

Chapter 19

HONOUR KILLINGS AND THE LAW IN TURKEY

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INTRODUCTION

Since the beginning of the 1980s, violence against women in Turkey has become a focal point of the organized women's movement. Over the past ten years, the women's movement has succeeded in mobilizing broad public support to counteract this form of violence. The media has meanwhile engaged in critical reporting on this topic, and feminist-political activities are receiving more attention and support than ever before. Violence against women in Turkey, as in other parts of the world, takes various forms that defy simple classification. The definition given by Watts/Zimmerman¹ covers the pre-birth phase (e.g., gender-selective abortion), the early childhood phase (e.g., female infanticide), and all the later occurring forms of physical and psychological violence committed by the victim's current or previous partners or family members of either gender, notably:

- Coerced sex,
- Rape,
- Sexual abuse including harassment,
- Deprivation of medical treatment or education,
- Murder, especially by poison,
- Murder in the name of family honour (the so-called "honour killings").

This chapter limits itself to the last in the list, namely "honour killings".

In 1993, the General Assembly of the United Nations passed its Declaration on the Elimination of Violence against Women, defining gender-specific violence as "... any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological

¹ Charlotte Watts and Cathy Zimmerman, 'Violence against Women: global scope and magnitude,' *The Lancet*, 359 (2002): 1233.

harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life².

In Turkey, honour killings, which constitute concrete acts of violence against women, respond to a wide variety of motives, notably: an out-of-wedlock pregnancy, a marriage unaccepted by the family, a love affair outside of marriage, a visit to a cinema in the company of friends, a love message to a current or potential lover, rumours of dishonourable conduct, the wish to divorce, the forfeiture of a woman's honour after rape. The distinguishing feature of honour killings is the concept of family honour—irrespective of whether the woman is married or single. Within the concept, not only closely related family members, including half-brothers and half-sisters, but also distant relatives can become honour 'safeguards'. It is important furthermore to understand that honour killings are not limited to fundamentalist Islam and feudal society structures to be found in the south-eastern regions of Turkey. The fact that honour killings are committed among many Turkish migrant families in Europe and that family honour is now the primary motive for violent acts against women in large Turkish cities, despite modern economic living standards, shows why a simple socio-economic or religious explanation for honour killings is not sufficient.³

This chapter, while not attempting a sociological analysis of the causes of these acts⁴ or of the counter-measures employed,⁵ examines the laws regarding murder committed in the name of honour and the exculpatory clauses that remain in the Turkish Penal Code after the 2005 reform. A comparison will be made with the norms of the former Penal Code, while public opinion and decisions of the Court of Appeal will also be examined.

CONFLICTING INTERPRETATIONS OF THE PREVIOUS PENAL CODE (1926-2005)

The previous Penal Code placed crimes against the sexual integrity of women and children (rape, sexual coercion, sexual abuse, kidnapping for sexual motives, etc.) under the title 'Crimes against public morality and the family.' As such, the concept of honour was made out to be a public good that sought to protect not only the interests of the individual but also the interests of all members of the family affected by the action. This interpretation held sway from the time of the enactment of the previous law in 1926 until the new penal code went into effect on 1 June 2005.

Article 462, which was finally removed in July 2003 in order to satisfy the EU legal adaptation, served as the standard norm relating to honour killings. The norm carried the

² 'Article 1 of the Declaration on the Elimination of Violence against Women,' UN General Assembly Resolution 48/104 of 20 December 1993.

³ See also Purna Sen et al., 'Violence against Women in the UK (CEDAW Thematic Shadow Report 2003),' Womankind Worldwide, <http://www.womankind.org.uk/upload/CEDAW-report.pdf>, p. 23.

⁴ See for such analysis: Ayhan Sev'er and Gökçe Yurdakul, 'Culture of Honour, Culture of Change. A Feminist Analysis of Honour Killings in Rural Turkey,' *Violence Against Women Journal* 7 (2001): 966-1000; Radhika Coomaraswamy, 'Integration of the Human Rights of Women and the Gender Perspective,' UN Economic and Social Council, E/CN.4/2002/83, 31 January 2002; Ayhan Sev'er, 'In the name of fathers: Honour Killings and some examples from south-eastern Turkey,' *Atlantis* 30 (2005):129-145; Yakin Ertürk, 'Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human Rights Council",' UN General Assembly, A/HRC/4/34/Add.2, 5 January 2007.

⁵ See among others, Filiz Kardam, 'The Dynamics of Honor Killings in Turkey. Prospects for Action,' UNDP/UNFPA, November 2005.

subtitle ‘*in flagranti* situation: exceptional, severe provocation’ (a special norm of *unjust provocation* in §51 of the Penal Code) and allowed for sentence reduction for homicide and assault and battery crimes in *in flagranti* situations. These crimes could be committed against wives or husbands, sisters (but not brothers), or descendants of the assailant or partners of the above. Only wives or husbands, parents and sibling—*independent* of their gender – could benefit from the sentence reduction. An additional element of that crime was the direct *in flagranti* situation, in which the timeframe might be extended from the moment before or after sexual intercourse, as long as there was no doubt about the deed. It did not matter whether the victims of the crime were married or single. According to this rule, the sentence would be reduced to 1/8 the normal penalty, since the law considered the *in flagranti* situation as an exceptional, severe provocation for the offender.

Some authors claim that extramarital sexual intercourse on the part of adult unmarried daughters or sisters did not in that period constitute an unlawful act and should not, therefore, be considered as unjust provocation. In the case of adultery, laws concerning unjust provocation should have applied, which in reality invalidated a special rule such as §462.⁶ Of particular interest is the creation of a direct link between §462 and unjust provocation, which were understood as interlinked norms, as a general rationale for mitigating guilt (§51).⁷ Thus, a crime ‘committed out of rage and pain over an unjust provocation’ (§51) is linked with the honour concept relating to the family as well as the sexual autonomy of individuals.⁸

This perspective was also adopted by the Court of Cassation. Instead of applying the special rule of §462, the general sentence reduction rule (§51) was applied in principle, and in crimes in the name of honour an automatic sentence reduction was carried out. This is connected not least with the widely held understanding of provocation and the closely linked concept of honour in judicial opinion. The facts that most victims are female and most offenders are male suggests that female sexuality both within and outside marriage are understood to be a family good, a guiding societal principle of morally permissible behaviour. The decisions of the Court of Cassation (Yargıtay) between 1975 and 2003, which were chosen because of the application of (as well as reference to) §51 and §462, point clearly to this connection. In the resulting jurisdiction, the concept of honour is not viewed in connection with religion, but rather indicates culturally specific forms of gender roles in which women are assigned moral behavioural models.

A broad definition of honour killing has been used for this analysis of jurisdiction of the Court of Cassation. Briefly summarized, the criteria can be presented as follows:

- The victims were killed by family members, understood in a very broad sense. Here the perspective of the perpetrator is especially noteworthy. In one case, the General

⁶ Sahir Erman and Çetin Özek, *Ceza Hukuku Özel Bölüm. Kişiye Karşı İşlenen Suçlar* (Penal Code Special Part. Crimes Against Persons) (İstanbul: Alfa, 1994), 154.

⁷ §51 of the former Turkish Penal Code: ‘If someone perpetrates a crime under the influence of rage or severe suffering produced by an unjust provocation and such crime is found to require punishment of death, he or she is sentenced to the grave punishment of life imprisonment, ...’ (even though the authors used the term ‘unlawful provocation’ it seems more proper to use the term ‘unjust’ regarding the jurisdiction of the Court of Cassation. See for the English translation of the Penal Code regulations ‘The Success of the Campaign for the Reform of the Turkish Penal Code From a Gender Perspective’ (Summary Outcome Report), p. 7. (<http://www.wwhr.org>) (last accessed 11 February 2007). (Emphasis added by author).

⁸ See Faruk Erem, *Türk Ceza Kanunu Şerhi. Özel Hükümler Cilt. 3* (Comment on Turkish Penal Code. Special Part, Vol. 3) (Ankara: Seçkin, 1993), 2132.

Criminal Division of the Court of Cassation granted sentence reduction to a man who lived on the same street and came from the same small town as the girls who were molested, since he – as a ‘countryman’ (in this sense, ‘part of the larger family’) – had suffered significant pain and rage resulting from the dead man’s assault on the girl.⁹

- Although the majority of victims of honour killings are women, their partners or, in the above-mentioned case, their molesters can also be victims. Since the ‘honour of the woman’ as the subject of protection is the focus of all these cases,¹⁰ such crimes against male victims should also be considered as honour killings.
- The perpetrators were not restricted by age or gender since, although most of them are male and generally minors, there are also cases in which women committed the crime. Particularly in the case of honour killings determined by the tribal council or family assembly, minors are often contracted since they receive reduced sentences due to their age. However, neither a formal decision by a tribal council or family assembly nor the young age of the offender is a decisive criterion.

The established jurisdiction of the Criminal Division of the Court of Cassation defined unjust provocation (§51) as a crime of the perpetrator, which he/she committed under the influence of rage and pain, without premeditation.¹¹ However, despite an attempt to restrict unjust provocation, the Court of Cassation interpreted this norm quite broadly in connection with the concept of honour and applied honour as a general, almost arbitrary justification. The Court assumed a fundamental societal consensus on the meaning of honour. Accordingly, this (fictional) consensus regarding the perpetrator-victim relationship was always applied in favour of the perpetrator and taken as justification for sentence reduction. Bearing this in mind, one cannot speak of the Court of Cassation having a forward-thinking societal function.

THE LEGAL FRAMEWORK FOR THE PROTECTION OF WOMEN

The most important UN-level convention designed to level the field for men and women, namely the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, was ratified by Turkey on 14 October 1985; the Optional Protocol of 2000 was subsequently ratified on 18 September 2002. Turkey’s only reservations concerned CEDAW’s Article 29, paragraph 1 and Article 9, paragraph 1.¹² The original reservations of 20 December 1985 relating to the regulations of the Turkish Civil Code were lifted following the major legal reform in 2001, when the domestic laws were modernised.

In 1995 Turkey took part in the Fourth World Conference on Women held in Beijing and continues to participate actively in the resulting Action Plan ‘Beijing+5 Process and

⁹ Yargıtay Ceza Genel Kurulu (General Criminal Division of the Court of Cassation), E. 1989/1-133, K. 1989/192, T. 22.05.1989, *Yargıtay Kararlari Dergisi*, Cilt: XV, Sayı: 10, Ekim 1989, p. 1468-69.

¹⁰ Exceptionally, women set a measure in this case, but one cannot argue that means an equalization with men! See for discrimination in law Sandra Fredman, ‘Discrimination,’ in *The Oxford Handbook of Legal Studies*, ed. Peter Cane and Mark Tushnet (Oxford: Oxford University Press, 2005), 202-225.

¹¹ General Criminal Division of the Court of Cassation, E. 2003/1-173, K. 2003/198, T. 24.06.2003; E. 1990/1-176, K. 1990/194, T. 25.06.1990; E. 1989/1-99, K. 1989/159, T. 24.04.1989; E. 1989/1-55, K. 1989/113, T. 20.03.1989; Y4.CD E. 1993/5283, K. 1993/6515, T. 05.10.1993.

¹² See <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (accessed on 11 February 2007).

Beyond.¹³ Within this framework, Turkey presented a report to the UN in 1997; a follow-up report promised for 2005 has not yet been delivered. The Beijing Action Plan explicitly covers violence against women in the name of tradition and clearly states that the abuse of women's rights is equivalent to the abuse of human rights.¹⁴ In the UN General Assembly's Resolution of 30 January 2003, the member states were again called upon to address honour killings, to take appropriate measures, and to refuse to allow religious and cultural values as justification for such acts.¹⁵

The campaign between 2002 and 2004 of the Turkish network Women for Women's Human Rights (WWHR) for a gender-equal Penal Code reform should be considered within this framework.¹⁶ The network, which included NGO representatives, lawyers, and researchers from various universities, submitted to Parliament a model bill for a penal code with full gender equality. The new version of the penal code owes much to the network's activities. However, the new regulations concerning honour killings and unjust provocation cannot yet be considered a triumph for the women's organisations.

THE NEW PENAL CODE (AS OF 1 JUNE 2005): §29 UND §82

With the help of the above-mentioned campaign of the WWHR, the active efforts of some members of the Parliament, as well as public debate, the regulations on unjust provocation were changed (§29)¹⁷, and murderous crimes in the name of 'custom' (in Turkish: *töre*) were entered into the catalogue of major-sentence crimes (§82/k).¹⁸ Thus, manslaughter for custom reasons as well as killings for 'blood revenge' were classified as murder and given tougher sentences. However, the wording, the method and the lawmaker justification for the changed regulations call for caution in the application of these norms through the courts. Up to now it cannot be shown that tougher sanctions have had any impact in reducing honour killings. As such, scepticism regarding current jurisdiction is called for.

The reservation has to focus on the wording of the new norm. With help of the differentiation between 'honour killings' and 'murder in the name of "custom"', the lawmakers attempted to restrict the extent of tougher sanctions in the case of murder in the name of honour. As such, violent acts committed in the name of honour should not be completely banished from the legal system since, as shown above, the jurisdiction of the

¹³ At the 23rd special session of the General Assembly on 'Women 2000: gender equality, development and peace for the twenty-first century' which took place on 5-9 June 2000, a Political Declaration and outcome document entitled 'further actions and initiatives to implement the Beijing Declaration and Platform for Action' was adopted. See for the assessment of the implications of the Political Declaration and 'further actions and initiatives to implement the Beijing Declaration and Platform for Action' the Report of the Secretary-General (A/55/341).

¹⁴ 'Actions to be taken by Governments: (g) Take urgent action to combat and eliminate violence against women, which is a human rights violation, resulting from harmful *traditional or customary practices, cultural prejudices and extremism*' (Emphasis added by author).

¹⁵ UN General Assembly Resolution No. A/RES/57/179 (30.01.2003).

¹⁶ 'The Success of the Campaign for the Reform of the Turkish Penal Code From a Gender Perspective' (Summary Outcome Report). See <http://www.wwhr.org> (last accessed 11 February 2007).

¹⁷ §29 of the new Penal Code: 'A person perpetrating a crime while under the influence of emotional or physical suffering caused by an unlawful act is given punishment...' (Emphasis added by the author).

¹⁸ §82 of the new Penal Code with the subtitle 'aggravated homicide': 'In cases where murder with intent is perpetrated, k) by motivation of custom, the perpetrator is punished with the aggravated punishment of life imprisonment.' (Emphasis added by author).

Court of Cassation as well as the lawmakers consider the current honour codices of society as facts to be accepted. The explanatory statement of the lawmakers covering §29 and §82 confirm this conclusion.

According to §82/k, manslaughter in the name of ‘custom’ now counts as murder. Although the representatives of women’s organisations called for a more comprehensive formulation such as ‘in the name of honour,’ the challenge found no ear among the lawmakers. The lawmakers’ justification text for the norm—which for the application of the law is not binding, but as part of its historical interpretation will be taken into account—admits that the application of this norm is only possible ‘in the absence of an unjust provocation.’ This means then that the provocation clause, contrary to hopes, will continue to be applied for murder in the name of ‘custom’ (as well as honour killings). This justification is supplemented through §29 and the whole connection becomes clearer.

Still unclear is what is to be understood as murder in the name of ‘custom’ and which elements of crime are required to determine that an act as such constitutes a murder. According to public and parliamentary discussions, a murder in the name of ‘custom’ requires a decision by a so-called tribal council or family assembly, which names the victim and contracts the person to carry out the killing. It remains unclear who belongs to this council or assembly and whether the gender of the victim as well as the killer is meaningful in evaluating the elements of the crime. The concept of ‘custom’ suggests for Turkish circumstances a feudal background, which for many judges might mean a geographic limit (mainly the south eastern part of Turkey) for murder in the name of ‘custom’. Although both types of murder are characterized by a sexuality and lifestyle imposed on rather than self-selected by women, the sexual integrity of women will not be protected fully through the rules of the new Penal Code.¹⁹

Since the new Penal Code has come into effect, new ‘forms’ of honour as well as ‘custom’ murders have emerged. Instead of contracting a family member to commit a murder, the victims are forced into suicide, and in most cases, the circumstances surrounding the suicide are not even investigated. Although such criminal circumstances are foreseen in §84 of the Penal Code, they do not constitute aggravated murder.

According to the new rules of §29, a perpetrator can benefit from sentence reduction if the motive for the crime was of rage or pain resulting from an unlawful act. The definition of ‘unlawful act’ is decisive for the application of the law. In the justification given by the lawmakers, it was revealed that honour as well as ‘custom’ murders (in this, both terms were used synonymously) played a major role in the reformulated rule. Thus the clause allowing sentence reduction in the case of interfamily killings was stricken. It has been further clarified that the factual circumstances surrounding a potential victim may not be deemed an unlawful act. Still, the example provided by the lawmakers makes it clear that they still hold a very specific idea of honour and that the Penal Code reform was able to offset only a small part of the abuse. According to the example presented, the perpetrator may not claim an unlawful act and provocation if the victim were no longer considered ‘pure’ because of rape and the family

¹⁹ According to one newspaper report, many perpetrators recognize the loophole in the law and use this improper differentiation to their benefit. In an actual case, 20-year-old Gülistan Gümüş fled from her husband and sought shelter at her parents’ home. When her husband came to her parents’ house with seven of his relatives, Gülistan hid in a chest in which she was shot numerous times. In his defence, the husband claimed he had committed the murder in the name of ‘honour’, in which ‘custom’ had played no role. Therefore, his crime could not, according to §82, be considered as aggravated murder (*Radikal*, 21.12.2006).

felt itself under attack because of these circumstances, since the rape itself was not an act targeted *directly against the perpetrator*. The killing of a female family member who is rendered ‘dishonourable’ after being raped is therefore not covered by §29. However, if an unlawful act (by which is meant an *unjust act* as in the former Penal Code) has been directed against the perpetrator, the possibility is presented to apply this norm. The logical conclusion of this justification would be that adultery, out-of-wedlock sexual relationship or a women’s request for divorce could be understood as *unlawful* behaviour having a direct impact upon the perpetrator. The above-mentioned Court of Cassation decisions support such an assumption.

Given that the norms have been applied only in the first instances of jurisprudence since the new Penal Code took effect on 1 June 2005, and no Court of Cassation decision has been reached, it remains to be seen whether the Court will develop a more progressive opinion on the question of the concept of honour.

CONCLUSION

That murder in the name of ‘custom’ has been classified as an aggravated crime in the new Penal Code is a welcome development. Still, in light of the fact that the main focus of penal regulations should lie in the prevention of all violence against women, the more general concept of ‘honour killings’ must also be considered in the law.

In order to guarantee the effective application of such a norm, a clear provision about the connection with unjust provocation should be foreseen (§29). A clear prohibition of the application of the sentence reduction norm in all cases making reference to the concept of honour would ensure sufficient clarity, because, up to now, even actions that are not crimes or unlawful civil actions have been deemed unlawful behaviour. But legal norms alone cannot effect a change in societal attitudes. Only through interdisciplinary collaboration on various levels (from politics to social work to the courts) can the societal honour code as an excuse for violence against women be combated.

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