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Victims of Law: The Efficiency of Turkish Penal System on Honour Killings

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"our mothers, our lovers wives
who die without ever having lived,
who get fed at our tables after our oxen…"
Nazim Hikmet

Introduction

Penal laws are aspired to be explicit and precise to not onlyenlighten citizens about the acts acknowledged as ‘crime’ by the state, but also to prevent arbitrary implementations through restricting the discretion of judges.Honour killings, as a homicide type, in the former Turkish Penal Code havedemonstrated the consequences of the failure of this policy in a very tragic way. The former penal code used to provide numerous provisions allowing for sentence reductions at the honour killing cases. Such reductions used to be integrated with age reductions in that often the youngest member of the family committed the murder in order to benefit from all legal possibilities lessening the sentence. Accordingly, the former legal norms served to contribute in more than one way to rendering the punishment of an honour killing more bearable (Kocacioglu, 2004: 123).

With the new Penal Code, Turkey has totally changed his attitude against honour killings. The discriminative norms are sorted out; in particular the murder in the sake of honour (“custom” in the Code) has been regulated as matter in aggravation. The efforts of the women rights activists and changing role of Turkey in the region have been significant motives on the change in question.However, considering possible implementation issues, the new provisions are unlikely

satisfyingalbeit the radical changes.The law is not explicit about honour killings so it is possible to face the problems of the former penal code at the point of using the discretion given to judges. At this juncture, one can claim that the efficiency of the laws in question is left to the judicial decision makers.

In this essay, to shed some light on the honour killings in the criminal context of Turkey, some terms related to the honour will firstly be explained in order to depict what sense 'honour' makes in this geography. Having presented the legal framework on the issue, the legal steps achieved will be discussed in conjunction with the international instruments ratified by Turkey such asthe Convention on the Elimination of Discrimination against Women (hereinafter 'the CEDAW')and the UN resolutions on the issue. Finally, the significance of the implementation when it comes to honour killings will be articulated with further suggestions such as providing the participation of NGOs to the proceedings, and a conclusion will be reached.

Ambiguityof theTerms: Honour, Custom (*Töre*), *Namus and Seref* asTurkish Indigenous Concepts

Leyla Pervizat (2006: 306) mentions that how she was protested when she first started lobbying on the honour killings at the United Nations in 1998. Since honour in the west is considered as something good, valuable and positive, she used to be warned that she should "rename this violation or better choose her words carefully". The conceptual distinction between the western and eastern traditions is likely the underlying reason of this reaction. "In the West, honour is often defined as moral integrity, the esteem accorded to virtue or talent. Both the depth and the breadth of an eastern understanding of honour is very different (Sev'er and Yurdakul, 2001: 971 cited in Abu- Lughod, 1986)".Various words used in Turkish language are

such as to attest to this assertion. Besides the western meaning, we have two, particularly vital, words germane to honour: *seref* and *namus*.

Seref can be defined as social esteem or prestige of individual or family (Bilgili and Vural, 2011: 66), and thus represents an honour stemmed from an achieved status (Sev'er and Yurdakul, 2001: 972). "Namus, on the other hand, refers to the concept of the women sexualities, bodies, lives and individualities. [...] Although women are labelled with or without namus, actually the responsibility to keep it clean when it stained is with men. Men's actions to fulfil these responsibilities define whether he has *namus* or not (Pervizat, 2006: 297)". According to cultural mores, men cannot have *namus* per se, because their *namus* is always contingent upon the *namus* of their mothers, wives, daughters, and sisters (Sev'er and Yurdakul, 2001: 975).

In substance, in this traditional system, women are considered the property of the family rather than being individuals, and represent its *seref* or *namus*. By the same token, they are expected, for instance, to be virgins or in other words 'clean'when they marry. This cleanliness is so delicate that can be destroyed by the merest acts such as strolling alone in the town, flirting with a boy, or even asking for a love song on the radio. In such a situation, the cost of freedom and love that woman pay might bethe murder in the name of honour (Arin, 2001: 822-823).

The Concept of Honour Killings in the Former and NewTurkish Penal Codes

In the light of the terms explained above, in Turkey, the concept 'honour killings' literally corresponds to '*namus* killings'. However, neither the old Penal Code nor the new one does handle the notion *namus*(hereinafter 'honour'). When looking at the entire code, 'custom (*tore*) killings' is distinguished as a single term which

could be related withhonourkillings.Pervizat (2006: 298-299) articulates the distinction between two crimes, and reveals the significance of distinguishing them:

Firstly, she emphasizes the gender-based nature of honour killings. In the context of Turkey, honour killings are predominantly committed against women and girls who break the established societal norms. On the other hand, custom killings are the crimes arising from living in the feudal system.

> Although women and girls can be the victims in these custom killings, they are not the main targets. In other words, their lives, their sexualities, their bodies, and individualities are not the main issue here. What is important in the custom killings is the sustenance and continuance of the tribal system. In a very rough way of looking at things, in custom killings men kill other men (Pervizat, 2006: 298).

Accordingly, if the society progresses from the feudal system of living into more modernized form, custom killings might disappear but we could unlikely attain same consequence for honour killings. Men's desire to control women is a phenomenon that could be encountered in every social, political, and economic system (Ibid).

As for the significance of the honour versus custom debate in Turkey's context, Pervizat rightly states that while this misunderstanding sometimes derives from just sheer ignorance, it has often a racist perspective. Some people, thereby, can perceive the issue of honour killings as violence against women occurring only in Kurdish communities, wherethe feudal system is still dominating lives, in Turkey. As an honour killing advisor, BingulDurbas ("The Interview" 2011) points out that "linking honour crimes to Kurdish culture leads to the stigmatization of entire Kurdish communities and 'ethicises' honour crimes". She identifies honour killings as a particular manifestation of universal patriarchal violence against women and a means of controlling women's lives and thereby maintaining male control over women.

Throughout the former Turkish Penal Code, the law does not mention ‘honour killings’ explicitly. However, particular articles attest to some value judgments favouring the offenders of such killings.According to the former Penal Code (Article 453/1), the woman who killed her new-born childout of wedlock for inducement of rescuing her ‘*seref*’ was sentenced to from 8 to 12 year imprisonment by extenuating the punishment.

Another provision implicitly referring honour killings was theArticle 462, which set forth the reduction of the punishment at the cases that murder was committed in due course of catching victims committing adultery or illicit intercourse.

> This article was only abolished 2003 after great pressure from the EU, within the framework of the sixth harmonization package aimed at bringing Turkish legislation in line with EU legislation. The JDP government presented the cancellation of article 462 as a symbol of their determination to prevent honour crimes (Ilkkaracan, 2007: 9).

Through this article, such an understanding that people captured in due course of adultery deserve the murder was expressed, as well asthe discrimination between offenders was displayedin contravention of the Article 2 of the CEDAW which obliges state parties to repeal all national penal provisions constituting discrimination against women. Namely, if and only if the murderer was brother, his sentence would be reduced; no reduction would be applied if the murderer was sister (Centel, 2005: 11).

The new Turkish Penal Code that entered into force in 2005, after a successful campaign by women’s movements, has brought positive changes respecting the recognition of women’s sexual and bodily rights (Human Rights Watch, 2008: 46).

> The reform of the Penal Code has transformed the philosophy of the old Penal Code by acknowledging women’s right to have autonomy over their bodies and sexuality. [...] All references to vague patriarchal constructs such as chastity, morality, shame, public customs,

> or decency have been eliminated and definitions of such crimes against women brought in line with global human rights norms (Anil et al., 2005: 14).

Accordingly, the provisions exemplified above (Art. 453 and 462) are not included into the new code. Likewise the former code, the new code does not referred to honour killings expressly:however, killings in the name of custom (*tore*) is listed among the aggravating circumstances of a crime, and constitutes aggravated homicide that requires life imprisonment (Article 82/k).

New Government, New Penal Code: Steps in the Period of Change

Turkey has ratified a range of international instruments in order to enhance women's situation, particularly the CEDAW which is the only binding international legal instrument on the elimination of all forms of gender – based discrimination and the protection of women's human rights (The Statement of Selma Aliye Kavaf, 2010: 2). However, when it comes to women's human rights, it is essential to remember that the success of the policy is substantially up to the sincerity of the governments.As Shadow Report on the Implementation of the Istanbul Plan of Action (2009: 15) underlines, "although a few positive steps have been taken by the southern and eastern Mediterranean countries such as Turkey, and there have been amendments to penal and national laws and other legislation, some of these efforts were most likely motivated by political considerations and not by a commitment to fighting discrimination against women or achieving gender equality per se". Considering the efforts of Turkey for accession to the European Union for a very long time, the policy on the prevention of honour killings is also an exam for Turkey in terms of demonstrating his genuine intention.

As a noteworthydevelopment, The Turkish State did not hide behind its reservations to fully implement the CEDAW with regard to substantive issues. For instance, Turkey has never referred to the reservations in its reportsto the Committee as a justification of not implementing any part of the Convention. Furthermore, over the years the state consistently declared its intention to remove the substantive reservations to Article 15(2) and (4), and Article 16 (c) (d) (f) and (g) in line with the routine recommendations of the Committee to all state parties that have placed reservations, particularly to Article 16. Turkey withdrew the reservations in September, 2000 as she committed herself, in Beijing, to do so. (Acar, 2000: 207).

The Justice and Development Party (hereinafter 'the JDP') has taken office in 2002, and since then Turkey has started to take more active role at the United Nations (hereinafter 'the UN') including violence against women.

While determining the policy of the JDP on honour killings, the background of the issue at the UN should firstly be depicted.The first international attempt to propose the concerns about honour killings for the agenda was the Resolution 2000/31 on extrajudicial, summary or arbitrary executions adopted at the United Nations Commission on Human Rights (CHR) in its 60th session in 2000 by mentioning the crimes of honour in the preamble paragraph. Few months later, that the Outcome Document of the 23rd Special Session of the United Nations General Assembly (Beijing+5) referred to crimes of honour was a second important step for women human rights (Pervizat, 2000: 311-312).

The document in question obliges all state parties to "develop, adopt and fully implement laws and other measures, as appropriate, such as policies and educational programmes, to eradicate harmful customary or traditional practices,

including [...] so-called honour crimes (Paragraph 66/e), and “to increase cooperation, policy responses, effective implementation of national legislation and other protective and preventive measures aimed at the elimination of [...] crimes committed in the name of honour (Paragraph 96/a)”. The document emphasizes that honour killings is one of the violations of the human rights of women and girls, and an obstacle to the full enjoyment by women of their human rights and fundamental freedoms (Paragraph 66/e).

Finally, the resolution ‘*Working Towards the Elimination of Crimes Committed in the Name of Honour*’ was introduced by the Netherlands on November 1st, 2000 and adopted with 120 in favour including Turkey and 25 abstaining. In 2004, Turkey, with its intensive and effective lobbying, and the UK put the resolution to tender again, and succeeded in the adoption of it by all states. That this effort is Turkey’s first ever attempt at the UN on women issues, being main sponsor of the resolution with the UK, and the appointment of Professor Yakin Erturk as the UN Special Rapporteur on violence against women are explicit indications of Turkey’s changing face in the world (Pervizat, 2000: 313-315).

As Anil et al. (2005: 9-17) portrayed in their booklet, Women for Women’s Rights (WWHR) – New Ways (an NGO in Turkey) initiated the Campaign for the Reform of the Turkish Penal Code from a Gender Perspective immediately after the Civil Code reform, in 2002. The initiation and coordination of a national Working Group with the participation of representatives of NGOs and bar associations, as well as academicians from various regions of Turkey was enabled by WWHR – New Ways at the beginning of 2002. Having analysed both the Turkish Penal Code in effect and the 2000 Penal Code Draft Law, the group asserted that both of the regulations comprises ‘the same discriminatory, patriarchal perspective and

containsa myriad of provisions legitimising women's human rights violations'. The Working Group handled the draft law from a perspective aiming to transform the underlying philosophy of the Penal code, benefited penal codes from other countries, and prepared its recommendations including more than 30 amendments in the form of new articles. The recommendations and proposed articles in question were published as a report and sent to all members of the parliament (MPs), NGOs and media representatives in 2000. In due course of these legal studies, the General Assembly took a decision for early elections as an unexpected development after a political crisis in 2002. After the early elections and the victory of the religious right JDP, the booklet was sent to all MPs of the new parliament immediately, and an appointment with the new Justice Minister was asked, which he refused. JDP acted reluctant to cooperate with the Working Group, and ignored the recommendations concerning women in the process of the new draft. This attitude of the government led to launch of a massive public campaign during 2003-2004 through numerous conferences, meetings, press conferences in various cities of Turkey. The Group managed to voice their demands, and affected the Justice Commission after intensive advocacy efforts. Finally, the draft law was approved in the General Assembly on September 26th, 2004. However, despite the overall success of the Campaign, including the definition of honour crimes (not only so-called customary crimes) as aggravated homicide was one of the four demands of the groupwhich were not accepted.

The new Penal Code came into force in 2005. Since that time, The JDP government hasn't stepped on course to change the Penal Code on the issue honour killings albeit continual demands. Shadow NGO Report on Turkey's 6th Periodic

Report to the Committee on the Elimination of Discrimination against Women (2010)uttered the issue one more time:

> Article 82 of the Turkish Penal Code regulates Aggravated Homicide, and states that 'killings in the name of custom' instead of "honour killings" meets the conditions for aggravated homicide. The justification of the article provides the grounds for sentence reductions based on "unjust provocation". This hinders effective punishment of the perpetrators of "honour killings". Honour killings should be classified as aggravated homicide in Article 82, and all references to "unjust provocation" should be removed from its justification.

During the consideration of the 6th periodic country report of Turkey at the 46th session, Selma Aliye Kavaf, State Minister of the Republic of Turkey in Charge of Women and Family Affairs emphasises the regulations brought by the new Turkish Penal Code in order to meet the requirements of the CEDAW. She alsomentions that the new code has been criticised for not covering 'in the name of honour' statement albeit numerous significant steps. However, she insists that the crimes in the name of custom in the article concerning includes the concept of honour killings.

Implementation Issues

Uygur and Sancar (2005: 35) rightly points out the interaction between honour killings, legal norms and implementation:

> The origin of these crimes lies down not only in the religion and custom; legal norms (like Article 434 of the [former] Criminal Code) also encourage them. On the other hand, judges and other officials are influenced by custom, religion and morality. Thus, it may be expected that they reflect these in their decisions, in particular, when they use their discretion.

At the time of the former Penal Code, in practice, when it was not possible to apply Art. 462 for the killings in the sake of honour, the sentence reductions would be implied by applying the general provision of undue provocation. The World

Organisation Against Torture (OMCT, 2003: 354) also condemns this implementation inits report on violence against women in Turkey: “Because of the general social acceptance of honour as an extremely important element of Turkish culture, sentence reductions for the perpetrators of crimes committed in the name of honour are rarely challenged”. In a sample case that is given by Sev’er and Yurdakul (2001: 982), SevdaGok, aged 17, had publicly been executed in the market area by her adolescent cousin who cut her throat with a bread knife on the purpose of cleaning ‘the family honour’. Although this murder was premeditated and the cousin displayed no remorse, he was sentenced to only 7 year. Similarly, HacerFelhan was killed by his 13 year old brother using shot gun in that she escaped from home. Owing to his age and so-called provocation, his sentence was reduced to 10 years, but in fact he was released after serving 2 years (Sev’er and Yurdakul, 2001: 984 cited in Farac, 1998). The more tragic one for the Turkish Law was the decision of the court on his early release: “Although the accused killed his sister intentionally, due to her running away from the family he had been put under great social pressure, and committed the crime under mitigating circumstances” (Arin, 2001: 821). As for the genuine criminals behind the cases, i.e. the family members who decided the murder got the most ironic punishment: none!

With the new Penal Code, now it is harder for perpetrators of honour killings to utilize sentence reductions. However, according to women’s rights organizations, the reforms have fallen short.

> [...] there is no mention of killings justified in the name of *namus* (honour)—which may be exempted from the higher sentences for *tore* (custom) killings. Concern over this large loophole was expressed by the UN Committee on the Elimination of Discrimination Against Women: reviewing Turkey in 2005, it found that “the use of the term ‘custom killing’ instead of

> ‘honour killing’ in the Penal Code may result in less vigorous prosecution of, and less severe sentences for, the perpetrators of such crimes against women.” Yakın Erturk, the UN Special Rapporteur on Violence against Women, agrees: “With the law worded as *tore*, there is still room for interpretation (Human Rights Watch, 2008: 46-47).

According to Article 29 of the Penal Code that establishes sentence reductions for unjust provocation: “A person committing an offense with effect of anger or asperity caused by the unjust act is sentenced to imprisonment from eighteen years to twenty-four years instead of heavy life imprisonment, and to imprisonment from twelve years to eighteen years instead of life imprisonment. In other cases, the punishment is abated from one-fourth up to three thirds”.Due to the fact that honour is not specifically included as one of the aggravating circumstances, other provisions within the Code such as Art. 29 can still be used to lessen the sentences of the perpetrators of honour killings. Women’s rights groups in Turkey claims that this article implicitly “offers license to perpetrators of honour killings and legitimizes this violent tradition under the pretext of penal law (Human Rights Watch, 2008: 47)”.

As Yakin Erturk stated in her report (2007: 17):

> Legal practice will show whether the law, as it stands, sufficiently protects womenagainst all forms of “honour” murders. If the courts do not grasp the spirit of the reform and failto punish all murders aimed at controlling women’s sexuality or curbing their personal autonomywith the highest sentences, the legislative branch may have to revisit article 82 and amend it onceagain.

At this juncture, providing the NGOs with more active role regarding the law of procedure could be an effective step so as to enable a fair proceeding without perverting the course of justice.

Conclusion

TheParliamentary Commission on Inquiry on Honour and Custom Killings called for the rate of honour and custom killings in the entire killings committed in 81 provinces from the Security General Directorate. According to the research, 1091 murder cases occurred between 2000 – 2005 by reason of honour and custom (Bilgili and Vural, 2011: 69).

As uttered in the Report of the Special Rapporteur on Violence against Women byMs.Yakin Erturk (2007: 12), “human rights sensitive approach by judicial decision makers can compensate for deficiencies in the law itself and underlines the importance of human rights and gender – sensitivity training for professionals”.

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