

TURKEY AT THE CROSSROADS: INTERPRETATION OF WOMEN RIGHTS WITHIN THE CONCEPT OF HUMAN RIGHTS

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General View

The formation of the legal system of Turkey at the Crossroads is not an easy subject to interpret, especially regarding the women's situation within the concept of Human Rights compared to international basis is not and an easy task. This arduousness is not because Turkish accruements are not contemporary; on the contrary, comparing with other nations this achievement is priceless. In this study some International Conventions and the Legal Documents will be interpreted with in the concept of the points taken place at Turkish Constitution, Civil Law, Criminal Law, Labour Law, Social Security Law and educational codes in operation.

Turkish legal system, being at the Crossroads was influence by so many civilizations. That is why before going into the subject, some information will be submitted to give a brief note about historical and cultural aspects of Turkey, and also some notes how the Turkish civilization and the society has been affected.

Turkey is being the focus point of discussions, by the economically developed countries, as well, the states that are struggling for the peace and the countries of the European Union, especially on Human Rights being the top essential subject of all, Negative interpretations arise without scientific researches and objective criteria. For this reason, short information about Turkey's situation being at the CROSSROADS should give.

I- What does it Mean - "Turkey on the Crossroads"

A - Historically

Turkey at the Crossroads is a perfect explanation of Turkey's important role in the Middle East area and the aspect of her location as geographical and

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geopolitical context. Because of its geographic situation and historical background, Turkey has been one of the most important centers of the world and it still is. The description of "Turkey on the Crossroads" is self-explanatory.

How it is;

Turkish Republic is situated at the crossroads of Europe, Asia and Africa. At the east Iran, at the west Greece and Bulgaria, at the south Syria and Iraq and at its north Armenia is situated. In addition, it is surrounded by sea on three sides.

It should review the States or the populations that had been established and survived on this part of the earth:

The Hittites, Urartus, Phrygians, Lydians, Persians, Macedonian Empire of the Alexander the Great, Romans, Byzantines, Safavis that had influenced Anatolian Turkmenians at Eastern Anatolian border, Seljuk's, Anatolian Seljuk's, Oghuz Turks, Ottomans as well as other several people governed by the Ottoman Empire had filled up the stage. Anatolia, governed by the Moslem tribes during the period until completely ruled by the Ottoman Empire, received much immigration.

Anatolia, being surrounded by seas at three sides, was located in the midst of transport between Europe Asia and Africa. Its suitable climate, efficient lands and most importantly, its abundant hydro resources caused it to have been invaded many times. Today the top reason of the games played over Turkey is the WATER Problem.

Since thirty years, the top concern of the world is to produce policies on how to obtain lands with water resources for the future when there will be a lack of water. It is not difficult to understand why it is permitted to construct dams at the southeastern part of Turkey even during the war experienced for 15 years (I do not call this as terrorism, because what was experienced was a real war).

Anatolia is a very attractive place. In addition, since her attraction continued in the course of history, the communities who came here by immigrations and invasions have enriched this territory from cultural standpoint as well.

Such immigrations and invasions have caused Anatolia to have a rich history. Anatolia with its very rich political, artistic, economic and even legal history continues to maintain its richness.

To list the civilizations with track records on Anatolia:

It was scientifically determined that in the years 10,000 B.C. a group of people named LUVI's lived at Çatalhöyük settlement in ANATOLIA as local people. These people at Hacilar Çayönü experienced Neolithic Age as well as the Calgolithic Age and that they experienced the Bronze period, dealing with mining. What it means is that Anatolia is a region full with ancient livings.

— It seems that the Hittites were people who had come to Anatolia by immigration, though historians could not find from where and when they had come. It also said that the Hittites were original Turks. The track records of these civilizations and their living and culture can be seen on the Anatolian people in one way or other. We can even say that the people currently living in Anatolia have the same type of faces as those on Hittites' fresks.

— The Phrygians' also came by immigration and lived in two separate regions in Anatolia, namely as the Major Phrygia and the Minor Phrygia, around Kızılırmak River and Cappadocia and around Bursa Uludağ, Bursa at the west respectively. Kibele, the Main Goddess of Anatolia, belongs to Phrygians. Archaeologically, they have left behind an important inheritance.

— The Lydian's' established a civilization in the surroundings of the rivers Gediz and Menderes, and this civilization extending from Ephesus to the inner western Anatolia appeared to be a state that made and used the money for the first time in the history. Unfortunately, the Persians demolished the Lydian. This people dealing with art, trade and culture could not in fact afford the wars for long.

— The Ions were the people who lived in the urban states formed by Akas' who came from Greece in colonies and mixed with the local people in the locality extending from İzmir Bay to Güllük.

— The Urartus' established a civilization around Van. Archaeologists definitely state that the Urartus were of Asian origin. In Urartus' religion, the Sun and all other existences in the sky deemed holy. Their neighbor, Asurians', gave the name Urartu to them. Later on the name of Urartu was changed to Ararat. Their distinctive feature as miners enhances the possibility that they came from Central Asia. Urartus were relatives with Hurrians. The Hurrian Civilisation located at Southern Anatolia influenced the Anatolian people as an advanced civilization. The Urartus developed a great Civilization. The Urartu miners influenced the Phrygians.

— The Persians had also influence on the Anatolia people between the years 543-333 B.C. Anatolia remained under the influence of Persian culture during that time.

— The Assyrians expanded up to Toros Mountains and Cappadocia as a state situated in the Southern Anatolia. They had great influences in Anatolia during the 18th and 17th centuries B.C. The Assyrians were a state particularly having effect on the development of commercial life in Anatolian living. The Assyrians were living in colonies, who made trade in flat settlements at the skirts of Kültepe Tumulus, Kayseri. Such information gathered from the tablets found. The Assyrians came to Anatolia from Mesopotamia as a continuation of the Sumerian Civilization and influenced the Anatolian people. Syrians are the continuance of Assyrians. The Syrian people since the 4th century A.C. has considered Assyrians as their ancestors.

— The Alexandrian Empire was a civilization that took Anatolia under its influence in the context the Alexander the Great is having expanded from Macedonia toward Asia. It has much effect on the Anatolian People. In addition, because of this, we see that the eastern and the western civilizations are mixed.

— During the Akas' immigrations in the years 1200 B.C., the Akas established colonies in the settlement areas such as Ephesus, Milet, Trabzon, Sinop, and they appear to be the people that were effective on the formation of Anatolian culture by mixing with local people. They had effected on the formation of Hellenism. All these differences can explain how democracy, secularism and Islam could prosper at the same land.

— After Alexandrian the Great, the KINGDOM OF BITINIA founded at Erdek, Balıkesir near Çanakkale at northwestern Anatolia, and PONTUS KINGDOM at Black-Sea and BERGAMA KINGDOM at Western Anatolia established as well.

Eventually, these states issued invitation to the Romans, inviting the Romans to come and govern them and thus the Roman period started.

— The Roman Empire influenced the Anatolian legal system, fine arts, and politics. They ruled over a vast territory from Rome to Egypt and left behind many archaeological ruins in Anatolia.

In the year 395, the Roman Empire divided into two, Istanbul named as Constantinople, was the capital of the Eastern Roman Empire. This state ruled from Istanbul, later got the name as Byzantium, and was ended at

1453, and became an important part of Ottoman Empire. Roman Law is the base of European Law and still maintains its effect on the system of Turkish Law as well.

Because the Anatolian people were influence by variety of cultures, they practice Islam very different from other Islamic countries. Also democracy and secularism could achieve with Islam only by such interaction. The occurrence of such several raids, invasions, crusades to Anatolia would indeed cause mixing of the eastern and the western cultures, which appears as the richness of the country and of the nation.

B - Turkish Invasion to Anatolia

The Anatolian land where the Turkish Republic founded, such civilizations as we listed above came and lived, and many of them passed through or went away, the culture of some maintained their effect and some of them were undergone changes.

Turkey as a cradle of many civilizations and nations has a full historical inheritance. However, it should be stated that the Greeks, Syrians, Celdanians (Orthodox), Nasranians who maintained and are still continuing to maintain their own culture, civilization, language and religion on this land. Armenians immigrated at Emperor Justinianus time during the period of Roman Empire, and the Armenian people settled by him in the surroundings of Erzurum and Erzincan also continued to live on these lands during the period of Ottoman Empire in the same manner. All these groups have maintained their own culture, religion and language. These people lived here as the nationals of Roman Empire as well as of Ottoman Empire, and are currently living on the same land as citizens of Turkish Republic.

The Greeks (Roman citizens not people from Greece) lives with Ottoman Empire beginning from Byzantium and maintained their living as Roman (RUM-Greek), and are non-Moslem people.

In line with these explanations, it would be of use to put emphasis on the description of whether the Anatolian people are composed of as a mosaic or not. It should identify if this is a mosaic or an alloy; because, in many books, these two concepts are confused.

A mosaic defines as an integrity in which any components having different features are involved individually by maintaining their own features.

In view of Turkey, it is not possible to mention as mosaic, because mosaic implies that the individuals with different form of religion, language and life style live on the same piece of land, as their country.

Mixing of various elements having the same cultural origin such as Turkish, Arabic, Persian, Laz, Bosnian, Georgian, Albanian, Zaza and Kurdish with other cultures to form a compound of another culture on the same land cannot be qualified as a mosaic.

It would not be wrong to admit that those people from different clans, who speak the same language, believe in the same religion, though involved in different sects; and who are not nationals of different states to come together lives on the Anatolian land as an alloy. Because several Turkish states established, and formed Anatolian Turks in a cultural accumulation, in which the Turkish ness aspect remained effective and suppressive.

On the contrary it can be perceived different. Against the fact that such formations of clans, tribes, beylics, princedoms, khanates, kingdoms, empires coming from the same origin, can't they live in brotherhood?

It would not be wrong to say that the Oghuz Turks are a part of Turkish-speaking clans who came to Iran via Mavennahünehir and to Anatolia, mixed with many ethnic groups to form a nation with Turkish identity. However, it is a fact that the people who came to Anatolia whom we call Turk omen or Turks speak Turkish language. Because there are not documents about this matter, not much interpretation can made. It took a very long time for this Turkish-speaking people to come to Anatolia and they founded or helped states on their way, and at last they came here by conquest and settled.

However, due to the unique character of Turks, they maintained their own culture, features and nature at every place where they settled.

In short, the Turks, who came to Anatolia in the years 700-800 A.C. and lived on this land for centuries, formed various states and ultimately, by forming a secular republic governed by democracy, they continue their sovereignty on this land.

Geographically that is the first reason why Turkey is at the crossroads, but this is not the only reason why she is at crossroads.

The second reason that such civilizations as we mentioned above had established on these lands that are worth living has intercontinental transport and compound of civilizations are available. Migrations from Asia to Europe for discovering new continents and to the south realized on this land. Crossing from Asia to Europe, several states founded on this land and Roman Empire made its raids to the east via this land. The Crusades took place on this land, the Eastern Roman Empire maintained its sovereignty on this land and united with Turks.

There is not any other land in the world, where such a complexity of various cultures, races, languages and religions, incorporated to form such integrity. Those who lived on these lands, also being the nationals of such states as listed above, have indeed left their tracks behind them, and this is why the nationals of this country have so much accumulation of cultures in her past. This is a great richness.

Another important reason is that Turkey's position as a country at the crossroad is very important that the international political relations of Turkey with their neighbors are on a very fragile platform. Although there are severe problems arising in between, they consider Turkey as a conflict-preventive and crisis-manager.

Both parties politically prefer, the Turkish Government as a mediator in most of their interstate conflicts for political or military purposes.

It has now been understood by the World states and by supranational institutions that without Turkey, the non-Moslem developing countries would have no skill whatsoever in solving problems with their surrounding countries.

This could summarize as follows:

- Without Turkey, arrangement of oil transportation from the Middle East might not be possible.
- Without Turkey, settlement of democracy in the surrounding countries might not be possible.
- Without Turkey, it would not be possible for Europe, USA and Russia to establish the trade relations and the system, which they wish to establish under the name of democracy in the surroundings of Middle East and Caspian Sea.
- Without Turkey, it is not possible to implement peace programs in the Middle East as well as in the particular regions of Asia.

This is an overview of the legal system, related to the rights of women living in "Turkey at Crossroads" and what kind of women's rights are available in this country with very intensive accumulation of cultures where so many civilizations were established in the past.

A foreigner who has no knowledge and cultural back ground about Turkey and only has hear say bases information, is not possible to penetrate the nations expectations and standards of judgment. It is obvious that no one could be able to understand this nation's and the countries problems and

expectations from outside, unless be conscious about the independence war and the foundation of Turkey as well, which needs to grow up in that atmosphere.

In this work would give the juridical sources of Women's rights. The operational part is not included.

II - Legislation and Women Rights

A) International Documents

Turkish legal system based on democratic and secular principles. Equal rights and enforcement of law is fundamental at this system.

International agreements are very important and great emphasis placed on them. It is not that in Turkish system there are fewer rights than especially in Europe or the Turkish system gives less opportunity to people to reach justice but Turkey has a very contemporary legal system and that nearly all international agreements are accepted and applied. It is contemporary that especially the women's rights agreements and other international documents about human rights applied to the national system.

The article 90 of Turkish Constitution states that any international convention comes into force in accordance as the procedures of acceptance are completed and these become a part of Turkish legislation.

The international conventions (either United Nations or Council of Europe documents) that ratified and signed by Turkish government that related to the women's rights mentioned below:

a) Convention on the Elimination of All Forms of Discrimination against Women. (United Nations Conventions- dated Dec. 18, 1976)

Turkey had ratified this document on and accordingly with the Discrimination of Elimination against Women Act was accepted on June 11, 1985 and on Dec. 20, 1985 completed the procedure.

b) Convention on the Political Rights of Women. (United Nations Convention New York dated March, 31, 1953)

Turkey has accepted it on Jan, 12, 1954; it is in force since Jan, 26, 1960.

c) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. (United Nations Protocol, New York Nov 06, 1999.

Turkey had signed this document on Sept, 9, 2000.

d) International Convention on Civil and Political Rights (United Nations document dated Dec. 6, 1966)

Turkey had signed this document on August 14, 2000.

e) European Convention for the Protection of Human Rights and Fundamental Freedoms. (Accepted by the Council of Europe in 1952)

Turkey had ratified this document on March 10, 1954.

f) Social Chart (Council of Europe document dated 18 Oct. 1961)

Turkey had ratified it on July 4, 1999, Decree No 3582.

Additional Protocol to the European Social Charter was also signed on May 5, 1988.

Besides all these documents of either the United Nations or the Council of Europe documents, the subcommittees do many issues on discrimination about women or abuse of women works also. They are helping to the state parties that signed these documents or even to the states which are not even parties to the organizations, trying to inform them about their rights or what can be done to avoid the abuse or help them do work on national scale about this subject.

Turkey being a member of all these organizations had done what is to be done legally at national scale and a great variety of NGOs are working on this field. The NGOs are especially working to built social awareness. The government also tries to prevent violent actions against its citizens especially women and work with the NGOs on several programs.

B) National Documents within the Context of International Conventions

a) Turkish Constitution

Social rights that the Turkish citizens are favored had been a part of the Turkish Constitution since it is accepted.

Since the beginning of the Republic there had been four Constitutions (at 1921, 1924, 1960, and 1982) with different code numbers. The recent constitution is codified on Nov. 7, 1982, Decree No 2709.

The special articles that take place in Turkish Constitution especially on this matter give a better view of the subject.

The preamble of Turkish Constitution begins by stating that

"...every Turkish citizen has the right to exercise the fundamental rights and freedoms set forth in the Constitution on basis of equality and social justice."

Article 2 gives the fundamental characteristics of Turkish Republic States that Turkish Republic is a democratic, secular and social state, respectful to human rights, and governed by the rules of law.

Article 5 determines the duties of the social state and the obligations of as to respect and protect the rights of human beings and progress on:

- Fundamental freedom and rights of the individual,
- Remove the political, social and economic obstacles, which restrict the fundamental rights and freedoms of the individuals.
- Provide the conditions required for the development of the individual's material and spiritual existence.

Article 10 is about equal treatment before the law. Accordingly, all individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any other such consideration.

The said article also states that no privilege granted to any individual, family, group, class, state organs, and administrative authorities should act in compliance with the principle of equality before the law in all their proceedings.

Fundamental rights of individuals take place at article 12 of the Constitution. It is stated that every individual possesses inherent fundamental rights and freedoms which are inviolable, not transferable and inalienable.

Article 42 of the Constitution is about the rights of education and training. According to this article no one could be demolished his or her educational rights. Fundamental or primary education for eight years is compulsory and free of charge for every boy or girl and every citizen.

The constitution sets forth the general rules about the rights and freedom and gives directions to establish for ways and means of the establishing all of these specific codes.

b) Women's Rights within the Context of Civil Code

Besides the Constitution, the chapter about family law of Turkish Civil Code has supplied additional rights on proprietorship of women since 1926.

Although there is not a legal discrimination at heritage law about men and women, the situation of the surviving spouse has to modify. When the partner dies, the portion of the living spouse is sharing the heritage with their children, or sharing the heritage with the dead ones relatives, if they have no children. Giving half of the heritage to the living spouse would be the ideal distribution, with whom the heritage would split equally with the others. This issue worked by NGOs and Bar Association as a proposal to the parliament for amending the law, was at the process of codification, but the parliament did not accept.

The Civil Code revised at October 8, 2001 and in power at 1 January 2002 arranged a very important new article about the property law in favor of women. Before the amendment, separation of properties was the legal system, but now sharing the added properties after the marriage is the legal form. In other words, both parties at marriage would share all the assets gained after, except the ones inherited from their parents, donated especially to one of them or gained by lottery. At divorce, all the assets will be shared 50- % 50.

If the partners did not sign any other agreement, this will be the rule. At this point, there is no discrimination of men or women. If the parties married before January 2002, if there is not a signed agreement for all the property that gained after 2002, it will split up in half, or an agreement will be signed accepting this regime to be in effect from an earlier time. Or else the married couple can choose the personal property regime instead of the legal form that is sharing half-and-half.

Within the context of inheritance rules, Civil Code must have some modification; this is an important expectation of the women in our society.

c) Women's Rights With in the Context of Criminal Code

Criminal Code is the most important law that criticized being against the women's rights in Turkey recently.

The Criminal Code revised according to the points at CEDAW report. The articles pointed out as being against the women's rights were abolish, or changed accordingly. This had been the result of tedious work of many women's associations for two years or more and as a result, the articles that

were against equal rights of women abolished. The new Criminal Code is effected on June 1, 2005.

The new concepts of Criminal Code so far are those:

- Sexual assault among married couples are considered crime (Art.102/2)
- Sexual abuse to women workers at their work place considered sexual harassment. (Art 102/3-b)
- The punishment to inflict to the person who causes women to quit its job because of sexual harassment is aggravated.
- Before the amendment of the Criminal Law, if the woman who was raped married the rapist, the punishment was postponed, now this statement is changed and there is no postponement.
- Murders under the motive of honor killing get the most severe sentence, sentenced to lifelong prison.
- If the parents kill their daughter in the name of honor, or because their girl married to the person that they did not approve, do not get any reduction of their punishment pertaining to unfair provocation.
- Violent action at the family is considered as torture and the penalty for that is given to be the most severe form of torment.
- Not taking care of the married wife or husband considered a crime and not giving support to the pregnant women that carries his child punishes.
- The punishment for prostitution is deregulated, and to encourage help or force to be a prostitute is punished severely. Outsourcing women from different countries, forcing the children to prostitution punished. To the women who are force to prostitute no punishment give to, only they given medical help or therapy.

If scan at the points that are brought to attention by CEDAW

Article 2 of the Convention which is:

“State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

b) To adopt appropriate legislative and other measures including sanctions where appropriate, prohibiting all discrimination against women.

c) To establish legal protection of the rights of women on a sexual basis with

men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discriminate;

d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

f) To take all appropriate measures including legislation, to modify or abolish existing laws regulations, customs and practices which constitute discrimination against women;

g) To repeal all national penal provisions which constitute discrimination against women."

Has accepted.

According to CEDAW article 15/I is:

"State Parties shall accord to women equal with men before the law."

According to this statement, there is not any contradiction with the Turkish Criminal Code.

The discussions about the Criminal Code impose by several NGO's and this gives some ambiguity to the judge to decide upon the case. However, the law is strict and it is practice equally to everyone. It means that the judge has no right for discretion.

The most important issue is the killing for honor and killing for traditions. (I must say that, in the old days in Turkey there wasn't such kind of Arabic or Islam origin punishment for the women. There was only blood feud between some families arouses of property disputes or some killings because of economic factors or silly arguments arouse between friends even, but not because of opposed marriages or killing for honor like Arabia.)

Now it is obvious that, it is been a hot issue in Turkey's agenda or it has been made up intentionally as an issue.

It should be considered that;

Turkey got and still gets illicit migration from Iran, Iraq and Syria, because of political, economic, and legal reasons, and the living conditions of these countries were and are harder than Turkey.

Many of these people even young children without families had run away from the borders illegally and come to live in Turkey. Those who had the

relatives in Turkey were much lucky in loosing their traces. These people found so many ways of crossing the border or came as a tourist and stayed in Turkey forever. At the Population Polls done once in five years, these young or elder people, declared that they have no identity cards because of their parent's negligence.

By managing to have identity cards automatically, they become citizens, which mean becoming a part of Turkish population. This illicit way, had added up a great amount of population at Turkey, where the Turkish population on the Polls in 1925 showed that Turkish citizens were only around 12 million. The cause of this was that men population killed during the Independence War.

Now the Turkish population is around 70 million, and the cause of this must detected well.

Also as a coincidence, the severe population growth had been especially at the southeast. In addition, at the same land these Kurdish and Arabic speaking new population is forming. Moreover, these people do not speak the same language or the same dialect of Arabic or Kurdish as at the southeast part of Turkey where the Arabic and Kurdish origin people lived in harmony as in the old days. The identity of the new comers cannot trace, because they can prove no ancestors.)

For the killing for traditions, Turkish Criminal Code, article 82, has sentenced the most aggravated degree as life long prison. In addition, this is not considered unjust provocation. At this situation, according to the wording of the Code, the judge does not have the right to determine to diminish the punishment, but the NGO's have a different opinion on this subject. For the honor killing, where the husband kills his wife or the wife kills her husband if there is a sexual relation, this punished according to article 81 of the Criminal Code, and they are sentenced to life long prison, for the act of intentional murder.

Only the judge can decide at this point, considering Article 24 of the Criminal code, and lessen the punishment as reasoning it just provocation. At this point, there should not be any judgment of decreasing the punishment as considering it as provocation. It should not be consider as fair to apply a decrease to this penalty by the judge's decision.

d) Women's Rights within the Context of Employment

In Turkey, legal structure of the working women is scattered in different

codifications according to the fields they work. If one is a government officer different rules are applied than a worker.

The social security organizations for different workers are also different. But for all these different codes, equal rights and opportunities are necessary, and equality before the laws is the main principle. For this reason, there are some opportunities set out for women, because of their nature, repeated in all of them.

The legal rights of working women in Turkey were at international standards before Turkey signed the Convention on Elimination of all Forms of Discrimination against Women. Because Turkey is a member of ILO and although did not ratify the whole conventions of ILO is practicing most of the key rules. For this reason, any reform of the Turkish Labor Law does not cause important problems in the country. As mentioned above, Turkish citizens have equal rights before law according to Turkish Constitution. This main principle has affected all the working life and the legal principles so that there is not any discrimination of men or women. The legal Codes has equal principles on working rights, wages, working conditions, social security, retirement and rights of compensation for both men and women. It is not possible to make a different arrangement than this basic legal principle. The employer at its work relations cannot discriminate race, sex, language, political thoughts, belief, religion and sect or any like subject.

The employer cannot offer lower wage regarding to different sexes. Because of special preventive measures, lower wages cannot be offered.

In case the employer violates the mentioned rules pecuniary punishment can be determined.

Furthermore, in case the employer violates the said obligations mentioned in the law, workers has the right to sue the employer for their loss amounting to his/her four months salary plus benefits he did not obtain.

Apart from the rules pertaining to the benefit of workers in general, without any discrimination, there are also below mentioned protective rules for women as positive discrimination at Labor Law.

If need to summarize:

- Women workers are in better conditions in principals of getting severance payment. If a women worker because of getting married terminates the employment contract voluntarily within one year as of the date getting married, they are entitled to have a severance pay. In Turkish Labor Law, severance payment is an institution, which is money legally due by

employer to the worker, in case of implementation of some conditions depending on expiration of the labor contract.

- It is forbidden that women workers cannot be employed under water or under ground.
- Women workers may only work according to the obligatory rules that are placed in guidelines in night shifts and on some industrial plants.
- Pregnant women are protected because of her pregnancy.

For pregnant women, eight weeks of leave before the birth and eight weeks of leave after the birth, totaling 16 weeks of paid leave are accepted. During this period, even if the worker wants to work, it is forbidden for the employer to accept them at work.

According to the pregnant women's health conditions, this period can be longer. In addition, the women worker may ask for free leave up to six months, because of this reason. This is not compensating for yearly vacation. When a women worker begins work after giving birth to her child, she has one and a half hours of leave each day for breast feeding her child. How to use this time is up to the women worker.

Positive incentives for women workers pertaining to Social Security Law:

Men and women can retire or have old age insurance at different ages. Generally, in Turkey women can retire at the age of 58 and men at the age of 60.

There is a special coverage for women motherhood. Women workers besides getting all kinds of health cover can have compensation also while she is away from her work. There is not any other sexual discrimination about women workers besides these mentioned above.

Evaluation of CEDAW within the context of Employment, Social Security and rural living:

The article 11 states that:

"State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same right, in particular

- a) *The right to work as an inalienable right of all human beings.*
- b) *The right to the same employment, opportunities, including the application of the same criteria for selection in matters of employment.*
- c) *The right to free choice of profession and employment, the right to*

promotion, job security and all benefits and conditions of service and the right to motion, job security and all benefits and conditions of service and the right to receive vocational training and retraining including apprenticeships, advanced vocational training and recurrent training.

- d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.*
- e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;*
- f) The right to protection of health and safety in working conditions are including the safeguarding of the function of reproduction.*

2- In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall respond appropriately.

- a) To prohibit, subject to the imposition of sanction, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals based on marital status.*
- b) To introduce maternity leave with pay or with comparable social benefits are without loss of former employment, seniority or social allowances.*
- c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of the network of child-care facilities.*
- d) To provide special protection to women during pregnancy in type of work proved to be harmful to them.*

3- Protective legislation relating to matters covered in this article shall review periodically in the light of scientific and technological knowledge and shall revise, repealed or extended as necessary."

The rights stated in these articles take place in the Turkish legal system. That is why anything related with these subjects are already exist in the Turkish legal system so there is not any subject to considered further.

The article 12 of the CEDAW is:

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, Access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of his article, States Parties shall ensure to women appropriate services in connection with

pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

In Turkish legal system, this subject is also cover so there is not any need for any other modification on this issue.

Nevertheless, it should clarified that there is not a general social insurance system in Turkey. Also in the world, there are many countries where mandatory health insurance or any kind of free health insurance is not possible. Only very wealthy nations can afford such free health coverage, and this is somewhat impossible or is a utopia.

Even thought there is not a general health insurance in Turkey there are different social security systems without discrimination of men and women, who are working for public officers, workers or people working at their own premises as employers or workers or employers at agricultural field.

For this reason, a large majority of the community, as workers, employed or employees or agricultural workers covered with health insurance. Besides all these mentioned groups, unemployed people, or people do not fit to any category mentioned above, has given health care by the government and it called Green Card. This is how health care provided to economically poor people.

Article 13 of CEDAW states that:

"States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a) The right of family benefits;*
- b) The right to bank loans, mortgages and other forms of financial credit;*
- c) The right of participate in recreational activities, sport, and all other aspects of cultural life."*

There is not any discrimination of men and women about the items concerned at this article. All the rights and opportunities mentioned in this article dedicated to all Turkish citizens. Therefore, there is no need to make any other revision for women.

Article 14 of CEDAW states that:

"1. State parties shall take into account ,the particular problems faced by rural women and significant roles, which rural women pay in the economic survival of their families, including their work in the non/monetized

sectors of the economy, and shall take all appropriate measures, to ensure the application of the provisions of the present Convention to women in rural areas.

2. State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate at and benefit from rural development and, in particular, shall ensure to such women the right:

- a) To participate in the elaboration and implementation of development planning at all levels,
- b) To have Access to adequate health care facilities, including information counseling and services in family planning,
- c) To benefit directly from social security programmes,
- d) To obtain all type of training and education, formal and non formal including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services in order to increase their technical proficiency,
- e) To organize self-help group co-operatives in order to obtain equal Access to economic opportunities through employment or self-employment,
- f) To participate in all community activities,
- g) To have Access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reforms as well as in land resettlement schemes,
- h) To enjoy adequate living conditions, particularly in relation to housing sanitation, electricity and water supply, transport and communications."

In Turkish laws is not any discrimination for the women working in rural areas. It means working men and women at this sector does not have different rules and opportunities.

However, the truth is that the rural women in Turkey usually works at their fields and farms for the survival of their families without paid. This is very hard to control and at the traditional Turkish family life, it is very hard to change this structure at economical scale.

In fact, workers of rural sector and agricultural workers and the employers must comply with the rules of Employment Law; these binding states take place at the legislation. The wordings of the law and the decrees are in harmony with the international documents and there is no need for any revision of the law and also any need for any amendment. Recently those who are working at the agricultural field are bound with Labor Law that needs no modification.

There is also another positive discrimination for women at social security coverage. If they are single and have a father who was covered with social security, and after the death of her father, the daughter has the right to get a part of his pension, where the son can not get after the age 18 or he is out of school.

e) Women's Rights within the Context of Education

In Turkey, Turkish women can have the same education as Turkish men. This is the legal form in all Turkish Codes about education. There is not any article about discrimination of women.

The Turkish Constitution, states that primary education is compulsory and without any pay to any of its citizens. The government has the obligation to have all needed means for primary education that is eight years from the age of 7-to 14.

The statistics about literacy of women shows a lack of this. It mostly is the result of hard financial and natural conditions.

The parents with many children prefer to send the boys to school if they have limited financial possibilities, because later they will be the men who will be breadwinners. Girls brought up to get marry and their responsibilities are for the continuity of the gender and the survival of their families.

All schools in Turkey are secular and they regulate, control and inspect by the government. According to the same rules of law, that consists of equity.

There are also private schools all around Turkey. Public Schools are free, but for private schools you have to pay tuition. Public schools can be accessible in any place of Turkey, besides. The government has boarding schools for both boys and girls at the east and southeast parts of Turkey where it is hard to reach school because of harsh climatic conditions. These schools are also free. Now at eastern parts there are new campaigns for supporting the girls to attend school. Some incentives by the government given, like a little amount of money per year/per family.

The legal proceedings for the girls to accept to school are the same as boys. The girls accepted even to military schools, and to all kinds of technical schools that give them vocational skills.

All students take the same exams to enter all kinds of schools, so any discrimination cannot take place. They have the right to sue at the Court if there is any discrimination. If the girls are as bright as the boys they can reach to any kind of grants or scholarship programs with the boys.

There are a lot of programs for the health and well-being of the families, especially family planning for women in Turkey. Women of rural areas are even more interested on this subject compared to men.

All these are in accordance with the article 10 of CEDAW.

Conclusion

Turkey, in the past has full of priceless experiences. Turkish nation deserves the best contemporary conditions forever. Regarding the women's rights as explained the "Turkish Constitution" has all modern terms and was revise accordingly with international conventions, which is not wrong to say that when women's rights are taken into consideration, legally there should be no discrimination among people.**

** The resources used in this article:

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TÜRK VATANDAŞI ERKEĞİN YABANCI EŞİNİN SOYADINI ALAMAYACAĞINA İLİŞKİN BİR YARGITAY KARARI ÜZERİNE DÜŞÜNCELER

Araş. Gör. Emre ESEN*

I. Yargıtay 18. Hukuk Dairesi'nin kararına¹ konu olan olayda davacı Z. *Muzafer*, Nüfus Müdürlüğü aleyhine İstanbul 11. Asliye Hukuk Mahkemesi'nde açtığı davada sunduğu 14.7.1995 günlü dilekçesiyle, 24.3.1995 tarihinde İsviçre'nin Zürih şehrinde İsviçre vatandaşı *Helene Brigitte* ile evlendiğini, bu evlilikten önce 27.2.1995 tarihinde Zürih Nüfus İdaresi'ne eşiyle birlikte yaptığı müracaat üzerine eşinin soyadını taşımasına izin verildiğini ve eşlerin aile soyadlarının, eşinin soyadı olduğunu, İsviçre'de bu soyadını kullanmasına rağmen Türkiye'deki kayıtlarda soyadının *Kırgız* olarak kaldığını ileri sürerek ve 2675 sayılı Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun'un 12. ve İsviçre Medeni Kanunu'nun 30/2. maddelerini dayanak göstererek, nüfus kaydında *Kırgız* olan soyadının *Vollenweider* olarak düzeltilmesini talep etmiştir.

İstanbul 11. Asliye Hukuk Mahkemesi'nce, Zürih'te ikamet eden davacının açtığı davanın yabancılık unsuruna sahip olduğu kabul edilerek davada 2675 sayılı Kanun hükümleri uygulanmak suretiyle davacının ikametgâh hukuku olan İsviçre Medeni Kanunu'nun 30/2. maddesi uyarınca, yabancı tabiiyetteki eşinin soyadını taşıyabileceği benimsenerek nüfus kaydında *Kırgız* olan soyadının *Vollenweider* olarak düzeltilmesine karar verilmiştir².

Kararın, yürürlükteki kanuna aykırı olduğu iddiasıyla Cumhuriyet Başsavcılığı'nca temyiz edilmesi üzerine, mesele Yargıtay 18. Hukuk Dairesi'nin önüne gelmiştir.

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¹ Y. 18. HD. E.288, K.1496, T.25.2.1997; kararın metni için bkz. AYSEL ÇELİKEL, ERGİN NOMER, *Devletler Hususi Hukuku - Örnek Olaylar - Mahkeme Kararları*, 7. Baskı, İstanbul, 2001, s. 473-475.

² İstanbul 11. Asliye Hukuk Mahkemesi E.1995/340, K.1996/69, T.13.2.1996, (karar yayımlanmamıştır).