

# Turkey

## How Adultery Almost Derailed Turkey's Aspiration to Join the European Union

Pinar Ilkcaracan



Filmkor Women's Cooperative

### Introduction

On September 14, 2004, hundreds of women marched in front of the Turkish parliament in Ankara chanting, “Our bodies and sexuality belong to ourselves.” The march, organized by the Women’s Platform for the Reform of the Turkish Penal Code from a Gender Perspective (referred to hereafter as the Women’s Platform), took place at the height of a major political crisis between the Turkish government and the European Union triggered by an attempt of the religious conservative AKP (*Adalet ve Kalkınma Partisi*/Justice and Development Party) government to introduce a bill criminalizing adultery.<sup>1</sup> On the day of the march the government announced the withdrawal of the bill, and, only a few hours later, an announcement was made for an indefinite withdrawal of the draft of the Turkish Penal Code for further review. The Turkish Grand National Assembly passed the code on September 26, 2004, after

<sup>1</sup> Until 1996 the Turkish Criminal Code made adultery a criminal offence and differentiated between men and women in the definition of adultery. While for women one sexual act with a man other than her husband was sufficient for conviction of adultery, a married man could not be convicted of adultery unless it was proved that he was living with a woman other than his wife. In 1996, Article 441 of the penal code regulating adultery by men, and in 1998, Article 440 of the penal code regulating adultery by women, were annulled by the Constitutional Court on the grounds that the differences violated Article 10 of the Turkish Constitution, which states that men and women must be equal before the law.

two weeks of intense discussions and political turmoil, and it came into effect on June 1, 2005 as Law No. 5237.

The withdrawal of the penal code draft, resulting from the controversy over the proposed adultery law, prompted the biggest crisis between the EU and Turkey since the start of the accession talks. During the national debate that ensued, AKP appeared to be split over the issue. While the Justice Minister declared that there was no need for a legal sanction on adultery, the Women's Minister defended criminalizing adultery, stating: "We cannot give up our own values just because we want to join the EU. Adultery is not considered a crime in many countries of the world. But just because this is the case ... we cannot just accept it ... we have to respect the values of Turkish society."<sup>2</sup>

As the debate continued, the markets fell drastically, threatening an economic disaster (certainly the first one in Turkey triggered by an issue concerning sexuality) only three years after Turkey's devastating economic crisis of 2001. Finally, after a meeting with EU Enlargement Commissioner Günter Verheugen in Brussels on September 23, 2004, Prime Minister Tayyip Erdoğan, a devout Muslim, announced his withdrawal of the proposal to criminalize adultery.

However, only a day later, he expressed anger about the situation to the press. Referring to the rally organized by the Women's Platform and its slogan, Our Bodies and Sexuality Belong to Ourselves, he said, "There were even those who marched to Ankara, carrying placards that do not suit the Turkish woman. I cannot applaud behavior that does not suit our moral values (*ahlak*) and traditions... A marginal group cannot represent the Turkish woman."<sup>3</sup>

Erdoğan's remarks, accusing hundreds of women representing more than 20 Turkish organizations of opposing moral values and traditions and betraying their "Turkish identity" by claiming ownership of their bodies, captured the essence of the debate that raged from 2002 to 2004, primarily between feminist groups and the religious conservative government during the Campaign for the Reform of the Turkish Penal Code from a Gender Perspective. The campaign, aiming at a comprehensive reform of the Turkish Penal Code, succeeded in

<sup>2</sup> (2004, August 28). Bakan Akşit: AB'ye gireceğiz diye değer yargılarımızdan vazgeçemeyiz (Minister Akşit: Just because we want to join the EU, we cannot give up our values). *Zaman*.

<sup>3</sup> (2003, September 25). Türk Kadını, Marjinal Bir Kesim Temsil Edemez (A marginal group cannot represent the Turkish woman). *Zaman*.

reconstructing gender and sexuality in the legal context despite the religious conservative government's attempts to incorporate in the law a notion of "public morality," embedded in male-centric Muslim tradition, at the historic moment of Turkey's accession to the EU.

This paper will analyze the competing discourses on sexuality (in particular on honor and virginity), criminalization of youth sexual relations, and sexual orientation, which emerged as the most controversial issues during the penal code reform campaign. It draws on the author's personal experience as the initiator of the Women's Working Group on the Penal Code (WWGTPC) and the coordinator of Women for Women's Human Rights (WWHR) – NEW WAYS, which served as the coordinating secretariat for the campaign. The data analyzed include newspaper and magazine articles, reports, and e-mail exchanges on various issues related to the campaign among the women who were members of the *TCK\_Kadin* Listserv (TPC\_women in English, TPC being Turkish Penal Code), during the years 2003 and 2004. In addition, a series of nine semi-structured interviews were conducted with members of the Parliamentary Justice Commission that prepared the draft law, women MPs from both the government and opposition parties, including the Women's Minister, and board members of LGBT organizations in Istanbul and Ankara.

### **Background: From religious discourses to gendered national identities**

The history of the modernization movement in Turkey dates back to the nineteenth-century Ottoman Empire. The defenders of modernization, from the reformists of the nineteenth-century to the Kemalists of the republican period, claimed that education and the liberation of women were pre-conditions for the achievement of modernity and thus sought to overcome traditional gender-role ideology in an attempt to align with contemporary values.<sup>4</sup> During the period between the "beneficial reforms," beginning in 1839, and the second constitutional period in 1908, these modernists particularly criticized arranged marriages, polygamy, and gender segregation, and advocated for women's free access to education and for relationships and marriages based on love. On the other hand, conservatives, including Islamists, have tried to limit the effects of modernization to the technical, administrative, and material domains, while building on the foundations of the past. They have constantly

<sup>4</sup> Göle, N. (1993). *Modern Mahrem: Medeniyet ve Örtünme (The forbidden modern: Civilization and veiling)*. Istanbul: Metis Yayınları. (First published in 1991).

emphasized the importance of the cultural and ethical legacies of Turkish society, and have maintained that gender relations must be regulated by *shari'a* (Islamic law) in order to preserve ethics and moral values. The conservatives have traditionally viewed reforms on gender relations as influenced by Western thought and as a threat to the prevailing cultural identity. Although the exact content of, and actors in, this tug-of-war between tradition and modernization have changed, it is striking that the role of women in society remains one of the main subjects of debate in Turkish society.

The founding of the Turkish Republic in 1923 was followed by the introduction of several reforms, including the abolition of *shari'a*, secularization of the state, and revolutionary changes for women.<sup>5</sup> In 1926, the Turkish Civil Code was introduced. Adapted from the Swiss Civil Code, it banned polygamy and granted women equal rights in matters of divorce and child custody. The civil code was an important victory over the advocates of *shari'a*.<sup>6</sup> However, as feminist political scientist Şirin Tekeli argues, women's rights as granted by Kemalists were strategically intended to destroy links to the Ottoman Empire and to strike at the foundations of religious hegemony.<sup>7</sup> Indeed, it seems that the official position of the new republic on the status of women was restricted to a secularist stance intended to reform the Islamic way of life, rather than to promote the actual liberation of women in everyday life. Thus, women were presented as the “emblem” of secularism and the new republic, just as the conservatives and Islamists used them as symbolic and literal “protectors” of family values and the social status quo.

Despite the apparently opposing views of modernists and Islamists on women's role in society, in fact, they competed zealously to construct a patriarchal ideal of female sexuality and to maintain and reconstruct mechanisms to control women's sexuality and bodies. The modernists attempted to confront the social anxieties triggered by women's participation in the public sphere through the construction of the modern Turkish woman, emancipated and

<sup>5</sup> The reforms, which represented a political revolution, included the abolition of the sultanate and the caliphate, the adoption of Latin letters for the Turkish alphabet, and the encouragement of Western clothing for women and men. The ideological foundation of these reforms came to be known as Kemalism, also depicted as “the Kemalist revolution,” since this all occurred under the leadership of Mustafa Kemal, who became the first elected president of the Turkish Republic and remained so until his death in 1938.

<sup>6</sup> Arat, Y. (1994). 1980'ler Türkiye'sinde Kadın Hareketi: Liberal Kemalizmin radikal uzantısı (Women's movement in Turkey in the 1980's: A radical extension of liberal Kemalism). In N. Arat (Ed.) *Türkiye'de Kadın Olgusu* (*The issue of women in Turkey*), pp. 71-92. Istanbul: Say Yayınları.

<sup>7</sup> Tekeli, Ş. (1982). *Kadınlar ve siyasal toplumsal hayat* (*Women and socio-political life*). Istanbul: Birikim Yayınları.

active in the founding of the new republic as mother, teacher, and political activist, yet also modest and chaste.

In her analysis of representations of women in the novels of Halide Adivar, an eminent female writer and political activist of the pre-republican period, Deniz Kandiyoti, concludes that the female characters in Adivar's novels represent a nationalist consensus on "the terms under which women could be accepted into public life in republican Turkey: as asexual and devoid of their essential femaleness."<sup>8</sup> Kandiyoti also notes that although the modernists took great pains to establish a new nationalist morality in which the equality of women could be justified as an integral part of pre-Islamic Turkic cultural mores, obviously this reassurance was not deemed sufficient. As claimed by Ziya Gökalp, the then leading ideologue of the Turkish nationalist movement, the principal virtue of Turkish woman is *iffet* (virtue, chastity).<sup>9</sup>

In her analysis of the Kemalist socialization of women, Durakbaşa observes that in the puritanical construction of women's morality in the new Turkish Republic, the concept of honor gained an emotional importance for both women and men. While opening a new space for themselves in the public domain, women were simultaneously held responsible for maintaining the highest moral standard of "harmless" interaction with men.<sup>10</sup> Accordingly, in order to claim this new public space, women had to master the complicated art of concealing their sexuality once again, this time with an invisible veil.

Yet, it seems that the founders of the modern republic did not quite trust women's capacity to fulfill their new citizenship obligation. Thus Islamic and customary laws, norms, and discourses were simply translated into a new language, subsumed under a notion of public morality constructed around values such as *namus* (honor), *ırz* (purity, honor), *iffet* (chastity), *haya* (shame), or *müstehcenlik* (obscenity). This new language was also entrenched in the 1926 Turkish Penal Code, adopted from Mussolini's Italy, as part of westernization efforts by the new republic. Not only was the 1926 Turkish Penal Code based on that of an extreme right-wing regime, it also incorporated several articles common to penal codes of Middle-

<sup>8</sup> Kandiyoti, D. (1998, Spring). Slave girls, temptresses and comrades: Images of women in the Turkish novel. *Feminist Issues*, 8.1, pp. 35-50.

<sup>9</sup> *Ibid.*

<sup>10</sup> Durakbaşa, A. (1998). Cumhuriyet Döneminde Modern Kadın ve Erkek Kimliklerinin Oluşumu: Kemalist Kadın Kimliği ve Münevver Erkekler. In A. B. Hacımiraçoğlu (Ed.) *75 Yılda Kadınlar ve Erkekler*, pp. 29-50. İstanbul: Tarih Vakfı.

Eastern countries. Sherifa Zuhur, who conducted a comparative study of criminal laws in the Middle East and North Africa, argues that the criminal codes in the Middle East and the Muslim world are a constant reminder that the primary social identification of women is as reproductive and sexual beings who are constrained by men, the family, and the state.<sup>11</sup>

The Turkish Penal Code of 1926 reflected an understanding of sexuality, in particular women's sexuality, as a potential threat to public order and morality, and thus to be in need of legal regulation. The code included sexual crimes under the section Crimes Against Society in a sub-section titled Crimes Against Traditions of Morality and Family Order (*adab-ı umumiye and nizam-ı aile*), instead of defining these as crimes against persons. The designation of crimes such as rape, abduction, or sexual abuse against women as “crimes against society” rather than as crimes against individuals, was not only a manifestation of the code's foundational premise that women's bodies and sexuality are the property of men, family, or society; it was also a reflection of the social anxiety about a perceived need for stricter state control of sexuality in the context of the liberalizing impact of the Kemalist revolution, including the abolition of religious laws, the participation of women in the public sphere, and the implementation of Western dress codes.

### **The new feminist movement and the rise of political Islam in the 1980s**

Right and left wing political movements dominated Turkish political debate and action in the 1960s and 1970s in reaction to strong state controls. In this environment women's issues were subsumed under Marxist discourses, as leftist women activists were incorporated into the Marxist movement. Thus, the emergence of a new feminist movement similar to those in the West did not take place until the late 1980s. The new Turkish feminist movement of the 1980s brought human rights violations against women in the private sphere to public attention for the first time. An initial campaign focusing on domestic violence was followed by a widespread and energetic feminist campaign against sexual harassment and sexual violence in 1989, resulting in a significant legal reform; article 438 of the Turkish Penal Code, which reduced by one third the sentence given to rapists if the victim was a sex worker, was repealed by the Grand National Assembly in 1990. However, the initial vigor of the new feminist movement to publicize issues related to women and sexuality was short-lived.

<sup>11</sup> Zuhur, S. (2005) *Gender, sexuality and the criminal laws in the Middle East and North Africa: A comparative study*. Istanbul: WWHR – NEW WAYS

The rise of political Islam,<sup>12</sup> concurrent with the emergence of the new feminist movement, changed the political scene in Turkey dramatically. The women's movement was confronted not only with the rise of the Islamic Religious Right but also with the rise of militarism and nationalism driven to a large extent by the armed conflict between Turkish security forces and the separatist Kurdistan Worker's Party (PKK) beginning in 1984.

The triumph of the conservative Islamic Welfare Party in 37 of 81 provinces in the 1994 local elections drastically shifted the Turkish political scene. The perceived threat of the Islamic religious right redirected most women's attention and interest from women's human rights violations in the private sphere to the protection of the "republican principles" and secularism of Kemalist ideology. These were the traditional concerns of pro-republican women activists, whose main agenda has historically been the defense of the principle of secularism as well as the protection and advancement of women's legal rights in the public sphere. As a consequence, the ideological differences between feminist activists and traditional pro-republican women activists, which might have been expected to diminish under more advantageous political conditions, further deepened following the elections. Despite the rapid emergence and institutionalization of several women's NGOs across Turkey, the rise of the Islamic Religious Right, nationalism, and militarism and the resulting polarization of the political environment in the 1990s have diminished the space for feminist discourses and activism on a number of issues. In the 1990s, the new feminist movement failed to raise a substantial critical focus on militarism and on the rise of nationalistic ideologies. Debates on sexuality and sexual liberation, critiques of the heteronormative model, the redefinition of female sexuality, and the human rights of lesbians — issues which might have taken hold in a more politically supportive environment — failed to make an impact on the public agenda.

Throughout the 1990s, feminist activism and legal advocacy in Turkey concentrated mainly on reform of the civil code, which designated husbands as heads of family and contained provisions violating both the constitutional guarantee of gender equality and international conventions, like the Convention on the Elimination of All Forms of Discrimination against

<sup>12</sup> For other local examples of the impacts of religious authorities in sexuality discourse, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, pp. 33-35; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, p. 135; Nowicka, W., The struggle for abortion rights in Poland, pp. 183-185. For impacts in global debates, see: Girard, F., Negotiating sexual rights and sexual orientation at the UN.

Women (CEDAW), to which Turkey was a signatory.<sup>13</sup> The civil code and the draft amendments for gender equality came to the forefront of the public agenda in 2001 during parliamentary reform debates as the result of a dynamic and extensive campaign by a coalition of over 120 women's NGOs from around the country – the broadest alliance of women's groups since the new feminist movement emerged in the 1980s.

Unexpected resistance to the gender-equality clauses, from a coalition of male MPs led by the ruling Nationalistic Action Party and the opposition Islamist Welfare Party, triggered the campaign. This backlash occurred despite the acceptance of Turkey as a candidate for EU membership in December 1999, a development that had been expected to intimidate opponents of gender equality. But those opponents stubbornly argued that the gender equality provisions would create anarchy and chaos in the family and threaten the foundations of the Turkish nation. Nonetheless, the campaign by the women's coalition gained media attention and galvanized public opinion, which scorned any resistance to the notion of equality between women and men. Consequently, the opposition was forced to step back, and the campaign scored a victory with the realization of the November 2001 Civil Code reform, which abolished the supremacy of men in marriage and established by law equality between women and men in the family.

### **Seizing a window of opportunity:**

#### **The Campaign for Reform of the Turkish Penal Code from a Gender Perspective**

Inspired and motivated by the successful outcome of the campaign to reform the civil code in the face of strong opposition, Women for Women's Human Rights (WWHR) – NEW WAYS, a leading Turkish women's NGO and key advocate for civil code reforms on gender equality since the early 1990s, initiated a Women's Working Group on the Turkish Penal Code in early 2002. In 2001, two years after Turkey was accepted as a candidate for full EU membership, the government, in agreement with the EU, had prepared a national program. It outlined the political, economic, and legal reforms that Turkey pledged to carry out by late 2004 to fulfill EU membership criteria. This included the reform of the Turkish Penal Code. The European Commission was concerned mainly with the abolition of the death penalty, pre-trial

<sup>13</sup> Turkey ratified CEDAW in 1985 with several reservations, which were not removed until 2002.



detention provisions, and the expansion of the scope of freedom of expression, and not with gender equality or articles concerning sexuality. Despite the lack of EU interest in these areas of reform, WWHR – NEW WAYS saw in the planned reform of the Turkish Penal Code an opportunity to push for reforms on gender equality and sexual rights. In early 2002 it initiated a Women’s Working Group on the Turkish Penal Code comprising 15 representatives from NGOs and lawyer’s associations as well as academics from various regions of Turkey. Its goal was a comprehensive reform of the Turkish Penal Code from a gender perspective that included a strong set of principles concerning sexual rights and bodily integrity.

The Working Group’s comprehensive view of sexual rights and bodily integrity was based on a recognition of the basic human right of all women to full autonomy over their bodies, sexuality, and reproductive capacity, independent of age, marital status, socio-economic background, or sexual orientation. The main aim was to change certain articles in the penal code that violate women’s human rights. These articles included one that reduced sentences for perpetrators of honor crimes, which was the only issue on the EU agenda related to women. Another objective of the campaign was to rewrite the law, with women’s autonomy over their bodies and sexuality as the main guiding principle. The demands of the Working Group were therefore presented as a single indivisible package.

In keeping with these principles, the Women’s Working Group adopted a methodology to translate these demands into legal terms. After identifying all the articles that violated women’s human rights and the right to sexual and bodily integrity in both the existing code and the draft law, the group undertook a comparative study of penal codes in different countries. This helped the group to prepare detailed proposals and justifications for about 45 amendments, formulated as new provisions and articles to be integrated in the new law, which the group then published as a booklet. As these efforts got underway, the three-party government coalition led by the social democrats resigned after a political crisis leading to early elections in November 2002 that ended with a stunning victory for the newly formed religious conservative AKP.

Despite repeated requests by the Women’s Working Group, representatives of the new government refused to meet with members to hear their demands. Faced with strong govern-

ment resistance, the group extended its lobbying efforts into a massive public campaign, which it launched on May 23, 2003 with a widely attended press conference. At that press conference, campaigners and NGOs that supported the Working Group's demands formed the Women's Platform. The campaign, and the discussion on sexuality it provoked, drew great public and media interest, resulting in several front-page headlines and daily coverage by a majority of newspaper, TV, and radio outlets. It continued for 18 months until the new penal code was ratified by the parliament in September 2004, with more than 35 amendments to laws concerning sexuality and sexual crimes.<sup>14</sup>

The most controversial debates during the campaign revolved around social constructions of honor, virginity, sexuality of youth, and sexual orientation, all issues seen as related to extramarital sexuality and strongly opposed by religious conservatives in various Muslim countries.<sup>15</sup> About 40 of the Women's Platform demands were accepted. The proposals that were rejected included designation of honor crimes as aggravated homicide, criminalization of virginity tests, removal of an article penalizing consensual sexual relations between youths aged 15 to 18, and the penalization of discrimination based on sexual orientation. The two other rejected demands were the removal of an article prohibiting publication of "obscene" content and extension of the legal abortion period from 10 to 12 weeks.

The section below presents the essential elements of the controversial public discourses on honor, virginity, sexual relations of youth and sexual orientation during the Campaign for the Reform of the Turkish Penal Code, and the different sides in these debates.

## Contested discourses

### **Honor and virginity: Fundamental elements of "Turkish identity"?**

Issues around honor and virginity were the most controversial and widely debated topics

<sup>14</sup> The Platform's demands incorporated in the penal code reform included a revision regulating sexual offences under the section "crimes against individuals," sub-section "crimes against sexual inviolability," instead of the previous section "crimes against society," sub-section "crimes against moral customs," constituting a groundbreaking shift in the overall perspective of Turkish penal law. The notion that women's bodies and sexuality are commodities of men and of society, and that sexual offences are to be regulated with reference to patriarchal social constructs such as "society's traditions of morality," "chastity," and "honor" were deleted, bringing, for the first time, legal recognition of women's ownership of their bodies.

<sup>15</sup> Amado, L. E. (2004, May). Sexual and bodily rights as human rights in the Middle East and North Africa: A Workshop Report. *Reproductive Health Matters*, 12.23, pp. 125-128.

during the Campaign for the Reform of the Turkish Penal Code from a Gender Perspective. The significance attached to virginity and honor in both rural and metropolitan Turkey is deeply entrenched; both constructs involve social, legal, and political means for controlling all forms of female extramarital sexuality. Unmarried women are generally expected to remain virgins until their wedding night, and virginity is not only the symbol of a woman's purity and chastity, but also an icon of her family's honor. Sexual relations outside marriage on the part of a married woman, including rape, are generally understood primarily as assaults on men's honor.

The Women's Platform demands to reform the code around issues of honor and virginity became the major focus of opposition from the religious conservatives. Only a few days after the launch of the campaign, *Vakit*, a radical right-wing religious newspaper, attacked women's groups in an article with the headline, The Shameless Proposal, which denounced the demand for the removal of all penal code references to *namus* (honor) and *adab* (public morality) as "immoral" and "shameless."<sup>16</sup> Interestingly, the arguments in the article were not centered on religion, that is, Islam, but on the construction of Turkish national identity. The article argued that the demands of the Working Group were alien to Turkish society and that its members were "obviously" leading lives completely estranged from the Turkish nation. Notably, this argument underlay both religious and secular conservative discourses against the demands concerning honor and virginity throughout the entire campaign.

Several of the Women's Platform demands aimed to delete articles in the code that constructed honor and female virginity as values to be protected by law. One called for the removal of an article canceling punishment in cases where a rapist married his victim. This article was predicated on the notion that a woman who had been raped, and therefore dishonored, could restore her honor by marrying her rapist, and that by marrying his victim, the perpetrator's offence could be considered undone. This article essentially re-victimized the woman as she is forced to marry her rapist, first, by her own family to "save" their honor, and second, by the perpetrator's family, to prevent his incarceration. It also served to sustain a cultural construction of honor, which enables the violation of women's sexual autonomy by the law itself. The feminist movement brought the issue of honor to the public agenda for the first time and the campaign contributed significantly to raising public consciousness about the

<sup>16</sup> Yılmaz, M. (2003, May 28). Edep'siz Teklif (The shameless proposal). *Vakit*.

issue.<sup>17</sup> Of all the feminist demands, this issue, addressing the re-victimization of unmarried women who suffer rape, was the first to gain passionate widespread support from the liberal and left-leaning media shortly after the launch of the campaign. The newspaper headlines at the time reflected growing criticism of the provision, as in *The Additional Punishment of Marriage for Victims of Rape*,<sup>18 19</sup> and, *Turkey's Contribution to the Criminal Medicine Literature: Rape to Marry*.<sup>20</sup> The media focus on this one stipulation among the more than 40 demands of the Women's Platform that aimed at sexual liberation, was not surprising given that the portrayal of women as victims is as popular a theme in Turkish media as elsewhere in the world. Indeed, the tendency to reproduce the image of women as victims exists even among the global women's movement in its advocacy for women's human rights.<sup>21</sup>

Despite the early public and mainstream/left media support for the cancellation of the provision, members of the government did not hesitate in supporting its retention. As the parliamentary sub-commission working on the draft law revision began convening in October 2003, Doğan Soyaslan, a chief consultant to the Justice Minister, triggered a public uproar when he said, "No man would like to marry a woman who is not a virgin. Marrying the rapist after a rape is a reality of Turkey. The brother and the father of a girl who was raped would like her to marry the rapist. Those who are opposing this here [at this meeting] would also like to marry virgins. Those who claim the opposite are fakers."<sup>22</sup> This statement, coming from a senior government representative, was a turning point in the campaign, prompting the widest outburst of public opposition against the government regarding the draft law since its inception, and bringing public attention to the debate between the government and the Working Group to a peak.

Two weeks later, Soyaslan created an even greater uproar during a televised debate when he said that the provision generally applied in situations involving victims of lower socio-eco-

<sup>17</sup> Article 433 of the old Turkish Penal Code.

<sup>18</sup> Korap, E. (2003, July 24). The additional punishment of marriage for victims of rape. *Milliyet*.

<sup>19</sup> (2003, September 23). The additional punishment of marriage for victims of rape. *Cumhuriyet*.

<sup>20</sup> (2003, September 28). Turkey's contribution to the criminal medicine literature: rape to marry. *Vatan*.

<sup>21</sup> Kapur, R. (2005). *Erotic justice: Law and the new politics of post colonialism*. London: Lashhouse Press.

<sup>22</sup> Yalçın, Z. (2003, October 23). Bakan Danışmanının 'Bekaret' Takıntısı (The "virginity" obsession of the minister's consultant). *Sabah*; Önal, G. (2003, October 23). Kimse Bakire Olmayan Biriyle Evlenmek İstemez (Nobody wants to marry a woman who is not a virgin). *Milliyet*; Korkmaz, I. (2003, October 23). Herkes Bakire İster (Everybody wants a virgin). *Hürriyet*.

conomic status, and that he could not imagine applying it to his own daughter.<sup>23</sup> Asked if he would marry his daughter to a man who had raped her, he said, “No, but I’m different, I’m a professor. I would think that she had gone to him of her own will. If that wasn’t the case, I wouldn’t allow her to marry him.”<sup>24</sup> Soyaslan’s remarks reflected the rarely acknowledged fact that in Turkey legal articles and provisions that violate women’s human rights disproportionately affect women and girls of lower socio-economic status. This is not only because these women and girls are more vulnerable to the impact of discriminatory traditions and customary practices, but also because they are deprived of the socio-economic means to protect themselves from such violations.

The extremist newspaper *Vakit* supported Soyaslan’s defense of women’s honor and virginity as Turkish values that should be protected in law. The newspaper argued that the Working Group’s platform was not representative of Turkish women, despite the fact that the group was made up of 26 NGOs from almost every region of the country. *Vakit* also implied that the proposals were Jewish influenced, targeting a member of WWHR – NEW WAYS whose father was a Turkish citizen of Jewish background.<sup>25</sup> A columnist in *Vakit* argued that the Women’s Platform was not representative of Turkish women because the member organizations “belonged to high society and radical leftist organizations, whose sexual instincts have become out of control.”<sup>26</sup> The article did not discuss how members of “high society and radical leftist organizations” had come to be united for a common cause despite their class conflicts.

There is no question that the Turkish constitutional principle of secularism played an important role in the decision of the AKP government to base its opposition to penal code reforms promoting gender equality and sexual rights on the ideology of “national values” rather than on religious arguments. However, other historical and strategic factors have played a more important role in this secularization of oppositional discourse. As I argued earlier in this paper, the transformation of Turkey from a regime based on religious norms in the Ottoman Empire to a modern republic with a secular Western legal framework included the translation of Islamic and customary laws, norms, and discourses on gender hierarchy into a new

<sup>23</sup> The Press Club (Basın Kulübü). *Habertürk TV*, first aired on November 2, 2003 and repeatedly aired on the same channel for several days after.

<sup>24</sup> Asena, D. (2003, November 5). Profesör ve Düş Kırıklığı (The professor and disappointment). *Yarın*.

<sup>25</sup> (2003, November 14). Azgın Teklif (The wild/oversexed proposal). *Vakit*.

<sup>26</sup> Karakoç, A. (2003, October 6). *Vakit*.

language. This language appeared secular but traditional philosophical and ideological gender constructs were embedded within the “new” national identity, including such concepts as *namus* (honor), *ırz* (purity, honor), *iffet* (chastity), and *haya* (shame). The choice of arguments based on national identity to ground the legal regulation of women’s bodies in defense of honor and virginity was not only consistent with this historical discourse but also ensured the support of secular conservatives on these issues. Indeed, renowned secular jurists and academics supported the religious conservatives in their opposition to amendments of articles concerning honor and virginity, agreeing that these articles were in line with Turkish customs and traditions. For example, a respected professor of criminal law, Sulhi Dönmezer, often referred to as “the professor of professors,” asserted that the article canceling sentencing for rapists who subsequently married their victims should remain as “this law is in line with realities of Turkey. Virginity is a component of Turkish customs and practices. The law has to respect this.”<sup>27</sup>

Although Islam forbids extramarital sex for both women and men, customary practices such as honor killings or virginity testing cannot be justified by an appeal to the Qur’an. In 2004, Turkey’s Department of Religious Affairs issued a statement that honor crimes are patriarchal practices condemned by the Qur’an.<sup>28</sup> It is also notable that virginity is a requirement of all Muslims until marriage; the Qur’an makes no distinction between women and men here, despite the obsession with female virginity in both the penal code and Turkish society. (In Turkey a woman is expected to remain a virgin until her wedding night, whereas men are traditionally encouraged to have sexual relations before marriage). Thus, the use of an historicized construction of values anchored to national identity as opposed to religion to defend the judicial encoding of honor and female virginity was an effective strategy that not only avoided political, ideological or social complications, but also ensured the support of secular, liberal conservatives. This strategy was possible because the Kemalist form of secular republicanism was always based on the premises of male privilege and women’s sexual subordination embedded in Turkish national identity.

Despite the strong political opposition, intensive lobbying by the Women’s Platform and the growing public uproar over the rape article finally resulted in the acceptance of many of the

<sup>27</sup> Lakşe, E. (2003, November 6). Eşinizi bakire mi alırdınız? (Do you prefer a virgin wife?) *Haftalık*.

<sup>28</sup> The Republic of Turkey, Presidency of Religious Affairs, Press Release. (2004, March 8). Retrieved June 9, 2005, from <http://www.diyamet.gov.tr/english/default.asp>.

group's demands. Under increasing public pressure, the parliament finally decided to delete not only those articles providing for sentence cancellations for rapists who married their victims, but also several other references to "society's traditions of morality," "chastity," and "honor." Rape and sexual assault, previously defined as "forced or consensual seizure/attack of honor/chastity," were redefined in article 102 (1) of the new Turkish Penal Code as "any sexual act violating a person's bodily inviolability." Articles discriminating against women based on virginity or marital status, such as provisions for a lighter sentence in cases where the woman raped was not a virgin or an abducted woman was unmarried, were removed. Clauses implying legal distinctions between virgins and non-virgins were deleted from the "definitions" section, and the code no longer considers honor a mitigating circumstance in an unwed mother's murder of a newborn.

However, as explained below, some of the Women's Platform demands were rejected, especially those justifying reduced sentences for perpetrators of honor killings.

### **Honor killings or customary killings: What's in a name?**

While there has been extensive feminist activism against honor killings in Turkey since the 1990s, the debates during the campaign showed that there was considerable controversy and confusion regarding the conceptual definition of honor as it related to female sexuality and honor killings. One interesting outcome of this conceptual controversy was the acceptance by the Justice Commission, in one of its final meetings on the penal code draft in May 2004, of the inclusion of "customary killings" instead of "honor killings" in the article defining aggravated homicide. The Women's Platform had never used the term "customary killings" in its publications or campaign statements. It immediately issued a statement that replacing the term "honor killings" with the term "customary killings" was unacceptable.<sup>29</sup>

While both terms are commonly used in Turkey, often erroneously in an interchangeable manner, the term "customary killings" is associated primarily with a practice more prevalent in eastern and south-eastern Turkey, in the context of a semi-feudal traditional agricultural

<sup>29</sup> Women's Working Group on the Turkish Penal Code (TCK Kadın Calisma Gurubu). (2003). *Kadin Bakis Acisindan Tiirk Ceza Kanunu (Turkish Penal Code from a Gender Perspective)*. Istanbul: WWHR-NEW WAYS.

economy and among a predominantly Kurdish population. It entails a death warrant, issued by the so-called extended “family assembly,” against a female accused of “dishonoring” her family through alleged “inappropriate” conduct. While “customary killings” are also “honor killings,” the latter is a broader term that entails any act of murder motivated by the (male) perception that his “honor” has been blemished by the actions of a female relative. Thus, the term “honor killings” includes both so-called “crimes of passion” arising from feelings of hurt, jealousy, or passion on the part of a spouse, as well as the more traditional customary practice of a death warrant as described above.

The definition of “customary killings” instead of “honor killings” as aggravated homicide in the penal code was the result of a last minute compromise proposal by some women MPs from the opposition Social Democrat Party (CHP) after repeated rejections of several proposals on honor killings by both the draft law sub-commission and the Justice Commission. In an interview with the author CHP MP and Working Group member, Gaye Erbatur, said, “The issue of honor was discussed for days. AKP members constantly argued that if a man sees his wife with another man, what else could he do except to defend his honor? Honor was a very sensitive issue that they were obsessed with. So we thought we could convince them to at least accept the term ‘customary killings,’ which has different connotations. However, there was also resistance against the proposal on customary killings from AKP. Although the Minister of Justice supported the proposal, several AKP members of the Justice Commission voted against it, thus it was not accepted unanimously.”

It seems that under pressure from women’s groups, the public, the media, and the opposition CHP, AKP made a compromise that created an unclear, arbitrary, and inconsistent distinction between customary and honor killings. In fact, both of these terms imply that murder in the name of honor is a lesser or even a justified crime. Bekir Bozdağ, an AKP sub-commission member, acknowledged this confusion in an interview with the author. “Customary and honor killings do not intersect 100 percent, but all examples given by those who prefer the term honor killings can also be conceptualized under the notion of customary killings. Obviously there is conceptual confusion here,” he said.

In interviews with members of the sub-commission it became clear that there was a perceived difference between honor and customary killings based on idiosyncratic understand-



ings of custom and honor. As the head of the sub-commission, Hakkı Köylü, said, “Honor was the issue that triggered the biggest discussion. I was under immense pressure on this issue, especially from the women’s organizations... I agree that customary killings cannot be justified. Just because the customs demand so, it is not right that a girl is killed when she elopes and marries someone her family does not agree with. This is a customary killing, I understand... However, if a father kills the man who abducted his daughter, this is not a customary killing, because it includes a provocation (which) can provoke and distress a man. Or, if a man kills a man he found in bed with his wife, this is not a customary killing... This is an honor killing, and you cannot put it in the same basket with a customary killing... We have to accept that this is a homicide which is conducted under provocation and should receive a reduced sentence.”

The construction of “honor” as a sacred value and its deep association with female sexuality were so strong that AKP members vehemently resisted any association of acts so described with criminal penalty. Adem Sözüer, an independent legal expert on the sub-commission, says that the discussions about honor were often irrational: “Penalizing killings in the name of honor seemed to be considered almost like penalizing honor as a value. They said, ‘How can we use the words honor and penalty together? One should lead an honorable life, this is one of our basic values, for example if a spouse kills her/his spouse because she/he caught him/her with someone else.’ I’m giving this example because it was repeated constantly; shall there be a sentence reduction or not, that was the major discussion... Therefore, the discussion generally concentrated on how to solve this problem without using the word honor.”

Sözüer claims that there was not a great deal of difference between the AKP and the CHP perspectives on honor as a positive value, especially regarding the use of the word “honor” in the code. Orhan Eraslan, a CHP MP, said, “AKP argued that honor is a value of Turkish society, and that we could not therefore bring a legal provision against it. This issue is a two-edged knife. If there is public pressure on them, do you think we did not feel the same pressure? AKP presented the issue as if we (as CHP members) are against honor and thus unscrupulous, immoral ... Such pressure was created, but we tried to withstand it; we tried to demonstrate this was unacceptable.”

This reflects the fact that “honor” and “virginity,” as socio-cultural constructs, are deeply entrenched in Turkish popular discourse, and that eliminating them requires broad campaigns aimed at their deconstruction.

### **Criminalization of consensual youth sexual relations: Social democrats in defense of virginity**

CHP presented a more conservative attitude when it came to the issue of premarital sexual relations. In an interview with the author, Sözüer related how a CHP MP on the commission, who had been otherwise very cooperative with the Women’s Platform, played a leading role in the inclusion of an article providing for the criminalization of consensual sexual relations of youth aged 15 to 18 upon complaint, despite strong protests by both the Women’s Platform and some AKP members. In discussions with Women’s Platform representatives, including the author, the MP repeatedly mentioned that he has a daughter and he believed this article was very important to protect girls. Erbatır, the woman MP from CHP who worked most actively on the reform process, also reported that female CHP MPs encountered the most resistance from male party colleagues on the issue of decriminalizing consensual sexual relations among youth.

CHP members claimed that the opposition of some AKP members to the article criminalizing consensual adolescent sexual activity was based on their quest to maintain the customary practice of early/religious marriages.<sup>30</sup> This claim is based on the fact that in cases of early marriages, still very common in Turkey, a religious marriage ceremony is conducted even though religious marriages do not have any legal validity and it is forbidden by law to hold a religious marriage ceremony prior to the civil ceremony.<sup>31</sup>

The insistence of CHP, a social democratic party, to criminalize sexual relations of youth, while some religious conservative AKP members opposed it in order to defend the customary practice of early marriages, illustrates the unique complexity of political attitudes regarding sexuality in a secular Muslim country. In this instance, a supposedly liberal and secular po-

<sup>30</sup> Until 2001 the minimum legal age for marriage was 15 for girls and 17 for boys in Turkey. It was raised to 17 for both sexes with the reform of the Turkish Civil Code in 2001.

<sup>31</sup> Research shows that 16.3 percent of women living in the eastern and southeastern regions of Turkey were married by the age of 15, the minimum legal age for marriage until 2001. See Ikkaracan, P. (1998). *Doğu Anadolu’da Kadın ve Aile* (Women and family in eastern Anatolia). In A. B. Hacımirzaoğlu (Ed.) *75 Yılda Kadınlar ve Erkekler (Women and Men in 75 Years of Turkish Republic)*, pp. 173-192. İstanbul: Tarih Vakfı.

sition led to the more conservative outcome. Indeed, the defense of secularism and secular law against religious/customary practices also led to conservative stances by the CHP on other issues. For example, while CHP representatives were instrumental in the criminalization of marital rape in the new penal code, they rejected the Working Group's demand to include women living in *de facto* marriages in the article, asserting that this would lead to an implicit support of religious marriages, which are not validated by the Turkish Civil Code. Eraslan explains the CHP opposition: "Of course a couple may live together without a legal (civil) contract. In many places of the world, this is a common situation that is a result of modern life. This is something that is very acceptable. However, the case of religious marriages is a different issue, as they lead to polygamy and women's oppression... We thought if we include *de facto* relations in the article on marital rape, this could lead to an open door for further acceptance of religious marriages... This would lead to worse consequences... Therefore we removed the term *de facto* marriages from the article."

Article 104, stipulating a sentence of six months to two years imprisonment upon complaint for anyone engaging in sexual relations with young persons between the ages of 15 to 18, in the absence of any force, threat, or ruse was accepted by parliament despite the fervent protests of the Women's Platform.<sup>32</sup> However, at the beginning of 2006, only six months after the new Turkish Penal Code came into effect, the Court of Assize in Ardahan, a province in eastern Turkey, appealed to the Constitutional Court for the cancellation of the article. The court argued that the article could result in ambiguous legal situations concerning whom to penalize in cases of consensual sex between boys and girls aged 15 to 18, and that it violated the equality principle of the constitution as it foresees penalizing an individual based on a complaint by a third party.<sup>33</sup>

Both parties also rejected the Women's Platform demand for an article criminalizing virginity tests. CHP instead proposed a provision penalizing genital examinations without authorization by a judge or a prosecutor, claiming this would serve to prevent virginity testing. The provision was strongly opposed by women's groups as it fails to explicitly name and ban virginity testing and does not require the woman's consent, leaving room for forced examinations.

<sup>32</sup> The second paragraph of the article that stipulated doubling the penalty in cases where the perpetrator is more than five years older than the victim was cancelled by the Turkish Constitutional Court on the grounds that it violated the equality principle of the Turkish Constitution.

<sup>33</sup> Kaya, Ö. (2006, January). Gençlere Cinsel Özgürlük Davası (The court case against the freedom of youth sexuality). *Yeni Hukuk* 1.4, p. 20.

Despite this, the provision was accepted (Article 287) by parliament without any revision.

### **Penalization of discrimination based on sexual orientation: A short-lived success**

The first organizational efforts around gay and lesbian rights in Turkey date back to the beginning of the 1990s. In July 1993, the Istanbul governorate forbade a planned series of activities, intended to bring gay and lesbian issues to public attention in Turkey. In response, the organizers founded Lambda Istanbul, the first gay and lesbian organization in Turkey, to focus on instituting gay and lesbian rights and raising public consciousness of issues faced by gays and lesbians in Turkish society. A year later, in September 1994, another gay and lesbian group, KAOS Gay and Lesbian Cultural Research and Solidarity Association (KAOS GL), organized in Ankara to fight discrimination against gays and lesbians. Both organizations have contributed to raising awareness on gay, lesbian, and transgender people in Turkey. Transgender sex-workers have achieved visibility in the Turkish media regarding their activism against the high level of police violence to which they are subjected. However, rights around sexual orientation have not yet become a topic of public debate.

Criminalization of discrimination based on sexual orientation was one of the demands formulated by the Women's Working Group in 2002 and supported by the groups that formed the Women's Platform in May 2003.<sup>34</sup> This public demand concerning sexual orientation by such a broad alliance of women's NGOs constituted a first in Turkey. WWHR – NEW WAYS, the initiator and coordinator of the campaign and instigator of this demand, has a long history of sexual rights advocacy, including sexual orientation rights, and has worked internationally for years with various organizations around the world. Although initially some women's organizations were not supportive of the demand, they all finally backed it.

A small group of lesbian women active in both the Women's Platform and LGBT organizations played a leading role in motivating gay and lesbian organizations to work on penal code reform from an LGBT perspective.<sup>35</sup> Lambda Istanbul held a press conference, publicizing its demands related to the Turkish Penal Code, in January 2004.<sup>36</sup> The demand to penalize

<sup>34</sup> The formulated demand concerned the revision of article 170 of the draft law penalizing discrimination based on race, ethnicity, sex, family status, customs, political views, philosophical belief, and religion to specifically refer to "discrimination based on sexual orientation" as well.

<sup>35</sup> Author interview with Oner Ceylan from Lambda Istanbul, December 8, 2005.

<sup>36</sup> Lambda Istanbul Press Statement. (2004, January 16). TCK\_Kadin listserv. [http://groups.yahoo.com/group/tck\\_kadin/message/378](http://groups.yahoo.com/group/tck_kadin/message/378).

discrimination based on sexual orientation initially met resistance from even the most progressive MPs and sub-commission members working on the Penal Code draft law. However, after intensive lobbying, Sözüer, one of three independent experts on the sub-commission, was persuaded to put it up for discussion. The sub-commission's ensuing debate on sexual orientation revealed that the very term "sexual orientation" was unknown to the majority of the MPs. The debate was rather short, and Sözüer was able to convince sub-commission members by focusing on examples of discrimination against male transsexuals and transvestites, which is more publicized in the Turkish media than discrimination against gays and lesbians.<sup>37</sup> In the sub-commission, discrimination against gays and lesbians was not raised, and the brevity of the debate was the first indication of the silence that was to come as the Minister of Justice canceled the revision four months later at a Justice Commission meeting on penal code reform. While it may be said that defending the argument on sexual orientation based on transgender issues was a strategic move as it used the higher visibility of transgender people in the media, I would argue differently. In my view, the silence around gay and lesbian issues reflects the monumental anxiety in Turkish society around homoerotic desire; it is easier for many to address violence against transgendered people than face issues of gay and lesbian sexuality. Transgender issues are perceived in the final analysis as more accommodating to the heteronormative paradigm.

While the media reported extensively on other penal code revisions, the initial acceptance of the criminalization of discrimination based on sexual orientation garnered only brief mention in a few liberal newspapers. However, the headlines in the religious conservative media accused the AKP of protecting homosexuals while failing to lift the ban on female students wearing the headscarf at universities.<sup>38</sup> The comparison of these two issues was not only based on religious conservative sentiments, but was also aimed at mobilizing the religious community in Turkey against the right to sexual orientation. The lack of women's right to wear *hijab* at universities is one of the major political issues targeted by religious conservatives and is a hotly debated topic. Although the AKP has made several attempts to lift the headscarf ban at the universities since its election, its efforts remained fruitless due to fervent opposition from the secularists, including CHP and Turkey's President, Ahmet

<sup>37</sup> The increased attention of the media to transvestites and transsexuals in Turkey is due to the visible and widespread police violence exerted on transvestites and transsexuals involved in sex work and their more forceful advocacy efforts on discrimination compared to gays and lesbians.

<sup>38</sup> Yılmaz, M. (2004, February 7). AKP Nereye? (Where is AKP going?). *Milli Gazete*.

Necdet Sezer. The failure of AKP to lift the ban remains one of the strongest criticisms against the party by voters.<sup>39</sup>

While LGBT organizations cheered the initial inclusion of the revision, women's organizations, experienced in the complexities of legal reform and the political system, were more skeptical and warned LGBT organizations that the issue was not yet settled. Lambda Istanbul and KAOS GL organized a delegation to visit parliament and lobby members of the Justice Commission in May 2004, the first visit of an LGBT group to the Turkish parliament. This resulted in the first widespread coverage by the liberal media on the criminalization of discrimination based on sexual orientation since the start of the campaign. Although the delegation hoped to meet all members of the Commission, they were received only by Orhan Eraslan from CHP, which was used against him by the AKP in his electoral province. AKP disseminated photocopies of the press clippings covering Eraslan's meeting with LGBT delegates to even the most remote villages, accusing him of working for homosexuals rather than for his voters. Although Eraslan claimed that he had the support of his CHP colleagues, his remarks to the press reflect the unease he felt as the only MP who agreed to meet homosexuals: "Being a democrat means, however, to listen to the opinions of those who are different, and to reflect on them. The fact that I agreed to meet them [homosexuals] does not mean that I agree with their demands. I did my duty as a member of the sub-commission."<sup>40</sup>

As stated earlier, the revision on discrimination based on sexual orientation was ultimately removed from the draft law in May 2004 by the Minister of Justice, who argued that since the term "sexual orientation" was similar to the term "sex," which is mentioned in Article 10 of the Turkish Constitution on equality, there was no need for such an article in the penal code. The only objection to the Minister's withdrawal of the revision came from Eraslan, who elucidated the difference between "sex" and "sexual orientation." The Minister insisted that they were similar and the revision was cancelled without further discussion by a majority vote, including the votes of several other CHP members of the Justice Commission.

<sup>39</sup> Faced with strong opposition from the establishment in Turkey, AKP hoped to resolve the issue through a ruling of the Strasbourg-based European Court of Human Rights (ECHR). However, in June 2004, the ECHR, in *Leyla Sahin v. Turkey*, unanimously ruled that the university's headscarf ban did not infringe the European Convention on Human Rights, a ruling that was sharply criticized by the AKP.

<sup>40</sup> (2004, May 25). TCK'yi Bizi de Korumayacak Şekilde Düzenleyin (Revise the Penal Code so that it will protect us too). *Vatan*.

Explanations for the cancellation of the initially accepted demand on sexual orientation differ. While CHP members Eraslan and Erbatur, who worked diligently on the reform, think that the AKP's Islamic identity and pressure from radical Islamists and the religious conservative media were to blame, representatives of LGBT organizations said they did not see much difference between the views of AKP and CHP on sexual orientation. Arguing that neither AKP nor CHP had an established political position on the issue, Öner Ceylan, a representative of Lambda Istanbul said, "We as homosexuals think that the leftists are just as harmful to us as the religious extremists. Maybe it's different for women or other groups, but ... from our perspective there is no difference in the unconscious homophobia of all parties, even if they wouldn't say that they are against homosexuals... The only party that I see as a threat is not AKP, but the nationalist MHP (the Nationalistic Action Party)."<sup>41</sup>

All representatives of LGBT organizations interviewed by the author have indicated that they do not perceive Islam or the religious conservative identity of AKP as the major reason for the rejection of the proposal on sexual orientation. They argue that widespread homophobia in Turkey, patriarchal ideologies on the part of all political parties, the traditional government attitude of ignoring the existence of the LGBT community and thus LGBT human rights, and lack of sufficient preparation by LGBT organizations for the campaign, were the key factors in the failure to adopt the article on sexual orientation.<sup>42</sup> Ali Erol, a representative of *KAOS GL* suggests an analysis based on class issues as well, as evidenced by the varying reactions of the Islamist media in Turkey to the sexual orientation proposal. Erol said, "While newspapers like *Zaman* or *Yeni Şafak*, which are close to the AKP government, chose to ignore the issue, *Vakit* demonstrated hate and profanity against homosexuals... *Zaman* or *Yeni Şafak*, which represent the Islamists who are adapting to middle-class urban life in Turkey, are aware that they cannot control the lives and behaviors of everybody and that they should give up such claims, even if reluctantly. *Vakit* on the other hand expresses the Islamist reaction of people from the poorer and lower middle classes, who are left out of the political and economic system. This is why *Vakit's* rhetoric demonstrates rage and hatred."

<sup>41</sup> Author interview with Öner Ceylan from Lambda Istanbul, December 8, 2005.

<sup>42</sup> Author interviews with Öner Ceylan and Ülku Özakin from Lambda Istanbul, December 8, 2005, and Ali Erol from Kaos GL, December 16, 2005.

Despite the failure of the campaign to criminalize discrimination based on sexual orientation, the representatives of LGBT organizations agree that the campaign has been an influential and successful step in raising consciousness on sexual orientation, leading as it did to a first-ever discussion of the issue in parliament and the first lobbying effort of parliament by members of the gay, lesbian, and transgender communities. Indeed, there is concrete evidence that the campaign has influenced public policy on sexual orientation in Turkey. In September 2005, the Attorney General of Ankara declined an application by the Department on Associations for a court case against *KAOS GL*. The application stated that the very existence of *KAOS GL* had violated Article 56 of the Turkish Civil Code stipulating that an association against law and morality cannot be established. In its rejection of the application, the Attorney General referred to the parliamentary debate on sexual orientation and stated that “...while the concept of morality includes a notion of subjectivity and varies according to different societies, and at a time in which discrimination against sexual orientation is debated within the context of the reform of the Turkish Penal Code, it is determined that being a homosexual does not mean being immoral and the reality should be based on a notion of freedom of human will, as experts on ethics concur.”<sup>43</sup>

The first time collaboration of the women’s movement with the LGBT movement on an issue regarding sexual orientation is also perceived by LGBT organizations as very important, though some members express doubt as to whether this will continue and question the sincerity of the support from some of the women’s organizations. According to Erol, “While the [Women’s Platform] as a whole expressed its demand on sexual orientation in a strong manner, emphasizing its absolute significance, this does not mean that all women’s organizations in the [network] have made sexual orientation a priority... Some women’s organizations ignored the issue entirely in their panels and conferences related to the campaign, as we witnessed in Ankara, although it was included in the public declarations of the Women’s Platform.” The evolving relationship between women’s organizations and LGBT organizations will be a critical determinant of the strength and the future of struggles around sexual rights in Turkey.<sup>44</sup>

<sup>43</sup> The Press Office of the Ankara Attorney General, Press Decision No: 2005/1491.

<sup>44</sup> For more on women/LGBT alliances, see also in this publication: Girard, F., Negotiating sexual rights and sexual orientation at the UN, pp. 341-352; Vianna, A. R. B. & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, pp. 47-49; Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, p. 117; Cáceres, C., Cueto, M. & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false promises, p. 154.



## Re-criminalizing adultery

After the parliamentary summer break in 2004, just weeks before the new draft law on the Turkish Penal Code was expected to win approval, a development occurred that threw the entire debate into chaos. A headline in *Hürriyet*, Turkey's most renowned mainstream newspaper, announced an AKP government proposal to add a clause to the penal code criminalizing adultery. This surprise move — as mentioned at the beginning of this paper — sparked an intense debate that split the nation in two, irrespective of traditional, political, or ideological positions. The government based its argument to re-criminalize adultery on the alleged demands of “the Anatolian woman” (women living in rural areas).<sup>45</sup> This argument aimed to ameliorate the AKP's image as unsupportive of women, which had resulted from the Campaign on the Turkish Penal Code from a Gender Perspective, and at the same time reiterated the religious conservative claim that the women's groups in the Women's Platform network were marginal and unrepresentative of the nation's women.<sup>46</sup>

Both the AKP and the CHP appeared split over the issue.<sup>47</sup> CHP members signaled an initial acceptance of the revision, provided men would face the same penalties as women, but later changed their position after strong criticism from its women MPs and women's groups, who were the first to react.<sup>48</sup> Within the AKP, the coalition in favor of the revision was led by Prime Minister Erdoğan, a devout Muslim, and included the Women's Minister and all other women MPs, as well as a majority of the male MPs. The Minister of Justice and AKP members from the sub-commission that had prepared the draft law on the penal code opposed the revision behind closed doors. While the debate on other issues related to sexuality in the penal code ran mainly on the national level during the three-year campaign, the criminalization of adultery carried the debate to the international level. The move met with sharp criticism from EU officials, who were expected to issue a crucial appraisal of Turkey's progress towards EU standards within the month.<sup>49</sup>

<sup>45</sup> Korkmaz, S. (2004, August 28). Here is AKP's justification for adultery (İşte AKP'nin Zina Gerekçesi). *Hürriyet*.

<sup>46</sup> This was an oft-repeated argument against the Women's Platform in the extreme religious right press throughout the campaign.

<sup>47</sup> Şahin, Ö. (2004, September 1). İktidar ve Muhalefet Toplum Kulak Verdi: Zina tekrar suç kapsamında (The government and the opposition listened to the public: Adultery criminalized again). *Zaman*.

<sup>48</sup> Doyle, C. (2004, September 2). Women Attack Turkey Adultery Law. BBC News. <http://news.bbc.co.uk/1/hi/world/europe/3623072.stm>

<sup>49</sup> The European Commission was expected to issue a crucial report to the European Union on October 6, 2004, stating its view on whether or not to open accession negotiations. This report would serve as the basis of discussions at the EU Brussels Summit of December 17, 2004, where the final decision over Turkey's accession was made.

The initial draft Penal Code prepared by the AKP government contained no provisions on adultery. Moreover, the issue had not arisen during the three-year campaign on the Penal Code, except for a proposal made by one AKP MP in October 2003 that didn't attract any support at the time, even within AKP circles.<sup>50</sup> Thus, the AKP's last minute attempt to criminalize adultery and the Prime Minister's personal efforts to promote this despite national and international criticism, hint at an extemporaneous political strategy aimed at stirring up the religious sentiments of voters and upholding Islamist identity at a moment of heightened sensibilities around national identity in the context of the pending decision on Turkey's accession to the EU. Interviews revealing that the attempt came as a surprise even to AKP members of the sub-commission confirm the impression that this move was a political strategy employed by the Prime Minister, rather than a reflection of any genuine interest in criminalizing adultery as part of AKP's agenda.<sup>51</sup>

The debates on adultery covered a wide range of issues: the extent to which the state has a right to intervene in the private sphere; the alleged differences between rural and urban women; the meaning and content of so-called Turkish values; the role of Islam in Turkey; the assumed threat of *shari'a*; whether European culture and values were compatible with Turkey as a Muslim nation; and whether the AKP was an Islamist party aiming at *shari'a* or a religious conservative party in the European sense.

Finally, in contrast to all other issues debated at the national level during the campaign, the AKP government was forced to withdraw its proposal on criminalizing adultery. The withdrawal was not a result of national debate, but due to pressure from the EU, although the AKP insisted until the last moment that the EU had no right to intervene in such an issue, an argument that had never been made in a European Convention or accession agreement.

The fierce debates around adultery between the EU and Turkey that nearly led to the rejection of Turkey's full membership in the EU, is an example of the significant role sexuality plays in political struggles and constructions of national or religious identities.

<sup>50</sup> Ahmet Büyükakkaşlar, an AKP MP, made the proposal. See Adultery should become a crime again. (October 8, 2003). *Yeni İleri and Hürriyet*.

<sup>51</sup> For another example of political manipulation of women's sexuality in relation to EU accession, see also in this publication: Nowicka, W., The struggle for abortion rights in Poland, p. 172.

## Conclusion

The reform of the Turkish Penal Code in 2004 as a result of a three-year campaign by a broad coalition of women's organizations and two LGBT organizations included drastic changes related to sexual and bodily rights in Turkey, despite the opposition of the religious conservative AKP government. The Campaign for the Reform of the Turkish Penal Code from a Gender Perspective was successful in revising more than 40 articles in the Turkish Penal Code, ending all varieties of legal categorization of women on the basis of virginity and marital status, and instituting a groundbreaking shift in the overall perspective of Turkish Penal Law towards sexuality and gender. The major revisions included the redefinition of sexual crimes as crimes against persons and sexual inviolability instead of as crimes against society and public morality, the recognition of women's ownership of their bodies and sexuality, and the removal of all references to "chastity," "honor," and "virginity."

The most contested discourses during the campaign emerged as those related to extramarital sexuality: honor, virginity, sexual relations of youth, and sexual orientation. The religious conservatives based their defense of legally regulating women's sexuality on the notions of women's honor and virginity as elements of Turkish identity that should be protected by law. This discourse is in line with the ideology of the founders of the new Turkish Republic; in an effort to abolish religious and customary laws of the Ottoman Empire and establish a modern, secular republic, they translated religious and customary laws, norms, and discourses into a new language subsumed under the notion of "public morality." This new language was constructed around such values as gendered notions of honor, virtue, and purity, vested in women as the primary guardians — through their chastity — of the nation's morality at a time of political and social transition. Thus, the debate on honor and virginity during the campaign shows not only that this ideology continues to be influential in Turkey despite 80 years of modernization and progress, but also that it is now employed as a key rhetorical device by religious conservatives in order to restrict women's ownership of their bodies and sexuality.

The insistence of the social democrats on criminalizing consensual sexual relations between youths and their relative silence on the issue of sexual orientation, show that these issues remain taboo in Turkey above and beyond the ideological differences between conservative or

progressive political parties. The analysis of the debates around sexual orientation during the campaign and interviews with MPs who played a major role in the reform process show that the lack of public and political awareness around sexual orientation contributed significantly to the rejection of the demand for criminalization of discrimination based on this ground. The relative openness of some MPs to the protection of transgender rights compared to the silence around gay and lesbian issues also suggests that homoerotic desire as manifested by gays and lesbians, which threatens the heteronormative model radically, triggers a higher social anxiety than that created by sexual minorities who are perceived as conforming to the traditional binary modalities of heterosexuality.

However, despite parliament's rejection of demands concerning youth sexuality and the right to sexual orientation, subsequent debates around an appeal to a higher court to cancel the article criminalizing voluntary sexual relations between youths, and a court ruling against a plaintiff aiming to shut down an LGBT organization, were significant in creating public and judicial consciousness on these issues.

The debates generated by the AKP's attempt to re-criminalize adultery, in order to bolster its religious conservative identity just weeks before a parliamentary vote on the new Penal Code and the final decision on Turkey's accession to the EU, and the withdrawal of the proposal as a result of strong opposition from EU officials, are reflective of the centrality of issues related to sexuality in the political struggles around culture and identity politics both on national and international levels.

The Campaign for the Reform of the Turkish Penal Code from a Gender Perspective, aiming at a fundamental transformation of its philosophy, prompted the widest public debate on gendered notions of sexuality and sexual rights in Turkey since the foundation of the modern/secular Turkish Republic in 1923. Yet, given that there are three bodies of law that potentially apply to sexual activity — the constitution, civil law and criminal law — the concentration of advocacy for sexual rights within the context of criminal law will have a limited effect in establishing such rights in Turkey. There also needs to be advocacy and lobbying to anchor sexual rights in the constitution and civil law, and beyond that, in popular culture and imagination. The future success of this advocacy seems to depend on the strength of

coalitions between those struggling for the realization of sexual rights, namely the women's and LGBT movements as well as human rights groups.

The new Turkish Penal Code is the first example of a comprehensive reform of sexual and bodily rights in the legal domain in Muslim societies. The success of the campaign, despite a governing Islamist party, can be an inspiration for other activists working on sexual and bodily rights under conservative governments, especially those in a stage of socio-political transition like Turkey.