wife as his sister or mother and not as his wife), this can be considered the basis for severe discord in the marriage and can quickly lead to divorce.

CUSTODY

When it comes to custody the Turkish Civil Code does not distinguish between the father and the mother and says that the custody of any children belongs to their parents. Accordingly, the parents are responsible for providing their children with the appropriate formal (Article 265) and religious education (Article 266). Parents name their children, represent her/him against third parties and, in brief, are expected to do everything necessary to ensure that they are brought up properly.

During the normal course of a marriage the custody of children is shared equally between the father and mother, but in the event of a dispute, the final word belongs to the father (Article

163). However, the mother has the right to reclaim custody of the child if the father does not exercise his rights properly. If one of the parties dies during the marriage, the other party automatically assumes full custody of the child.

In the event of separation or divorce, the rules regarding custody do not treat the father and mother differently. The judge awards custody of the children to whichever parent s/he believes will look after the child better. Men are not regarded as being superior to women in this respect (Article 148). The party who has not been awarded custody is expected to share the financial burden of caring for the children, relative to her/his financial means. The court will also rule on the party's access to the children.

If separation or divorce is the result of violent conduct by either the husband or the wife (although the latter is very rare), it is not usually difficult for the victim of the violence to convince the judge that the perpetrator should not be granted custody of the children.

WOMEN'S SEXUAL FREEDOM

A woman has the right to live with any man, providing that she understands that such a relationship does not confer upon her any rights to maintenance, inheritance etc. However, if the man has bought goods or property for the woman, he cannot reclaim it after separation.

A woman always retains the right to file a complaint if she has undergone any kind of sexual abuse or harassment. If the person who has sexually abused her is a fellow civil servant to whom she is subordinate, s/he is liable to an increase (by one third to one half) in any resultant punishment (Article 251 of the Turkish Criminal Code). However, this provision does not apply to the sexual abuse or harassment of subordinates in the private sector, which are governed solely by Article 421 of the Criminal Code. Article 421 provides for:

Imprisonment for three months to one year for the verbal abuse of women or young men;

Imprisonment from six months to two years for the physical abuse of women and young men.

The Turkish Criminal Code does not have any provisions specifically governing cases of sexual abuse. Such cases are dealt with under Article 421 on verbal and physical abuse. Acts considered as verbal or physical abuse include: improper sexual remarks; fervent, forcible kissing on the lips; the 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 behaviour to be considered "abuse".

The Turkish Civil Code lists rape as a crime. However, it is classed as a crime not against the individual but against the general customs, rules and family order of society. The punishment varies according to the age of the victim (i.e. whether she is younger or older than 15). In addition to actual rape there are also two other offences, namely: attempt to rape and total attempt to rape.

If the rape victim is older than 15, then the use of force and/or violence must be proved. In other words, the law considers that a woman older than 15 is capable of initiating sexual

relations of her own free will. The terms rape and attempt to rape do not apply to all kinds of sexual activity against the woman's will. Here, the focus is on use of violence.

Turkish laws do not make any specific provision for violence against women in marriage. Violence in marriage falls under the same laws as violence outside marriage (namely Article 456 and consecutive articles of the Turkish Criminal Code).

If the woman is a victim of violence she must first go to the police station to file a complaint and to a court-approved doctor, who will issue a report detailing the degree of violence. The woman can either file charges against the perpetrator of the violence herself or the Public Prosecutor will file charges against her/him on behalf of the public according to the result of this report. If, however, the perpetrator of the violence is the woman's husband she is likely to have greater difficulty finding witnesses and may find that the police station is less cooperative than if her assailant had been someone other than her husband.

ABORTION

Abortion is covered by the section entitled "Crimes Against the Unity and Health of the Nation" in the Turkish Criminal Code. Article 468 and consecutive articles stated that the mother of an aborted foetus and the doctor who performs the operation should both be subjected to penalty unless the pregnancy is considered to be detrimental to the health of the mother. However, this was amended by the 1983 bill on "Demographic Planning". Abortion is now legal up until the end of the tenth week of pregnancy provided that the woman gives her consent. Foetuses older than ten weeks can only be aborted if they pose a threat to the health of the mother, and if this threat has been verified by a report from a gynaecologist, or if the foetus is expected to be abnormal or pose a threat to the health of future generations.

If the woman is married, the consent of her husband is also required. If the woman is unmarried and under 18, the consent of her guardian is also required.

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

Except in the circumstances mentioned above, the abortion of foetuses older than ten weeks is considered a criminal offence.

In Turkey, there is no obligatory birth control or sterilization.

PORNOGRAPHY

There is no legislation dealing specifically with pornography. Articles 416 to 428 of the Criminal Code provide for punishment for indecent or obscene material. There is no distinct reference in these articles to the offence being against women.

The Criminal Code provides for the punishment of anyone who displays or disseminates indecent or obscene material. In the case of an indecent photograph, the law will punish the publisher or disseminator of the photograph, not those who appear in it.

PRE-NATAL DETERMINATION OF THE SEX OF THE FOETUS

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.

ABNORMAL SEXUAL BEHAVIOUR

The Turkish Criminal Code does not refer specifically to abnormal sexual behaviour. A woman has the right to divorce if her husband forces her to engage in what are considered abnormal sexual acts. If, as the result of such acts, the woman suffers physical injury, she has the right to file charges against her husband under the criminal law and in accordance with the degree of injury.

There is no reference to homosexual relations between women in Turkish Criminal Code. As a result, it is not, in itself, an offence.

There is no reference to transsexual women in the Turkish Criminal Code. Such women are only covered by the law if they work as prostitutes, in which case they are liable to the “Regulation Regarding the Struggle Against Venereal Diseases Infected Through Prostitution and Provisions Governing Prostitutes and Brothels” with respect to the protection of public health. In such a case, transsexual women may be sent to a court-approved doctor for examination. In practice, however, such women are frequently mistreated by the Police Ethics Department. They are often arrested and taken to the local police station, where they are insulted, their hair is cut and they are maltreated by the police.

SEXUAL SLANDER

Women do not have many rights regarding verbal abuse concerning their sexual life and preferences. Somebody calling a heterosexual woman a homosexual can be sued for slander under the Turkish Criminal Code. This provision (the implication that being called a homosexual is insulting) is, in itself, insulting to homosexuals. An appeal to have the provision annulled is currently awaiting a court ruling.

VIOLENCE AGAINST SEX WORKERS

Sex workers who have suffered violence while performing a sexual act can file charges against their assailant under Article 456 and consecutive articles of the Turkish Criminal Code, because as mentioned above, there is no legal distinction between victims of violence.

Until 1990 those found guilty of raping a sex worker were entitled to a reduction of up to one third in their punishment. But, under intense lobbying from the women’s movement, this provision was annulled by the Turkish Grand National Assembly.

WOMEN’S RIGHTS TO ECONOMIC INDEPENDENCE

Until 1990 a married woman could work outside the home only with the permission of her husband. Nevertheless, the woman could circumvent this restriction if she could prove that

her working outside the home was beneficial to the preservation of the family union. But having to produce proof was a heavy burden for many women.

In a case in Izmir, where the husband had objected to his wife's working outside the home, it was claimed that the article on which the husband's case was based violated the Turkish Constitution. The court in Izmir applied to the Constitutional Court for a ruling. On 29 November 1990 the Constitutional Court ruled that the article did violate the constitution. However, the court ruling was not published in the Official Gazette until 2 July 1992. As a result, women no longer require their husbands' permission in order to be able to work outside the home.

Single women have never required anyone's permission in order to be able to work outside the home.

Women do not face any restrictions regarding the purchase or sale of property or goods.

If the two parties in a marriage have accepted the aggregation of goods regime, the woman cannot reject an inheritance without her husband's consent. If the husband insists on objecting the woman can apply for a court ruling.

If married women wish to establish or become a shareholder in a joint stock company, they must first obtain written permission from their husbands.

Although, under the Turkish Civil Code (Article 169), any kind of legal transaction is permitted between a husband and wife the following are invalid unless they are approved by a Court of the First Instance:

Legal transactions with regard to the woman's personal goods or goods covered by the aggregation of goods regime;

Debts undertaken by the woman against third parties in the interest of her husband.

There are no legal provisions regarding offering employment to women or sexual discrimination in the workplace. However, women cannot work underground, in mines or in physically arduous tasks. Nor are women admitted to military academies or allowed to perform military service. In this respect, it may be possible to apply to the Constitutional Court on the grounds that a woman's right to work and the principle of equality are being violated.

The Turkish Criminal Code outlaws unlicensed sex work. It states that it is illegal for women to sell their bodies without the necessary legal permission. Sex work is legal only if licensed. Women working in brothels are also covered by the social security system. Their employers have to pay the necessary premium the same as any other employer.

However, forcing women to sell their bodies is illegal. The punishment varies according to the age of the women. If the woman forced to sell her body is younger than 15, anyone forcing her to sell her body is liable to a prison sentence of not less than two years. The sentence is longer if the guilty party is a relative of the young woman or has influence over her (Article 417 of the Turkish Criminal 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 Articles 435 of the Turkish Criminal Code.

Another factor is also taken into account. If somebody forces a virgin less than 21 years old into sex work or uses violence against her to achieve that end, s/he will be liable to prosecution even if the woman concerned gives her consent (Article 436).

Article 436 states that anyone who rapes, supplies, dispatches or transports a virgin or a woman less than 21 years old on behalf of another is liable to prosecution. Implicit in the offences relating to transportation is that the woman is being provided for sexual purposes. The woman concerned has the right to submit a complaint and the case can be brought to court in the public interest.

With very few exceptions, women working in the agricultural sector do not have the right to social security insurance. According to the Social Security Act (Articles 3a and 3b) the wives of employers who do not receive a salary are not covered by the social security system. Casual or seasonal workers in the agricultural sector with a short-term contract can benefit from the system (Social Security Act, Reference 2925), providing that they are more than 18 years old (Article 4). Article 85 of the Social Security Act provides for voluntary insurance, if a written application has been made to the relevant local Social Security Institution.

Women can claim an old-age pension providing that they are at least 50 years old, have been insured for 15 years, have paid a premium for at least 3,600 days and have made a written application to the institution (Article 20).

Article 48 of the Turkish Constitution states that: "Everybody has the right and duty to work in any field s/he wishes and to draw up contracts." Article 49 states that "Working is every individual's right and duty." Article 10 states that everybody is equal before the law without any discrimination.

Constitutions normally form the skeleton of a country's legislation. The above-mentioned articles demonstrate that there are no legislative restrictions on a woman's right to set up her own businesses. Even though no Turkish laws can contravene the principles contained in the country's constitution, in practice there is still sexual discrimination against women.

A married woman has to appear in the income tax declaration of her husband. Income tax regulation follows the principle of "the head of the family". It aims to maximise the tax received by the state by combining the income of the husband and wife (Income Tax Act, Article 93).

The State Employees Act (no. 657) must also be in accordance with the constitution, i.e. no sexual discrimination should take place in recruiting or dismissing individuals by the state. But the political parties have been violating this law. For example, in the past, recruitment of female judges was restricted.

Such practices can only be halted if they are highlighted and publicized. A bill allowing women to do military service was recently approved by the Grand National Assembly but it has yet to be published in the Official Gazette.

INHERITANCE

Under Turkish law, daughters and sons have an equal share of their parents' inheritance without any sexual discrimination. This equal share corresponds to three-quarters of the legal inheritance and is divided equally among the children.

The proportion of the inheritance inherited by the living partner (whether the wife or the husband) varies according to the others with whom s/he shares the inheritance:

If s/he shares it with their common children, s/he will receive one quarter of the total.

If the couple was childless and s/he shares it with the father/mother of the deceased, s/he will receive half of the total.

If s/he shares it with the grandparents of the deceased, s/he will receive three quarters of the total.

If there are no other heirs, s/he will receive all of the inheritance.

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

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. If there is any infringement of this right, the woman can have recourse to the courts.

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

THE RIGHTS OF DAUGHTERS

According to Article 88, Paragraph 1 of the Turkish Civil Code, women cannot marry before they are at least 15 years old. In exceptional circumstances a court may permit a girl of 14 to marry. As mentioned above, pregnancy is not by itself sufficient reason. The woman who is going to marry should have the capacity and awareness to meet the responsibilities of marriage.

If the girl is forced to marry against her will, the marriage can be annulled under Article 118 of the Turkish Civil Code providing that an application is made to the courts within six months of the pressure on the girl being lifted and no longer than five years after the marriage. The girl can also apply to the courts for those who forced her to marry to be punished.

Any betrothal of children by their parents at birth has no legal validity. If the girl is at least 15 years old, she may refuse to marry someone against her will. She cannot be forced to marry merely because either her, or her prospective husband's, parents had agreed to the match some time in the past.

If the girl is under age, somebody else who will protect her rights should notify the Public Prosecutor. The girl's parents can be sued for "misuse of influence" and the marriage annulled.

There is no legal validity for the custom of the dowry paid by the bridegroom to the bride's family. The bridegroom cannot be forced to pay the dowry, although tradition may require it. This creates problems if the engagement is broken off before the wedding. The Supreme Court of Appeals holds that, if the engagement is broken off, all presents must be returned except for this dowry payment, as it is contrary to ethics and customs.

There are no special legal provisions for violence suffered by girls within their own families. Under the Turkish Criminal Code there is no distinction between male and female victims of violence in the family. But the definition of "violence" does not include physical violence such as beating that is considered to have been administered as part of the parents' responsibility for educating the child. If the beating is deemed excessive, then the provisions of the law on assault apply. Generally, a slap on the face or on the back is not considered "misuse of custody rights". If the child is beaten with a belt and is injured, then it may be defined as violence. Official authorities normally only hear of such cases if the child is taken to hospital or someone else notifies the authorities. However, the latter is rare as most people are reluctant to be seen interfering in what are considered to be a family's internal affairs.

When the case is referred to the judicial authorities, Articles 477, 478 and 479 on the Abuse of the Laws of Education and Discipline and the Maltreatment of Individuals in the Family are applied. Article 478 refers to children under 12. Article 479 provides for the withdrawal of custody from the perpetrators of violence against the child.

Turkey is a signatory to the 1994 Convention on Children's Rights (published in the Turkish Official Gazette on 27 January 1995) but with some reservations. Therefore, now it is possible to appeal to courts for articles which contradict this convention.

There is no legislation specifically addressing the issue of a girl undergoing sexual abuse in the family. The Supreme Court of Appeals defines physical/verbal abuse as importunate behaviour carried out with sexual desire. The law foresees only third persons as the perpetrators of this crime and its provisions are designed for cases of assault by strangers. The Turkish Criminal Code does not contain any legislation specifically addressing the subject of sexual abuse.

If the concept of sexual abuse is extended to include rape or attempt to rape, then Article 417 provides for a 50 percent increase in the punishment if the offender is a blood relative of the child.

THE RIGHTS OF FEMALE CHILDREN WHO WORK

According to the Convention on Children's Rights, a person is considered a child until the age of 18 (unless established differently in special provisions).

Article 60 of the Turkish Constitution states that: "Everybody has the right to social security." Child workers are insured according to the provisions of the Apprenticeship Act. It is a crime to employ children without social security insurance. However, they obtain the right to seniority compensation only after the age of 20.

The female heir of someone, whether male or female, who was a member of the social security system is entitled on that person's death to receive a widow's/orphan's pension, regardless of her age, provided that she does not have social security cover herself and submits the appropriate application to the relevant social security institution.

Women working in businesses owned by their husbands are not eligible for coverage under the social security institution, but they may make use of what is called the "voluntary institution".

If the competent authorities become aware of children being forced to work without insurance the employer is liable to face criminal charges and made to pay damages.

Article 50 of the Turkish Constitution states:

"Nobody can be forced to work in a manner incompatible with her/his gender and ability." Children, women, and the physically handicapped enjoy particular protection as regards conditions of work. Children cannot be employed in heavy work, mines or underground. However, there are no other legal provisions to safeguard their rights if they are employed in other areas of work, although the Convention on Children's Rights can also be referred to in this respect.

Forcing girls and younger women to sell their bodies is governed by Articles 435, 436 and 437 of the Turkish Criminal Code, as mentioned above. The outcome of each case may differ according to the age of the girl and her relationship to the accused. If the parents of a girl force her into prostitution, they are deprived of their custody rights.

The sexual abuse of children by strangers is governed by Article 421 of the Turkish Criminal Code. To rape or attempt to rape a girl child is liable to public prosecution according to Article 414 and consecutive articles.

THE RIGHT TO TAKE PART IN POLITICAL LIFE

Article 67 of the constitution states that any Turkish citizen who has turned 18 in the year of an election or referendum has the right to vote. The same article states that citizens have the right to vote, to be elected, to carry out political activities independently or within a party and to take part in a referendum in accordance with the conditions laid down by law. The law does not distinguish between the sexes. However, taking part in elections requires considerable expenditure and political parties tend to put their woman candidates in less favourable positions where they have little chance of being elected. Many women also have

domestic responsibilities, such as caring for children. As a result, women often prefer not to participate in active politics and there are very few female members of parliament.

There is no sexual discrimination in the regulations relating to the election of candidates for the Grand National Assembly. Article 10 of the Law on the Election of Members of Parliament (no. 2839) states: "Every Turkish citizen who is at least 30 years old can be a member of parliament."

The establishment of a political party does not require prior permission. All Turkish citizens, regardless of their gender, are free to establish a political party. However, Article 5, Paragraph 2 of the Political Party Law states that a party based on gender cannot be established. With this exception, there are no restrictions on women establishing associations or parties, providing that the party does not threaten to violate the Turkish Constitution's provisions on the indivisible integrity of the country.

PARTICIPATION IN RELIGIOUS LIFE

There are no Turkish laws specifically addressing the possibility of a woman becoming an *imam* (a religious leader), *hafiz* (one who has learnt and memorised the Koran by heart) or *hodja* (a religious teacher).

According to Paragraph 1 of the "Law Concerning Forbidden Clothing" (no. 2956), no religious clothing can be worn outside the places of worship and religious ceremonies, regardless of the religion or the religious sect of the person.

However, Islam bars women from becoming an *imam*, although in Turkey they can become a *hafiz* or *hodja*.

The increasing number of Turkish women opting to dress according to Islamic precepts has triggered considerable debate. In principle, women are not allowed to take examinations with their faces completely covered, to visit public institutions or go to school wearing a *çarşaf* (a black overgarment) or to attend court hearings as a lawyer with their head and faces covered.