Legal Policies for Advancing Gender Equality in Turkey

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Turkey is in a unique position between Europe and Asia with the influence of the Middle East and as the successor of the Ottoman Empire that was ruled under shariah (Islamic law). With the establishment of the Turkish Republic as a secular democracy, legislation has been improved in terms of gender equality in social, economic and political areas. By the 1980s, the improvement reached its climax and by the third wave in the 2000s many national and international legal policies had been codified. This article will cover the legal policies advancing gender equality in Turkey at national level (excluding international agreements to which Turkey is party), how they have evolved in the past decade and, finally, recommendations on how to improve this advancement.

When it comes to legal policies, it is better to divide this topic into policies regarding social rights, political rights and economic rights. With the establishment of the Republic, new codes were ratified to regulate the new regime. The very first amendment in terms of gender equality may be seen as Tevhid-i Tedrisat Kanunu [Code on Unification of Education], codified in 1924, which secularized the education system and regulated it under a unified Ministry of Education. With this improvement, girls and boys started to have the same opportunity to apply for the same educational institutions at every level. In 1926, the Civil Code was ratified, through which the right to polygamy for men was prohibited and the right to inheritance, divorce, curatorship and succession was granted to women on an equal basis with men. This Code may be regarded as a revolution because it is the basic principle document that secularized the Turkish legal system.

In 1930, women gained the right to vote and stand in local elections, and in 1934 in national elections. In the election held in 1935, 17 female deputies were elected and started out in the Parliament. In terms of the right to vote and stand for election, Turkey may be seen as a pioneer for both European and Middle Eastern countries.

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The first wave in the feminist movement had begun in France in 1789 in terms of defending women’s political rights. The second wave in terms of women’s social rights was effective in North America and Europe in the 1960s. With the influence of globalization and the development of communication technology, in the 1980s Turkey had experienced the second wave.

In the 1990s, under the leadership of the feminist movement, street demonstrations and social campaigns were organized, with protests against violations such as domestic violence, sexual harassment and virginity tests. In those days, legal regulations under the Civil Code and Criminal Code were also criticized by feminists since they reproduced the gender stereotypes within both the family and society. Several amendments were made due to these protests. Article 153 of the Civil Code dated 1926 states that “women take the husband’s surname on marriage.” It is obvious that this regulation is a reflection of the patriarchal family structure and conflicts with Article 10 of the Constitution, which ensures gender equality. This article was amended in 1997 as granting women’s right to keep their own surname along with their husband’s surname with a written application to the register office before marriage.\(^4\) However, even in 2022, married women have to take out a lawsuit to keep only their own surname rather than taking their partner’s.

In 1985, Turkey became a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and, in 1987, the Advisory Board for Policies Regarding Women, the first institution specialized in women policies, was established under the State Planning Organization. In 1989, the Women’s Unit was established under the Ministry of Labor. Finally, in 1990, the General Directorate on the Status of Women (KSGM) was established. The aim of the KSGM was to abolish discrimination against women, protect women’s rights, improve legal policies, and ensure gender equality in social and economic life.\(^5\)

The main developments in terms of legal policies are recorded in the past decade. The Constitution may be examined first since it is the highest norm in the legal hierarchy. The first Constitution of the Turkish Republic was dated 1924 and was also a revolutionary document for Turkey at that time. In 1960, there was a military coup. In 1961, a new Constitution was ratified that was in force until 1980. In 1980, there was another military coup and, in 1982, a new Constitution was ratified, which is still in force despite so many amendments in different years.

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Article 17 of the Constitution dated 1982 stated that “family is the core unit of society.” In 2001, this article was amended into “the family is built on equality between partners.” Article 10, which regulates equality within society, states that “everyone is equal before the law no matter the language, race, color, political ideology or other reasons.” In 2004, a new sentence was added to this article: “Women and men have equal rights. The state is obliged to ensure this equality within society.” These amendments were definitely designed as gender equality regulations.

\(^4\) Law numbered 4248.\n
In 2002, a new Civil Code came into force and also consolidated the amended articles of the Constitution.

- The Civil Code dated 1926 had articles that state that the “paterfamilias is the husband” and was amended as the “family is co-run by both partners.” There were also other specific regulations such as the “family house shall be chosen by the husband,” which was also amended to “partners shall decide where they will live together.”
- The legal age is stated for marriage as 17 with parents’ permission and 16 with the Court’s permission. Another right is also granted to annul marriage in case the decision to marry is made under emotional or physical pressure.
- The Civil Code dated 1926 had an article that requires the husband’s permission for the wife to be able to work outside the house. This article was repealed by the new Civil Code.
- There is also other new legislation in this Civil Code regulating equal rights and obligations for both partners within the marriage, and equal distribution of the marital property between both partners. With this Civil Code, the right to curatorship of an extramarital child is granted to the mother unlike the previous one.

In 2003, Family Courts were established that specialized on the conflicts regarding divorce, curatorship, material or immaterial compensation, distribution of marital property,
alimony (child support payments) and also domestic violence. It is legally and politically important to have specific courts on some special conflicts.

In 2003, Labor Law 4857 was also enacted with enhanced regulations.

- Article 5 of the Labor Law regulates the Principle of Equal Treatment and explicitly outlaws the gender pay gap, which is the difference between men’s and women’s pay, based on the average difference in gross hourly earnings of all employees.
- The Labor Law also forbids termination of employment agreements due to pregnancy or breast-feeding leave. Reasons are set out for rightful termination as numerus clausus under Articles 18, 24 and 25.

In 2011, further legislation was enacted to regulate maternal leave. Paid maternal leave was set as eight weeks before birth and eight weeks after the birth under Law 6111, dated 2011. An unpaid leave option was also regulated under the same law as six months for the employees working in the private sector and a year for employees working in the public sector.

- Paternal leave was more recently regulated in 2015 as five days for employees working in the private sector and ten days for employees working in the public sector.
- Article 50 of the Labor Law states that “no one shall be forced to work on jobs that are inappropriate for their age, sex and strength. Minors, women and people with legal disability are specifically protected from the working conditions.”
- Women were granted the right to severance pay on resignations due to marriage, whereas this right is not granted to men. This is a parallel regulation with the abrogated article of the Civil Code that requires the husband’s permission for a married woman to work.

In 2005, Penal Code reforms occurred in Turkey, and the new Penal Code 5257 was enacted. Feminist legal experts call this Code a reform because the perspective of the previous law has changed at a significant level. Previously most of the offences where the victim is a woman were regulated under the section “Offences against the Public”. With the new Law, those offences are now regulated under the section “Offences against the Person” since women are not inferior human beings that seek protection from society itself. With this new Law:

- Articles 5 and 22 explicitly state that “no discrimination shall be made between persons with respect to sex,” among others, to ensure gender equality.
- If the act of intentional killing is committed against a pregnant woman, in knowledge of such pregnancy or with the motive of tradition (so-called honor killings), the offender shall be sentenced to aggravated life imprisonment.
- If the act of intentional harm results in the premature birth of a child, where the victim is a pregnant woman, then the penalty determined according to the relevant article shall be doubled.
- The penalties for offences against sexual integrity were increased.

In 2009, the Law for the Committee on Equal Opportunities for Women and Men, Law no. 5840, was adopted. Consequently, an Equal Opportunities Committee in the Turkish Grand National Assembly was established.

Law no. 6284 dated 8 March 2012 to Protect Family and Prevent Violence against Women
repealed the Family Protection Law no. 4520 dated 1998 and is the crucial legal document in terms of gender equality in Turkey. It is also significant that the date of the law is 8 March. This law was enacted as the implementation process of the Istanbul Convention, which is the Council of Europe Convention on preventing and combating violence against women and domestic violence. The purpose of this law is to protect women and children, who have been subjected to violence or are at risk of violence, and to regulate procedures and principles with regard to the measures of preventing violence against those people.

Turkey became the first and only country to withdraw from the Convention, after President Erdogan denounced it on 20 March 2021. Feminist organizations, political parties and even real persons brought a lawsuit against the presidential decree before the Council of State. Turkey’s Council of State Prosecutor declared President Erdogan’s withdrawal of the country from the Istanbul Convention illegal, and asked the Council to annul the decree. The Council has not yet announced its decision.

To propose policy recommendations on how to improve this advancement, the following measures may be taken:

• Annulment of the decree withdrawing from the Istanbul Convention: this Convention regulates fundamental human rights and may not be withdrawn by a decree. The Istanbul Convention is the first international legal document that defines gender-based violence rather than violence against women. It is also a constituent document for national legislation.

• Establishment of a Ministry for Women: this is responsible for designing, coordinating and evaluating policies, plans and programs to promote gender equality, and seeks to eliminate all forms of discrimination against women. In 2011, the Turkish Ministry of Women and Family Affairs was replaced by the newly established Ministry of Family and Social Policies. By removing the word “women” from the title of the Ministry, women were interpreted as an element within the family rather than being a single individual by themselves. Lack of a separate ministry for women means gender equality will not be on the agenda since the values of being a traditional family are prioritized.

• Adoption of an Equal Status Law for the elimination of discrimination in the workplace: in accordance with EU Directives,

There have been significant steps in Turkey’s gender policy in the last two decades. The main aim has been to bring Turkey’s legislation closer to the EU acquis. The amendments to the Constitution, the Civil Code, the Labor Code and specific regulations such as Law no. 6284 are all significant in ensuring gender equality in legislation. However, as lawyers working in the field, we see that the challenging part is the implementation of these regulations. Social norms and practices prevent gender equality policies from coming into force. In light of the aforementioned developments and current conservative regime, one can say the feminist movement is the most powerful opposition in Turkey today.
an Equal Status Law shall be adopted that prohibits direct and indirect discrimination, eliminates victimization and harassment on any of the grounds in the workplace. Gender inequality is reinforced by the lack of economic independence of women. The elimination of discrimination in the workplace will allow more women to work under gender sensitive rules, eliminate gender pay gaps, dismantle barriers, and ensure equality in access to training. Therefore, more women will be in the workforce and be economically independent from their fathers or husbands.

- Adoption of gender equality education into a formal syllabus: this is one of the requirements of the Istanbul Convention. Gender equality education shall be given under the supervision of the state, beginning from kindergarten. Since the cultural norms are established based on discrimination against women and stating women’s position as inferior, we need to take affirmative action to replace it with the notion of equality.

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- Establishment of hotlines, and an adequate number of women’s shelters to avoid domestic violence, which is also a requirement in the Istanbul Convention. According to Article 14 of the Local Governments Law in Turkey, municipalities with regions with populations of over 100,000 are responsible for opening shelters for women and children. Today, the total capacity of Turkey’s shelters does not fulfill this obligation. Shelters have a significant role in taking precautions against domestic violence.