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Legal Implications of Turkey's Accessions to the Istanbul Convention by Enacting and Refining Its Laws on Violence Against Women

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ABSTRACT

This study examines Turkey's Law No. 6284, which was enacted pursuant to the Istanbul Convention's obligations for signatories to combat and prevent violence against women. The law aims to provide both protection and prevention measures to assist women and their families. However, the nation has struggled with the implementation of consistent responses to family violence. The article argues that, although Turkey has done much to implement the Istanbul Convention, the nation's male-dominated mentality and the emphasis on family coherence and harmony rather than women as "individuals" hinders effective responses to gender violence.

KEYWORDS

Istanbul Convention; gender equality; violence against women; women's rights

THE ISTANBUL CONVENTION: A NEW INSTRUMENT TO ERADICATE VIOLENCE AGAINST WOMEN

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, known as the Istanbul Convention (the Convention), was effectuated on 2014, August 1. The Convention engenders a zero-tolerance policy for family violence in order to make signatory nations and Europe a safer place to live. The Convention also provides a set of comprehensive obligations on signatory nations for dealing with all forms of violence against women and children within an international human rights' legal framework (Nousiainen & Chinkin, 2016; Shrestha, 2015). For example, the Convention provides definitions for gender, gender violence, and what constitutes a "due diligence" standard for responding to gender violence (Simonovic, 2014, p. 606). Significantly, the Convention ensures that signatory nations outlaw specific manifestations of violence against women, such as stalking, forced marriage, female genital mutilation, forced sterilization, and unacceptable justifications for crimes, such as "Honor" killings.

Although the Convention identifies domestic violence as a gender-neutral phenomenon—because perpetrators of domestic violence can be women as well as men—it acknowledges that domestic violence affects women disproportionately (Romkens, 2014, p. 205). Accordingly, the Convention is the first legally binding document that forms a structural connection between gender (in)equality and violence against women. To respond to gender violence, the treaty underscores human rights, suggests criminal law changes, and advocates for effective measures that promote gender equality. As of July 2019, 47 nations signed the treaty and 34 ratified it. Turkey was the first nation to ratify the Convention on 2012, March 14. This article examines how

Turkey's laws aim to proscribe violence against women and/or help victims since ratifying the Convention (particularly Law No. 6284).

TURKEY'S LAW TO PROTECT THE FAMILY AND PREVENT VIOLENCE AGAINST WOMEN

After Turkey's ratification of the Istanbul Convention in 2012, Turkey's Family Protection Law (No. 4320) was revoked and replaced with the enactment of the Law to Protect Family and Prevent Violence against Women (Law No. 6284). The new law has many strengths but also has some gaps that may hinder Turkey's ability to thwart family violence and promote gender equality. Among the strengths of Law No. 6284 are: the law aims to protect families and prevent female violence, uses the definition of female violence promoted by the Convention, and provides for both prevention and protection measures to assist victims.

Law No. 6284: Implementing the Convention's Provisions

Law No. 6284 has a focus on protecting victims and the victim's family from violence; it also aims to prevent "violence against women." Article 1(1) of Law No. 6284 aims "to protect the women, the children, the family members and the victims of stalking, who have been subject to the violence or at the risk of violence, and to regulate procedures and principles with regard to the measures of preventing the violence against those people." The language of the law suggests that women should be protected from violence because they are women, not because they are spouses or mothers. This language is important because it does not aim to prevent violence against women solely because women may serve a traditional role as a wife or mother. The law recognizes that regardless of one's gender role, women can be victims of violence. Consequently, the law does not underscore the traditional view of family as an Honor-based unit in which violence against women is a private matter to be kept within the family. Incorporating and responding to women and their concerns transcends the gendered notion of public-private dichotomies in law (Charlesworth & Chinkin, 2000, p. 59). Consequently, Law No. 6284 eliminates the violence against women's public-private dichotomy, a change that is in line with Article 3 (a) of the Convention. Turkey's law treats violence against women as a crime regardless of whether it occurs in public or in private.

Article 1(2)(a) of Law No. 6284 states that the provisions of international agreements supersede Turkish laws in cases where they conflict. This is an important provision because it obligates the nation's criminal justice system to follow the provisions in the Convention because it is a legally binding document that cannot be violated by state law. Consequently, Turkey's law has a human rights approach to combating violence against women. The law provides "a fair, effective and speedy method, which is based on basic human rights, sensitive to the equality of men and women, applicable to the social state principle, is maintained in providing support and services to the victims of violence" (Article 1(2)(b) of Law No.6284). The law also provides that particular gendered measures to prevent violence and protect women from gender-based violence cannot be interpreted as discrimination (Law No. 6284, Art.1(2)(ç)).

The Convention emphasizes that "women and girls are exposed to a higher risk of gender-based violence than men." This obligation encourages law-enforcement officers to provide a duty of due diligence to protect women and girls from the dangers associated with violence. Law No. 6284 consequently broadens the scope of protections for victims of violence. For example, the law aims to eliminate discrimination against women based on marital status, enables protection orders to be given to married or divorced women, and protects single women who are abused by their partner. In addition, Law No. 6284 includes victims who are "at the risk of violence" within

the scope of its protection measures (Sagiroglu, 2013, p. 24). Thus, Law No. 6284 introduces preventive and protective measures for victims of violence (Sagiroglu, 2013, p. 24).

Nevertheless, Ugur (2012) questions who will determine whether or not a person is at the risk of violence and how. He argues that there may be serious problems that could result in a violation of the rights and freedoms guaranteed under the Turkish Constitution in practice because the law does not include a criterion such as “clear, adequate, immediate danger” (Ugur, 2012, p. 348). The need for a clear criterion is clearly under the scope of the Convention (see Article 50, immediate response, prevention, and protection; Article 51, risk assessment and risk management; and Article 52, emergency barring orders). Despite these weaknesses, Law No. 6284 extends the protection borders appropriately, accommodating the definition of violence and the protection of not only victims who have been subjected to violence but also victims who are at risk of violence. In this regard, Law No. 6284 provides protective measures for women at risk of killings, including “Honor” killings. Articles 3(2) and 5(2) of Law No. 6284 obliges judges *and* civil authorities and law-enforcement officers to take protective measures. Civil authorities are to:

- (a) To provide an appropriate shelter to the person and if necessary to the person’s children in the vicinity or in some other location.
- (ç) To provide temporary protection upon a request of the relevant person or ex officio if there is a life-threatening danger for the person. (Article 3(1)(a)(ç))

Law-enforcement officers and chiefs are to respond to risky situations with protective measures the day of the risk report or within 48 hours (Article 3(2)). Women who prefer to apply to police stations as a first course of action can take advantage of both protective and preventive measures more rapidly (Aile ve Sosyal Politikalar Bakanlığı/Ministry of Family and Social Policy, 2014, p. 25).

Obviously, the most urgent protective measure is to ensure shelter for the victim who is subjected to violence. Unfortunately, there are not enough shelters in Turkey for those who suffer violence (Ozturk et al., 2017, p. 9). For this reason, Article 7 of the Implementing Regulation of the Law explains the solution for this shortage in detail:

The persons, for whom a decision for providing a shelter has been taken, shall be settled in places belonging to the Ministry or under the supervision of the Ministry. On the occasions when the shelters are not adequate, the protected persons are settled in the social facilities, dormitories or similar lodgings of the state institutions and organizations upon a request of the district authority and in urgent cases, upon a request of the law enforcement officials or the Ministry until his/her secure transfer is provided.

The law also states that “if there is a life-threatening danger for the person and the person’s children, they shall be accompanied for settling securely to guesthouse, the first receiving unit or other facilities by the law enforcement officers” (Article 7(3)). In cases “when the measure for providing a shelter is implemented by the law enforcement officers” or “when the protected person is in the police station,” the victim is immediately delivered to Şiddet Önleme ve İzleme Merkezi/Violence Prevention and Monitoring Centers (ŞÖNİM) by law-enforcement officers (Article 7(4)). If this is not possible, short-term shelter is afforded to the victim and her company. The victim shall be immediately accepted to the shelter without seeking any other decision or approval (Article 7(5), Implementing Regulation Concerning the Law No. 6284). Turkey’s Law No. 5393, Article 14 clarifies this provision by specifying the obligation to open a shelter in municipalities where the population is larger than 100,000. Unfortunately, considering the inadequacy of the number of shelters in Turkey, it may not be possible for all victims to benefit from this service.

Judges can impose preventive orders on perpetrators of violence. Although Article 5 of Law No. 6284 and Article 17 of the Implementing Regulation Concerning the Law No. 6284 provide details about how to regulate these orders, the list of orders provided is not prescriptive (Akin, 2007, p. 135). Judges can decide on one, several, or several “similar” versions of these orders so

that each case has a protective order that responds to its distinct characteristics and context. The victim is thereby protected as an *individual* rather than a statistic (Sagiroglu, 2013, p. 92). Under the law, a person can have a protective measure applied without any evidence; however, evidence is required for a preventive measure that is needed to assist victims at risk of being exposed to violence (Sagiroglu, 2013, p. 93). Article 5(1) states that judges may impose one or several preventive measures (or similar ones) to perpetrators of violence: “If there is a previous decision to allow having a personal connection, to have a personal connection with the children together with a company and to restrict the personal connection or to revoke it completely” (Article 5(1)(ç)). Moreover, in cases where the delay would be risky, “the measures as contained in the clauses of (a), (b), (c) and (d) of the first paragraph shall be taken by the relevant law enforcement chiefs as well” (Article 5(2)). Of importance, Article 5(1)(d) provides that preventive measures can be applied to relatives of victims even if they have not been subjected to the violence. Consistent with Article 56 (1)(b) of the Convention, which obliges States to ensure that “victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively at all stages of investigations and judicial proceedings,” the law ensures that victims and their children and family can seek assistance to prevent violence.

Another strength of Law No. 6284 is the introduction of preventive imprisonment for a perpetrator of violence acting contrary to a judge’s orders. This sanction could compromise a person’s right to freedom because it is anticipatory punishment about a potential future act of violence. The law requires that the potential violent perpetrator be forewarned about the potential for preventative imprisonment (Article 8(5)). Article 13 states that once the perpetrator acts contrary to the preventive measure given in accordance with Article 5, the measure of forced imprisonment will be implemented. Ugur (2012) questions forced imprisonment when potential perpetrators act contrary to the preventive cautionary orders. Ugur (2012) argued that the most appropriate preventive measures should be decided with careful attention to the relationship between the nature of violence and the family, social, economic, and so on relationship between the victim and the perpetrator. Certainly, due to the potential for mistakes, when a preventive measure is being decided, the judge should consider the psychological, sociological, and economic context of the violence and how to treat family members given the effects of violence by the perpetrator (Ugur, 2012). Article 5(1)(h) provides that the perpetrator should participate in training and rehabilitation programs aimed at controlling anger, coping with stress, and changing his behavior. If the perpetrator is addicted to drugs or alcohol, or has a mental disorder, then treatments should consider these ailments. Article 13(1) states that the perpetrators of violence “shall be subject to the preventive imprisonment from 3 to 10 days by the judicial decision depending on the nature and severity of the violated measure even if the act constitutes another crime”. The confinement period is too brief: “in each recurring action contrary to the requirements of the preventive orders, the period of preventive imprisonment shall be from 15 to 30 days, but the period cannot be more than 6 months” (Article 13 (2)).

In its justification of preventive imprisonment, the Grand National Assembly of Turkey’s Report criticized the implementation of the Law because of the length of criminal cases and because the imprisonment sanction was rarely imposed on perpetrators of violence (TBMM/Grand National Assembly of Turkey, 2011). The Assembly’s promotion for a preventive imprisonment measure as a means wants the sanction to be initiated before any finalization of proceedings so that protection orders could be enacted effectively and quickly (Gunay, 2012, p. 683).

To assist victims, Law No. 6284 established ŞÖNİM. In accordance with the Convention’s “due diligence” requirements, the law imposes a duty on persons who provide assistance to victims (e.g., professionals such as managers, social workers, psychologists, nurses, civil servants, security and cleaning staff, and other law-enforcement officers such as police and prosecutors). The law provides:

where necessary qualified personnel especially the women are employed and perform a duty, and where the support and monitoring services are provided to the persons to prevent the violence and implement efficiently the protective and preventive measures They operate on a basis of 7 d and 24 h and their procedures and principles are identified by implementing regulation.

Monitoring studies are conducted and support services are provided to the persons in these centres in order to prevent violence and efficiently implement the protective and preventive measures. (Article 14 (1)(2), Law No. 6284)

The Ministry of Family and Social Policies operates ŞÖNİMs on a 24-hour, 7-day-per-week one-step system in accordance with the Convention. ŞÖNİMs provide effective and urgent services that recognize human dignity and strengthen women's economic, psychological, legal, and social position (Moroglu, 2012b, p. 38). By December 2012, ŞÖNİMs were opened in Ankara, Adana, Antalya, Bursa, Denizli, Diyarbakır, Gaziantep, İstanbul, İzmir, Malatya, Mersin, Samsun, Şanlıurfa, and Trabzon (KSGM, 2016).

ŞÖNİMs provide information to victims about their rights and institutions where they can receive support pursuant to Article 15(2)(a). The centers are to cooperate with nongovernmental organizations (NGOs) working to end violence. These obligations are compatible with the Convention, which asserts that States need to provide these services to victims in a language they understand and be compatible with victims' varied ethnicities. Further, Article 55(2) of the Convention obliges States to provide governmental organizations, NGOs, and domestic violence counselors to support victims, at their request, during investigations and judicial proceedings regarding the crimes. Such support will not contribute to the effective conduct of an investigation and prosecution and reduce the risk of violence against the women being repeated. According to official data, as of August 2019, KSGM has been servicing victims of violence in ŞÖNİMs in 81 provinces (Aile, Çalışma ve Sosyal Hizmetler Bakanlığı, 2019). It has also operated 144 shelters/guesthouses (Aile, Çalışma ve Sosyal Hizmetler Bakanlığı, 2018), four of which are run by women NGOs. In 2011 there were only 48 shelters (Republic of Turkey, 2017, p. 36). Violence prevention and monitoring centers are one of the crucial outcomes of Law No. 6284 in compliance with the Convention, although the number and capacity of the shelters are still deficient considering the prevalence of different forms of violence against women in Turkey.

The Convention includes several provisions that oblige signatory States to alter national legislation to enable victim-reporting methods and provide improved opportunities for victims to access and use them. Such measures are analyzed in this section, which argues that necessitating legally binding changes to national legislation better protects victims of violence. Such measures include restructuring reporting procedures and encouraging victims to make use of the legal remedies available to them; such recourses help to decrease violence, danger of violence, and risk of death. The victim-reporting mechanisms are essential to allow friends, family members, or any outside witness of violence to stand up for women too afraid to speak for themselves as a consequence of learned obedience, shame, or fear of revenge. Thus, Article 27 of the Convention obliges the States to "take necessary measures to encourage any person witness to the commission of acts of violence covered by the scope of this Convention or who has reasonable grounds to believe that such an act may be committed, or that further acts of violence are to be expected, to report this to the competent organizations or authorities." Moreover, Article 28 of the Convention holds certain professionals responsible for reporting to organizations or authorities if there is a serious act of violence that has been committed or further serious acts of violence which are to be expected.

Article 7 of Law No. 6284 states that "if there has been violence or there is a risk of it, everybody can report this situation to the official authorities and organs" and gives the public officials "who receive the report" responsibility "to fulfill their duties without any delay and inform the authorities of the other measures needed to be taken." This provision does not provide a notification obligation. Nuhoglu (2012, p. 71) pointed out that it is a social duty to report the situation of those who witness violence to the competent authorities whether (s)he is a victim of violence

or not. Violence contravenes human dignity and human rights; however, if it constitutes an offense of the TCK (Turkish Penal Code), those who act in contradiction to the notification obligation will face sanctions in conformity with Article 278 of the TCK. However, public and health officers who violate the notification obligation may face sanctions if the act of violence constitutes one of the offenses defined in Articles 279 and 280 of the TCK. Public officers are obliged to fulfill their duties under the TCK without delay and to inform authorities of the measures to be implemented (Ugur, 2012, p. 349). Failure to fulfill these duties without delay may constitute the offenses of “Misuse of Public Duty” and “Public Officer’s Report of Offense” in Articles 257 and 279 of the Turkish Penal Code.

Although the provision for reporting violence under Article 7 of Law No. 6284 does not fully comply with the requirements of Article 28 of the Istanbul Convention, the Law’s provision is sufficient to meet Articles 278, 279, and 280 of the TCK and Article 7 of Law No. 6284 because if the violence does not constitute an offense or a prosecuted offense *ex officio*, there is no notification obligation.

POTENTIAL WEAKNESSES IN TURKEY’S VIOLENCE AGAINST WOMEN LAWS

Although Law No. 6284 has created a comprehensive legal framework for protecting women from violence and preventing violence against women, and complies with the Convention, there are still loopholes within the nation’s statutory law that should be closed.

Challenges to Women’s Role

Turkish feminists have noted the patriarchal male-dominated mentality to women’s role in the family that is still evident in Law No. 6284 (Centel, 2013; Moroglu, 2012a). One concern, for example, is that the law’s title was changed from the draft law. Initially, the law was to be entitled “Draft Law on the Protection of Women and Family Members from Violence” but the title was changed to “Draft Law to Protect Family and Prevent Violence against Women” during the meetings in the Grand National Assembly of Turkey/TBMM (Moroglu, 2012a). Changing the name of Law No. 6284 received a negative reaction from women’s organizations and parliamentarians in the Grand National Assembly of Turkey/TBMM because the change potentially shows the scope of the law has been limited to protect the “family”—a traditional cultural norm within the nation, rather than denoting a protection for the individual woman and her family from violence (Centel, 2013; Moroglu, 2012a). The Law’s title reflects the perception of women as members of a family rather than as “individuals.” To end the public–private distinction that previous law reinforced, both in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention, changes in the law necessitate deprioritizing awoman’s role in the “family” and prioritizing the woman as an individual who embodies an autonomous person with individual human rights. The root of women’s oppression has been society’s placement of her within a fixed, gendered role in a traditional family construct. To relegate violence in the framework of “protection of the family” grounds the rights of the individual in a secondary position (Sener, 2012, p. 3). Prioritizing the family more than the individual female is a tendency that is echoed in the political, social, and legal developments in Turkey in the last decade. After the parliamentary elections of 2011, the Ministry of Family and Social Services (substituting the Ministry for Women and Family) was established, and there was renewed emphasis in political and academic discourse on women’s status and place in the society. This is an important juncture in the struggle of the women’s movement against the State’s centering of women in the family (Sener, 2012, p. 3).

Law No. 6284 also seems to exclude vulnerable woman who have the specific needs that mainstream violence against women support mechanisms are unable to provide (WAVE, 2016b). Article 18(3) of the Convention provides that the diverse needs of women need to be addressed.

Catalan Law, for example, uses an intersectional approach that identifies and supports women with disabilities, transsexuals, Roma ethnic groups, old age, immigrants, and women at risk of Female Genital Mutilation (FGM) (WAVE, 2016a). Currently, the law does not take into account the struggles of these groups of women who may also need access to legal aid or assistance with language barriers. The law needs to expand its scope and service supports by addressing diverse needs through the intersection of ethnicity, gender, and language constructs within strong patriarchal family units in Turkey that experience violence. Inclusion of a multilevel construction for the protection and prevention of violence against women is congruent with the United Nation's concern for "the inequalities faced by Kurdish women, which are compounded by the intersecting forms of discrimination to which they are subjected" (UN Committee on Elimination Against Women, 2016, pp. 12–13).

Another shortcoming of Law No. 6284 is the lack of a clear, explicit general obligation that excuses violence as part of a cultural tradition, such as "Honor" killings. Article 12(5) of the Convention guarantees that crimes against women are considered crimes irrespective of the intentions behind them (Hester & Lilley, 2014, p. 8). The most important feature of international treaties for women is that they reflect changes in social patterns; this is regulated in Article 12(5) of the Convention. Moreover, Article 42 of the Convention obliges that "culture, custom, religion, tradition or so-called 'Honor' shall not be regarded as justification for such acts." Thus, Article 42(1) specifically reinforces the State's obligation in Article 12(5) of the Convention in the context of criminal law. Law No. 6284 does not include the context of crimes within its scope. The act of killing committed with the motive of custom is legislated as an aggravated circumstance pursuant to Article 82/1/k of the TCK. However, there is no provision for a crime committed in the name of "Honor" in the TCK. Thus, crimes committed in the name of "Honor" should be legislated under the TCK and Law No. 6284. One problem of the TCK is the application of unjust provocation provisions in cases involving so-called Honor killings. Even in cases where unjust provocations conditions occur, sentence reductions cannot be imposed to murders committed with the motive of blood feud or *töre*/custom (Akbulut, 2014, p. 158). In other words, only in cases of killing committed with the motives of *töre*/custom or blood feud are aggravated circumstances legislated in Article 82 of the TCK applied (Ozgenç, 2013, p. 433). To remedy this problem, Law No. 6284 should include general obligations that reflect changing social patterns affecting gender discrimination of women, any form of violence against, and extend to the protection of women's right to life more than family "Honor."

Omission to Prohibit Mandatory Alternative Dispute Resolution

State authorities opt for the path of least resistance in cases of violence against women or devise a way to reconcile the couple in the name of "protecting the family." Police officers usually consider the problem as a family issue in which they cannot intervene; rather than investigate victims' claims, they "seek to assume the role of mediator by trying to convince the victims to return home and drop their complaint" (*Halime Kılıç v. Turkey*, 2016, p. 73). The Convention forbids any legislation that obliges victims to take part in mandatory mediation or other forms of mandatory alternative dispute resolution mechanisms. Thus, Article 48/1 of the Convention obliges State parties to "take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation." Although the drafters of the Convention do not question the benefits that these alternative methods present in many criminal and civil law cases, they highlight the harmful effects these can have in cases of violence roofed by the scope of this Convention, "in particular if participation in such alternative dispute resolution methods are mandatory and replace adversarial court proceedings" (Council of Europe, 2011, p. 252). Nelles (2012a) explained that "this is because in cases of violence against women roofed by the Istanbul Convention, victims can never enter the alternative dispute resolution process on a level equal to that of the perpetrator" (p. 442). Victims of violence are always

left with “a feeling of shame, helplessness and vulnerability, while the perpetrator exudes a sense of power and dominance” (Council of Europe, 2011, p. 252). It is the responsibility of the State to provide access to adversarial court proceedings presided over by a neutral judge to avoid re-privatization and to enable the victim to seek justice (Nelles, 2012b). Kimelblatt (2016) argued that this eradicates the probability that “victims would be forced to sit down with their abusers to resolve issues prior to or instead of using other legal remedies” (p. 428).

Article 56 (1)(g) of the Convention gives parties the responsibility to “take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by ensuring that contact between victims and perpetrators within court and law-enforcement agency premises is avoided where possible.” Consequently, Article 48(1) entails State parties to forbid in national criminal and civil law the mandatory participation in any alternative dispute resolution processes. The Turkish legislation is very blurred on this matter. Certainly, Article 48(1) of the Convention is not included in the scope of Law No. 6284. The drafters of Law No. 6284 did not prohibit either mediation as a legal institution or reconciliation efforts within the scope. Its absence shows the lack of the State’s willingness to fight judicial passivity. This grounds that women have to accept the traditional roles because not only do they seem like second-class citizens as women but also as members of minorities in light of intersectionality within feminist-legal theory. For this reason, often the State does not take them as seriously and puts up with solving these issues within the family or community because it does not want to interfere. Moreover, there is no provision related to mediation on violence against women in Article 253(4) of the Turkish Criminal Procedure Law; rather, it enables that “in cases where the crime under investigation is depending on mediation, the public prosecutor, or upon his orders, the official of judicial security forces shall propose mediation to the suspect and to the victim or to the person who has suffered damages from the crime.” Crucially, the Turkish Criminal Procedure Law was amended in 2016, and the duty to propose mediation between the suspect and the victim is given to a “mediator” who works in the Mediation Bureau.

However, this is not the whole picture. In 2012, Article 1(2) of the Law on Mediation in Civil Disputes prohibited mediation in domestic violence disputes:

This Law shall be applied in private law disputes, arising solely from the affairs or actions on which the parties may freely have a disposal, including those possessing the element of alienage. However, disputes containing domestic violence are not suitable of mediation.

Therefore, disputes involving claims of domestic violence are unfit for mediation because of the possibility that one of the parties threatens and oppresses the other and that difficulties would arise to access of the principle of equality (Demir, 2014). Unfortunately, no detailed arrangement has been made regarding what kinds of disputes can be fully assessed in the context of domestic violence (Bozdag, 2016). The vague language of the Law on Mediation in Civil Disputes is not adequate to try to prevent violence and whether mediation in cases of violence against women is appropriate should be considered in light of the services provided by ŞÖNİMs (Ozbek, 2013, p. 1027). Ozturk (2017) stated: “especially in cases where there is no physical violence, the voluntary mediation may be an effective solution in the prevention of violence as being evaluated and conducted the concrete cases by the jurist-psychologist or psychologist who are charged in duty in the ŞÖNİMs, instead of an absolute prohibition of the role mediation in this regard” (p. 25). Nonetheless, female victims of violence should be provided sufficient and efficient preventive and protective measures through law-enforcement officers’ duty of due diligence. Officers must also prevent women’s secondary victimization by being sensitive and attentive to their own responses to victims’ claims. Although the Convention forbids the enforcement of mediation mechanisms, Turkey must consider the risk of the murder and/or continued violence that many women victims of violence face when coming in contact with a violent partner.

THE IMPLEMENTATION GAP

The implementation of the legislation that protects women against violence—especially Law No. 6284—has its own challenges. The law has been the subject of much criticism regarding “the lack of resources, including insufficient human resources and funds, lack of monitoring, evaluation and follow up of measures, inadequacy of support mechanisms such as shelters and intervention centers, lack of indicators and objectives, negative attitudes towards women, related laws and shelters due to conservative ideologies” (WAVE, 2016a, p. 60). These criticisms are based on statistics provided in a range of national, international, and shadow reports (see: BIANET Shadow Report, 2017; GREVIO, 2018; Republic of Turkey, 2017).

Research on Domestic Violence against Women in Turkey in 2015 found that “36 percent of women are subjected to physical violence; 12% of them are subjected to sexual violence; 44% of them are subjected to psychological violence and, 30% of them are subjected to economic violence by their husbands or male partners in any period of their lives” (Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, 2015a, pp. 7–13). Although this research does not provide statistics on female killings and “Honor” killings, it observes that:

Regarding the incidents of violence against women or femicides, men generally try to justify the murder and blame the wife whom they injured or killed. In most of the incidents, “jealousy”, “betrayal” or “suspicion of betrayal” have been emphasised. By the young men who participated in the focus group discussions, betrayal was given as one of the reasons for society’s approval of violence. In line with the opinions of the young men, the men who have killed their wives not only justified themselves but also mentioned “betrayal” as a justification which is in line with society’s understanding of “honour”. The narrations of 39-year-old, secondary school graduate K. who murdered his wife, reveal the society’s approach to honour and how violence is legitimised in case of a betrayal. (Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, 2015b, p. 252)

The State’s failure to protect a woman from an “Honor” killing is also evident in the 2015 Report’s analysis of the case involving “K.” who was punished with 15 years’ imprisonment. K. indicated that he killed his wife for his Honor and did not mention any “remorse.” He stated that “he was right to murder his wife and that the society also thought like him” and continues:

Media exaggerates this. You know I have killed my wife, and the state couldn’t protect her, a woman was murdered. Okay but ask him the reasons why he killed that woman. Like for example; a man gets angry and kills his wife because she didn’t cook. Another man kills his wife because of his honour, his wife cheated on him. They give both of us life imprisonment. There is no justice in this. When I went before the court, they gave me aggravated life imprisonment. They gave normal life imprisonment for the other guy. Then I was sentenced to 15 years of imprisonment. (Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, 2015b, p. 254)

This case demonstrates that the “unjust provocation” provision applied to punishments of “Honor” killings is still used; this infringes on Article 42 of the Convention.

Unfortunately, there is no official data on women killings in Turkey. Some NGOs provide such data: The Bianet Male Violence Monitoring Group reports that in 2016, 261 women and girls were killed—“68% of the women were killed by their partners (husband/boyfriend/fiancé) or ex-partners, 10% were killed by relatives” (Tahaoglu & Baki, 2017). The report also indicates the ineffective implementation of Law No. 6284 when: “6% of the women were killed despite protection orders. 9% of the women were killed despite demanding (and not receiving) protection orders against their husbands who were inflicting violence, or were killed right after a protection order had expired” (Tahaoglu & Baki, 2017). Although Law No. 6284 is “good,” it has a limited impact on the ground. In Turkey, data are needed.

The figures declared by various ministries to the press are in contradiction with the figures Bianet reached by compiling information from the media. For instance, as then the Minister of Family and Social Policies Aysegül Islam claimed that there was no woman murdered under state protection, whereas Bianet declared

in its male violence monitoring report that 11 women were killed in the first quarter of 2014 and 10 women were killed in 2013 despite protection orders. (BIANET Shadow Report, 2017, p. 16)

Another research initiative, entitled “We Will Stop Femicide Platform,” found that 328 women were killed in 2016 (Kadin Cinayetlerini Durduracagiz Platformu/We Will Stop Femicide Platform, 2016). KAMER (Women’s Center NGO), in their 100 case files on discrimination against women and the abuse of their rights, found violence to be prevalent (KAMER, 2016). The reality is that violent partners live with their families and their abusive practices are normalized by their status in the community.

The social crime of violence against women is excused and justified as “man’s insanity, Honor, and property” (Baki, 2017, p. 63). Thus, the omnipresent and persistent issue of family crimes, committed in the name of so-called Honor, results in a relatively high number of forced suicides or disguised murders within Turkey (UN Committee on the Elimination of Discrimination against Women, 2016, p. 34).

The CEDAW Committee has noted that:

The State party’s efforts to raise the awareness of the public in order to reject the concept of “honour” that perpetuates and condones the killing of women have been insufficient. It notes the information provided by the State party that article 29 of the Penal Code providing for mitigating circumstances in the case of “unjust provocation” is not applied to killings in the name of so-called “honour”. The Committee is concerned, however, that this does not constitute a sufficient legal safeguard, given that the provision explicitly prohibiting the application of article 29 addresses only killings in the name of “custom” (töre) and thus may not always cover killings in the name of so-called “honour” (namus). (GREVIO, 2018, p. 85; UN Committee on the Elimination of Discrimination against Women, 2016, p. 34).

The BIANET Shadow Report to GREVIO echoes this observation that “culture, manners, and customs, tradition or so-called Honor are used especially as unjust provocation cause to reduce the punishment. Jealousy, having male friends or suspicion that his wife cheats on him became factors in remission under the name of unjust provocation” (BIANET Shadow Report, 2017, p. 41). GREVIO urges the Turkish authorities to “amend the Turkish Criminal Code, with a view to explicitly excluding crimes, including murders, committed in the name of ‘Honor’ and not merely ‘custom’ from the application of Article 29 of the code on unjust provocation” (GREVIO, 2018, pp. 85–86). U.S. Department of State’s (2016) Human Rights Report on Turkey also evaluates “Honor” killings, noting that, although perpetrators of “Honor” killings receive life imprisonment, actual punishments frequently are reduced because of mitigating factors:

The law allows judges, when establishing sentences, to take into account anger or passion caused by the “misbehaviour” of the victim. Local political and human rights representatives noted that society largely downplayed the issue of women killed by family members because there was an underlying assumption that some type of “honour” violation was involved, perhaps justifying the killing. (U.S. Department of State, 2016)

These statistics are worrisome, especially when considering the improvements made to Turkish legislation after the ratification of the Convention. Preventive mechanisms that lack a women’s rights-based approach refuse to acknowledge that patriarchy and violence are a holistic, reciprocally related problem. Tahaoglu (2016) observed that women and girls must obey unconditionally the boundaries drawn by prescribed gender roles within the patriarchal structure; if they pass beyond this border, they face violence, ill treatment, torture, and even murder or forced suicide in the name of “Honor.” Therefore, State law-enforcement officers are obliged to exercise their due diligence duty to prevent and protect women from the risk of murders committed in the name of “Honor.”

After experiencing severe violence, some women at risk of death seek protection from the police station to survive. KAMER’s study of 13 murder cases in southeastern Turkey, where mostly Kurdish women live, found that 11 women made more than one application to the police station in response to the ongoing violence they experienced (Baki, 2017, p. 63). Although the

women reported their potential killers to law-enforcement officers, their murders were not prevented, mostly because the women were not protected more effectively. Baki (2017) discussed that “there is no risk assessment, no measures are taken to provide coordinated protection and support in cases where the violence is not repeated or there is a risk of death” (p. 63). Thus, there is an urgent need to enforce “the idea of acting immediately, acting swiftly, making sure that the police response to every single call, even if it’s coming from the same victim and it’s often repeated and they haven’t been able to help her properly, but the idea is to take it seriously and to act quickly” (Baki 2017, pp. 62–63). This reveals the necessity of the provision on risk assessment and management procedure within Law No. 6284 in requirement of Article 51 of the Convention. In any case, killings of women despite the protective measures in place show that women’s lives remain unsafe because law-enforcement officers may not be performing their duty of due diligence (Baki, 2017).

Raising awareness and increasing knowledge through law-enforcement training can play a vital role in eliminating violence against women. To this end, the Ministry of the Interior, Ministry of Justice, and Ministry of Health provided training protocols; “several seminars were organized until now with the participation of 71,000 Police, 65,000 Health Personnel, 326 Family Court Judges and Public Prosecutors” (Republic of Turkey Ministry of Family and Social Policies, 2016, p. 32). Moreover, thousands of military staff from the Ministry of National Defense, rank and file officers, and religious officers received training between 2014 and 2016 (Republic of Turkey, 2017). The State also sponsored seminars, projects, and other awareness-raising activities on gender equality and all forms of violence against women (Republic of Turkey, 2017). In addition, in 2015, the Bureau for Combating Violence against Women and Domestic Violence within the Provincial Directorate of Security Affairs Division of Public Security of 81 provinces was established “to examine the data related to violence against women and domestic violence in the province and represent the organization in the processes and procedures carried out throughout the province” (Republic of Turkey, 2017, p. 11). Hundreds of police officers, personnel in the Ministry of Health, and persons working in ŞÖNİMs received violence against women training (Republic of Turkey Ministry of Family and Social Policies, 2016).

Despite these extensive training initiatives, reports reveal that women who have applied to police stations in the first instance continue to face mixed (negative and positive) reactions when seeking help. Some victims stated that “they were not referred to services of guidance and support by the police and instead they were sent back to their homes and tried to be reconciled with their abusive husbands” (Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, 2015b, p. 229). Moreover, the rate of access to legal aid is reduced because of victims’ lack confidence in the justice system, their experiences of injustice, and the complicated and cumbersome nature of legal proceedings (Tahaoglu, 2016). Further, police, prosecutors, and judges are approaching violence against women cases and violations of women’s rights as if they are ordinary, formal decision-making processes (Baki, 2017, p. 63). Although the training programs aim to raise police awareness of gender equality in the fight against violence against women, the police reproduce a systemic culture of entrenched patriarchal beliefs that is exceedingly difficult to uproot. This confirms that the prevailing cultures of entrenched patriarchal beliefs extend to the State mechanism. In this respect, the legislation is not able to bear fruit in a society where the structures are patriarchal and dominated by males. This is evidenced in their pronounced neglect for women:

Police stations/police and women’s guesthouses/shelters are the most widely known institutions that provide services in the field of violence against women. Regarding the applications made to the police, women’s statements not being taken (81 percent), and women not being alone during the statement taking process (18 percent another police officer, 14 percent their family, 3 percent their husbands) are among the problems encountered during the application process. Referral of women subjected to violence to another institution/organization by the police is the most common implementation (40 percent). However, the fact

that 27 percent of the applications resulted in women's reconciliation with their husbands points out that there are still problems in this field. The Violence Prevention and Monitoring Centers which started to provide services in 2012 and which are still operative as a pilot scheme in certain provinces are the least known institutions. (Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, 2015b, p. 350)

Research on the law's impact reveals that the training of law-enforcement practitioners needs to be continued because there is a lack knowledge about Law No. 6284 and the Convention (Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, 2015a, p. 37). Training that conveys information on Law No. 6284 should be organized for young women and men with different educational and socioeconomic levels to increase their awareness (Republic of Turkey Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, 2015a, p. 37). In keeping with its intensifying mandate to prevent domestic violence, the Turkish State should devote focused attention to femicide and "Honor" killings. To date there is neither data nor training on femicides including "Honor" killings provided in any official government studies and research.

The Convention clearly states that the core reason for gender-based violence is the inequality between men and women and that its purpose is to eliminate violence based on gender (Hester & Lilley, 2014). The reforms made over the last two decades by the Turkish government have made promises for the equality for women while protecting traditional gendered roles that make them a more vulnerable group (Dedeoglu & Elveren, 2012). The government pursues a decisive power strategy that has shaped the gender regime of "family-centred modernisation" in Turkey (Sancar, 2012, p. 306). This shaping, however, is rooted in and informed by a strong "historical" momentum whereby men establish a State, and women build a modern nation by making families (Sancar, 2012). Although women's rights NGOs collaborated with the Turkish government in drafting and enacting Law No. 6284, the societal ideal of women's main roles as mothers and wives remained unwavering in its strength because the family as a core social entity for most of the Turkish population remains a firmly patriarchal unit. The reforms made over the last two decades have made promises for the equality for women while protecting traditional gendered roles that make them a more vulnerable group (Dedeoglu & Elveren, 2012).

The current Turkish government appears to have avoided opportunities to offer practical policies to change women's position and role in society. Despite the ratification of the Istanbul Convention and amendments to Turkish legislation, authorities have not made progress in halting violence against women, "nor did they adopt procedures to investigate the hate motive in cases of people perceived to have been killed due to their sexual orientation or gender identity" (Amnesty International, 2017, p. 370). Dedeoglu and Elveren (2012) stated, "the current welfare reform processes are destined to remain ineffective for women as long as they are not backed by a political willingness and commitment to promoting gender equality" (p. 8). Although the Turkey Constitution includes a gender equality provision, there appears to be a failure for women to have achieved substantive equality in practice. According to the World Economic Forum's Global Gender Gap Report for 2018, Turkey is rated 130 among 144 countries; the country consistently fell in the report's rankings over the previous 10 years due to the government's failure to recognize the role of women outside the family unit and to use the law to provide them with effective protection.

CONCLUSION

After Turkey's ratification of the Istanbul Convention, Turkish legislation has been taking concrete steps to combat violence against women, especially through Law No. 6284. Despite the compatibility between the Turkish legislation and the Istanbul Convention, gaps and loopholes between the two still exist. Turkey should proactively aim to eliminate violence against women,

including the so-called Honor killings and unravel the male-dominated traditional social mentality that continues to maintain a powerful grip on government agents. Law No. 6284 should be refined to view women as autonomous people who hold individual rights. To address problems of reporting violence to police authorities, more female recruits to the police force are needed so that victims may report their violence to someone who might not hold a traditional view of women's role in the family. All measures should keep in mind the need for reversing the male-dominant culture and provide continuous education for all social and State actors who enforce the law. A patriarchal view of women has to be eliminated from the mentality of law-enforcement officers, prosecutors, and judges and they need to prioritize women's equality with men in its substantive form.

Women and men need to work together to eliminate prejudices, customs, and negative gender stereotypes in society. Ending discrimination against women in the public and private spheres demands decisive political will, the lack of which remains the main obstacle to eliminating violence against women in Turkey.

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