

RE/FORMING THE PENAL CODE IN TURKEY FROM A GENDER PERSPECTIVE: THE CASE OF A SUCCESSFUL CAMPAIGN

INTRODUCTION

On September 26, 2004, a draft law aimed at the reform of the Turkish Penal Code was accepted in the Turkish Parliament as the result of a successful three-year campaign (2002-2004) led by a Platform of women's and LGBT (Lesbian, Gay, Bisexual and Transgender) organizations (The Platform for the Reform of the Turkish Penal Code). The campaign was successful in realizing more than 35 amendments towards recognition of women's legal entitlement to sexual and bodily autonomy and rights despite strong opposition from the right-wing, Islamist AKP (Justice and Development Party) government. The campaign aimed to transform the underlying philosophy and principles of the old penal code that constructed women's bodies and sexuality as belonging to their families, fathers, husbands and society; eliminate all articles in the old penal code that constituted violations of women's human rights, particularly sexual and bodily rights; and to ensure progressive definitions of sexual crimes. Throughout the campaign, advocates emphasized the *holistic* nature of their demands, stating that their aim was not the revision of a number of articles, but rather a complete reform of the penal code, overhauling the patriarchal framework of the code so as to legally recognize women's autonomy over their bodies and their sexuality within Turkish law.

The three-year campaign succeeded not only in a revolutionary change of the underlying philosophy of the Turkish Penal Code towards the recognition of women's autonomy over their sexuality and bodies, but also in achieving 35 amendments of the penal code, which were strongly opposed by the government at the beginning of the campaign, constituting a groundbreaking shift in the overall perspective of the Turkish state and the public on the issue.

The campaign, which triggered numerous, wide-ranging public debates and made frequent front page headlines in the media, occupied the public agenda in Turkey for three years, generated the widest discussion and broke several taboos on issues related to sexuality in Turkey. This chapter aims to provide a critical account of the campaign, its actors and the factors that contributed to its success. It draws on the author's personal experience as the co-founder of the Women's Working Group on the Penal Code, that initiated the campaign and coordinator of the NGO, Women for Women's Human Rights (WWHR) – NEW WAYS, which acted as the coordinating body of the campaign during the entire process.

THE HISTORICAL AND POLITICAL CONTEXT: WOMEN AND CIVIL SOCIETY IN TURKEY

The founding of the Turkish Republic in 1923 after the war of independence was followed by the introduction of several revolutionary reforms, including drastic changes regarding equality of women and men in the legal sphere; secularization of the state; the abolishment of the Sultanate, the *shari'a* and the caliphate and the adoption of Latin letters as the Turkish alphabet.¹ In 1926 the

¹ Women in the Ottoman Empire had been advocating for reforms on gender equality from at least the mid-19th century, with writers such as Fatima Aliye Hanim championing women's rights. Many Turkish women joined the nationalist movement in the lead-up to the Kemalist Revolution.

introduction of the Turkish Civil code, modeled upon the Swiss Civil code, banned polygamy and granted women equal rights in matters of divorce and child custody. The Civil code in particular was an important victory over the advocates of *shari'a*. If we look at other examples of Middle Eastern countries, such as Egypt, or Iran under the Shah, we see that they underwent similar attempts at Westernization but stopped short of reforming the family law codes or introducing changes to the status of women. From this perspective, the early and uncompromising nature of the so-called 'Kemalist revolution' becomes even more striking (Arat 1994). However, even this widely acknowledged and celebrated reform of the Turkish Civil code, which has been widely acknowledged as progressive both by academic circles and the Turkish public, was in fact far from bringing actual equality for women in Turkey. Until the reform of the Turkish Civil code in 2001, several laws, especially those in the marriage and family section of the old Civil code, reduced women to a subordinate position in the family. For example, the husband was defined as the head of the marriage union, thus granting him the final say over the choice of domicile as well as the final say concerning children.

Even decades after the legal reform of the new republic aiming at equality between women and men, little had changed in the everyday life of the majority of women living in Turkey. Yet, traditional and contemporary patriarchy has continued to dominate other areas of life. Although primary education has been mandatory since 1924, 32 per cent of women living in Turkey are still illiterate, according to the population census of 1985. The percentage of paid women workers is still a mere 16.1 per cent in urban areas (Fourth World Women's Conference, Turkey National Report 1994). The representation of women at the Parliament remains under five per cent.

Yet the official discourse of the state held that the problem of the status of women has been solved and that Turkish women should consider themselves 'lucky' because they were granted specific rights in the public sphere even before their European counterparts. Unfortunately, this discourse has been internalized by many of the women who have been able to benefit from the new possibilities of the young Republic, such as professional women living in big cities or women of the bureaucratic elite. As a result, most of the women's groups and associations formed during the post-Republican era have concentrated on 'helping' or 'educating' women living in the rural areas, instead of questioning their own status or advocating for further rights. Moreover, the dichotomy they perceived between themselves and the rural women hindered their understanding of the problems and potentials of these women, whom they were supposedly trying to 'help,' thus their efforts and strategies have been quite ineffective.

In the 1960s and 1970s, right and left-wing political movements dominated Turkish political debate and action in reaction to strong state controls. In this environment, women's issues were subsumed into Marxist discourses, as leftist women activists were incorporated into the Marxist movement. The 1970s in Turkey witnessed an armed conflict between right and left wing groups, which resulted in a tragic atmosphere of violence and the deaths of hundreds of activists and civilians. The 1980 military intervention, which was justified by the military as the only way to put an end to the anarchic atmosphere, suppressed leftist opposition by force, applied a systematic de-politicization of the masses and set the stage for neo-liberalist policies proposed by the IMF (International Monetary Fund) and other capitalist forces. In this atmosphere of repression and fear, the first new social movement, which demonstrated the courage, to oppose the government actions and articulate its demands was the women's movement.²

2 A similar development regarding the emergence of a feminist movement took place in Pakistan after the military intervention of Zia ul-Haq in 1977.

Since 1980, there have been several factors leading to the weakening of state authority and control in social life and hence enabling the development of civil society in Turkey. Transition to a free-market based economy, political and cultural conflicts, as well as globalization, have all led to the rise and development of a civil society with autonomy vis-à-vis the state. A major research study on the status and progress of civil society in Turkey in the 2000s coordinated by the Third Sector Foundation of Turkey notes that in this context, women's organizations deserve particular attention for their success:

Civil society initiatives on a broad array of issues from freedom of expression to criminalization of torture, women's rights or the right to sexual orientation are taking the rights-based agenda to a new level...Most notable efforts include human rights CSOs efforts on expanding civic liberties, and women's CSOs that succeeded in their plight for gender-based reforms to the Turkish Penal Code. ³

The feminist advocacy in Turkey in the 1980s and the 1990s

The new feminist movement of the 1980s brought private sphere women's human rights violations in Turkey to public attention for the first time. The first widespread campaign of the new feminist movement targeted domestic violence.⁴ This campaign was followed a year later by another widespread and energetic feminist campaign against sexual harassment and sexual violence, which began in November 1989, with a press conference held on a ferryboat in the Bosphorus in the waters separating the two halves of Istanbul, straddling Asia and Europe. The highlight of the press conference was the selling of pins sporting purple ribbons, to be used by women to prick harassers.

The campaign brought an important achievement in the legal arena. Article 438 of the Turkish Penal Code, which reduced by one-third the sentence given to rapists if the victim were a sex-worker, was repealed by the Grand National Assembly in 1990.⁵ After this date, despite the success of the first campaigns and the foundation of numerous feminist NGOs in the 1990s, no other significant legal change regarding gender equality was realized in Turkey, except for a special law concerning protection orders, aimed at protecting victims of domestic violence, which passed in 1998 as a result of another feminist campaign.⁶

Throughout the 1990s, feminist advocacy and lobbying for legal reform in Turkey concentrated mainly on the reform of the civil code, which declared husbands as the head of the family and contained several provisions violating both the constitutional guarantee for gender equality and international conventions to which Turkey was signatory, such as the Convention on the

3 Filiz Bikmen and Zeynep Meydanoğlu (eds.), *Civil Society in Turkey: An Era of Transition – Civic Civil Society Index Country Report for Turkey* (Istanbul: TÜSEV Yayınları, 2006, p.14).

4 In February 1987, a judicial decree citing in its ruling the Turkish proverb 'one should not leave a woman's back without a stick or her womb without a baby', rejected a woman's application for divorce on grounds of conjugal violence. This triggered a feminist campaign in Istanbul against domestic violence.

5 Another legal gain of the first feminist campaigns was the annulment by the Constitutional Court of Article 159 of the Turkish Civil Code, which decreed that a married woman must have her husband's implicit or explicit consent to work.

6 Law number 4320, 'The Law on the Protection of the Family'. For an account of the campaign for protection orders, see <http://www.edc.org/GLG/end-violence/hypermail/endviolence-nov98/0021.html> (23 May 2005) and WWHR – NEW WAYS (2005), *Turkish Civil and Penal Code Reforms From A Gender Perspective: The success of two nationwide campaigns*, Istanbul: WWHR-NEW WAYS.

Elimination of All Forms of Discrimination against Women (CEDAW).⁷ Although the reform of the civil code and amendments for gender equality became an issue on the public agenda and several drafts were prepared by various governments after 1984, none of these attempts were concluded until the full pledged reform of the civil code in 2001, a result of a broad and intensive campaign by the women's movement.

After several attempts by previous governments to reform the civil code, in 2000 the coalition government of social democrats, liberals and nationalists finally prepared a draft of a civil code integrating women's demands for full gender equality. Women's groups perceived the civil code reform providing full gender equality as fail-safe. This perception was based on several facts: for one, their years of advocacy for full equality in the civil code seemed finally to be recognized by the government, which had integrated their demands into the draft. Moreover, the government enjoyed an absolute majority in parliament, thus even if all of the opposition, including the religious right Welfare Party, voted against the new civil code, the votes of the MPs in the coalition parties would be sufficient for the acceptance of the government's draft by parliament. Finally, just a few months before the draft law was expected to be discussed in the parliament, Turkey was officially named as a candidate for EU (European Union) accession in December 1999, a development that was expected to intimidate opponents of gender equality in Turkey.

Despite the evidence that supported it, it soon became clear that women's optimism was unfounded. As soon as the draft law was submitted to parliament for discussion in April 2000, an alliance of male MPs belonging to the coalition parties took the lead in opposing the clauses aimed at gender equality proposed by their own government. The opposition was led by the Nationalistic Action Party, but strongly supported not only by the members of the Islamist Welfare Party, but also numerous MPs from all other parties. The opponents argued that provisions aiming at equality between men and women would create anarchy and chaos in the family and thus threaten the foundations of the Turkish nation.

After its initial shock, the women's movement was quick to respond. Within a very short time, more than 120 women's NGOs from all around the country joined together to initiate a major campaign, the widest coalition ever formed for a common cause since the emergence of the new feminist movement in the 1980s. The campaign was effective in gaining the support of the media and the public, creating an atmosphere where resistance to equality between men and women was viewed with scorn. In consequence, the opposition had to step back, and the campaign played a key role in the ultimate realization of the civil code reform.

The new Turkish civil code, approved by parliament in November 2001, abolished the supremacy of men in marriage, establishing full equality of men and women in the family.⁸

7 Turkey ratified CEDAW in 1985, with several qualifications but with a promise to remove them in a short time, which was not realized until 2002.

8 It also raised the minimum age for marriage to 17 for both women and men (previously 17 for men and 15 for women); set the equal division of property acquired during marriage as a default property regime, assigning an economic value to women's hitherto invisible labor in the household; allowed single parents to adopt children and gave equal inheritance rights to children born outside and within marriage. Another gain of the campaign was the amendment of article 41 of the Constitution in October 2001, redefining the family as an entity that is 'based on equality between spouses'.

RE/FORMING THE TURKISH PENAL CODE: THE SUCCESS OF A THREE-YEAR CAMPAIGN

The construction of gender and sexuality in the Turkish Penal Code of 1926

The Turkish penal code was adapted from the Italian penal code in 1926 after the foundation of the Turkish Republic in 1923, as a part of legal and political reforms aiming at secularization and westernization, including radical changes for women. As explained above, the reform of the Turkish civil code in particular was an important victory for the reformists against the conservative forces advocating the retention of Islamic law. Yet, as Tekeli maintains, the rights granted to women by Kemalists aimed to destroy links to the Ottoman Empire and to strike at the foundations of the religious hegemony rather than at establishing actual gender equality.⁹ Indeed, it seems that the official Kemalist position on the status of women and reforms regarding gender equality were restricted to a framework of secularism and the reform of the Islamic way of life, rather than the actual liberation of women. Thus, the Republican ideology also instrumentalized women, this time as the ‘protectors’ of secularism, just as the conservatives before them held women as emblematic ‘protectors’ of conservative family values and the social order.

The most striking evidence of the divergence between the rhetoric and practice of the new republic regarding women can be found in the patriarchal construction of women’s sexuality and bodies in the 1926 penal code, which included several articles that aimed to protect men’s honor and the so-called moral values; sanctioned practices such as honor crimes, abduction and rape of women, and constructed women’s bodies as property of their families, husbands and society.

In the 78 years following its first introduction in 1926, until its full-fledged reform in 2004, several articles in the old Turkish penal code were amended, but except for one, none of these amendments concerned women’s human rights or sexuality. The only amendment regarding women was the abolishment of article 438 granting sentence reductions of one-third to rapists if the victim were a sex-worker. This came as a result of a widespread feminist campaign against sexual violence and violence against women in 1990.

Many articles in the Turkish penal code of 1926 - henceforth referred to as the old penal code - reflect the construction of sexuality, in particular women’s sexuality, as a potential threat to public order and morality, and in need of regulation by laws. For instance, all sexual crimes were regulated under the section ‘crimes against society’, sub-section ‘*adab-ı umumiye and nizam-ı aile*’ (crimes against traditions of morality and family order) instead of under the section ‘crimes against individuals’. The regulation of crimes such as rape, abduction or sexual abuse against women as crimes against society, and not as crimes against individuals, was a manifestation of the code’s foundational premise that considered women’s bodies and sexuality as a property of men, family or society.

The terminology and phrasing in several articles of the old penal code regarding sexuality referred to traditional notions, all adapted into Turkish from Arabic, and commonly associated with religious, i.e. Islamic morality. The notion of *ırz*, defined by the Ottoman-Turkish dictionary as ‘honor’ or ‘purity’, was the key concept in definition of sexual crimes.¹⁰ For example, the term used for rape in the code was *ırza geçmek* (penetrating one’s honor) instead of the common word used

9 Şirin Tekeli, *Kadınlar ve Siyasal Toplumsal Hayat* [Women and Socio-Political Life] (Istanbul: Birikim Yayınları, 1982).

10 Mustafa Nihat Özün, *Osmanlıca-Türkçe Sözlük* [Ottoman-Turkish Dictionary] (Istanbul: Bilgi Yayınevi, 1971).

for rape in Turkish, *tecavüz* (violation, attack). The use of the term *ırza geçmek* for rape implies that rape was viewed in the code primarily as a violation of honor, and not as a crime committed against an individual's bodily integrity. This view alone disallowed criminalization of marital rape, as sexual acts within the context of marriage – even if forced or brutal – could not be considered an assault against one's honor. The definition of rape or attempted rape using *ırz* instead of *tecavüz* was in line with the main intention of the law to protect men's or the family's honor, as opposed to protecting women and girls from sexual crimes.

In a parallel way, if a man who had raped or abducted a woman subsequently married his victim, the code granted a suspension of the sentence,¹¹ the underlying logic being that while a raped woman suffered a loss of honor, if the rapist ultimately married her, her honor was restored and the offence undone. Even in cases where a woman or even a girl under 15 was abducted or raped by a group of men, if one of the perpetrators accepted to marry the victim, charges against all of them would be dropped.¹² These provisions not only sanctioned the crimes of rape or abduction, but also encouraged men to abduct or rape women who refused them, thus virtually forcing women to marry their rapists in order to preserve their honor.

Sexual attack, including sexual abuse of children under 15 that did not involve penetration was defined as an act against *ırz* and *namus* (honor).¹³ Sexual intercourse with a person between 15 and 18 years, even if consensual, constituted a crime and carried a punishment of six months to three years of imprisonment.¹⁴ The law also sanctioned the murder of women in the name of honor. Article 462 of the Turkish Criminal Code granted a sentence reduction of up to seven-eighths to male and female perpetrators of honor crimes if the victim were caught in the act of committing adultery or 'illegitimate sexual relations,'¹⁵ or if there was evidence beyond doubt that the victim had just completed such an act.

This article was only abolished in 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 AKP (Justice and Development Party) government presented the cancellation of article 462 as a symbol of their determination to prevent honor crimes. Strikingly, although honor killings were one of the very few issues concerning gender equality singled out by the EU, it seems that EU officials were unaware that in fact there was another article in the code titled 'unjust provocation',¹⁶ a general article providing reduced sentencing in cases where a crime was considered to be committed under provocation, that was often used to grant sentence reductions to perpetrators of honor killings. The notion of honor also served to sanction the murder by women of their newborns born out of wedlock. Article 453 provided for a reduction of punishment for the murder of a newborn child by the mother if she committed the murder to 'save her honor.'

Certain articles in the code assigned less value to unmarried women compared to married women. For instance, if a married woman was abducted, the minimum sentence required was seven years of imprisonment, but if the abducted woman was unmarried, the sentence could be anywhere

¹¹ Article 433 of the old Turkish Penal Code.

¹² Article 434 of the old Turkish Penal Code.

¹³ Articles 416 and 415 of the old Turkish Penal Code.

¹⁴ Article 416 of the old Turkish Penal Code.

¹⁵ The term 'illegitimate sexual relations' was not defined in the Code.

¹⁶ Article 51 of the old Turkish Penal Code.

from three to ten years.¹⁷ Virginity was a value protected by law, thus article 423 stipulated imprisonment of six months to two years for men who had sexual relations with a virgin based on misleadingly promising marriage; however, the sentence was to be suspended if the perpetrator agreed to marry the woman.

Notions of *haya* (shame) and *ar* (things to be ashamed of, especially related to sexuality) were the main criteria for specification of criminal sexual behavior. An article in the old penal code referring to a general, undefined notion of shameless behavior (*hayasızca hareketler*) provided for up to a one-year imprisonment ‘for anyone who acts or engages in a sexual relationship without *haya* (shame)’.¹⁸ In practice, this article was often used to justify human rights violations by police against LGBT people, although homosexuality is not criminalized in the law. Additionally, all materials, including publications, literature, music, etc, which ‘severed the public’s feelings of *haya* and *ar*’ or ‘served to provoke or abuse feelings of sexual desire’ were considered to be criminal.¹⁹ It is interesting to note this article even applied to publications aiming to convey the experiences of women who have experienced sexual violence in their childhood. A novel, titled ‘It’s Enough, Don’t Hurt My Skin!’ about victims of sexual violence was banned and collected by a decision of the criminal court in Istanbul based on this article.²⁰

While the code included a very broad definition of sexual behaviors considered criminal, it failed to penalize crimes of marital rape, sexual harassment in the workplace, virginity tests, discrimination based on sexual orientation or sexual crimes by security forces.

The campaign for the reform of the penal code from a gender perspective (2002-2004)

WWHR had acted as one of the secretariats of the coalition for the reform of the civil code and thus enjoyed a wide range of contacts in the parliament, as well as extensive experience in lobbying for legal reforms. Inspired and motivated by the noteworthy success of the nationwide campaign for the reform of the civil code despite the strong opposition of a coalition of the nationalists and the religious right in the parliament, WWHR wanted to take advantage of this experience and momentum for further reforms aiming at gender equality.

In December 1999, Turkey was accepted as a candidate for membership by the (EU). Consequently, Turkey was required to prepare a national program in order to bring its legal, political and economic system in line with EU requirements. The so-called ‘National Program for the Adoption of the Acquis’, a long list of reforms promised by Turkey in preparation for its accession to the EU was prepared and made public in 2001, and included a planned reform of the Turkish penal code. Perceiving this as a window of opportunity for gender equality in the penal code, WWHR initiated a working group aiming at a holistic reform of the Turkish penal code from a gender perspective in early 2002.

Women’s Working Group on the Penal Code (WWGPC), created by WWHR, included 15 representatives from NGOs and lawyers’ associations as well as academics from various regions

¹⁷ Article 429 of the old Turkish Penal Code.

¹⁸ Article 419 of the old Turkish Penal Code.

¹⁹ Articles 426, 427, and 428 of the old Turkish Penal Code.

²⁰ Meltem Arıkan, ‘Yeter Tenimi Acıtmayın’, (It’s Enough, Don’t Hurt My Skin!) (Istanbul: Everest Yayınları, 2003).

of Turkey to ensure geographic representation at the national level.²¹ A majority of the members were among the most active leaders of the campaign for the reform of the Turkish civil code. Although the initial goal of WWHR was to establish a mixed group that included men as well as women - as a strategy to increase the group's recognition by the general public - it proved quite difficult to find male experts who were ready to strive for gender equality in the penal code. Professor Artuk, the only male member of the group, declined to attend the group meetings after its third meeting in May 2002.

The group hoped to take advantage of the momentum around the successful civil code campaign to engender support for reform of the penal code. Nevertheless, the initiative was quite daring. In contrast to the case of gender equality in the civil code, gender equality in the penal code had never been on the Turkish public's agenda. The European Commission (EC), which urged Turkey to reform its penal code, was concerned mainly with the abolishment of the death penalty, pre-trial detention provisions and the extension of the scope of freedom of expression, and not with gender equality. In fact, the only reference made by the EC concerning women in the penal code was related to honor crimes, but even that was unsatisfactory and misleading as it targeted only one of the articles in the penal code granting reduced penalties for perpetrators of honor killings (article 462) and completely ignored another article that served the same purpose (article 51).

Advocacy for gender equality in the penal code was also not on the agenda of the feminist movement. There were several reasons for this, including the focus of the women's movement on equality in the civil code; the lack of women specializing in criminal law, traditionally considered to be a male domain; as well as the impact of the political victory of the Islamic religious right in Turkey in the 1990s. The shift of political power to religious right parties after the 1994 local elections and 1995 general elections had a restraining impact on the range of discourses and demands of the new feminist movement of the 1980s, especially those related to sexuality.²² With the rise of political Islam in Turkey in the 1990s, the new feminist movement, which had concentrated on women's rights in the private sphere, including domestic violence, sexual abuse and sexual freedom, lost its initial attraction for many women who perceived the rise of political Islam as a major threat to their existing rights in the public sphere. In contrast, many women showed increased support for traditional women's NGOs, whose primary agenda has historically been to protect the principle of secularism. I would also argue that the rise of political Islam in Turkey discouraged the activists of the new feminist movement that emerged in the 1980s from engaging in traditionally taboo areas related to sexuality, such as sexual autonomy, sexuality outside marriage, forced heterosexuality or the rights of lesbians. After the initial campaigns on sexual violence at the beginning of the 1990s, the only issues related to sexuality taken up by the feminist movement in Turkey were virginity tests and honor crimes. There is no question that honor crimes and virginity tests are issues of utmost importance for women. However, it is striking that while the women's movement concentrated on issues that involved blatant human

21 The members of the Working Group for the Penal Code included representatives of Women for Women's Human Rights – NEW WAYS, The Purple Roof Foundation, Women's Rights Enforcement Center, Istanbul Governorate Human Rights Desk and Istanbul Governorate Women's Status Unit from Istanbul; the Republican Women's Association from Ankara; Women's Commission of the Bar Association from Diyarbakır; Women's Commission of the Bar Association from Izmir, as well as the academics Professor Aysel Çelikel, the first female dean of the Istanbul University Law Faculty and Professor Mehmet Emin Artuk, one of the few male academics concentrating on sexual crimes and law in Turkey.

22 The 1994 local elections, which resulted with the triumph of the pro-Islamic Welfare Party in 37 provinces, including the urban centers of Istanbul, Ankara and Izmir, resulted in a drastic shift in the Turkish political scene. The pro-Islamic Welfare Party gained the highest percentage of votes in the 1995 general elections with 21.4 per cent.

rights violations, discourses that argued for women's sexual liberation in a positive manner were missing. Moreover, other forms of control of women's sexuality such as the value given to virginity, family pressure, violence and restriction of women's mobility aimed at controlling women's sexual conduct, and the lack of women's and girls' sexual autonomy, including the right to choose a partner were in general not a part of the feminist agenda.

In such a context, major enabling factors that affected WWHR's decision to initiate a working group for a holistic reform of the penal code aiming to anchor sexual and bodily rights in the law were the victory of the women's movement in the tough struggle against the nationalist and religious conservatives in the civil code campaign in 2001, as well as the accumulated experience of WWHR in advocacy for both legal reforms and for sexual and bodily rights on national and international levels. WWHR has been one of the leading organizations for advocacy for legal reforms in Turkey. It initiated the campaign for the law on restraining orders enacted in 1998, the campaign for the ban of virginity tests (1999) and also took on the role of an informal secretariat for the civil code campaign. It has also been working for sexual, bodily and reproductive rights on the national and international levels since its inception in 1993. WWHR has initiated a solidarity network of NGOs and academics doing advocacy and lobbying for sexual and bodily rights in the Middle East and North Africa.

The group initially met every two weeks and then once a month to prepare for the campaign. Their examination of the 2000 Penal Code Draft Law revealed that all provisions concerning gender and sexuality in the draft were copied almost verbatim from the 1926 Turkish penal code. The draft law embodied the same discriminatory and conservative philosophy, language and outlook regarding gender and sexuality as the existing code.²³ After identifying all articles violating 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 European countries, as well as countries that had progressive legislation on the matter, such as South Africa, and prepared detailed proposals and justifications for about 40 amendments, formulated as new provisions and articles to be integrated in the new law. A publication including an analysis of the existing code, the draft law and the amendments proposed by the group was prepared and published by WWHR to be sent to all members of parliament and the government on behalf of the group. However, just as the publication was ready and the group was preparing to start lobbying government and parliament for their demands, a political crisis changed the political scene in Turkey dramatically.

A political earthquake: a religious right party comes to power

While the efforts of the Women's Working Group on the Penal Code were underway, the three-party coalition led by the social democrats resigned unexpectedly after a political crisis in 2002, followed by a decision for early elections. The group, as shocked as the rest of the country by this unexpected development, was at the same time excited that one of its members, Professor Aysel Çelikel, was appointed independent Justice Minister for the pre-election period.²⁴ During the brief period of her ministry,²⁵ Çelikel formed a commission of experts mandated to review and revise

²³ The 2000 Draft Law was prepared by the coalition government formed by the Democratic Left Party, the Nationalistic Action Party and the liberal Motherland Party.

²⁴ According to the Turkish Constitution, the Minister of Justice, the Minister of the Interior and the Minister of Communications have to be replaced by independent experts for a period of three months before a new election.

²⁵ Aysel Çelikel served as the Minister of Justice from August 6-November 11, 2002.

the penal code draft law on behalf of the ministry, including two members of the Working Group. The commission accepted some of the proposals of the WWGPC and rejected several others. One of the demands accepted was the criminalization of marital rape, an issue the Working Group considered critical. Although group members were disheartened that several of their demands were opposed, even by academicians renowned to be progressive, they considered this development promising for their campaign, which they planned to continue after the elections.

The November 2002 elections in Turkey ended with a stunning victory for the newly formed religious right Adalet ve Kalkınma Partisi - AKP (Justice and Development Party). As only one other party, the left-leaning Cumhuriyet Halk Partisi - CHP (Republican People's Party), reached the ten per cent minimum necessary to hold seats, AKP was left with a two-thirds' majority in the parliament although they had received only 34.2 per cent of votes. This development shook the political scene like an earthquake, not only because the Islamists gained the majority in parliament for the first time in Turkey's history, but also because the structure of the parliament changed in such a dramatic manner: all parties represented in the previous parliament were left out because none had achieved ten per cent of the vote, while the two parties that previously held no seats gained all of them. The AKP was established only after the 1999 elections and the CHP had not received enough votes in the last election to hold seats in the previous parliament.

Immediately after the elections, the WWGPC met to analyze developments and strategize for the future. The dominant outlook at the meeting was that with a religious right party in power all hopes for the reform of the penal code regarding gender equality were lost. But the group decided to continue the campaign, no longer with great optimism for the inclusion of their demands in the penal code, but rather with a determination to bring their demands into the public arena and demonstrate their opposition in a visible manner, hoping to leave a hint for future generations.

Obtaining a copy of the draft of the new penal code prepared by the new government proved to be a major difficulty for the Working Group. Several formal requests to the Ministry of Justice and to parliament asking for a copy on behalf of the Working Group were unsuccessful. The parliamentary justice commission and the government seemed to handle the new draft law as a private initiative to be concealed from the public and from women's NGOs. As it slowly became clear that the Working Group would not obtain a copy of the new draft law by official means, they resorted to alternatives. The group finally received a copy of the draft law through the covert action of a liberal journalist friend who had been supportive of the religious right opposition in Turkey in the past, and thus had access to some key people in the new government. An analysis of the new draft law by the working group exposed that all amendments made by the Çelikel commission were ignored and articles pertaining to sexuality and women were again copied verbatim from the old penal code. The only amendment that was proposed concerning women was the extension of the legal abortion period from 10 to 12 weeks gestation, a proposal that would not make its way to the final draft.

The WWGPC publication was revised to address the new draft law prepared by AKP, and was again sent by WWHR to all members of parliament and to media representatives in mid-April 2003. Repeated requests for an appointment with the Minister of Justice and other members of government finally were answered; the head of the Justice Commission, Köksal Toptan, and several key MPs agreed to meet with Working Group representatives on April 28, 2003. One delegate summarized her impressions of the visit to parliament on the listserv set up for members of the working group, commenting that the head of the Justice Commission, Toptan, 'listened to

us silently and gave no reaction, as typical of AKP'. She also reported that an influential woman MP from the opposition party, a law professor, viewed their cause as hopeless.²⁶

The campaign expands

Faced with these dramatic setbacks and the persistent refusal of the new Minister of Justice to meet with members of the WWGPC, the group decided to transform its efforts into a massive public campaign through setting up a wider national Platform by the addition of other NGOs that supported its demands; increasing its lobbying efforts towards the members of the parliament; more systematic advocacy targeting the media and increased awareness raising on the issue throughout the country by organizing conferences and meetings. On May 23, 2003 the group held a large press conference presenting its critical analysis of the draft law of AKP and its demands for revision to the media. The press conference received widespread media attention, thanks to diligent and persistent networking efforts with the media over the long term by the Working Group. The left leaning *Radikal* headline read 'women's uprising against the penal code',²⁷ while *Posta*, the Turkish paper with the largest readership, declared 'women have rebelled'.²⁸

The Islamist newspapers ignored the press conference until *Vakit*, one of the extreme religious right newspapers,²⁹ headlined it five days later with 'the shameless proposal', calling the Working Group's call to eliminate all terminology in the penal code related to *adab* (public morality), *haya* (shame) and *namus* (honor) 'shameless'.³⁰ *Vakit* argued that the demands of the women's groups forming the Working Group for the Reform of the Turkish Penal Code were reflective of the fact that their members were leading a life completely alienated from the Turkish people.

The success of the press conference finally forced a response from AKP to women's demands. Justice Commission head Köksal Toptan announced that a sub-commission would be formed to review the demands of the Platform. In his first public statement related to the issue, Toptan also said that he agreed with women's call for the criminalization of marital rape, a demand of the Working Group previously accepted by the commission set up by Çelikel.³¹

After the press conference, the group was expanded and transformed into a national Platform - Women's Platform on the Turkish Penal Code - with the inclusion of other women's NGOs and LGBT groups. The campaign continued with numerous conferences and meetings held in Ankara and Istanbul, as well as in smaller cities. A moderated listserv was set up and WWHR, acting as secretariat for the campaign, followed the activities of the Justice Sub-Commission on the Penal Code on a day-to-day basis, disseminating information to Platform members and coordinating lobbying and action. Platform members lobbied members of the Justice Sub-Commission, the Justice Commission, EU officials and media representatives extensively. Representatives of the Platform visited parliament several times to voice their demands.

²⁶ Canan Arın, 'The Meeting in the Parliament Yesterday', April 29, 2003, http://groups.yahoo.com./group/tck_kadin/message/36. (accessed May 19, 2005).

²⁷ *Radikal*, May 24, 2003.

²⁸ *Posta*, May 25, 2003.

²⁹ All Islamist newspapers in Turkey are in the right spectrum. They include *Türkiye* (Turkey), *Zaman* (Time), *Yeni Şafak* (The New Dawn), *Vakit* (Time), *Milli Gazete* (The National Paper), and are often referred to as religionist (*dinci*) newspapers.

³⁰ Mahir Yılmaz, 'Edep'siz Teklif [The Shameless Proposal]', *Vakit*, May 28, 2003.

³¹ Hülya Karabağlı, 'Meclis Nihayet Kadının Feryadına Kulak Verdi [Parliament Finally Lends an Ear to Women's Cries]', *Akşam*, June 3, 2003.

The campaign and the accompanying discourse on sexuality and law in Turkey drew great media interest for a year and a half, with several front-page headlines and daily coverage by a majority of newspapers and TV and radio outlets. An initial impact of the campaign on the media was an increased attention to court decisions related to sexual crimes. Only a month after the May 2003 Working Group's press conference, a court decision releasing 27 perpetrators who had allegedly had forced-sex with a 13 year-old girl in Mardin, southeastern Turkey, triggered huge public and media debate on the Penal Code articles dealing with rape. The case had initially appeared in the news the previous year, when a girl of 13 was forced by two women to have sex with several men over a span of seven months, including public and military officers, complained to the police in July 2002. On June 20, 2003, the court decided that all the accused public officers should be released from detention and allowed to return to their public duties, as it found the evidence insufficient to decide whether the girl had been forced or had consented to the sexual acts.³² The decision to release the perpetrators met with widespread public scorn and was portrayed in the media in support of the women's penal code campaign, extending the publicity of the campaign and creating a favorable public atmosphere for it. The media's critique focused on penal code articles referring to the question of a victim's 'consent' in rape cases, and on the cancellation of punishment in rape cases where the rapist marries his victim; however, the publicity generated created a public atmosphere in favor of women's demands in general. Moreover, coverage of the issue of rape became increasingly prevalent in the media, with several newspapers providing general articles on the topic.³³ Turkey's major financial paper even devoted a whole page to the issue of rape for the first time in its history.³⁴

Influential women columnists, including Ferai Tınç from *Hürriyet*, Zeynep Oral from *Cumhuriyet*, Duygu Asena from *Yarın* and Ruhat Mengi from *Vatan*, who had always engaged in discourses related to gender equality, were the first to carry the discussion into newspaper opinion columns. However, after the initial publicity the campaign received in the media, they were soon joined by several male columnists supporting the campaign and women's demands in their columns. Most of the women columnists who led the support for the campaign had been members of the women's movement and friends of the initiators of the campaign for decades. In fact, two of them, Ferai Tınç and Zeynep Oral, were among the co-founders of the Platform. Ferai Tınç, a leading foreign policy columnist in the most-selling mainstream newspaper *Hürriyet*, worked almost as an activist to gain the support of other journalists in her newspaper by organizing several meetings where the members of the Platform and supporting MPs were invited to speak to *Hürriyet* journalists. Zeynep Oral initiated a series of 'open letters to the Justice Minister' in her column, reiterating the demands of the Platform and demanding his response, which was a crucial factor in the recognition of the Platform by the Minister of Justice. In some cases, some writers got into trouble with the commission members. The most striking example is the case of Ruhat Mengi. Ruhat Mengi wrote two articles criticizing the commission's attitude on gender equality in the penal code draft law.³⁵ She condemned the commission's perspective as sick. Upon these articles, she was sued and requested compensation by Sulhi Dönmezer, a prominent professor of law, who was among the writers of the draft law. The court case was covered largely by the media and although Mengi lost the court case, her efforts contributed significantly to the campaign.

32 *Hürriyet* 'Benim Yerimde Kızınız Olsaydı Ne Yapardınız? (What Would You Do If It Were Your Daughter?)', *Hürriyet*, June 27, 2003.

33 *Yarın*, 'M. A. 3 Yıl Süren Tecavüzü Anlattı [M. A. Tells about Her 3-Year Long Rape]', July 1, 2003.

34 Lami Özgen, 'Tecavüz: Bir İnsanlık Suçu [Rape: A Crime of Humanity]', *Finansal Forum*, July 6, 2003.

35 Ruhat Mengi, 'Tasarı Değil Skandal [Not a Draft Law, Rather A Scandal]', *Vatan*, May 15, 2003; 'Edep Törelere Karşı Suçlar [Crimes against Customs of Adab]', *Vatan*, May 16, 2003.

While the campaign gained paramount publicity in the media, the Islamist newspapers continued their silence on the issue. As the criticism towards AKP's draft laws regarding sexual crimes reached its height, *Yeni Şafak*, an Islamist newspaper that also has liberal columnists, published a full-page article praising the draft law, without a word on the ongoing criticism of Penal Code articles dealing with sexual crimes.³⁶ However, some days later, liberal columnists of the same newspaper supported women's demands in their columns.³⁷

Also drawing extensive media scrutiny during the summer of 2003 was the penal code article providing for cancellation of punishment in cases where a rapist marries his victim. The headlines reflected growing public criticism of this provision: 'the additional punishment of marriage for victims of rape',³⁸ 'the law that brings women to rebellion',³⁹ 'Turkey's contribution to the criminal medicine literature: rape for marriage'.⁴⁰

In October 2003, the Republican Women's Association, a member of the working group, organized a seminar and a press conference in Ankara, which was covered, and again supportive headlines appeared: 'the women's manifesto',⁴¹ announced one, while another headline shouted 'listen to this voice: women's NGOs submit a package to the government for the reform of the penal code'.⁴²

Columnists at the paper *Vakit*, an extreme religious right paper, reacted to the wide (non-Islamist) media coverage of women's demands in a very hostile manner, targeting representatives of working group as 'belonging to high-society and radical leftist organizations, whose sexual instincts have become out of control'.⁴³ Meanwhile, a member of AKP made a proposal to recriminalize adultery,⁴⁴ which found no response at the time, but which engendered a major crisis between the EU and Turkey a year later when the prime minister brought it up again, as will be explained in more detail later.

The Justice Commission finally appointed a sub-commission comprised of eight members - all male - three MP's from AKP, two MPs from the opposition party CHP, and three consulting academics, to review the draft on its behalf in October 2003.⁴⁵ The media bombarded the members and the head of the Justice Commission on their opinions regarding the Women's Platform demands as soon as the sub-commission was formed. In one of his first interviews to a major news channel, Köksal Toptan, Justice Commission head, gave the first signal of governmental recognition of the Platform's demands. Stating that the government had sent the draft law to 400 institutions and experts all over Turkey for feedback, but had received only 17 replies, he praised the women's working group for their extensive labor on the draft.⁴⁶ He failed

³⁶ Evin Göktaş, 'TCK'da Devrim Gibi Değişiklik' (Revolutionary Revisions in the Penal Code), *Yeni Şafak*, July 13, 2003.

³⁷ Kürşat Bumin, 'Kadınları Unutarak AB'ye Girmek Mümkün mü?' (Is it Possible to Become an EU Member Without Remembering Women?), *Yeni Şafak*, July 16, 2003; and *Yeni Şafak*, July 22, 2003 and Ali Bayramoğlu in *Yeni Şafak*, July 22, July 23, July 26, and July 30, 2003.

³⁸ Elif Korap, *Milliyet*, July 24, 2003.

³⁹ *Cumhuriyet*, September 23, 2003.

⁴⁰ *Vatan*, September 28, 2003.

⁴¹ *Radikal*, October 4, 2003.

⁴² *Şok*, October 4, 2003.

⁴³ Abdurrahim Karakoç, *Vakit*, October 6, 2003.

⁴⁴ The proposal was made by Ahmet Büyükkaslar, an MP from the traditionally conservative city of Konya. See 'Zina Yine Suç Olmalı' (Adultery Should Become a Crime Again), *Yeni İleri*, October 8, 2003 and *Hürriyet*, October 8, 2003.

⁴⁵ The academicians in the sub-commission were Dr. Adem Sözüer from the Istanbul University Law School, Dr. Ahmet Gökçen from Marmara University in Istanbul and Dr. İzzet Özgenç from Gazi University in Ankara.

⁴⁶ Toptan stated that they had received replies from 6 law faculties out of 25 and from 5 bar associations out of 80.

to mention that the draft law was never sent to any women's organizations for an opinion, while expressing his admiration for women's NGOs: 'meanwhile, women's NGOs and associations have really demonstrated an exemplary action on how public opinion might be shaped around an issue. They have sent reports and representatives to our commission to ensure their participation in the process; moreover, they have led the public opinion in a remarkable way'.⁴⁷

It was only after the head of the Justice Commission came out with these statements that the minister responsible for women, Güldal Akşit, announced a report prepared on behalf of her ministry which was in line with women's demands.⁴⁸ Given the minister's position, her act of support, coming after the Platform had already succeeded in gaining public, media and official government recognition, was too late. Her statement that the new penal code would be shaped by women MPs, though her party's women MPs had not engaged with the penal code issue at all until then, clearly revealed that Akşit 'discovered' the penal code issue only at a point when it could provide her with some political currency.⁴⁹

The first victories and reactions: a confusing development?

In October 2003, the parliamentary sub-commission working on revision of the draft law accepted some demands formulated by the Working Group and supported by the Women's Platform, including the criminalization of marital rape and sexual harassment at workplace, the revision of all articles discriminating between single and married, virgin and non-virgin women, and the cancellation of articles that provided reduced sentencing on the premise that sexual abuse of a child could possibly be consensual. The headline of the newspaper *Akşam* compared this development to the result of a boxing round, mirroring the public mood regarding the debate between the women's Platform and the government: 'the first round won by women: revolutionary changes in the 'macho' draft'.⁵⁰

The first governmental reaction opposing this development came from Güldal Akşit the minister for women, a reaction described as 'confusing' by the media.⁵¹ However, the minister's opposition was not that surprising for the women's Platform, which had received no support whatsoever from the ministry to that point. On the day the sub-commission accepted the demands outlined above, the minister gave a press statement declaring that 'the goal was not to have legislation that satisfied women one hundred percent, but to have legislation that recognized the sensitivities of the society and responded to its needs'.⁵² Akşit's statement implied that the penal code should continue to include the patriarchal, traditional notions that women were struggling to change.

A turning point: should a woman marry her rapist?

The minister of women was not alone in her opposition to the revisions accepted by the sub-commission. Only a day later, the chief consultant to the minister of justice, Professor Doğan

⁴⁷ 'Yeni TCK Tasarısı' (Draft Law on the New Turkish Penal Code), Yakın Plan (The Close Look) Program in *NTV*, *NTV on the Web*, <http://www.ntvmsnbc.com/news/240152.asp> (October 21, 2003).

⁴⁸ 'Justice Ministry will be Informed on Women's Organizations' Views Concerning TCK Bill,' *Turkish Daily News*, October 21, 2003.

⁴⁹ *Hürriyet*, 'Yeni TCK'yı Kadın Vekiller Şekillendirecek' [New Penal Code will be Shaped by Women MPs], October 20, 2003.

⁵⁰ *Akşam*, October 22, 2003.

⁵¹ 'AKP'li Bakan Şaşırttı: Hedefimiz Kadın Değil, Toplum' (Minister of AKP Surprises: Our Target is Not Women, But Society), *Vatan*, October 22, 2003.

⁵² *Ibid.*

Soyaslan, created a public uproar when he attended a sub-commission meeting in order to voice his opposition to the revisions, and stated:

This draft law is prepared according to realities in Turkey. 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 girl's brother, the father of a girl who was raped, want her to marry the rapist. Those who are opposing this here (at this meeting) would also like to marry virgins. If they claim the opposite, it is forgery.⁵³

This statement, coming from a consultant to the justice minister, was a turning point for the campaign, as it triggered the widest public opposition against the government regarding the draft law since the start of the campaign, and maximized public attention to the debate between the government and the Women's Platform. In fact, prior to the penal code campaign most Turkish citizens were unaware that an article in the 1926 code, still in force, provided for suspension of punishment in cases where a rapist married his victim. As is often the case, the article in actuality usually has affected women and girls of lower class with little education, who are deprived of the means to protect themselves from such human rights violations. Two weeks after Soyaslan's initial comments, he triggered an even larger uproar during a televised debate when he confirmed that this penal code article usually operated where victims were women of lower socio economic status when he noted that he could not imagine applying it to his own daughter.⁵⁴ When asked if he would marry his daughter to a man who had raped her, he replied: 'no, but I'm different, I'm a professor. I would think that she had gone to him on her own will. If that wasn't the case, I wouldn't allow her to marry him'.⁵⁵ Soyaslan made headlines with this and other inflammatory statements he came out with during the program, such as 'educated and working women are less religious because they go out of the house more often'. A headline in *Vatan* echoed the growing public contempt against Soyaslan: 'It's that man again! The latest bomb from the consultant of the minister of justice: "working women are less religious"'.⁵⁶

Soyaslan's defense of this 1926 penal code article was clearly politically unfortunate for him, as evidenced by the fervent public contempt that resulted, but it was definitely to the advantage of the Women's Platform. The Platform was now confident that some of their more than forty demands would not meet much resistance from the public. Several concerned outdated articles incompatible with the current public perspective. These included a clause that presumed a child under 15 could consent to sexual abuse and the article premised on the idea that a woman should marry her rapist to save her honor. Due to decades of advocacy by feminists, sexual abuse in the family or rape had become issues that met harsh contempt in the general public. On the other hand, activists expected stronger public opposition to several other of their demands, including criminalization of marital rape, criminalization of discrimination based on sexual orientation and the adoption of progressive definitions of rape that considered any violation of bodily integrity as rape, as these issues had not been widely discussed in Turkey.⁵⁷ In fact, at the beginning of the campaign the group was concerned that if these demands became the target of attack from

53 Zübeyde Yalçın, 'Bakan Danışmanının 'Bekaret' Takıntısı' (Minister's Consultant Obsessed with 'Virginity'), *Sabah*, October 23, 2003; Günseli Önal, 'Kimse Bakire Olmayan Biriyle Evlenmek İstemez' (Nobody Wants to Marry a Woman who is Not a Virgin), *Milliyet*, October 23, 2003; and Saffet Korkmaz, 'Herkes Bakire İster' (Everybody Wants a Virgin), *Hürriyet*, October 23, 2003.

54 The TV program was Basın Kulübü (The Press Club) in *Habertürk*, first aired on November 2, 2003, and repeatedly aired on the same channel for several days after.

55 Cited in Duygu Asena, 'Profesör ve Düş Kırıklığı' (The Professor and Disappointment), *Yarın*, November 5, 2003.

56 *Vatan*, November 5, 2003.

57 Despite earlier evidence of support for criminalization of marital rape by the head of the justice commission upon strong criticism of their cancellations made by the Çelikel commission regarding women's demands, the working group considered their demand regarding criminalization of rape as one of the demands that could meet a strong opposition public, especially men.

the religious conservatives this could create a backlash, turning public opinion against them. However, members were determined to maintain a holistic approach to the protection of sexual and bodily rights, and decided not to compromise on their demands. When the consultant to the justice minister, Soyaslan, chose to defend one of the articles that would clearly draw the contempt of the public this turned the tide of public support toward the campaigners, creating a mood of acceptance for their demands in general, including demands to which they expected more public opposition.

The debate triggered by Soyaslan continued to be the primary topic of public discussion for weeks. Women's organizations and several journalists demanded that the justice minister remove his consultant from the position. The minister ignored this; moreover, as he never issued a statement distancing him or his ministry from the opinions expressed by his consultant, the general public perception was that AKP supported Soyaslan's statements, and this worked to the Platform's benefit.

The Platform was quick to harness the increased recognition for its cause, and the general public mood of support to the campaign's advantage. The experience with the campaign to reform the civil code had shown that opposition from parliament to issues around gender equality and women's human rights could come from *any* party, from left to right. The coalition was thus concerned that despite expanding public support for the campaign, opposition to their demands could also come from male MPs of the opposition party CHP, a concern shared by women MPs from CHP. The Platform worked hard to come up with strategies to prevent such a possibility. With the help of Gaye Erbatur, a member of the Platform, who won a seat in parliament in the 2002 elections as a member of CHP, the Platform succeeded in convincing the CHP party leader Deniz Baykal to support its package of demands. CHP publicly declared its unconditional support for the Platform's demands at a press conference on November 8, 2003.

Another gain resulting from debates following the public uproar was the first official declarations from several AKP MPs in support of women's demands. As a result of increasing public pressure, the minister responsible for women finally gave a statement supporting women's demand that the clauses supporting forced marriage of women to their rapists be removed from the penal code.⁵⁸

The religious right initiates an attack

The initial success of the campaign and the growing public support for women's demands triggered a strong reaction from the religious right. *Vakit* accused the Platform members of pressuring MPs with their 44 page publication, and of having no morals (*adab*) or shame (*haya*) as evidenced by their call to eliminate these concepts from the penal code. *Vakit's* headline used the adjective *azgın* - oversexed, wild, mad or excessively lustful - over the news article describing the group's proposal. The article also implied that the proposals were created under Jewish influence, targeting a member of WWHR whose father was Jewish.⁵⁹ Another article in *Sabah* quoted a female member of AKP in the parliament, who stated:

I'm not trying to be a lawyer of men, but there are also men in this country tortured by women. Although it's not correct for a young man to commit rape, after all he is provoked to such

⁵⁸ *Posta*, 'Akşit: Tecavüzcüyle Evlendirme Adil Değil' (Marrying the Rapist is Not Just), November 8, 2003; and Şerife Üstüner, 'Tecavüzcülere 'Evlilik Affi' Yok' (No Marriage Amnesty for Rapists), *Akşam*, November 15, 2003.

⁵⁹ 'Azgın Teklif' (The Wild/Oversexed Proposal), *Vakit*, November 14, 2003.

action by a female. If a woman touches the hand of her boyfriend or caresses his hair, that can be provoking. One should consider the reasons why a man has committed rape'⁶⁰

She also criticized the women's organizations: 'I do not approve the injustices against women, but I'm also against women who go around with feminist feelings, carrying banners as if to cry 'death to men'.⁶¹

Soyaslan was supported by Ordinarius Professor of Law, Sulhi Dönmezer, who had headed the committee that had prepared the previous draft law. Dönmezer asserted that the penal code article canceling sentencing for rapists who subsequently married their victims should remain in the penal code as it served to prevent prostitution. Finally, both Dönmezer and Soyaslan brought a libel suit against *Vatan* columnist Ruhat Mengi and her newspaper, asking for \$100,000 U.S. compensation.

The Minister of Justice launched an investigation against the girl who was raped by 28 men, for writing a letter asking him what he would have done if it were his daughter that had been raped. The investigation was based on article 159 regulating the crimes of insulting the Republic, parliament, the government, ministries, military and security forces or the courts.⁶²

AKP proposed a new law to ban abortion in cases where the child would be born with grave physical or mental defect, starting a controversial public debate on abortion for the first time since its legalization in Turkey in 1983. The women's minister stated that while she would leave the decision on the parameters of abortion to scientists, jurists and religious experts, she personally completely opposed abortion except in cases where the mother's life was endangered, saying, 'nobody other than Allah should end a life given by Allah. Therefore, actually this discussion on the abortion period carries no importance'.⁶³ The debate on abortion continued for several months, until AKP finally withdrew its proposal in February 2004 after intense criticism from NGOs, including the Chamber of Doctors, the umbrella organization of medical doctors and associations working for the rights of the disabled.

All of these developments engendered intense public and media debate, with news items on the penal code and the campaign in all the newspapers, magazines and on television almost daily, contributing to growing criticism against AKP.

The government finally formally recognizes the Platform

As the public debate raged, a closed meeting at Ankara Palace (a prominent state guest house) organized by WWHR in cooperation with the UN Special Rapporteur on Violence against Women, Yakin Ertürk, brought together representatives from the Platform, the parliament and the EU for a 'dialogue' on the penal code on December 10, 2003. Yakin Ertürk, a member of the Platform since its establishment, had been appointed to the UN position in July 2003. The timing of the meeting was critical as the government and conservative right reaction against the campaign and the growing public criticism was becoming increasingly hostile, and the members of the Platform

⁶⁰ Hülya Karabağlı, 'Erkeği Tecavüze Kadın Sevkedir' (A Man is Motivated to Rape by a Woman), *Sabah Günaydın*, November 18, 2003.

⁶¹ Ibid.

⁶² *Güneş*, 'Sen misin Bakana Mektup Yazan' (You Dare Write to the Minister?), November 29, 2003.

⁶³ İlayda Gülbüz, 'Nurtopu Gibi Kriz: Haftanın Tartışması' (A Newly Born Cisis: The Debate of the Week), *Star*, November 12, 2003.

feared a backlash. Both the date and the venue of the meeting were strategically chosen: the date coincided with International Human Rights Day, symbolizing the link between women's demands regarding the penal code and human rights, as well as the importance of the issue for Turkey's human rights agenda. The venue, a venerable state guest house, was chosen as a symbol of women's right of access to the state.

The members of the Working Group and the Platform had to this point never used Turkey's accession to the EU to bolster their argument for the reform of the penal code from a gender perspective. To the contrary, they emphasized that the reform of the penal code should also ensure gender equality and protection of women's sexual autonomy not because of Turkey's accession to the EU, but because these reforms were the demands of Turkish women themselves. This strategy was adopted not only because this was truly the case, but also in order to thwart any potential arguments by the religious right claiming that the Platform's demands concerned Western constructs and were incompatible with Turkish culture. As the campaign became a major issue in the Turkish agenda, it also received the attention of the EU representatives in Turkey. As a result of this attention, the author of this paper was invited twice within a year as a key speaker to the monthly meetings of the EU embassies in Ankara as a representative of the Platform and the coordinating body to inform them about the developments on the campaign. Yet, until this meeting, this contact had remained at a level of information exchange, and we kept emphasizing that we did not want it to become an EU affair, emphasizing our strategy that this was a campaign led by women living in Turkey for their own rights. This view was also constantly emphasized in our interviews with representatives of the foreign media.

However, as we had already succeeded in getting the support of the public, we believed that the increasingly antagonistic attitude of the government and the religious right despite growing public support for the Platform necessitated new allies at the international level, namely the UN and the EU. Thus, the involvement of the UN Special Rapporteur on Violence against Women in organizing the meeting, and the participation of high level EU representatives was considered to be of great strategic importance.

The justice minister, who had repeatedly refused to meet with group members in the months before, agreed to attend the meeting as a speaker, signaling his first recognition of the Platform since the start of the campaign. Besides the justice minister, speakers representing the government included the women's minister, the head of the justice commission and the head of the sub-commission working on the draft.

The meeting clearly demonstrated the national and international recognition the campaign received, as well as the support for women's demands at the UN and EU levels, witnessed by the ministers and MPs directly. It also established the basis for future dialogue between Platform members and the government for the first time since the beginning of the campaign. After the meeting, Platform representatives were finally accepted by various sub-commission members and the justice commission for a discussion of their demands.

Several visits to the parliament were organized by the Platform to discuss women's demands directly with both the governing and the opposition party and key MPs. In all of these visits, special attention was paid on having a broad geographical representation of the Platform in order to counteract the claims of the government and the religious right that the demands were being only made by women from big cities and were not representative of the demands of Turkish women in general.

The debate on the penal code receives an international dimension

Despite the overall success of the campaign, a few of the Platform's proposed amendments were not accepted by the justice commission.⁶⁴ Thus, as the Platform prepared new advocacy and lobbying strategies to target parliament when it resumed work after the summer break, a last minute proposal by AKP to add a provision to the penal code criminalizing adultery, triggered a debate that extended beyond the boundaries of Turkey, making headlines not only nationally but in Europe and around the globe.

The initiative of AKP to re-criminalize adultery in Turkey came just three weeks before the draft was supposed to be discussed in parliament and only a month before the EU was due to issue a crucial appraisal of Turkey's progress towards EU standards.⁶⁵ Adultery had been decriminalized in Turkey by the Turkish Constitutional Court almost a decade earlier; 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 complete 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 two years later, 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.

On August 28, 2004 *Hürriyet* announced in a headline that AKP was considering re-criminalizing adultery. According to the newspaper, this initiative was a result of the government's desire to comply with the demands of the 'Anatolian woman', i.e. women living in rural areas, for criminalization of adultery.⁶⁶ The headline immediately sparked intense debate, which divided the nation into two. AKP and CHP appeared to be split over the issue as well. While the justice minister declared that there was no need for such a revision, since adultery had been decriminalized years ago by the Constitutional Court, the women's minister defended the proposal claiming that the annulment by the Constitutional Court of articles regulating adultery had caused a deficiency in the law. She also stated:

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 in a specific country, we cannot just accept it as such. We have to respect the values of the Turkish society.⁶⁷

The opposition party CHP also signaled an initial acceptance of the revision, provided men would face the same penalties as women.⁶⁸ In fact, in contrast to its later criticism of AKP on the

⁶⁴ These included the recognition of 'honor killings' instead of 'customary killings' as aggravated homicide; the criminalization of virginity tests; criminalization of discrimination based on sexual orientation, the extension of the abortion period from 10 to 12 weeks and the removal of the article that penalized consensual sexual relations of youth aged 15-18 upon complaint.

⁶⁵ 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 the accession negotiations. This report would serve as the basis of discussions of the EU Brussels Summit of December 17, where the final decision over Turkey's accession was made.

⁶⁶ Saffet Korkmaz, 'İşte AKP'nin Zina Gerekçesi' (Here is AKP's Justification for Adultery), *Hürriyet*, August 28, 2004.

⁶⁷ *Zaman*, '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), August 28, 2004.

⁶⁸ Ömer Şahin, 'İktidar ve Muhalefet Toplumla Kulak Verdi: Zina Tekrar Suç Kapsamında' (The Government and the Opposition Listened to the Public: Adultery Criminalized Again), September 1, 2004.

issue, CHP was initially supportive of the revision and made a complete U-turn only after fervent criticism from women's groups.

The debate overtook the public agenda and became the overwhelming topic of discussion immediately after loud protest from women's groups, who were the first to react.⁶⁹ A thorough analysis of the adultery debate, which continued for weeks and was the subject of thousands of national and international news stories, is beyond the scope of this chapter. Below I will try to provide a short summary of the main issues of the debate.

Prime Minister Tayyip Erdoğan led the coalition demanding re-criminalization of adultery. He was supported by all women MPs and the majority of male MPs in his party; religious women's organizations; some religious officials, including the previous head of *Diyanet* (the state department for religious affairs); the conservative and the religious right media, as well as several experts including academics and jurists. The opposition included the Women's Platform, the opposition party (which turned around on the issue after intense criticism), the liberal media and business associations such as the Turkish Industrialists' and Businessmen's Association (TUSIAD), who were concerned that the proposal would prevent Turkey's accession to the EU.

A week after adultery became the number one issue on the Turkish public agenda, the Europeans joined the debate. The EU enlargement commissioner Günter Verheugen first expressed astonishment, by calling AKP's proposal a joke: 'I cannot understand how a measure like this could be considered at such a time, it can only be a joke'.⁷⁰ Yet, in a short time it became clear that AKP was not joking at all and that the government was more than serious. Despite increasing vocal opposition both in Turkey and in Europe, including from the leaders of the European Union, Erdoğan and the government firmly defended the proposal.

Women chanting at the parliament: 'our bodies and sexuality belong to ourselves'

The organizers of the campaign were planning to organize a big march for the support of their demands since they had met the strong resistance of the government. Amargi, a leading women's organization and a member of the Platform, assumed the responsibility for the coordination of the march. They were assisted by another Platform member, the Women's Solidarity Foundation. For a year, several meetings were held with supporting organizations in preparation for the march. It was decided that the march should be held on the day the draft law would be debated in the parliament, as there were still fears that there could be a last minute backlash on that day although the majority of their demands were accepted by the Justice Commission.

This proved to be a very difficult task, as the government kept changing the date the draft law would be voted in the parliament as a result of the national and international political debates on the recriminalization of adultery. Yet, the organizers of the march spent tremendous effort to be able to organize the march within a short notice to be held on the day the draft law was brought to the parliament.

⁶⁹ Claire Doyle, 'Women Attack Turkey Adultery Law', *BBC News*, 2 September 2004, <http://news.bbc.co.uk/1/hi/world/europe/3623072.stm> (accessed May 20, 2005).

⁷⁰ 'Turkey Signals U-Turn on Adultery', *BBC News*, 14 September 2004, <http://news.bbc.co.uk/1/low/world/europe/3654650.stm> (accessed May 20, 2005).

Finally, on September 14, 2004, hundreds of women marched in front of the parliament chanting ‘our bodies and sexuality belong to ourselves’, the main slogan of the march. As the march continued, the AKP government announced that they would withdraw their proposal on the recriminalization of adultery. However, two hours later, the government declared that they had withdrawn the entire draft law on the penal code for another review until an unspecified date, an announcement that shocked both the Turkish and the European public.



‘Our bodies and sexuality belong to ourselves!’

(Photo © Filmmor Women’s Cooperative)

The delay of the penal code reform triggered the biggest crisis between the EU and Turkey since the start of the accession talks. Erdoğan accused the European Union of interfering in Turkey’s internal affairs by its involvement in the debate, stating it had no right to intervene.⁷¹ The European Commission reacted sharply, stating in no uncertain terms that if the draft law was not adopted soon, and if the government insisted on criminalization of adultery, the EU would not start negotiations with Turkey.⁷² The markets fell drastically, threatening a new economic crisis only three years after the huge economic crisis that hit Turkey in 2001 with devastating consequences for many. While not the first economic and political crisis in recent Turkish history, this was certainly the first one triggered by an issue concerning sexuality.

The entire country agonized over the developments, aware that if Erdoğan continued to insist on criminalizing adultery, bridges to the EU would be burned and turmoil would result. Meanwhile, rumors were circulating that AKP not only wanted to criminalize adultery, but also wanted to decrease penalties for rape and reconsider the article that cancelled sentence reductions for rapists who married their victims.⁷³

71 ‘Turkish PM Attacks EU ‘Pressure’’, *BBC News*, September 17, 2004, <http://news.bbc.co.uk/1/hi/world/europe/3666288.stm> (May 20, 2005).

72 ‘EU Demands New Turkish Penal Code’, *BBC News*, September 20, 2004, <http://news.bbc.co.uk/1/hi/world/europe/3672834.stm> (May 20, 2005).

73 Nevin Şenol, ‘Marrying the Rapist’, September 23, 2004, http://groups.yahoo.com/group/tck_kadin/message/1022 (May 20, 2005).

WWHR issued up to several press statements daily on behalf of the Platform, following the news on an hourly basis. Finally, after a meeting with Verheugen in Brussels on September 23, 2004, the Prime Minister announced his withdrawal of the proposal to criminalize adultery. As the Turkish public breathed a sigh of relief and the markets started rising again, Erdoğan expressed sharp anger towards the Women's Platform. At a meeting organized by his party's women's branch, he accused the Women's Platform of being 'a marginal group that does not have any right to represent the Turkish woman'. Referring to the rally organized by the Platform on September 14, 2004 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', implying that by demanding ownership of their bodies and sexuality, Platform members had proved that they were immoral and not worthy of representing 'Turkish women'.⁷⁴

The success of the campaign

The new penal code was finally accepted in the Turkish parliament on September 26, 2004. Media coverage of Erdoğan's harsh insult to the women's groups that comprised the Platform and fought so hard for three years to eliminate gender discrimination in the new penal code was scarce and negligible. The Prime Minister's criticism caused little if any public response and the Women's Platform members were too exhausted to react to the Prime Minister's insult after the three-year marathon of struggle.

The three-year campaign resulted in more than 35 amendments in the Turkish Penal Code recognizing women's autonomy over their sexuality and bodies and a revolutionary change in the philosophy of the code in 2004. The new Turkish Penal Code classifies sexual offences under the section 'crimes against individuals', sub-section 'crimes against sexual inviolability', instead of 'crimes against society', sub-section 'crimes against moral customs', signifying a groundbreaking shift. The notion that women's bodies and sexuality are commodities of men and of society, and that sexual offences are to be regulated in reference to patriarchal constructs such as 'society's traditions of morality', 'chastity', and 'honor' were stamped out, bringing first-time legal recognition of women's ownership of their bodies and a notion of gender equality concerning the inviolability of the body.⁷⁵

CONCLUSION

The Campaign on the Reform of the Turkish Penal Code (2002-2004), led by a platform of women's and LGBT organizations in Turkey, succeeded in a revolutionary change of the underlying philosophy of the Turkish penal code towards the recognition of women's autonomy over their sexuality and bodies despite the opposition of a religious right party in the government, the Justice and Development Party. The campaign, which triggered numerous, wide-ranging public debates

⁷⁴ *Zaman*, 'Türk Kadını, Marjinal Bir Kesim Temsil Edemez' (A Marginal Section Cannot Represent the Turkish Woman), September 25, 2003.

⁷⁵ For more information on detailed information regarding the amendments made in the Turkish Penal Code as a result of the campaign, please see WWHR, The Campaign for the Reform of the Penal Code from a Gender Perspective, http://www.wwhr.org/tck_kampanyasi.php (Accessed May 12, 2007)

and made frequent front page headlines in the media for three years, generated the widest discussion on issues related to sexuality in Turkey since the foundation of the Turkish Republic in 1923 and broke several taboos on issues such as the constructions of morality, honor, virginity, sexual orientation or adultery.

As such, it constitutes a leading example of a successful advocacy and campaign led by civil society - in this case by the Turkish women's NGOs - that resulted in a groundbreaking reform at the national level despite strong governmental opposition.

The campaign was a pioneering example of an effective democratic opposition initiative that involved a long process of awareness-raising and efforts to gain public and media support in Turkey. Moreover, it has also been exemplary of a long term sustained democratic political bargaining between two politically opposed social actors: the feminists and a religious right government.

A recent research study led by CIVICUS on the status of civil society in Turkey has cited the campaign as one of the most successful civil society initiatives in Turkey along with the efforts of human rights CSOs on expanding civil liberties.⁷⁶ The success of the campaign was also acknowledged by the government representatives themselves, with whom the campaigners led pungent fights during the campaign. The head of the parliamentary Justice Commission, Köksal Toptan, a leading figure in AKP, respectfully acknowledged that the Women's Platform for the Reform of the Penal Code had been the only coalition in Turkey to work intensively and effectively on formulating and integrating its demands into the draft law on the Turkish Penal Code.

Several factors played a significant role in the success of the campaign. To start with, the early and extensive preparation of campaign organizers; their holistic approach to the reform of the code from a gender perspective with a through analysis; and their determination for their ultimate aim, namely the recognition of women's autonomy of their bodies and sexuality, set the crucial background factors of their success. Given the wide range of their specifically formulated demands (more than 40 articles to be revised in the penal code), the campaigners from the beginning emphasized their determination that they would not bargain on specific articles and the significance of the acceptance of all their demands for the realization of their ultimate aim – the recognition of women's autonomy of their sexuality and bodies by the state.

Another significant factor that led to success was the meticulous coordination and a tactical day-to-day follow-up of political developments regarding the campaign with immediate reactions, in which WWHR staff deserves special attention with its very dedicated, voluntary, but at the same time professional manner of performing all the daily tasks that were required for the day-to-day management of the campaign (WWHR refused to receive any funding for the campaign in line with the principal of the campaign that it was a campaign of Turkish women for their own rights, with no external impact or intervention). These included daily action alerts; phone calls and faxes to Platform members, MPs and media representatives; daily e-mail and phone briefings to interested journalists; organization of lobbying visits to the parliament; and organization of interviews with the TV, newspapers and radio.

⁷⁶ Filiz Bikmen and Zeynep Meydanoğlu (eds.), *Civil Society in Turkey: An Era of Transition – Civicus Civil Society Index Country Report for Turkey* (Istanbul: TÜSEV Yayınları, 2006).

The tactical use of the media, which involved daily briefings to interested key journalists; ongoing personal communication with media representatives that publicized the campaign via phone or e-mail; including daily feedback for their published articles or aired programs, was among the main strategies of the campaign that proved to be very effective.

The campaigners, which had the advantage of experience with various other campaigns, including the law on protection orders that was passed in 1998 and the reform of the Turkish civil code in 2001 after an extensive national campaign, took advantage of a number of political opportunities and windows of opportunities such as the accession process to the EU, as well as their informal contacts to media, UN or EU representatives in a strategic and tactical manner throughout the campaign. Yet, their insistence on framing the campaign within a national framework, led by national actors, was a crucial strategy throughout the campaign.