

Reforming laws, reforming women's lives

Looking at the representation level of women and the positions they occupy in our Parliament, political parties, judicial organs, unions or simply the labor force in Turkey, one might wonder how a democracy can be functional while half the population of a country is basically not participating in many sectors of its social, political and economic life. Really, where are the women?



Zelal Ayman from the Women's Solidarity Foundation stressed that shortcomings still remain in the revised TMK and TCK. The new property regime of the civil code is only valid for marriages that took effect after January 1, 2002," said Ayman. "This is a major defect that prevents 17 million married women from benefiting from this law.

IRAZDA GERAY

The New Anatolian / Istanbul

The constitution and civil and penal codes of a country affect the lives of all its citizens subject to those laws. Living in democratic societies, individuals have the right and responsibility to monitor the making and implementation of these laws as well as to abide by them. Looking at the representation and participation level of women and the positions they occupy in our Parliament, political parties, judicial organs, unions or simply the labor force in Turkey, one might wonder how a democracy can be functional while half the population of a country is basically not participating in many sectors of its social, political and economic life. Really, where are the women?

The conditions leading to that very question necessitate a closer look at the success the women's movement has achieved in reforming the Turkish Penal Code (TCK) through a three-year campaign.

As a number of other sectors in the society, including the press, can attest, the process of lawmaking in Turkey does not necessarily involve cooperation with the relevant sectors of society, or seeking the opinions and/or approval of the proposed regulations. Aware of this fact, women's groups have been working on reforming the penal code even before the issue reached Parliament. Spearheaded by an independent women's organization, Women for Women's Human Rights (WWHR)-New Ways, the movement prepared its own version of the penal code bill and started lobbying the jurists, lawyers and later the deputies in the Justice Subcommittee and the Parliament to establish gender equality in the new TCK.

Before looking at the penal code reforms, we should note that a few legal changes were realized prior to 2002 in the Turkish Civil Code (TMK) that was adopted from the Swiss Civil Code in 1926.

Major legal changes in the Constitution and TMK before 2002

In 1990, Article 159 of the TMK, which required the husband's consent for a married woman to work outside the home, was annulled.

In the same year, the Parliament repealed Article 438 of the TCK, which used to provide for a reduction of one-third in punishments for rapists if the victim was a sex worker. The Law on the Protection of the Family Article 4320 was adopted in 1998, aiming to prevent domestic violence.

In 2001 Article 41 of the Constitution was amended, redefining family as an entity that is based on equality between spouses, replacing the old version's "the husband is the head of the marriage union."

The new TMK was accepted in 2001 and came into effect in January 2002 largely as a result of lobbying efforts by 126 women's groups who undertook a nationwide campaign to reform the code through media and fax campaigns, meetings, Parliament visits and networking.

Turkish Penal Code

The Turkish Penal Code (TCK) was adopted from the Italian Penal Code in 1926. After years of comparative research and networking conducted by women's groups, efforts to reform the TCK from a gender perspective became a massive public cam-

Major changes in the Turkish Civil Code

The legal minimum age for marriage for both women and men is now 18.

In the old TMK it was 15 for women and 17 for men. Unlike the previous code, the new TMK grants the same inheritance rights to children born inside and outside marriage. The new TMK allows single parents to adopt children.

Under the new TMK, the default regime regarding the ownership of property in marriage provides for an equal division of property acquired during marriage. "Division of property" was the default regime in the previous TMK whereby each party was the owner of goods registered in his/her name.

campaign in 2003. The new TCK draft was accepted in the Parliament in September 2004 and was expected to go into effect today. But with a last-minute decision of lawmakers, the TCK was postponed. More than 30 amendments sought by the women's movement have been included in the new TCK. And most importantly, the core philosophy of the code has been altered.

One might wonder what the reform of the TCK has to do with the promotion of women's human rights. Comparing the old and new classifications of regulations on sexual felonies against individuals may suffice to answer that inquiry:

The old TCK used to regulate sexual offences under the section of "crimes committed against society" in the subsection "crimes against public morality and family." More specifically, the rape or sexual abuse of a woman was recognized as a crime against the family or the society she is a part of, while the crime is committed obviously and specifically against the very person of that woman.

Major improvements in the new TCK

There are new measures to prevent sentence reductions granted to perpetrators of so-called honor killings, and killings in the name of customary law, are regulated as aggravated homicide. There was no notion of marital rape in the previous TCK.

The new TCK explicitly criminalizes marital rape and sexual abuse in the family. The old TCK discriminated against non-virgin and unmarried women in cases of rape and abduction.

This discrimination has been eliminated in the new code. The new TCK criminalizes sexual harassment at workplaces.

The new TCK considers sexual assault by security forces to be an aggravated offence.

The old TCK included obscure notions such as "consent of the child" in cases of sexual assault. The new TCK explicitly defines sexual abuse of children and excludes such contradictory notions.

The previous TCK provided for sentence reductions or cancellations for the perpetrators of rape and abduction if the perpetrator married the victim.

The new TCK abolishes this provision. The old TCK granted sentence reductions to mothers who kill their newborn children born out of wedlock.

The new TCK eliminates this article.

In the new code these offenses are placed under "crimes against individuals / crimes against inviolability of sexual integrity." Thus it is recognized that these are crimes against the individual and not society per se, and that the woman is an individual and not the property of society.

The new regulation of sexual crimes also sets higher prison sentences and bring progressive and clear definitions of the crimes. For example, vague and regressive notions such as "consensual rape and consensual sexual abuse" have been removed from the code.

Remaining shortcomings in the TMK and TCK

Zelal Ayman from the Women's Solidarity Foundation stressed that shortcomings still remain in the revised TMK and TCK. The new property regime of the civil code is only valid for marriages that took effect after January 1, 2002," said Ayman. "This is a major defect that prevents 17 million married women from benefiting from this law.

Güven Türe from the WWHR stated that the Law on the Protection of the Family also has a major flaw. Besides the fact that its implementation is far from sufficient, its scope of protection only covers the family, while protective and preventive measures are also needed in households of unmarried hetero and/or homosexual couples, he said. Türe did note a pleasing development from last month, when a judge in Istanbul issued a protective order for an unmarried couple, which will provide a precedent for future cases.

Türe asserted that the new TCK brings measures to prevent sentence reductions granted to perpetrators of honor killings. However she added, the article fails to name and define honor crimes and instead reads customary killings, which gravely limits its scope. Among the women's groups remaining demands is the penalization of discrimination based on sexual orientation, which is not realized by the code.

Although certain measures have been taken on the criminalization of virginity testing, they are not enough. Women's organizations are demanding that this practice be explicitly defined and banned under all circumstances. Nevertheless the code merely calls it "genital examination" and does not require the woman's consent for the execution of the test.

Women's groups are also demanding the extension of the legal abortion period from 10 weeks to 12.

Enforcement of women's rights in the international arena

Meanwhile, United Nation' Committee on the Elimination of Discrimination Against Women (CEDAW) has made its recommendations to Turkey concerning the official country report prepared by the government and the shadow reports prepared by women's organizations in Turkey and presented to CEDAW this January.

The above-mentioned demands and shortcomings in the TMK and TCK were also emphasized by CEDAW's decisions, and Turkey was called on to further reform the discriminatory Articles and regulations in these codes. It recommended that the insufficient number of women's shelters be increased. It urged the state to cooperate with women's organizations to ensure the quality management and safety of these shelters, which will be transferred to local governance as foreseen by the ongoing Public Administration Reform Process. CEDAW demanded that the state ensure increases in women's political participation and employ a quota system to this end.

CEDAW also counseled the state to adopt special temporary measures in order to encourage and facilitate women's participation in the public and economic fields.

Another major shortcoming in the new TCK is the addition of new articles criminalizing consensual sexual relations of youth age 15-18 as well as a new article on "obscenity" that threatens the freedom of expression and legitimizes discrimination based upon sexual orientation.

The outcome of the long and vigorous campaign carried out by the women's movement resulting in the reform of the TCK shows where women are, or at least some of them. As the veil of invisibility falls away we see that they are organizing and struggling to change the status quo and help bring a freer and more democratic order to society.

Now, they say, is the time to monitor and ensure the implementations of our achievements in the legal sphere. Regulations on paper will have meaning only when and if they are put into practice.

