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Violence Against Women and Turkish Criminal Law

Turkey's Legal and Societal Framework

- Turkey was established based on secularism in 1923
 - religion-based stereotypes have continued to dominate Turkey's society
- the Criminal Code Law Number 5237 entered into force in 2005
 - crimes are categorised as crimes against woman's body and her sexual freedom
 - terms of chastity, honour, morality, disgrace removed from substantive criminal law
- The Istanbul Convention 2011
 - Turkish Parliament passed a law and the Convention became a part of domestic law
 - Turkey established the Ministry of Family and Social Policies
 - the Law Number 6284 (the Law on Protection of Family and Prevention of Violence against Women) took effect in 2012
- The GREVIO report on Turkey was released in 2018
 - pointed out that Turkish criminal justice system is not effective enough in the cases of VAW

Some problematic definitions in Turkey's Criminal Code

- **the principals of**
 - state obligations
 - due diligence
- **definitions of crimes of**
 - sexual assault
 - psychological violence
 - Stalking
 - forced marriage
 - killings of women

Crime of Sexual Assault

- **Article 36 of the IC**
- → criminalisation of all forms of non-consensual acts
- **Article 102 of the Turkish Criminal Code**
 - ▶ *(1) Any person who violates the physical integrity of another person, by means of sexual conduct, shall be sentenced to a penalty of imprisonment for a term of two to ten years, upon the complaint of the victim. If the said sexual behaviour ceases at the level of sexual importunity, the term of imprisonment shall be from two years to five years.*
- → **the paragraph** defines basic form of sexual assault. Kissing, hugging etc.
- → It does not constitute any crimes where the victim is the offender's spouse. (See Jurisprudence of Court of Cassation of Turkey)

Sexual Assault (Rape)

- **Article 102/2 of the Turkish Criminal Code**
- *(2) Where the act is committed by means of inserting an organ, or other object, into the body, the offender shall be punished with a term of imprisonment no less than twelve years. If the act is committed against the offender's spouse, conducting an investigation and prosecution shall be subject to a complaint by the victim.*
- Where victim is a wife
 - ▶ → a form of impunity is provided instead of condemnation
 - ▶ → Social status is prevailed
 - ▶ → the victim's complaint is a pre-condition of investigation and prosecution
 - ▶ **Under Article 43 of the Istanbul Convention the criminalisation of sexual offences applies irrespective of the relationship between perpetrator and victim.**

Crime of Psychological Violence

- Psychological violence is not defined as a crime
- It is a requirement of the article 33 of the IC
- Generally applicable articles
 - article 96 (the crime of torment)
 - article 232 (ill-treatment among family members)
- → crime of psychological violence has its own protected legal interest

Crime of Stalking

- is a requirement of article 34 of the IC
- to instil a sense of fear in the victim for her safety by repeated threatening conduct
- article 105 of Turkish Criminal Code - sexual harassment
- *(1) If a person is subject to sexual harassment by another person, the person performing such act is sentenced to a term of imprisonment from three months to two years or to a judicial fine; and if the act of sexual harassment is committed against a child, the offender is sentenced to imprisonment from six months to three years upon complaint of the victim.*
- --> crime of stalking is more comprehensive and aggravated than sexual harassment and molestation



Crime of Forced Marriage

- forced marriage leads domestic violence
- a special provision defining crime of forced marriage does not exist in Turkish Criminal Law
- some general provisions of threat, deprivation of liberty or sexual assault are applicable
- article 103 of the Turkish Criminal Code - abuse of children the child is under the age of 15
- → defining forced marriage as a crime is a message to potential perpetrators
- → Declares the unacceptability of forced and child marriage
- → the crime of forced marriage not only covers the beginning of an unwanted marriage but also staying in the marriage
- → among refugee girls and women, child marriage and forced marriage even as a second or third wife increased

Killings of Women

- 932 women were killed in the past three years
- Turkey's authorities have been held responsible due to subordinating women to men
- woman and girl may become a victim due to living in a way that is not approved of by government's ideology
- In most cases
 - ▶ the perpetrator is a husband, a partner, an ex-husband or an ex-partner
 - ▶ the woman terminate the relationship or demands more freedom
 - ▶ Victim's complaint about the suspect or a third person's notification was ignored and required protection was not provided by the authorities
 - ▶ therefore perpetrators were further encouraged due to the unwillingness of official authorities to intervene



the withdrawal of Turkey from the IC (20 March 2021)

- came up through a Presidential Decree which is based on another presidential decree
- it may be described as a usurpation of legislative power since the Turkey's Parliament had ratified the IC through a law
- no explicit provision for terminating a treaty exists in domestic law however, in a case of a law conflict, an international treaty on human rights shall prevail over domestic law. Moreover, article 104 of the Constitution holds that fundamental rights, individual rights and duties shall not be regulated by a presidential decree
- The ruling party is in a conflict with the secular system and rule of law of Turkey and against the idea of gender equality
- Turkey hasn't been implementing some judgements of the ECHR and and not being a state party of the Rome Statute of the International Criminal Court (the ICC). Turkey's withdrawal from the Istanbul Convention seems to be a continuation of its latest policies towards international human rights mechanisms that aim at limiting the governmental power at the domestic level

31429 Official Gazette

Presidential Decrees

Number: 3718

20 March 2021 Saturday

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, which was signed by Turkey on May 11, 2011 and approved with the Cabinet Decree no. 2012/2816 on February 10, 2012, shall be terminated on the part of Turkey as per the Article 3 of the Presidential Decree no. 9.

Recep Tayyip Erdogan
President of Turkey