# THE 2002 CIVIL CODE: ITS REFLECTIONS ON THE HUMAN RIGHTS OF WOMEN

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# THE 2002 CIVIL CODE: ITS REFLECTIONS ON THE HUMAN RIGHTS OF WOMEN

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# ABSTRACT

An abstract of the thesis of Sibel Kama for the degree of Master of Arts from the Atatürk Institute for Modern Turkish History to be taken February 2012.

TITLE: The 2002 Civil Code: Its reflections on the Human Rights of Women.

The Turkish Civil Code put into effect in 1 January 2002 made many Amendments to the former Civil Code. The Code also introduced changes regarding women and family. While making amendments, the equality of genders was a concern and new rules were introduced about that. This study to discusses the changes to what they articulate or disclose and what they produce on. To understand how the New Code changed women's everyday lives, the law with its legislative process, national and international developments and the legal history of the women's movements in Turkey were examined.

# ÖZET

Atatürk İlkeleri ve Inkılap Tarihi Enstitüsü"nde Yüksek Lisans derecesi için Sibel Kama tarafından Ocak 2012 'de teslim edilen tezin özeti

BAŞLIK : 2002 Medeni Kanunu: Kadının İnsan Haklarına Yansımaları.

1 Ocak 2002 tarihinde yürürlüğe giren Türk Medeni Kanununda, önceki yasaya göre çeşitli iyileştirmeler yapmıştır. Yasa kadın ve aile bakımından da önemli yenilikler getirmiştir. Yeni kurallar cinsiyet eşitliği ile ilişkili olarak değiştirilmiştir. Bu çalışmada Medeni Yasada kadınlarla ilgili olarak yapılan değişiklikleri ve ne bunların ne ifade ettiğini tartışmak istiyorum. Yasanın kadının gündelik yaşamına getireceklerini anlamak için, yasalaşma sürecini, bu süreci etkileyen ulusal ve uluslararası gelişmeleri ve Türkiye'de kadın hareketinin yasal tarihini birlikte değerlendireceğim.

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# CHAPTER I

## INTRODUCTION

In this study, the recent changes in the Civil Law which ensure gender equality will be assessed. The most recent Turkish Civil Code, which was approved by the Turkish Parliament on 22 November 2001, abolished the supremacy of men in marriage and established the full equality of men and women in the family. It was published in *the Official Gazette* on 8 December 2001 and came into effect on 1 January 2002. The provisions brought by the law aimed at ensuring gender equality within the family institution. The family, the accepted main form of coexistence of men and women, is an age and gender-based hierarchical formation. The family is a place in what there is gender-based division of labor between women and men and, the division is re-born and re-produced. In the family, the main tasks of women are household work, child and elderly care. The gender-based division of labor in society puts women in a dependent and secondary position, which prevents their material and spiritual enhancement. The main objectives of the law are the removal of women's dependency upon men, strengthening the economic status of women and making them equal. Are the regulations adequate to change the traditional roles?

An examination of the legislative process will provide information about how the traditional roles of women are affected. Marit Melhuus indicates, "There is no doubt that states make themselves visible and felt through legislation." (Melhuus, 2004), and continued, saying,

> "that national legislation may articulate national concerns, and that legislative processes represent an interesting ethnography forexploring the

> attributed meaning, limits and articulations of the state. As such, legislation and laws represent key institutions as well as institutional practices. They are not only techniques of governance, but also embody the very language of stances and, by implication, the mythical quality of the state as something abstract, above and beyond the mundane routines of everyday life. Yet not only are laws routinely made by people in specific positions, they also have direct implications for people's life. (Melhuus, 2004).

As Mitchell indicates, the details of a legal process "all of which are particular social practices, are arranged to produce the effect that the law exist as a formal framework, superimposed above social practice" Legislative processes are therefore interesting both in what they articulate or disclose and in what they produce. (1999:90)

My focus is primarily on processes that occur within government. When we look at legislative processes and parliamentary debates we find that both the causes and the main meaning of the arrangements. Melhuus indicates in his study that,

> the making of law implies examining a series of events and social practices, ideas and values informing the law, including motivation, culminating with the vote in Parliament. The law (and legislative processes) produce a framework, but also generate a moral universe. In the understanding of the law as political processes which characterize the legal constitutions of social reality, laws represent power fields where multiple actors confront each other to negotiate the terms of their existence. They provide a grid, a set of categories in relation to which different ordering or practices of governing take place, which are constitutive of social reality." (2004:213).

I will examine in my study the implications, ideas and values and motivations in the law. I will explore aspects of the states about gender equality.

Turkey's past, economic, social conditions and relations with the other countries are all effect the New Civil Code. So, I will consider in this study the history of women and international relations. The real meaning of the law can be understood only considering the law process by means of past and future relations. I have used published sources, and unpublished official papers and archival sources. This is not an empirical study, although I have drawn on valuable empirical studies.

The first chapter of my thesis is the introduction. The law governing family relations changed dramatically with the New Civil Code. This study gives an account of the processes and problems of reform. It is not a study of the social and economic forces which govern the distribution of power in society and influence attitudes towards legislation and legal practice, nor is it a study of the impact which the law has on individual behavior. A study of these processes also may throw some light on the development come to be regarded as fundamental characteristic of Turkish family law.

The second chapter is about the history of women's rights in Turkey. The study focuses on the New Civil Code, but goes further back in time when necessary for an understanding of legal developments in Turkey. So, in this chapter, the changing position of women within the framework of Family Laws will be reviewed. Family Laws is a part of the Civil Law, what is one of the main laws for both state and people that insists especially on people's rights and family relations. So, I will examine the history of changes through legislation. In Turkey, there are three family law regulations in total. One of them was made of near the end of the Ottoman Empire. The Decree on Family in 1917 and the Republican Civil Code in 1926 are the subjects of my second chapter.

First of all, I investigate the legal rights of women during the Ottoman Empire. The Ottoman legal system, based on Islamic law, the Sharia, was centralized. The Sharia consisted of provisions listed in the Quran, Islam's holy book, sayings and acts of Prophet Mohammed as reported through the centuries, and the interpretations of Islamic jurists over the centuries, often in the form of treatises. These practices of Sharia were continuously formed and re-formed as the reality of

society in the future legal documents. The Sharia governs marriage, divorce and inheritance. The Sharia assumes that women are naturally dependent men.

With the Tanzimat period (1839-1876) began a social and economic transformation. This was an era of modernization. The modernization of society was thought to be the main role of the state. This term is reflected in the law as codification. The Mecelle code was the first attempt to codify a part of the Sharia-based law of an Islamic state. It was the civil code of the Ottoman Empire in the late nineteenth and the early twentieth centuries. The code was prepared by a commission headed by Ahmet Cevdet Pasha, issued in sixteen volumes (containing 1,851 articles) from 1869 to 1876 and entered into force in 1877. Its structure and approach were clearly influenced by earlier European codifications. It covered only laws of goods and obligations; family law was entirely left out. Family law remained the domain of religious law. Family affairs ordered *ferman* (imperial edict) and *tembih* (admonition) related to marriage and the protection of the family.

But as Deniz Kandiyoti indicates, "The overthrow of Abdulhamid II's autocratic regime in 1908 by the Young Turks, members of the Committee of Union and Progress, initiated the second constitutional period (1908-1918). This period witnessed intense social and ideological ferment, accelerating the proliferation of women's associations, the opening of the university to women, and the increased incorporation of women into the labor force". (Kandiyoti, 1991)

Zafer Toprak connects the question of women to family in his article "The Family, Feminism and the State". (Toprak,1990). He emphasized that the interaction between family and state was one of the main concerns of governments during the Young Turk period (1908-1918) and again in the single-party era (1923-1946) of Republican Turkey. "New Life" *(Yeni Hayat)*, as formulated by the ideologues of the

Committee for Union and Progress, the Unionists as we shall call them, required radical changes in the cultural norms and social structure of Ottoman society. Women and family in particular were brought onto the agenda of the new regime as the main items of concern during this period.

At the same time, political and social changes in late Ottoman society brought about alterations in the structure of the family, especially in Istanbul and other major metropolitan centers of the Empire. In the early years of the Young Turk period, a new ideological framework was developed in line with the emerging nationalism of the time. According to this new outlook, patriarchalism had to be replaced by partnership within the family, because the tenets of the 1908 revolution required "liberty, equality, and fraternity". The nuclear family based on partnership was seen as the model family, one that would emerge from and also lead to the emancipation of women. Indeed feminism and the "New Family" *(Yeni Aile)* or the "National Family" *(Milli Aile)*, as the Unionists put it, went hand in hand during the Young Turk period. (Toprak, 1990). The reformists believed that the status of women needed to be upgraded. "The National Family" concept was reflected in the law. Both the 1917 dated "Decree on Family Law" and the 1926 Civil Law had the same approach.

"The Decree on Family Law" was short-lived, lasting only from its promulgation in 1917 until June 1919. The more important novelties of this legal document were the raising of the age of marriage and the limitation of polygamy. Its importance lies in the fact that it laid much of groundwork for the Republican Civil Code of 1926. The 1926 Civil Code banned polygamy and granted women equal rights in matters of divorce and child custody. Turkish women also were granted suffrage rights first in local elections in 1930, then in national elections in 1934. The

1926 Turkish Family Law was based upon the concept of "the authority of the chief of the family." (Civil Code, Article, 152). The husband had a much greater effective capacity than his wife. From the Ottoman Empire and former, the authority of the husband as the head of the family was accepted and provided in societies by customs and religions. More importantly, debates on women and the family were used by Islamist, Westernist, and Turkish writers to distinguish their views of the Turkish nation and its national projects. Most scholars called this term "state feminism." This chapter examines the modernization discourse that was the main reason in the changing laws about women. So, the laws did not offer gender equality. I used only written sources in this chapter.

In the third chapters of my thesis, I concentrate on international developments which were effected to shape the 2002 Civil Code. This chapter aims status of women in Turkey which were reconstructed in accordance with the international developments and to maintain the role of women in this process. I searched first of all the CEDAW. The United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 as an international bill of rights for women. Nation-states that accept the convention pledge to adopt laws, policies, and other measures to end discrimination against women. The Convention defines discrimination against women as

> ... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.(CEDAW, Article 1).

By accepting the Convention, states commit themselves to undertaking a series of measures to end discrimination against women in all forms. States incorporate the principle of the equality of men and women in their legal system,

abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women; establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The General Assembly of the United Nations also adopted an Optional Protocol to CEDAW in 1999. By ratifying the Optional Protocol, states agree to receive and consider complaints from individuals or groups within its jurisdiction (communication procedure), and give to the Committee the authority to investigate and make recommendations to the state related to the systematic violation (inquiry procedure). (Moroğlu, 2005.) CEDAW is a living document. Its scope changes according to the general comments of the Committee. Some important issues which were not discussed in the original document have been added to it over time.

The "Convention on the Elimination of All Forms of Discrimination Against Women" was signed by Turkey 20 December 1985 with the reservations of 9/1, 15/2-4, 16/1c,d,f,g, and 29/1 articles, which were contradictory to national laws. The convention was ratified on 19 January 1986.

The reservation articles 15 and 16 of the Convention were incompatible with the Family Law section of the Turkish Civil Code, particularly those pertaining to women's legal capacity, such as the right to enter into contractual relationships, responsibilities concerning children, and choice of domicile, family name, work and job. The 9 th article was about nationally and the 29/1 article about international arbitration. Turkey raised reservations about articles 15 and 16 when the New Civil Code Draft amendment to was on the council agenda, (Moroğlu, 2005) on September 1999, and signed the Optional Protocol on 8 September 2000, and ratified on 29 October 2002. The Protocol went into force in January 2003. By adopting the

Optional Protocol, the Turkish Constitution was amended to define the family as an entity based on equality between the spouses. CEDAW was a significant factor in the changes in the Civil Code in Turkey.

The UN also has played an important role in the development of women's human rights. The CEDAW Convention was adopted in 1979. The "UN decade for women," was declared in 1985 at the Beijing Conference in 1995. Following the Beijing Conference 5 and the Beijing Conference 10 led to significant improvements. These studies strengthened the NGOs, and led to the emergence of women's human rights.

I researched developments in the European Community about women's equality. The European Community was established with Rome Treaty in 1957. The equality of men and women was limited with the "equal pay" in the Rome Treaty (Article 119.) The EU has eventually evolved this concept into a social commitment to equality between men and women in employment and in all other areas of Union activity. The Council of Europe has taken steps at different levels to promote equality between women and men. The European Social Charter which is enclosure of Maastrich Treaty provides a number of specific rights for women, namely equal remuneration, the protection of mothers and working women and the social and economic protection of women and children (Moroğlu, 2000:63.) The Amsterdam Treaty greatly raises the awareness of the issues regarding discrimination between men and women in employment as well as beyond the workplace and allows Member States to enact appropriate legislation.(Moroğlu 2000:63.)

A declaration by the Committee of Ministers in 1988 gave new impetus to this work. It affirmed that equality was an integral part of human rights and that the eradication of sex-related discrimination was a sine qua non of democracy and an

imperative of social justice. From this declaration follows the conviction that a democracy where women are under-represented in the various echelons of decision-making in the political, economic and social areas is not a true democracy. If women and men are not given the possibility of working together on an equal basis, sharing the same rights and same responsibilities, we shall be left with incomplete democracies (Declaration on Equality of Women and Men, adopted by the Committee of Ministers on 16 November 1988 at its 83rd Session.)

So, the new family concept was born in Europe. The notion of chief hood system in family relations was abolished in the contemporary law system. France in 1970, Germany in 1957, and Switzerland in 1988 regulated their law system with a new sense of family. In addition marriage in Europe was no longer the only accepted form of cohabitation of two people. Homosexual couples also demanded equal treatment. Traditional family law had to provide an answer to a new social phenomenon. When Turkey aspired to EC membership, it was to ratify first of all CEDAW and then had the responsibility to remove discriminative articles and supply gender equality.

In the second section, a brief look at to women organizations in Turkey in light of the New Civil Code. More than 126 women's organizations followed the legislation process very close. They had no dominating ideology. They were at different places on the spectrum. But most of the members who closely monitored developments related to women were well educated. They had watched the international gains of women very closely; they had kept in touch with international institutions, lobbies and followed them up in Turkey. They had affected the New Civil Code in various ways. They helped prepare the bill. They created awareness in society. They met with the deputies to convince them. They put pressure on the

deputies to change unfair articles about women. These organizations' demands received not response from politicians until Turkey's application to the EU. After that, politicians paid attention to their work, but they did not have a mission such as getting rid of the traditional roles of women and their secondary status.

A women's organization "Women for Women's Human Rights (WWHR)-New Ways was published a booklet in April 2002. In this booklet, they briefly indicated this reality, saying

> While we celebrate the gains of the new Civil Code, we are also well aware that legal changes are not enough to enable women to enjoy full human rights in their everyday lives. There are still tensions and contradictions between official laws and customary practices. Within this context, we believe that our mission to link local, national, regional and international action for social change assumes critical importance. It is only through enhanced solidarity between women's groups that we can continue the struggle for equality. At this point, one must pay tribute to the widespread collaboration between women's groups and activists in Turkey in the campaign to reform the Civil Code."(NWHR-New Ways, 2002).

In this chapter I mainly used international reports, state reports, shadow reports, UN and EU reports and women's movement articles.

The fourth chapter presents a brief history of the legislation process, various studies about the novelties of the 2002 Civil Code's and the speech in the National Assembly. The bill was accepted on 24 October 2001. I will give the structure of the National Assembly in different points, such as the result of the election, the formation of government, parties, and politicians. The different parties in the National Assembly expressed their views with their two MPs. I tried to mirror their views. I tried to show the religious conservative's, and the nationalist's views about women, and, of course, I'll touch the audiences. There were 126 women's groups in the National Assemble. They followed the conversations and discussions very closely. They initiated campaigns to overcome the resistance of the religious conservatives and the nationalists in the Parliament. They influenced the New Code.

The speeches will give important clues about the state's view about women. In the fourth part, I mainly used the record of council.

The main chapter of the thesis is about the articles to the 2002 Civil Code. The new Civil Code took a new approach to the family and to the role of women in the family. The main objective was to ensure gender equality in the law. The request for equality was seemed two-way. The first was to ensure equality in personal relationships. This equality was provided by the Law except for Women's surnames. However, equality on the part of the assets in the relationship was disappointing. The new Civil Code established "the Participation on Acquired Property" as the legal property regime, which was valid by default if couples did not choose one of the other specified regimes before or after they got married. Under this regime, there were two types of property, acquired property and personal property. Personal possessions and property accrued before the marriage were classified as personal property. Acquired property was the subject of the division. This article was meant to reflect the achievement of the economic power of women, but, taken forward to the effective date of matter at the last minute, it limited the application of the law. This point is very important to show that the real aim of the law was not to ensure gender equality. Again, not mentioning positive discrimination, the principle of equality led to the opposite results in practice. Along with other innovations brought by the law the institutions are examined in this section. In this chapter I used the 2002 Civil Code and women's organizations studies as sources.

Turkey again is passing through a new reconstruction process, because of global and economic forces that are quite similar to the establishment of a new Republic. International conventions and the European Community's norms are impinging on national legislation. Turkey has changed most of its laws and continues

to change, with the aim of harmonizing regulations with the European Community. The New Civil Code was one of them. In this study, my basic objective is to seek the effect of the egalitarian understanding of the new law on changing the traditional status of women in society.

# CHAPTER II

## THE LEGAL HISTORY OF FAMILY LAW IN TURKEY

In this chapter I introduce the long history of family law in Turkey. The history of law is worth of much more detailed study, but that is beyond of the scope of this work, by means of which I intend to give the dominant groups interests of Turkish Family Law. This chapter will focus primarily on family laws in the nineteenth century Ottoman Empire and in the new Turkish Republic.

The Ottoman Empire was an Islamic empire. The emperors derived their power and legitimacy from religion and justified their invasions by religious mandates. The Ottoman legal system, based on Islamic law, the Sharia, was centralized. The Sharia consisted of provisions listed in the Quran, Islam's holy book, sayings and acts of the Prophet Mohammed as reported through the centuries, and the interpretations of Islamic jurists over the centuries, often in the form of treatises. These practices of Sharia were continuously formed and re-formed as the reality of society in later legal documents.

### The Sharia and Women

In the Ottoman Empire, every religious community had its own rules related to marriage that members were supposed to follow. Marriage was regulated according to the principles based on the holly texts of each religious community. The Sharia was the traditional Islamic legal code that was at the heart of Ottoman family law. It assumed that women were naturally dependent on men. There is a gender-

based division of labor in the family. Women were responsible for the household, children and the elderly. The rights of women were placed in the parts of the Sharia that governs marriage, divorce and inheritance.

Family relations began with marriage that was a contract between two parties. The Sharia had very few conditions for preventing marriage. The marriage of a Muslim woman to a non-Muslim man was an important one of them. This rule also applied to the marriage of non-Muslim of different religions, so that a Christian and a Jew were not permitted to marry. Young age was not an impediment to marriage. Married children remained with their parents until they were considered "carnally desirable." Arranged marriages were common. A woman needed a tutor even in her adulthood. A marriage contract became real when people in the presence of witnesses, pronounced the words that expressed their will to marry, or in the case of legal tutors to marry their tutees, when there were no legal impediments to the two people being married and when an adequate *mahr* (dowry)[1], was transferred from the husband to the wife, which remained her property throughout the marriage.

The Sharia authorized men to marry up to four women. However, the men were obliged to pay their *mehr*, treat them equally and provide each one with a house or at least with a separate room. He was required to provide housing for the family, which remained his individual property. The woman was required to obey her husband. Economic responsibilities fell on the husband, who had to provide for the wife and children according to specific rules. A child born to a married couple was considered to be the husband's child.

Ottoman women could own property. It can be said that the marital regime in the Sharia indicated the separation of property, this appeared on at placed both the

[1] an immediate or deferred endowment to the bride as a sort of social insurance for the wife in the event of divorce or widowhood

1917 Family Decree and the 1926 Family Law. The husband and wife preserved their own personal property and had no right to dispose of that of their spouse. Women were secluded from man, especially in the upper class. The Sharia also permitted the dissolution of failing marriages. Men also had the exclusive right to dissolve marriages. The institution of one-sided divorce by men *(talaq)* allowed the husband to repudiate "I divorce you" his wife even if she had not breached the marriage contract. He had to provide alimony) *(nafaka)* to the divorced wife. A wife seeking divorce was required to ask her husband to dissolve the marriage. If he refused, she had go to court and request a judge to do so. Divorces vary in different Islamic legal schools. The Sharia Law recognized to male's right to larger share of inherited property, usually twice the portion of the female. The Tanzimant Land Reform in the second half of the nineteenth century allowed daughters to inherit land on terms similar to male.

## Reforms in Family Relations

By the mid-nineteenth century, Ottoman intellectuals had begun to engage with Western intellectual ideas, most notably those on democracy and secularism. Reforms began with the Gulhane Charter in 1839. The main importance of Gulhane Charter was its codified nature. Codification was a major instrument in legal reforms. After a short-lived attempt at a constitutional monarchy (1876-1878), the Ottoman state continued to implement reforms in the midst of an authoritarian regime.

In the early twentieth century, an important number of Islamic reformers defended the codification of Islamic Law. The Mecelle was the first attempt

to codify a part of the Sharia-based law of an Islamic state. In its structure and approach it was clearly influenced by the earlier European codifications. It covered only laws of goods and obligations; family law was entirely left out. Some intellectuals, while so-called Westernists, supported the adoption of a European–style family law and its incorporation into the Mecelle. But the Muslim religious establishment cherished its hegemony over personal and family law. The Christian and Jewish religious establishment also considered these areas as their exclusive domain. So, family law, remained a domain of religious law.

When the Young Turks came to power in 1908, the female, was considered the foundation of society in connection with the family. Islamist, Westernist and Nationalist narratives all has conceptualized the relationships between modernization, the state and the family. Gender emerged as a peripheral part of the discussion about the transition from tradition to modernity. (Mervat Hatem, 1989). The subordinate role of women in the Muslim family was treated as both a cause and symptom of societal backwardness. The influence of the West and of westernized reformers, who championed new gendered agendas, provided solutions to this problem. (Hatem, 1989).

This period witnessed great wars that changed the population structure. There were large migrations. The male population declined. The massive mobilization of Muslim men left the Empire with many jobs open and the state tried hard to convince women to work outside the home. Women engaged in patriotic activities such as serving as nurses or sewing clothes for soldiers. As Deniz Kandiyoti writes,

> "The overthrow of Abdulhamid II's autocratic regime in 1908 by the Young Turks, members of the Committee of Union and Progress, initiated the second constitutional period (1908-1918). This period witnessed intense social and ideological ferment, accelerating the proliferation of women's associations, the opening of the university to women, and the increased incorporation of women into the labor force. More importantly, debates on

> women and the family were used by Islamist, Westernist, and Turkish writers to distinguish their views of the Turkish nation and its national projects." (Kandiyoti, 1991).

"The Turkish intervention in this debate on Turkish national identity by-passed the counter posing of Islam to the West. Ziya Gökalp, the key ideologue of this view, argued that the history of pre-Islamic Turkish societies offered evidence to support the existence of egalitarian families, monogamous marriages, and Turkish feminism. This 'golden age' inspired the 1917 family code, which established the foundation for the 'National Family.' Marriages were to be monogamous and based on consent. The new code stipulated the presence of a state employee alongside the two witnesses required by the Shari'a to 'provide women with greater security in the conjugal contract' and made polygamy contingent on the consent of the first wife." (Hatem, 1989).

In the context of "modernization," new state schools for girls were established. Many publications for women emerged. Around these publications, many women's organizations were founded. They participated in the public debate on gender. They aimed at enhancing women's education, employment opportunities for women and promoting other women's issues such as the modernization of clothing and attires. Ellen L Fleischmaun describes the role of women as

> " The women who were involved in these early efforts all educated and from middle- and upper-class backgrounds, as was the case in women's organizations in other parts of the world during this period. Their educations acted as a catalyst, encouraging them to seek change and giving them the confidence and ability to act. Class played major role… Although eventually many women came to see themselves as part of women's movement, their concept of "movement" did not necessarily incorporate the mass of women in their societies. In this, they mirrored many of the attitudes of the male reformers, liberal politicians, and nationalists who were their allies during this period."(Fleischmann, 1999).

These characteristics of the women's organizations would be the same afterwards.

The nineteenth century did not produce a secular and uniform family law in the Ottoman Empire. But the laws and the 1917 Family Decree show that the status of women had begun to rise. There were some important reforms that opened the way to the Decree of Family Law. The Sicil-i Nüfus Nizamnamesi (Regulation on Registration) dated 2 September 1881 was one of them stated that weddings of both Muslim and non-Muslims had to performed with the permission of the leaders of their spiritual communities and that these leaders as well as those registering their marriage had to inform an official of the Population Office of that event. In the Sicill-i Nüfus Kanunu of 27 August 1914, a more protective restriction was imposed. According to this law, a husband was obliged to inform the Population Office in the event of his divorce. An important change also was brought about in the Penal Code on March 1914, according to which the legal guardians of women under twenty years of age had to be present when a marriage permit was sought from court. Finally, two imperial degrees *(ferman)* issued in 1916 increased the opportunities of women applying for divorce. Accordingly, women could now sue for divorce 'in cases of desertion or the existence of a husband's contagious disease making conjugal life dangerous.' After these important changes, the 'Decree on Family Law' was issued. Because of the sensitivity of the subject, it was not a law, it was only a Decree.

## The Decree on Family Law

The Decree on Family Law (Hukuk-i Aile Kararnamesi) was the first systematic codification of family law in the history of the Ottoman Empire. 25 October 1917 ( 25. teshrin-i evvel 1333 A.H.) it was adopted and took effect on 1 January 1918 and it was revoked by the Occupation Forces in Istanbul on 19

June 1919. Its main importance for this study lies in the fact that it lay much of the groundwork for the Republican Civil Code of 1926. I used in this chapter the decree and Prof. Dr. Orhan Çeker's book 'the Decree on Family' as my sources. (Çeker, 1985).

The Decree on Family law consisted of 157 items. It was not a law. It was a decree signed by Grand Vizier Mehmet Reşad and Minister of Justice Mehmet Talat. The Decree on Family Law did not introduce a single, unified law for every Ottoman citizen. It included separate sections for Muslims, Christians and Jews and each was based on their respective religious tradition. Thus, for example, while the regulations for Muslims and Jews permitted polygamy, it was strictly prohibited for Christians. Alhough, the Hanefi Mezhep was traditionally dominant in the Ottoman Empire, in the Decree, the authors combined the four schools of Sunni Islamic law at their convenience.

The Decree on Family Law codified a single interpretation of Islamic law. It had three main parts. The first part was about marriage, the second part about divorce and the third part contained various provisions. In addition to these part there was a general justification.

The first part contained six parts about engagement, conditions for marriage, barriers to marriage (for Muslims, Jews and Christians), material conditions of marriage (for Muslims and Christians), *kefalet* (having enough property and job for men), cancellation of marriage for Muslims, Jews and Christians, provisions of marriage for Muslims and Christians, *mahr* (dowry) and alimony. The second part was about divorce, in three parts. The conditions of divorce, *talak-ı ric'i* (divorce where women don't need a new agreement to remarry their old husband) and *talak-ı bain* (divorce where women need a new agreement to remarry their old husband),

divorce conditions for Christians, waiting period and alimony were the subjects of the second part. The third part was related the affectivity of law. In the part of general justification, why the articles existed was explained extensively.

The most important novelty in the decree was prohibition of child marriages. After the first part about engagement, the decree put the age to the conditions for marriage with the article four and so on. While the traditional interpretation of the Sharia established a single division between childhood and adulthood, the decree fixed the age of maturity for marriage at seventeen years for women and eighteen years for men. A new category of *mürahik*/a was introduced for young people who had reached maturity according to Islamic law, but were under age to women under seventeen, for men under eighteen needed the permission of a judge to get married (in the case of women, the permission of a legal tutor was also required). Marriage for girls below nine years of age and boys below twelve, was firmly prohibited by Article 7.

In the decree, marriage was to be based on the principle of free will. The authors of the decree refused to accept the Hanefi interpretation that considered valid marriage contracts agreed to under coercion, and opted instead for the Shafi'i interpretation that dismissed such contracts as invalid(Article 57). They were also careful to emphasize that the will to marry should be expressed in unambiguous language (Article 36). The decree introduced the obligation to make public the decision to marry, so that anyone who objected to the union had time to speak up. Moreover, the marriage contract had to be sealed in front of a *kadı* (judge) or his deputy. Muslims were supposed to appeal directly to the kadı, while a Jewish or Christian religious leader notified the court so that the judge could be present at the ceremony. The judge was obliged to register the marriage, and to provide specific

information regarding the spouses. However, the contract was held valid even if no judge was present, and it was only through punishment by imprisonment that the law was imposed.

Another important novelty in the decree was that it limited polygamy. It maintained the possibility of polygamy for Muslims, in accordance with traditional interpretations of Islamic law. However, it introduced an important novelty in this respect: it permitted a woman to impose a condition in the marriage contract that prohibited her husband from taking another wife without her consent. If the husband did marry a second woman despite the prohibition, either the first or the second wife would be divorced automatically (Article 38).

Another measure designed to strengthen the position of the wife was divorce negotiated in a family council. The authors defended it as a measure that protected women from the misbehavior of their husbands. It appeared as article 130, based on the point of view of Maliki Mezhep: If there appeared a conflict and incompatibility between the spouses and one of them appealed to the judge, the judge appointed one arbitrator from each family. If an arbitrator could not be found in one or both families, or if the person did not have the required qualities, then the judge designated suitable people from outside of the family. The family council created in this way examined the explanations and defense of both sides, trying to reconcile them. If it was not possible and the fault is the husband's, the couple separates. If it was the wife's fault, they were divorced and the wife returned a part or all of the *mahr* [dowry]. If the arbitrators did not agree, the judge either appointed another family council of suitable people or a third arbitrator who had no relation to either side. The decision of the arbitrators was irrevocable and no protest was accepted.

The decree was issued in the context of the Great War, which brought important changes to the lives of many Ottoman women. The massive mobilization of Muslim men left the Empire with many jobs open and state tried hard to convince women to work outside their homes. Women engaged in patriotic activities such as serving as nurses or sewing clothes for soldiers. Through this experience urban, middle-class women gained self-confidence and political consciousness. They united around the magazines and begun to request rights (Çakır, 1993). Furthermore, many reformers were convinced that the progressive of the state depended on the wellbeing of women and that there could be no real progress if they were kept in a position often compared to slavery and which prevented them from being good mothers of healthy, educated children. In these view legal status of women had to be improved in order to remedy the deplorable state of the realm.

The decree was identified as a threat to the conservatives. They were particularly sensitive to any restriction of male authority and denounced it as an un-Islamic attack. The religious leaders of the non-Muslim communities, as well as fanatical Muslims opposed the family law on the grounds that it deprived them of their jurisdictional authority over members of their religious community. Even so, it was promulgated. But after the establishment of a secular Turkish Republic under Mustafa Kemal Atatürk, there was more radical reform in family law in 1926.

## The 1926 Civil Code

Civil law, as one of the main branches of private law, was regulated by the Civil Code. The Civil Code of the Turkish Republic was passed on 17 February 1926, and comprised family law as one of its subfields. It entered into force on 4

October 1926 and was changed in 2002. It was an important reform of the Republicans and it played a great role in establishment of Modern Turkey. It was a symbol of Westernization, and thus proof that Turkey was on its way becoming a member of the civilized world. It was mainly a translation and adaptation of the Swiss Code. The Swiss Civil Code was keep intact in form, but some provisions which mainly were in Family Law were substantively modified in accordance with the Islamic Law.

Turkeys the Justice Minister of the time, Mahmut Esat Bozkurt, had studied law in Switzerland Swiss law seemed best to accommodate the needs of a country with diverse cultural and linguistic groups. The purpose of law was its rationale, which is explicit in the General Justification for the Proposed Law, written by Bozkurt. He argued in his rationale that the Mecelle, based on the Sharia, had to be abandoned in favor of a new law, because laws based on religion were inherently rigid, immutable, stagnant and incapable of meeting the changing needs of society. Depriving the new Turkish Republic of the legal advances of modern civilization could not be reconciled with the goals of the Turkish Revolution.

Bozkurt gave an overview of the evolution of the German, French and Swiss civil codes, and concluded that fundamental to all these laws was the absolute separation of religion and state. He explained that the drafting commission had selected the Swiss Civil Code because it could be easily adapted to a new society, and had brought together various cantons with different customs and traditions. Moreover, the Swiss Code was the latest of its kind in Europe. Thus, Bozkurt concluded, when the new Turkish Civil Code was enacted, the Turkish nation would be "freed of thirteen centuries of ill beliefs and chaos, close the doors of an old civilization, and enter the modern civilization which [would] bring it life and

prosperity." (Civil Code's rationale). So, all the novelties that the reformers brought were to establish Modern Turkey.

The 1926 Civil Code has four main parts. The third part was about family law. It began with engagement and then on to marriage. The most important changes began with the obstacle of marriage. The first obstacle to marriage was age. The age of consent for girls was changed from nine under Islamic law to fifteen. Similarly, for boys, it was changed from eleven to seventeen. The other important novelties of course were abrogation of polygamy. Polygamy was put as a marriage obstacle. Article 93 required that any person seeking to marry must prove that any prior marriage had ended. Moreover, under Article 112, a marriage would be void if either of the spouses had been married at the time of entry into marriage. Close kinship, period of violence *(iddet müddeti),* diseases and sexual union were other marriage barriers.

The 1926 Civil Code also outlawed traditional marriage practices. All marriages were registered with civil authorities. If the marriage was not enacted before an authorized officer it was decided absolutely null and void. The pre-nuptial agreement*, mahr* (dowry) in Islamic Law and bride-price a customary practice whereby the bridegroom paid a bride price to the bride's father in recognition of the cost of raising the bride and in compensation for depriving the family of her services following her marriage) were outlawed. Marriage between a Muslim women and a non-Muslim man became legal.

The 1926 Code also brought significant changes to divorce law. Both spouses were given equal entitlement to divorce, and the grounds for divorce became the same for both spouses. Accordingly, the husband's absolute right to divorce was abrogated by allowing for divorce only through the judicial system and based on the

enumerated grounds. The grounds for divorce provided by the 1926 Code were adultery, life threatening or psychologically destructive behavior, criminal behavior, abandonment, mental illness, and irreparable damage to the marriage union. These grounds were similar to those available to a woman according to some interpretations of Islamic law.

However, the 1926 Code kept intact the patriarchal family structure. The Code was based upon the concept of "the authority of the chief of the family." According to the Civil Code 1926, the husband was the chief of the family (C.C. Art. 152). He had charge and authority to supervise and manage the affairs of the persons residing together such as custody of children or domicile. If the husband abuse his rights, the wife was provided with legal help against her husband. The wife was cast in the role "assistant and counselor of the husband." In order to work outside the home, married women needed permission from their husbands. Otherwise, they had the right of divorce under the reason irreparable damage to the marriage union. Alternatively, the wife could seek such permission from the courts.

All types of property entering the family unit came under the control and management of the husband. This is not to suggest that the woman did not retain property rights. Rather, the law spoke only of maintaining the property, in harmony with the husband's general duty to protect his wife's interests. Moreover, the 1926 Code set up an ownership system within the marriage very similar to Islamic law. Even though the Swiss Civil Code recognized the system of shared property, the 1926 Code changed this to a separate property regime as a legal marital property regime, whereby each spouse retained what he or she had brought into the marriage. Under Article 146, upon divorce, both parties keep what they bring into the marriage. The rest of the property was shared as specified in the marriage contract.

Surnames were also adopted. From the Roman Age the authority of the husband as the head of the family was accepted and provided in societies by custom and religion. His last name became the family name. He represented the family union and was responsible for the wife. Articles 155 through 160 specifically, and the 1926 Code generally, set up a system whereby the husband had a duty to protect the wife, both her finances and her social interests, as her main legal representative, and the wife had a right to demand such protection. This brings to mind a verse from the 1917 Decree which depended on the Sharia.

With 1926 Civil Code women were recognized as equal and free citizens. They can be witnesses. They had equal part of heritance. They could work on all subject and they dropped the veil. They gradually gained the right to elect and be elected. However in the family women continued in their inferior and dependent status.

"The New woman" was a symbol of the modernization, secularization and westernization of new Turkish Republic. "Women rights" was formulated to serve society. The aim was not to transform and equalize gender relations. Women were at the heart of the building of the "modern" nation-state in Turkey particularly during the late 1920s and 1930s. "State feminism was used by many Turkish theorists to explain the "instigation from above" of extensive policies intended to change the status of women." These reforms were embodied in the Turkish civil code, which replaced the Sharia. The reforms, along with Turkish women's dress standards and code of conduct, appeared on the surface to be modern, but women's relations with men and their self-definition within the family remained traditional. The result was "simulated images of modernity." The state's appropriation of the women's agenda also impeded the development of an autonomous consciousness.

In this chapter I discussed the changes instituted by the 1926 Code, comparing them with the preceding era. As seen, certain provisions of the 1926 Code were harmonious with Islamic legal concepts. The official rhetoric that the code was a complete break with the Islamic past, however, failed to match the substance of the law.

# CHAPTER III

## INTERNATIONAL INFLUENCES ON THE NEW CIVIL CODE

This chapter, I discourses the international influences on the new Civil Code. of the Republican era Turkey and how contributed to the process of modernization and westernization. Turkey entered into direct economic and political relations with Europe and the USA where important developments about women's rights, after the World War Second and the Cold War Period had occured. The European countries began to question patriarchal gender roles and developed their new family laws. In Turkey, these new views were supported by the new women organizations, which had organized themselves according to these developments. The political parties and governments took onto their agendas gender equality under the influence of the international developments. I sought the developments in the United Nations Organization and the European Union which had the most effect on the New Civil Code.

The United Nations Organization was established in 1945, the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 outlines what is considered in twentieth century to be the fundamental consensus on the human rights of all people in relation to such matters as security of person, slavery, torture, protection of the law, freedom of movement and speech, religion, and assembly, and rights to social security, work, health, education, culture, and citizenship. It clearly stipulates that these human rights apply to all equally "without distinction of any kind such as race, color, sex, language... or other status" (Article, 2).

Obviously, then, the human rights delineated by the Universal Declaration are to be understood as applying to women. However, tradition, prejudice, social, economic and political interests have combined to exclude women from prevailing definitions of "general" human rights and to relegate women to secondary and/or "special interest" status within human rights considerations. So, in the 1979, the United Nations General Assembly adopted The Convention on the Elimination of All Forms of Discrimination against Women as an international bill of the women's human rights. Then, the United Nations declared 1975 as the World of Women and after that year finished, declared the United Nations Decade for Women (1976-1985).

During these years, women from many geographical, racial, religious, cultural, and class backgrounds took up organizing to improve the status of women. United Nations-sponsored women's conferences, which took place in Mexico City in 1975, Copenhagen in 1980, Nairobi in 1985, and Beijing in 1995 were convened to evaluate the status of women and to formulate strategies for the advancement of women. These conferences were critical venues at which women came together, debated their differences and discovered their commonalties, and gradually began learning to bridge differences to create a global movement. In the late eighties and early nineties, women in diverse countries took up the human rights framework and began developing the analytic and political tools that together constitute the ideas and practices of women's human rights. The agreements that are produced by such conferences are not legally binding; however, they do have ethical and political weight and can be used to pursue regional, national, or local objectives. Conference documents can also be used to reinforce and interpret international agreement such as CEDAW (The Convention on the Elimination of All Forms of Discrimination

against Women that have been important effect on the women's human rights. (Moroğlu,2005).

## Convention on the Elimination of All Forms of Discrimination against Women and Its Effects on the New Civil Code

After years of work by various governmental and non-governmental organizations, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 as an international bill of rights for women. CEDAW seeks to achieve equality for women in the political and public spheres, in education, health and employment. The starting point of the contract is the removal of discrimination. The Convention has affected women's human rights throught out the world and in Turkey. This effect can be seen in both the new feminist movements and laws, especially in the New Civil Code.

The process of the emergence of CEDAW began with the establishment of the Commission on the Status of Women (CSW). Since its establishment, CSW has defined the general guarantees of non-discrimination from a gender perspective. The work of CSW has resulted in a number of important declarations and conventions that protect and promote the human rights of women. In 1963, the Economic and Social Council invited the CSW to prepare a draft declaration that would combine in single instrument international standards articulating the equal rights of men and women. This process was supported throughout by women activists within and outside the United Nations system. So, the declaration on the Elimination of Discrimination against Women ultimately being adopted by the General Assembly on 7 November 1967. The Declaration amounted only to a statement of moral and

political intent, without the contractual force of a treaty. After that, the text of the Convention on the Elimination of All Forms of Discrimination against Women was prepared by working groups within the Commission during 1976, and was adopted by the General Assembly in 1979 by votes of 130 to none, with ten abstentions in resolution 34/180 (Moroğlu, 2005).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is often described as an international bill of rights for women. Consisting of a preamble and thirty articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention defines discrimination against women in Article 1, such as

> "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (Cedaw, Article 1).

By accepting the Convention, states commit themselves to undertake a series of measures to end discrimination against women in all forms, including first, to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women second they promise to establish tribunals and other public institutions to ensure the effective protection of women against discrimination and last, to ensure elimination of all acts of discrimination against women by persons, organizations or enterprise.

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life -including the right to vote and to stand for election – as well as education, health and employment. State parties agree to take all appropriate

measures. States parties[2] agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms. (Cedaw, Articles 2-3).

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. (Cedaw, article 4). It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women. The other articles intended for the removal of discrimination in every area of life.

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They also are committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations. (Cedaw, Article 5). For monitoring the State Parties the Committee on the Elimination of Discrimination against Women was established in 1982. The Committee's mandate is very specific. It watches over the progress for women in the countries to CEDAW. For this, the Committee reviews national reports and shadow reports (coming from non-governmental organizations), and makes recommendations on any issues affecting women.

CEDAW was not an effective control mechanism until the Optional Protocol, the General Assembly adopted on 6 October 1999 article 21 the Optical Protocol, to the Convention on the Elimination of all Forms of Discrimination against Women and called on all States Parties to the Convention to adopt party to the new instrument as soon as possible. By ratifying the Optional Protocol, a state recognizes

[2] A 'state party' to a treaty is a country that has rat,f,ed or acceded to that particular treaty, and is therefore legally bound by the provisions in the instrument.

the competence of the Committee on the Elimination of Discrimination against Women to receive and consider complaints from individuals or groups within its jurisdiction.

The Protocol contains two procedures. First, a communications procedure allows individual women, or groups of women to submit claims of violations of rights protected under the Convention to the Committee. It establishes that in order for individual communications to be admitted for consideration by the Committee, a number of criteria must be met, including that domestic remedies must have been exhausted. The protocol also creates an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights. In either case, states must be party to the Convention and the Protocol.

The Protocol includes an "opt-out clause," allowing states upon ratification or accession to declare that they do not accept the inquiry procedure. Article 17 of the protocol explicitly provides that no reservations may be entered to its terms. The Optional Protocol entered into force on 22 December 2000, following the ratification of the tenth state party to the Convention. (Ibid.)

The Convention on the Elimination of All Forms of Discrimination against Women was signed by Turkey on 20 December 1985 with the reservations of 9/1, 15/2-4, 16/1c, d, f, g, and 29/1 articles which were contradictory to national laws. The reservation articles 15 and 16 of the Convention were incompatible with the

Family Law section of the Turkish Civil Code, particularly those pertaining to women's legal capacity, such as the right to enter into contractual relationships, responsibilities concerning children, and choice of domicile, family name, work and job. The 9th article is about national and 29/1 article is about international arbitration. The convention was ratified on 19 January 1986 and Turkey raised the

reservations about article 15 and 16 when the New Civil Code Draft amendment to the council agenda (Moroğlu, 2005) on September 1999.

Turkey signed the Optional Protocol on 8 September 2000, and ratified on 29 October 2002. The protocol was to go into force in January 2003. By adopting the Optional Protocol, the Turkish Constitution was amended to define the family as an entity that is based on equality between the spouses. So, it is easy to say that CEDAW created change to the New Civil Code in Turkey.

The reflections of the signed CEDAW can be grouped in two. One of them is on the effects in the field of law. The Article of the Old Civil Code 159 that depended the husband permission of the wife's work that was against to equality was cancelled by Supreme Court in 1992. The compulsory education was raised to eight years in 1997. The Civil Code Article 153 was changed in 1997, allowing women to use their maiden names with their husbands' names. The Turkish Penal Code Article 440 and 441 that were against to equality were cancelled by Supreme Court. These articles were different regulations about adultery involving men and women. In 1998, the law on the Protection of the Family was enacted. In 1998 the Income Tax Law was changed. Women began to give declaration of their income separately from that of their husbands. In 1998 discussions on the New Civil Code Draft began. Turkey raised reservations about Article 15 and Article 16 when the New Civil Code Draft amendment was on the council agenda on September 1999, and signed the Optional Protocol on 8 September 2000, and ratified on 29 October 2002. The protocol went into force in January 2003. The Council of Europe Convention on preventing and combating violence against women and domestic violence, signed on 11 May 2001. Turkey was first signatory of the agreement and recognizes that if there is violence in a country, this is due to the gender inequality and the state is responsible to prevent

this violence (The Council of Europe Convention preventing and combating violence against women and domestic violence, Article 1.)

The second effects were in the field of the intuitional developments. A government ministry was established to responsible for women and family in 1990. The General Director of Women's Status and Problems Turkish was established connected to the prime ministery. And in the provinces, it began to establish The Turkish Units of the Women Status. Unfortunately, on 8 June 2011, "the State Ministry responsible of Women and the Family" replaced by the "Ministry of Family and Social Policies."

## Developments in the European Community

The European Community was established for the economic integration of Europe. So, the first regulations about equality of men and women were about working life. In time, the equality of men and women was placed outside of the working life for the future economic and social development and the success of the union. Thus, the "equality policy" is one of the priority issues that could not be compromised in the process of integration. The equality of men and women are discussed under the agreements that are the first source, and directives that are the second source of European Community Law. The Court of Justice's decisions are also important guides.

The European Community was established with the Rome Treaty (25 March 1957) and named the European Economic Community. Since 1957 and the Rome Treaty, the principle that men and women should receive equal pay for equal work has been enshrined in EC Treaties. The Union limited the equality of men and

women to the “equal pay" in the Rome Treaty. The following agreements and directives regulated the equality of placement in employment, and turnover. Working conditions were improved. As the number of women entering the working life, the problems of women became apparent. The end of discrimination increased against women’s became an important subject in the European Community. So, with the Social Protocol of the Maastricht Treaty (1992) included equality in employment (article 2) and an enhanced equal pay clause (article 6) that provided for positive discrimination. (the Treaty of Maastricht, articles 2 and 6). The Treaty of Amsterdam (1997) made the principle of equality between men and women an objective and a fundamental Community principle (Article 2). Article 3(2) also gave the Community the task of integrating equality between men and women into all its activities (also known as gender mainstreaming). (the Treaty of Amsterdam, articles 2 and 3).

The Treaty of Amsterdam also expanded the legal basis for promoting equality between men and women and introduced new elements of major importance. The new Article 13 made provision for combating all forms of discrimination and Articles 137 and 141 allowed the EU to act not only in the area of equal pay, but also in the wider area of equal opportunities and treatment in matters of employment and occupation. Within this framework, Article 141 authorized positive discrimination in favor of women. The Treaty of Lisbon reinforced the principle of equality between women and men by including it in the values and objectives of the Union (Articles 2 and 3(3) of the Treaty on European Union) and by providing for gender mainstreaming in all EU policies (Article 8 of the Treaty on the Functioning of the European Union). After these developments, equality between women and men became one of the objectives of the European Union to ensure equal opportunities and treatment for men and women through legislation, mainstreaming and positive

actions. With the added provisions, gender equality became a social policy of the European Union that would became a political union.(Moroğlu, 2000:63.)

The directives of the European Union are also important to improve gender equality. The directives bind the state parties. But because they are a secondary source of the Union, they do not apply directly. The Member States must take them in their laws. But the Court of Justice stipulates that people claim the directives in the national courts. We can see the development in gender equality if we follow the directives in the European Union. The related directives are as follows :

The principle of equal pay for men and women (10 February 1975, 75/117 EEC), the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working condition (09 February 1976 76/207/EEC), the principle of equal treatment for men and women in matters of social security (19 December 1978 79/7/EEC), and the principle of equal treatment for men and women in occupational social security schemes 24 July 1986 86/378/EEC) other directives include principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity and the protection of self-employed women during pregnancy and motherhood (11 December 1986 86/613/EEC) , a directive on the introduction of measures to encourage improvement in the safety and health at work of pregnant workers and workers who have recently given birth era or breastfeeding (19 October 1992 92/85/EEC), parental leave (03 June 1996 96/34/EC), directives for the counts included on the burden of proof in cases discrimination based on sex (15 December 1997 97/80/EC) establishing a general framework for equal treatment in employment and occupation (02 December 2000 2000/78/EC) directives about mobbing (emotional abuse)(23 September 2002 2002/73/EC), directive on gender equality

outside the area of employment to the Access to and supply of goods and services (13 December 2004 2004/113/EC)(the first directives that regulated equality outside of the working life), a directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation 'recast' 05 July 2006 2006/54/EC) was also introduced. This directive became a single text of the earlier directives. It does not contain any new provisions. It only enriches with the examples of the Court of Justice decisions.

The directive starts with the description of equality. The first article explains the purpose of the directive, such as creating equal treatment in employment and equal opportunity for men and women. It emphases that equality between men and women is a fundamental principle of Community law under Article 2 and Article 3 (2) of the Treaty and the case-law of the Court of Justice. Those Treaty provisions proclaim equality between men and women as a "task" and an "aim" of the Community and impose a positive obligation to promote it in all its activities (Article 3). Article 4 is about the Prohibition of Discrimination for the same work. Articles 5-13 are about equal treatment in occupational social security schemes. In Articles 14-16 return from maternity leave and paternity are regulated. In Article 19 regulates the burden of proof is replaced to prove that there has been no breach of the principle of equal treatment. Article 20 gives member states to design and make the necessary arrangements for monitoring and supporting the equal treatment of all people.

The European Parliament and the Council established in December 2006 a European Institute for Gender Equality with the overall objective of contributing to and strengthening the promotion of gender equality, including gender mainstreaming in all Community and national policies (Article 20). Member states were to bring into force the laws, regulations and administrative provisions necessary to comply with

this directive by 15 August 2008 at the latest or were to ensure, by that date, that management and labor introduce the requisite, provisions by way of agreement (Article 33). The directive was to be reviewed according to national reports that were to be submitted to the Community every four years (Article 31), at the latest 15 February 2011.

## Turkey-EU Relations and the Effects on the New Civil Code

Turkey was the second country to apply for membership in the European Economic Community in 1959. The state was determined to be a member of the Community. The first impediment to Turkey's accession process was the 1960 military coup. In 1963 the Ankara Treaty was signed between Turkey and the Community. It provided the framework for the relations of the parties. It provided a road map for future structural integration. According to the act, if Turkey fulfilled its obligations, It would be made a member of the EEC. However, Turkey's relations with the European Community throughout the 1960s and 1970s were highly unstable. On 12 March 1971, a second military coup caused blow to the democratic process. In the 1970s, Turkey experienced significant political, economic, and diplomatic problems so that the government suspended the relations with the Union for five years. In 1980 a third military coup took place. In 1982, the European Parliament cancelled the relations between Turkey and the Community until human rights and democratic freedoms were restored. In 1987 Turkey applied for full membership to the Community and in 1989, the Commission Opinion on the Turkish application stated that despite its eligibility for membership, neither the EC nor

Turkey were ready for Turkey's membership. The Commission recommended to Turkey a Custom Union instead of full membership.

In the late 1980s and 1990s, Turkey opened itself to globalization. 1992 with the Maastricht Treaty, the EU relations with the candidate states were set into a framework of political, economic and social rules. As mentioned before, the equality of women is an important part of this framework. The Custom Union Agreement was signed on 6 March 1995 between Turkey and the EU. This agreement increased hopes for in Turkish full membership. However, the European Council left Turkey out of the enlargement process in its Luxembourg summit of December 1997. Two years later, the European Council, in its Helsinki summit of December 1999, decided to elevate Turkey's position to a candidate country. (Presidency Conclusions, Helsinki European Council, 10-11 December). So the Comminute prepared the 1999 Regular Progress Report for Turkey. In November 2000, the European Union adopted the Accession Partnership Document for Turkey's membership and Turkey submitted its first National Program to the EU in March 2001. In December 2002, at the Copenhagen Summit, the European Council decided it would review Turkey's candidacy two year later. In October 2004, the European Council decided to open accession negotiation with Turkey in October 2005, according to the recommendation of the Commission. Turkey has had many troubles with its relation with the European Community. In this environment, removing the provisions related to gender equality emerged one of the easiest problems to solve.

The European Community (EC) contributed significantly, as Turkey aspired to EC membership. Turkey ratified CEDAW in December 1985 with objections that these were in contradiction with the article on marriages and families in the Turkish Civil Law. One reason for the signing was international pressure, the other one was

EU accession. Turkey tried to present a positive picture, in order to justify the request for membership in the European Community from 14 April 1987.

The European Union's laws and the directives on equality between men and women are an element of the "package" all candidate countries have to accept before becoming members. This is also one of the Copenhagen Criteria, which accession countries have to take into account (European Council in Copenhagen 21-22 June 1993 Conclusion of the Precidensy.) In order to starting the negotiation process, Turkey promised in the National Program to fulfill these criteria. The EU laws and directives' necessities must be done at certain times. This is different from CEDAW.

The first Regular Report by the EU Commission on the Development of Turkey was published in 1998. This report underlined the two bills to amend the Civil and Penal codes, which were approved by the Turkish government. The report stated that Parliament had passed legislation in January 1998 against domestic violence, in order to eliminate gender discrimination. The directives of this law were published in March 2008.

The 1999 Regular Report regarded the lifting of Turkey's reservations against CEDAW in July 1999 as "a positive development". (1999 Regular Report from the commission on Turkey's progress towards accession).

The Commission's Regular Report for 2000 lamented that "gender disparity is still high." It noted the persistence of certain legal discrimination, as it viewed the husband as the head of the family. The report pointed to the contributions made by women's groups in the amendments to the Civil Code. (2000 Regular Report from the commission on Turkey's progress towards accession 8 November 2000).

The 2001 Report affirms the amendment of Article 41 of the Constitution to establish the principle of equality between spouses as a basis for the family. The new

Civil Code, waiting before Parliament, "would remove remaining discrimination and strengthen gender equality". (2001 Regular Report on Turkey's progress towards accession 13.11.2001).

The Commission's Report from 2002 noted Turkey's ratification of the Optional Protocol to CEDAW. It recognized the abolition of the concept of "the head of the family" in Article 41 of the Constitution in October 2001 and the introduction of equal opportunities for women and men in family life, especially the amendments, which guarantee equal rights and obligation of the spouses. The report pointed out to the "essential improvements" brought in by the amended Civil Code that entered into force in January 2002. It stated that the new Civil Code "represents an important landmark in establishing women's rights". (2002 Regular Report on Turkey's progress towards accession 09.10.2002).

In 2008, Gender Equality Commission was established in the Grand National Assembly of Turkey. Gender Equality National Plan was created for 2008-2013, that included seven critical areas: education, health, economy, power and decision making processes, poverty, media and environment for promoting gender equality, and human rights and violence. (National Action Plan Gender Equality 2008-2013 September 2008). In May 2010, the prime minister circular issued about "Increasing Women's Employment and Achieving Equal Opportunity." ( A Prime Minister Circular No:2010/14). This Circular is an important step forward to increase women's participation in the labor force. It is also important as it reflects many of the demands voiced by women's groups, and is a product of collaborative effort between the government and women's platforms.

Thus, this section analyzes the Europeanization process in Turkey mainly through the political reforms and legal changes adopted in the aftermath of the

Helsinki summit from 2001 to 2004, various political reform packages were adopted in order to fulfill the Copenhagen criteria that resulted in deepening Turkey's Europeanization process.

## The Women Organizations in Turkey

The military intervention of 12 September 1980, which ended the political polarization and terrorism of the seventies, resulted in the de-politicization of society. Under these very difficult circumstances, the Turkish women's movement emerged as the first democratic opposition movement.

Şirin Tekeli argues that the Turkish women's movement arose only after the 1980s because Kemalism and leftist ideology had acted as ideological barriers to the women's movement. (Tekeli, 1995). The military intervention in 1980 forbad all political activities on the left and thereby enabled the emergence of a democratic and pluralistic women's movement.

After the military coup, women's groups held the first demonstration in Istanbul, on 17 May 1987, with 3000 women. The reason for this mass protest was the court case of a pregnant woman with three children who had been regularly beaten by her husband. When she applied for a divorce, the judge refused the application and referred to a proverb saying: "You should never leave a woman's back without a stick and her womb without a colt." (Kadının sırtından sopayı, karnından sıpayı eksik etme). (Çankırı, 1987).

Campaigns against violence towards women were received the most focus from women's groups from the start. For example The Purple Roof Foundation, published in 1988 the book *Bağır Herkes Duysun* (Let Them Hear You Scream),

based on witness testimonies of women suffering violence. The first large scale action of women after the military intervention was a signature action. On 8 March 1988 (World Women's Day), a group of women gave the Turkish Parliament a petition with 7000 signatures demanding the implementation of CEDAW and the realization of all necessary measures. Turkey had signed this resolution officially, but had raised some objections. The women's movement was a reaction against state policies. An important example was the First Women's Congress in 1989, with 800 participants discussing their problems and publishing their ''Manifesto for the Rescue of Women," in which they explained that they criticized the state because it maintained the division of labor in society, the main reason for their problems.

A new generation of middle-class, left wing, intellectual women who were in touch with the ideas of the new wave of feminism in Western countries proposed that the "paternalist Turkish state" was in fact a "patriarchal state," defending the interests of men. The feminist women thought that the family arrangements of the 1926 Civil Law were not "egalitarian." On the contrary, married woman had lost equal status, as the law recognized the husband's status as the "head" of the household and established a hierarchical relationship between the two. Woman had lost her name, her identity and even her freedom to work, as the authorization of the husband was required for her to work in a paid job outside the home. Her status had been defined as that of a "dependant housewife." This critical reading led the women's movement to launch a campaign from 1985 onwards calling for reform of the Civil Law.

The number of women's organization increased every day. They had parallel actions with their European colleagues. When Turkey became a signatory of CEDAW, they had more impact on state policy. Because they had the right to

prepare shadow reports to the commissions. Their actions were taken serious by Europeans. So, they effected the passage of the 2002 Civil Code under the pressure of the EU and UN.

In conclusion, when Turkey aspired to become a member of EU, it had to emulate European norms and principles, and adopted the EU's Copenhagen criteria. Turkey underwent an extensive legislative reform process from1999. The New Civil Code was adopted as a result.

# CHAPTER IV

## THE LEGAL PROCESS OF THE NEW CIVIL CODE

In this chapter I will concentrate on the preparation for the new Civil Code, limited to family relations and women status. First, I will give a brief history of the bill, then I will give some information about the structure of the National Assembly, the government, the parties in the Parliament, and finally I will summarize the opinions of the parties, and groups about the new Civil Code in Parliament. I have stated that there was a consensus in Parliament about the need to regulate, but the main reason for this consensus was the European Union accession process. As seen in the previous chapter the EU law and directives on equality between men and women was an element of the package all candidate countries have to accept before becoming members of the EU. Turkey promised in the National Program to fulfill these criteria. The Regular Report of the European Commission for 2000 noted the legal discrimination. So, the Civil Code changes came onto the agenda as an obligation. Some of the deputies of course were, sincere about granting equal rights to women with men in the family. In this chapter I review meaning of the New Civil Code articles for the deputies, and what they articulate or disclose, and what they produce with the New Civil Code for women.

### A Short History of the New Civil Code

The Civil Code is a very important law because it regulates the law of natural and legal person, family relations, inheritance and property. The 1926 Turkish Civil

Code changed fifteen times starting in 1938. The efforts to reform the Turkish Civil Code has started in the 1950s. It was issued by law in 1988 and in 1990 six articles were repealed.

In 1951 the Ministry of Justice established a commission that consisted of civil code professors from the Istanbul and Ankara Law Faculties, higher judiciary and some members of parliament. Ord. Prof. Dr. Hıfzı Veldet Velidedeoğlu was the reporter of this commission. The studies of the Commission took a long time, and stopped from time to time. So, the Preliminary Draft of the Turkish Civil Code and the grounds were presented to the Ministry of Justice, in 1971. This Preliminary Draft was published by the ministry of Justice, but the commissions which were formed in 1974 and 1976 were unable to finish the study.

The National Security Council during the period adopted the 1 June 1981 dated and 2467 numbered Turkish Law of Relationship with Related Work to make the Commission with the establishment of the Law, in accordance with faculty, the high judiciary, professional bodies and the Ministry of Justice members, a new commission was established. Prof. Dr Kemal Oğuzman was the chairman of this commission. They finished their work and the Ministry of Justice published the new draft. In the 1984 draft, the property regime of spouses was prepared in parallel with marriage law studies in Switzerland. "The Separate Property" system was preserved as the legal marital regime. "The Participation on Acquired Property" regime put as a contractual one. However, the draft failed. After the draft failed, some arrangements were made to resolve the disparity between spouses. These arrangements were separated from new civil code studies, but they failed again. In 1993, the Ministry of State Responsible for Women prepared a new draft about to change the Old Turkish Civil Code which numbered 743. The last draft modeled on the legal regime of

property regime in Switzerland. It was the same as the 1984 draft, but "Participation in Acquired Property" was designed as a legal property regime.

The New Turkish Civil Code preparations affected the CEDAW processes. CEDAW, adopted in 1979 as an international bill of rights for women, required the nation-states that accepted it to pledge to adopt laws, policies, and other measures to end discrimination against women. Those that ratified it were bound to put into practice the various provisions of the convention.

Turkey became a signatory to CEDAW on 20 December 1985 and ratified the Convention on 19 January 1986. It signed the Optional Protocol on 8 September 2000, and ratified it on 29 October 2002. This paper explores Turkey's implementation of CEDAW, with an emphasis on the laws and policies that were changed to bring them into compliance with the Convention, and the tangible changes that have, or have not, occurred as a result. The ratification of CEDAW in 1985 means a promise to remove reservations within a short time. With this promise, Turkey underlined its commitment to changing the discriminatory provisions in its legislation. These commitments were reiterated in the country report presented to the UN Committee on CEDAW in 1993.

In 1994, a new commission named the Turkish Civil Law Committee was created, chaired by Prof Dr. Ahmet Kılıçoğlu and then Prof. Dr. Turgut Akıntürk. Universities, judicial bodies, bar associations and trade associations and law-related civil society organization and the Justice Ministry joined the commission's works. The aim was create a new civil code to answer present-day conditions. The 1971 and 1984 drafts, the Swiss Civil Law, part of German Civil Law, French Law and Italian Civil Code were the sources of the new draft. In this draft "Partionary Property Seperation System" was modified as the legal property regime. The commission

completed their work in 1998 and on 16 September 1998 it was presented to Parliament. However, due to the 18 April 1999 parliamentary elections, the Parliament Rules of Procedure 77 were declared invalid according to Article.

Turkey's accession to the EU can be considered the primary driving force behind the reform of the Turkish Civil Code. Turkey was officially named a candidate for EU accession in December 1999, after the preparation of the draft Civil Code.

For the Draft Law on the Application Form a new commission was created in 1999, by the Ministry of Justice. Prof. Dr. Turgut Akıntürk led the commission that completed it in the same year. 18 October 1999, the Council of Ministers (Ecevit Government - 57 Government) adopted the entire 1926 law, repealing resolution No. 743, and on 30 December 1999 it was presented to Parliament. The draft was referred to the Parliamentary Justice Committee Chair on 12 January 2000. The Commission at a meeting on 6 April 2000 with Minister of Justice Prof. Dr. Hikmet Sami Türk; the General Manager of the Women's Status and Problems; Social Services and Child Protection Agency and the General Directorate; the Family Research Council; Ankara, Başkent, and Kırıkkale University Law Facult, Ankara and Istanbul Bar Association and civil society representatives. They discussed the bill and offered to combine a subcommittee to review it in.

Five people were elected for the subcommittee from each political party: Democratic Left Party Bursa Deputy Ali Arabacı, the Nationalist Movement Party Kahramanmaras Deputy Edip Özbaş, the Motherland Party Kirklareli Deputy Cemal Özbilen, the Virtue Party Adiyaman Deputy Dengir Fırat, and the True Path Party Kayseri Deputy Sevgi Esen. Bursa Deputy Ali Arabacı chaired by. The subcommittee had eleven meetings between 04 December 04 2000 and 23 May 2000.

Justice Minister Prof. Dr. Hikmet Sami Türk, the Justice Ministry, the State Ministry, the Supreme Court, the Turkey Bar Association, the Ankara Bar Association, the chairmen of the relevant institutions and organizations civil society representatives and the Baskent University Law Faculty's Dean. Prof. Dr. Turgut Akıntürk and Ankara University Law Faculty Instructor Prof. Dr. Ahmet Kılıçoğlu also joined these meetings. In the end, the commission combined the 1 / 611, 1 / 425 main numbered bill with the 2 / 361 main number bid and only one text presented as a report to the commission.

The Justice Commission gave its final form to the bill on 21 June 2001 the report was submitted to the Parliamentary General Assembly. The Parliament began to discuss the bill in General Assembly on 24 October 2001.The most controversial issue became the reform of the clause regulating property. From the 55th government, "partionary property separation system" was involved in drafts as the legal property regime. To this regime all matrimonial property should be split 50/50. The commissions, in accordance with country conditions, created this system. After renegotiation[3] and insistence of the Justice Minister of Hikmet Sami Türk, this system was changed "participate in acquired property" that was adopted from the Swiss Civil Code. So "partionary property separation system" became an optional property regime. This issue caused controversy in the Assembly and the public. Because this changed happened the last moment, many people were not well informed. This legal regime was formed to apply to all marriages, but with another changes, this clause was deemed to be valid only for property acquired after 1 January 2002. To the draft, unless the spouses selected another property regime within one year from the law's entry into force, this legal regime would be effective

[3] Tekriri müzekere

from the date of marriage. It changed that unless the spouses selected another regime within one year, this legal regime would be effective after 1 January 2002. Many families were excluded from the system with this last minute change.

## The Structure of the National Assembly

Turkey has a multi-party system, with two or three strong political parties and often a fourth party that is electorally successful. Since 1950 parliamentary politics have been dominated by conservative parties.

Turkey's 14th general election was held on Sunday 18 April 1999 and was the first election in Turkish history to combine local, council and parliamentary elections on the same day.

In this election, under the leadership of Bülent Ecevit, the Democratic Left Party (DSP) obtained an overall majority for the parliament. The Democratic Left Party, a social democratic-oriented party, was registered on 14 November 1985 by Rahşan Ecevit. She was the wife of Bülent Ecevit, who was banned from political life after the 1980 Turkish coup d'etat. The political ban on Ecevit was lifted in 1987, and later that year, Rahşan Ecevit handed over the rule of the party to her spouse. The Democratic Left Party received 10.75% for the first time in 1995 and had seven seats in the Parliament. In 1997 the Democratic Left Party became a partner of a three-way government under the leadership of Mesut Yılmaz, who was the leader of the Motherland Party and carried the country's 1999 elections. With the effect of capturing Abdullah Öcalan who was the leader of the PKK, Ecevit and the Democratic Left Party won 22.19 % of the votes in the elections of April in 1999 and took 136 of the 550 seats in the Parliament, becoming the leading party.

The second largest party became the Nationalist Action Party (MHP), which performed strongly nationwide, producing 129 MPs from nearly all of the country' s 81 province. The party had been found in 1965 by Alpaslan Türkeş as a far-right political party. The main character of the party is Turkish nationalism.

The Motherland Party (ANAP) was founded in 1983 by Turgut Özal. It was considered a center-right nationalist party. The Motherland Party maintained a majority in the government of Turkey from 1983 until 1991. During this time, the Motherland Party transformed the Turkish economy by beginning free-market reforms. In 1987, the ANAP-led government filed for admission to the European Union. However, this attempt was ended when the Motherland Party criticized the customs union of the EEC and decided the admission terms prescribed by the EEC not to be in the best interest of Turkey or its people. The Motherland Party gained 86 seats in the Parliament in the 1999 elections.

The True Path Party (DYP) was founded in 1983 by Süleyman Demirel, although he had been banned after the 1980 coup until 1987. It is a conservative party and draws strong support from the countryside. Its political and economic program is almost identical to that of the Motherland Party. It had 85 seats in the Parliament after the 1999 elections.

The largest party of the last election, the Virtue Party, was an Islamist political party established in December 1998 instead of the banned Welfare Party. It also was banned in June 2001. It had 47 seats in the Parliament. After the Virtue Party banned, some members of the parties was established the Saadet Party, and other members of the parties was established the Justice and Development Party (AKP) in 14 August 2001. Although its core is accused of incoming root from the Islamist current, it tends to identify itself with the tradition of the Democratic Party.

There were three seats for independent MPs.

The Democratic Left Party-the Nationalist Action Party –the Motherland Party coalition government was formed on 28 May 1999, under the chairmanship of Bülent Ecevit, the chairman of the leading party from the election. It was ended on 18 November 2002. The new Civil Code reforms were realized under this government.

## A Brief Overview of the 2002 Civil Code's Reforms about Women

The new Turkish Civil Code was approved by the Turkish Parliament on 22 November 2001 and came into effect on 1 January 2002. The Turkish Civil Code drastically changed the legal and economic status of women in the family. It scrapped the supremacy of men in marriage and established the full equality of men and women in the family.

One of the most important changes included in the new code, which consisted of 1030 articles, was the removal of the clause that defined the man as the head of the family. The new code also raised the legal age for marriage (which previously had been seventeen for men and fifteen for women) to eighteen both for women and men. Under extraordinary circumstances and for very important reasons, an exception could be made and the minimum age limit could be lowered to 16. The only person authorized to make such an exception was a judge of the Court of Peace. In making such a decision, the judge was to hear the opinions of the parents or the guardian whenever he or she had the opportunity.

The new code set the equal division of the property acquired during marriage as a default property regime, assigning an economic value to the women's hitherto

invisible labor for the well-being of the family household. So for the first time, women's household labor gained economic worth.

The concept of "illegitimate children," which was used for children born out of wedlock, was abolished. The custody of children born outside marriage belonged to their mothers. The old Civil Code did not give the custody to the women directly. They had needed to acquire for the custody of children if they were born outside of marriage. Children born outside marriage were to given the same inheritance rights as others, and single parents were be allowed to adopt a child.

The Family Courts were established on February 2003 to realize the expected aim of this law. The Family Courts consisted of psychologists, sociologists and social workers. The judges who were working Family Courts had special qualifications. However, there is still important lack of qualified judges. Unfortunately, very few family courts were established.

In addition, in October 2001, Article 41 of the Constitution was amended, redefining the family as an entity that is "based on equality between spouses." The new article states that, "The family is the foundation of Turkish society and is based on equality between spouses."

## Negotiation of the Draft in the General Assembly

Before drawing the Assembly negotiations, the history of the New Civil Code bill, was given in short. On narrative, the content of the drafts during the last fifty years of preparation took place at the rate of the effects of the final draft. The most important reason for telling the history of the Civil Law is to show the politicians' reluctance to Civil Law changes. The other reason is to emphasize the importance of

“international relations” in the quick legalization of the last draft, while many drafts prepared in the previous fifty years was not legalization process.

The equality of men and women, as brought in the Assembly bill, was to sustain personal and economic equality in the relationship between spouses. For this reason, discussions focused on marriage age, family head, representing party of the family, family house, parental rights, economic equality between spouses and custody issues, all of them providing equality in personal relations between spouses. Each political party, with a group in parliament reported its views on the bill by two deputies. The speakers in general represented their opinions in accordance with statements of their political parties. There were individuals bringing the bill to parliament representing different aspects of the coalition partners of the political spectrum, who reported their hesitation or who were supporters of the law, despite being in the opposition party. Women's associations tried to influence negotiations as spectators. Debates were important because they showed politicians’ perspective of "woman" and the objectives of the law.

The first speech in parliament on behalf of the Justice and Development Party was made by Mehmet Ali Şahin. During the preparation of the draft he had served on the Committee for Justice. He was a lawyer. He indicated that, on the basis of changes in the Civil Law to ensure the equality of women, these were signed international agreements.  He said that society deal with economic and social problems, but the Civil Code amendments were supported only by one part of women's organizations.

In a speech in parliament, the first issue criticized by Mehmet Ali Şahin, in relation to recent changes, was the clause which gave the right to the woman ‘’to acquire a separate residence from her husband." He considered that this article would

negatively affect the unity of marriage. It is seen that, in this approach, the focus of "women" shifted to "family." It reflects a common perspective of conservative's on women. Such a clause was not expected to undermine the unity of marriage; however, it hindered women's secondary position to men. The objection was that this was the point.

The second issue criticized by Mehmet Ali Şahin was the age of marriage. He was against the new law, which stipulated the age of marriage for women and men as the end of age of seventeen. He said that it was not feasible for the realities of the country and it would increase the number of unofficial marriages. The speaker had begun his political life in the Islamic Welfare Party. When the party had been prohibited, he had continued in the same direction as the Virtue Party and when this party had been prohibited too, he had been a founding member of the Justice and Development Party. The marriage age of women is very low in Islamic law. With the first menstrual period, women are accepted to be of the age of marriage. Increasing the age of marriage was not appropriate according to Islamic Law. Therefore in this regard, since the 1917 decree, the regulations in Family Law were constantly changing. Here, the legislator constantly remained between the dilemma of the prevention of marriage at an early age for women and providing civil marriage. Woman who married at an early age, because they were not married legally, faced the problems of early marriage. It is understood that the speaker criticized the reduction of the penalties for those who married without civil marriage and raising the age of marriage for women that were made after the Justice and Development Party came to power.

The last point the speaker mentioned was "the participation of the acquired property regime" to initiate the validity date from 1 January 2002. He suggested that

despite the lack of interest in the entire society, women's associations were not satisfied with this arrangement. He declared that he had met with the associations on this issue. During the amendment changes "the participation in acquired property'' regime, is of sensitive issues for the women's associations. This was because it had an important role in the equalization of women's economic conditions. The speaker said that in this regard, the Justice Commission put the dissenting opinion in its works. However, after coming to power, the Justice and Development Party had not produced another regulation on this subject, in spite of the power to change the law. This also raised the opinion that the speaker's criticism on this subject was not sincere.

The second to speak on behalf of the Justice and Development Party was Ramazan Toprak, another lawyer. He was a founding member of the party. He came from the prosecutor's office and was a military judge. In his speech, generally looking at the bill with favor, he criticized especially the regime's adoption as the "the division of the shared property" regime instead of "participation in acquired property ". He argued that the separation of the property regime was based on a shared division of property. Only the property for "joint use, enjoyment of the family and investments to secure the economic future of the family" was shared equally between the spouses. The regime was designed particular to Turkey as a regime between of the separation of property, and the regime of participation in acquired property. He considered that share based on this regime would be easier. He said that court cases related to participation in acquired property regime, would results in a very long period of trial time, and this would increase the grievances. The establishment of family courts and shortening the resolution process was one of the most widely debated issues. Especially, the adoption of "shared cost of separation"

regime in the bill's first shape and the discussions continuing on this axis for a long time raised the public opinion in a way that it was the Legal Property Regime. A lot of people still thought that half of the owned goods and properties will be given to her or him. However, in this system, again there were problems with the sharing of goods and properties and the problems afterwards.

Ismail Köse and Salih Erbeyin spoke on behalf of the Nationalist Action Party, which was a government partner. Ismail Köse began with expressing the happiness of finalizing a fifty-one year ongoing work. He emphasized the importance of civil law. He stated that Young Republic had passed from the Civil Law of Mecelle in 1876, and that Mecelle had been a partial effort at modernization. He said that the modernization process had gained momentum when the Civil Code entered into force in 1926. However, he stated that important social, political and economic changes had occurred in society during the previous seventy-five years, and laws must be renewed according to these changes. He stated that the Nationalist Action Party was working for a draft with the appropriate national values and social sensitivities, without deviating from the democratic content of the bill, and that especially promoted issues as changing the sex, allowing each of the spouses to select his or her profession and employment, property regime, the contribution made to social security and social welfare institutions, and helping to one of the spouses to simulation's[4] sue against the union of marriage before the divorce. He referred to the changes in the Civil Law related to women as such:

> "Giving Turkish women a new right under the name of family and inheritance laws is a subject which the Nationalist Action Party cares a lot about and is happy to see happening. Turkish women have played very important roles in our history. They ruled kingdoms with khans, sultans and emperors and joined wars, fights and also carried bullets to fronts in the Independence War. The nationalist movement believed that Turkish women

[4] *Muvazaa: a contract which, though clothed in concrete form,has no existence in fact.*

should also have an important role in modern life, as in history. The nationalist movement will keep on supporting Turkish women in their struggle to have equal rights and freedoms. In today's society, women are almost in every job and work shoulder-to-shoulder with men and are very successful and arbiter and have some rights which are not registered with laws yet and nothing can be reasonable stop this rights to be registered soon. The approach of the Nationalist Action Party about the head of family, the marital property regime, the regime of participation in acquired property, inheritance law and surname is in line. Our deputies' sensitivities are not centered on such fundamental rights being given or not given. As the issues of law and working field is the future of family and Turkish youth, it is very normal that our deputies have worked on this subject very carefully.[5]

In this speech, it can be seen that the Nationalist Action Party had similar trends with those who had defended the nationalist opinion in the last years of the Ottoman Empire. Women were considered here, again as a part of the family.

Salih Erbeyin's speech was in a similar direction. The Civil Law, the importance of family and the legalization of the bill were described. He described how his party viewed women and we see that family was emphasized instead of women very openly:

> "We all know and accept that the most holy presence of Turkish society is a strong family structure. Our main task as deputies is to strengthen and protect this strong family structure. We don't consider the members of family as wife, husband and child. We consider them all as whole and accept them as, the cement base of society and state. We take as an example a

[5] *Aile ve miras hukuku çerçevesinde Türk kadınına yeni hakların verilmesi, Milliyetçi Hareket Partisinin son derece önemsediği ve gerçekleşmesinden mutluluk duyduğu bir konudur. Türk kadını, tarihimizde önemli roller üstlenmiş, hanlar, hakanlar, sultanlarla birlikte yönetmiş, cenklere, savaşlara katılmış, Kurtuluş Savaşında cepheye mermi taşımıştır. Milliyetçi hareket, Türk kadınının, tarihte olduğu gibi, bugünün çağdaş hayatında da gerekli öneme sahip olmasından yanadır. Türk kadını, eşit hak ve özgürlüklere sahip olma mücadelesinde, bugüne kadar olduğu gibi bundan sonra da Milliyetçi hareketi arkasında bulacaktır. Bugünkü Türk toplumunda erkekle omuz omuza, hemen bütün mesleklerde başarılı ve söz sahibi olan Türk kadınının fiilen sahip olduğu birçok hakkın yasayla da tesciline hiçbir itiraz makul sayılamaz. Milliyetçi Hareket Partisinin aile reisliği, mal rejimi, edinilmiş mallara katılım rejimi, miras hukuku ve soy isim konularındaki temel yaklaşımı bu doğrultudadır. Milletvekillerimizin duyarlılıkları bu tür temel hakların verilip verilmemesi noktasında olmamıştır. Çalışma alanı ve yasa konusu, aile ve Türk gençliğinin geleceği olunca, milletvekillerimizin çalışmalarını bir kuyumcu titizliğiyle yapmasından daha tabiî bir şey de olamazdı.*

> proverb which says that a bird can't fly with one wing; neither can a bird fly balanced without a healthy body and healthy wings. [6]

Işılay Saygın spoke on behalf of a coalition partner, the Motherland Party. She began her speech by specifying the importance of civil law, and that the old law had become inadequate by changing time. She mentioned the difficulties arising from exigencies in domestic and international law related to the new regulation of family law regarding civil law. She indicated that obligations arose from the domestic law as in the Constitution's 10th article "everyone is equal before the law," according to the principle that spouses have equal rights; and the addition of the "family is the foundation of Turkish society based on equality between spouses" to the Constitution's 41th article changed Article. The causes by external law were explained:

> "In terms of international law, particularly the prevention of all forms of discrimination against women is a part of the protocol agreement, and additional voluntary commitments arising from other international agreements required the removal of male-female inequality from the existing law. On the other hand, the Civil Code change is among our commitments in short-term national program of harmonization with European Union. Besides all these national and international legal reasons, for social aspects, it has become necessary to have equal rights of spouses in the family. As is known, the public, impatiently are waiting for the change in the Civil Code."[7]

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[6] *'' Sayın Başkan, değerli milletvekilleri; çünkü, biz, biliyor ve kabul ediyoruz ki, Türk Milletinin en kutsal varlığı güçlü bir aile yapısıdır. Bu aile yapısının da güçlendirilerek korunması ve geliştirilmesi, en başta biz milletvekillerinin temel görevleridir. Aile bireylerini, salt erkek, salt kadın, salt çocuk olarak ele almayıp, aile bireylerinin tümünü, toplumun ve devletin temel çimentosu olarak kabul ettik. Bir atasözünde de ifade edildiği gibi, tek kanatlı bir kuş uçmaz, kanatlarının veya gövdesinin sağlıklı olmadığı bir kuş da dengeli bir hayat süremez ve yarına güvenle bakamaz görüşünü düstur edindik.''*

[7] *"Uluslararası hukuk açısından ise; başta, kadınlara karşı her türlü ayrımcılığın önlenmesi sözleşmesi ve ek ihtiyari protokol olmak üzere taraf olduğumuz diğer uluslararası sözleşmelerden kaynaklanan taahhütlerimiz, yasalarda var olan kadın-erkek eşitsizliğinin kaldırılmasını zorunlu kılmaktadır. Öte yandan, Avrupa Birliğine uyum sürecinde ulusal programda kısa vadede yapmayı taahhüt ettiklerimiz arasında Medeni Kanun değişikliği de yer almaktadır. Bütün bu ulusal ve uluslararası hukukî nedenler yanında aile içinde eşlerin eşit haklara sahip olmaları toplumsal açıdan da gerekli hale gelmiştir. Bilindiği gibi, kamuoyu, Medeni Kanun değişikliğini sabırsızlıkla beklemektedir. "*

Saygın's speech shows the reason for changes in the civil law in a short time by the coalition government, in many places even with the opposition's support that had not been able to be done in fifty years.

She highlighted in this way in her speech one of the important results of the equality between men and women in law:

> "under the principle of equality, while is ensured the removal of discrimination against woman, at the same time, privileges given to the women are abated and equal responsibilities are attributed. For example, in the current law, for men to be able to demand poverty alimony from women, the welfare state of the women is examined, however in this bill, the less faulty party has the right to ask for alimony without looking at any other condition." [8]

Here the speaker unintentionally highlighted the one of the most important deficiencies of the law.

The purpose of the speaker was to state that the changes in the Civil Code were also for men's benefit. However, the law did not contain "positive discrimination" against women, and by setting-up equality even among non-equity, revealed the fact that would result in female disadvantage in everyday life. New clauses were needed that would save women from dependent situations because of the gender-based division of labor provisions. Instead of this need, emphasizing that equality was in favor of men showed that the real goal was not to change the gender roles in society.

Continuing to her speech, she stated that, in the commission for the property regime, instead of unanimity about the removal of "the separation of property

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[8] *"eşitlik ilkesi çerçevesinde, kadınlara karşı ayırımcılığın kaldırılmasına imkân sağlanırken, aynı zamanda, kadınlara tanınan ayrıcalığa da son verilmekte ve eşit sorumluluk yüklenmektedir. Örneğin, yürürlükteki kanunda, erkeğin, kadından yoksulluk nafakası talep edebilmesi için, kadının hali refahta olması aranırken, tasarıda, eşlerden, daha ağır kusuru olmayan her birinin diğerinden herhangi başka bir koşul aranmaksızın nafaka talep edebileceği kabul edilmiştir."*

regime," there were doubts regarding the "participation in acquired property regime." She said that the adoption of the legal regime as "shared property division regime" was in favor of women in terms of ease of implementation. She stated that concern for the goods and properties to be divided exactly equally was out of place. She rightly pointed out that during the history of property regimes, many families had been left outside of the law.

She finished her speech saying that the recognition of gender equality within the family would require application to judge as the decision authority in cases, so it would be useful to establish family courts as soon as possible.

Beyhan Aslan next took the floor on behalf of the Motherland Party. She began by explaining the importance of the Civil Law. “Gender equality is not a blessing; it is requirement due to modern civilization, due to the changing Constitution and signed international conventions.”[9] She finished, saying that "The adoption of the Draft Turkish Civil Law will be a very important milestone in the journey of civilization in the legal system.”[10] This emphasis, once again, confirmed that the main factor of the legalization process were international relations.

Speaking on behalf of the Democratic Left Party, Ali Günay said that the bill must be debated not item by item, but as a whole, to provide legislation in a short time. He pointed out that the old law had entered into force in the same way. He cited the Ottoman legal system, the transition from the old civil law, telling the preparation stages of the new civil law, and continued his speech by outlining the changing parts. He described the changes within family law as the equalization of the age of

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[9] *Kadın-erkek eşitliğinin bir lutüf değil, çağdaş uygarlığın, değişen Anayasanın ve imzaladığımız uluslar arası sözleşmelerin gereği olduğunu*

[10] *‘’Türk Medenî Kanunu Tasarısının kabulü, hukuk sistemimizde, uygarlık yolculuğunda çok önemli gebir kilometre taşı olacaktır’’*

marriage, degrading behavior to be considered reason for divorce, divorced women's not taking the last name before marriage, increasing the number of competent courts, removal of the family head provision, and continued his speech by describing the main elements of the "participation on acquired property regime." He stated that was not true to accept personal gained property as acquired property in the "participation on acquired property regime." He pointed out that the regulations on family law were not only for the benefit of women, but for a joint application.

Yasin Hatipoğlu and Lütfü Esengül spoke on behalf of the Felicity Party. Hatipoğlu in declared that the general grounds of the new law must be taken from the old law, and that the language of the law should not be simplified. He justified the old law in general, saying "Modern civilization has visible points incompatible with the Turkish community, not of the lack of the ability of the Turkish nation, but because of some of the regulations and institutions in the Middle Ages, and religious organizations, surrounding it in an unnecessary way."[11] He indicated that this phrase was still unacceptable after seventy-five-years the adoption of the old law. He indicated that the society without Mecelle, at the end of spending seventy-five years with a law made by Switzerland, had resulted in social crisis, full prisons, and strict bans. He criticized the phrase in the Old Law that said "in the 13th century, our nation which has escaped from turmoil diseased beliefs, closed the doors of an ancient civilization and survived bringing life and efficiency will have entered into modern civilization."[12] to be put also in the new law. He said that modern civilization

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[11] *''Çağdaş uygarlığın Türk toplumuyla bağdaşmayan noktaları görülüyorsa bu, Türk Ulusunun kabiliyetindeki eksiklikten değil, onu gereksiz bir biçimde sarıp sarmalayan, Ortaçağ örgütü ve dinsel bazı düzenlemeler ve kurumlardandır''*

[12] *''Ulusumuz 13 yüzyılın kendisini çeviren hastalıklı inançlarından ve kargaşadan kurtulmuş eski uygarlığın kapılarını kapayarak, yaşam ve verimlilik getiren çağdaş uygarlığın içine girmiş bulunacaktır''*

had brought hunger and poverty to Turkey.

He said that simplification of language had not been true, he indicated that the accepted new terms had not replaced the old ones and he would vote against the bill. He belonged to the tradition of Islamic thought. In Islamic thought in a similar way as other religions that woman is dependent on man, that is, in a secondary position. Therefore, there cannot be equality between women and men in an Islamic country. Many criticisms of the speaker were related to the overall purpose of the law. General reason indicated the establishment philosophy of the Republic of Turkey. This philosophy allowed us to spoke about male-female equality. It was why it was one of the important topics for discussion in meetings of the Assembly.

Esengün began his speech by stating that the draft law had been prepared without regard to country's real needs, and had been prepared just to adopt European practices, that it was top-down, and in this aspect was an arrangement similar to the old interpretation of the law. He criticized the political and economic conditions in the country. He criticized the work of simplification in language as had the previous speaker.

Criticism of the changes made in the field of family law began from the point that it would install new obligations and responsibilities for women. Some of these criticisms were shared by some women's associations and feminists, who thought that "positive discrimination" was demanded. But subsequently in the speech, it became clear that the speaker was protesting the equality of women and men. He continued with the opinions that the abolition of the provisions that husband was the head of household would lead to chaos, the essence of unity of the spouses by joint representation would lead to end the marriage in the court house with each problem the spouses faced. He opposed the limitation of male domination. In this context, he

was also against changing the legal property regime. He indicated that due to Turkish customs and traditions of marriage it was wrong not to take place “milk bond” between barriers to marriage. He also criticized the resolution of disputes in court caused by the use of joint custody.

The majority of his criticisms were related to in the law to change the male-dominated system in the family. Representing the Islamic view, he was against the removal of clauses in violation of the equality introduced in the Civil Law based on Islamic thought. His criticisms indicated a continuation of responses to 1917 Family Ordinance No. 743 of the old civil law.

Sevgi Esen took the floor to speak on behalf of the True Path Party. She began by stating the importance of the Civil Law. She was enthusiastic and excited as a Liberal woman Member of Parliament. She indicated that, by regulating the relations in every area of the life, the Civil Law would shape the future and would serve the nation. She said that, with the old Civil Law the country had moved to the current level of contemporary civilization. She thanked primarily Atatürk and reformers that had delivered the country to the level of contemporary civilization. She indicated that the Civil Law was the icon of the Republic. By comparing the location and direction of the women in Republican and in Ottoman society, she drew attention to the fact that with the removal of the old civil law, women had come into Parliament come into important places and positions. She said that the new laws had been prepared for a long period of time according to the needs of society, and that it would be wrong to index this to the transition to membership in the European Union.

She stated that the basis of the law was based on the principle of equality between the spouses; it is made arrangements appropriate to the principle of equality in place of residence, age at marriage, the references to marry, the woman's last

name, divorce and compensation issues of poverty in trials, alimony, the increase of child support, and proceedings after divorce. She indicated that the rights and duties of spouses are synchronized, “the head of the house is the husband” provision is removed, and thus the choice of house, participation in costs, representation, accountability, and custody matters had been equally arranged.

About the goods regime, she said that women are victims of the "separation of property" regime one of the most important indicators of this was that "only 8.7 % of real estates are on behalf of women in Turkey.” She declared that, the selected acquired property regime would be resolve the grievances of women.

She stated that the True Path Party’s support for the law was beyond political considerations and in its all work "only and only the removal of the obstacles beyond the woman, attaining economic security for them and the democracy [were] taken as the target." Sevgi Esen was of the type know as "Republican Woman.” Her perspective of women again was "family" oriented. The belief that women’s struggle for equality was required for the advancement of the country was the main theme of her speech. It is clear that she did not have an opinion that women's traditional roles had to change.

The second speaker, from the True Path Party group was Mehmet Gözükaya. He began, saying that the adoption of the old civil code had been the first act of secular understanding and it had opened the doors of civilization for the country. He linked the legalization of the bill to the steps to enter the European Union:

> “Today, in the period very close to the social, economic and political stability that the European Union wants, in terms of political objectives, now, has become a necessity for the state to impose itself to change in term of fulfilling the commitments that we have promised to the European Union and European Union countries. Also the aspiration to join the European Union has

contributed. In addition, the social and cultural development of the Turkish society has led to making these changes. " [13]

He said that the bill did not meet the full requirements and that the DYP did not adopt some places. He criticized the multilingual simplification. In explaining the changes made to the Family Law, he indicated that he supported the removal of the leadership, ensuring gender equality, and women's receipt of future security. He stated that, equalizing and lowering the age of marriage to seventeen made it more difficult to make a marriage contract for individuals who had not completed the age of 18.

He mentioned the innovations brought by the law, such as place of marriage, financial and moral compensation in divorce, alimony of poverty, and intention to kill and degrading behavior were accepted as cause of divorce. During a divorce trial if one of the spouses died, whether the surviving spouse would inherit or not depend that on whether the spouse was tainted or not. He pointed out that this decision was a new one. He also noted that spouses had the right to choose their work.

He stated that the True Path Party supported the legal property regime, but according to his personal view, he thought that participation in the acquired property regime might cause long trials in addition of the fact that personal property to acquired goods income might cause injustices.

Despite being in the opposition, the True Path Party generally supported the law. It can be said that the members of this opposition party who were different

[13] *''Bugün, biraz da, ihtiyacı körükleyen, Avrupa Birliğine girmek, Batı'nın istediği sosyal, ekonomik ve siyasal istikrara en çok yaklaşıldığı dönemde, devletin politik hedefleri açısından, artık, kendisini dayatan bir ihtiyaç haline gelmiştir; yani, Avrupa Birliğinin ve Avrupa Birliği ülkelerine vaat ettiğimiz taahhütleri yerine getirme açısından bu değişiklik bir isabet olmuştur. Biraz da, Avrupa Birliğine girme gibi arzumuzun katkısı olmuştur. Ayrıca, Türk toplumunun da sosyal ve kültürel gelişimi bu değişiklikleri yapma zaruretini doğurmuştur.''*

gender, advocate the improvement of women, and had no problems with the change of traditional roles.

From the Democratic Left Party, Ali Arabacı took the floor. He defended the reason for the new Civil law. With the legal revolution in the Republic of Turkey, it was decided to break away from the Islamic legal system. He said that this direction of the revolution was the first for that day's Islamic world, as well as the only one for today. Mahmut Esat Bozkurt's reason was, like an author said, a declaration of secularism. A republic and its laws leaking from secularism was a hollow sheath, and it lost all of its historical meaning. If in the Muslim world democracy had existed only in Turkey for more than seventy years, the secular republic experimentation had a great role in this.

National Action Party deputy Levent Bıçakcı took the floor on his own behalf. First, he criticized the simplification of the language of the law. Second, he criticized the adoption of ''participation in acquired property'' as the legal property regime instead of "the division of shared property" regime. He said that the issue of property regimes was at the heart of the bill. However, he stated that the goods regimes were not explained enough to the public; and "participation in acquired property" regime would aggrieve women, men and children. His choice of words was interesting:

> "A few women newspaper writer set to work on women's rights advocates and around 100 women's associations have grappled with the regime with four-hands such as Moorish found the goods, and unfairly attacked the opinion, no matter who he/she is. Lawyers, in their faxes sent to us, the members of the commission, said that women would be the victims of this regime however they cannot raise their voices enough. Ultimately, threats to resign, cast by the Minister in the commission, led to the desired change."[14]

[14] *''Kadın hakları savunuculuğuna soyunan birkaç kadın köşe yazarımız ve dünya görüşleri bir olan 100 civarında kadın derneği, mal bulmuş Mağribi gibi bu rejime dört elle sarılmışlardır; karşı görüş beyan eden kim olursa olsun insafsızca saldırıya geçmişlerdir. Hukukçularımız, biz komisyon üyelerine yolladıkları fakslarda, bu rejimin kadını mağdur edeceğini söyleseler de, seslerini pek*

The True Path Party, the Justice and Development Party and the Saadet Party tables applauded. Then Bıçakçı continued saying that, each party of parliament had a member who found the regime of legal properties problematic; therefore he asked to return from wrong. He pointed out that the basic problem of the system was that trial cases would last for many years. As the representative of the ruling party, Levent Bıçakcı's speech was interesting. In the party supporting the law, the support was related to the current environment. Many of the lawmakers who supported the law were in the same position. It is obvious that this situation would make it difficult for law to be the basis for gender equality applications.

Finally, Justice Minister Hikmet Sami Türk took on floor to defend the law. He advocated general reason and simplification of the language of law matters and "participation in acquired property" regime. He stated that this system best reflected equality within the family, and it had been applied in Switzerland and in many other countries; and he noted that there had not been difficulty in the settlement.

In the end, Parliament passed the law with a large majority. But the main target of "the male-dominated" Parliament was not to liberate women. So, the members of the Parliament legalized the bill with important restrictions. In addition that there were subjects important to liberate women had not been argued. In a step of the equation on the personal relations of the spouses, then "last name" problem for women was ignored. The diagnosis of "positive discrimination," which would support the equality of women was not discussed. Without positive discrimination to equalize the spouses, would create new problems for women. "The economic relationship between spouses," which was the other step of the equation, was

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*çıkaramamışlardır. Sayın Bakanın komisyonda savurduğu istifa tehditleri, neticede, arzu ettiği değişikliği sağlamıştır.''*

regulated by property regimes. Here, the old legal "separation of property" regime, which drove women to economic poverty, was changed. A regime to participate in property acquired in marriage was adopted. However, by taking forward the effective date, the existing marriages remained outside the law to a large extent. Both the content of the conversations and the results show that the real target of the legalization studies of the members of parliament was not to change the traditional role of women in society. This situation indicates that during the implementation phase of the law, the problems would remain.

# CHAPTER V

# THE NEW FAMILY LAW

In this chapter I will overview the new Civil Code's Family Law. It is regulated under "Family Law" as the second book of the Civil Code. The Family Law consists of three chapters as the Marriage Law, Kinship and tutorship. I only consider of the Marriage Law, which consist of four parts, Marriage (articles 118-160 ), Divorce (articles 161-184), General Rules of Marriage (articles 185-201), and Marital Property Regime (articles 202-281).

## Conditions of Marriage

Marriage begins with engagement. Articles 118-123 of the New Civil Code are about "Engagement" and its legal consequences. It indicates that two person of opposite sexes have promised to marry. It is generally accepted that the engagement has a contractual nature. The parties express their willingness to engage. Marriage is the expected outcome of the engagement. But engagement itself does not constitute an enforceable contract. It does not compel either of the parties to marry, and it does not prevent a marriage with someone else. But there are consequences of a breach of engagement. One of them is the reciprocal return of the unusual gifts given by the fiancées or their parents during the engagement. The bride fee is thought of as a gift. In addition to the return of gifts, damages may be recovered against the party who breaks the engagement without reasonable cause. Compensation covers material and/or immaterial damages.

After the “engagement,” marriage is arranged in the Turkish Civil Code. Marriage is considered a legal contract. Conditions similar to those required for a valid contract, including the agreement of the parties, are necessary for a valid marriage. The status of husband and wife begins with the enactment of marriage.

The first part ruled that the conditions of marriage. The Turkish Civil Code allows only persons who are defined as ‘competent’ to get married, and lays down the criteria for such competence as well as the circumstances under which people cannot get married. Conditions for marriage include both of the above and are covered by the Turkish Civil Code and Marriage Regulations. Violations of these provisions constitute a crime and are punished under the Turkish Penal Code. Some of them cause the invalidity of the marriage.

There are certain conditions for a valid marriage. The first of them is competence to marry, which is detailed under the Civil Code’s Article 124. There are two basic criteria for competence: age and the ability to discern.

One of the most important innovations brought by the New Civil Code is that no one can marry before the age of seventeen. The new Civil Code corrects the previous discriminatory provision, which had ruled different minimum ages for men (17) and women (15). The new law adopted the same age for men and women and raised the age of marriage compared to that of the old law. Yet the minimum age for marriage is still below the age of simple majority (18), which is accepted as a precondition for legal competence and liability.

In this arrangement, as well as equality, it is also intended to prevent early marriages. Mostly female are victims of early marriages. In the old Civil Law the provision of women to marry was fifteen, and for men, seventeen. In the exceptional circumstances, it was fourteen for women and for men was fifteen years old.

Conservative and religious circles defend the early age marriage of women because of the importance of virginity for them and to prevent the causes of relations before marriage. But the main purpose and result is to put women under male domination at a young age. However, marriage at a young age takes its toll on women. As children, without physical and mental maturity, females fall under the responsibility of the marriage and having children. Also eliminated from discussion are the rights to education and self-development. The treats of polygamy and the possibility of violence are increasing for early married women. N.E., who lives in Istanbul, summarizes these issues by telling about her life:

N.E.: I was jumping rope in the garden with my friends. My mother came to me and said, "look at man going over there, you will marry him." I did not understand, I continued to jump rope. I was fourteen years old when I was engaged. We waited 1.5 years for marriage. In the weddings day I was very scared and I trembled all day. I became sixteen years old a month after I get married. My husband was fourteen years older than me. Secretly watching my mother-in-law when she was dining in the kitchen, I tried to learn to cook. My husband used to beat me for every reason. I would hide from him to protect myself. Sometimes I hid under the table. My girl was born when I was seventeen years old. Then, I had three sons. We did not go out of the house.''

When her husband's work failed, he left, leaving his wife and children with her father. He continued his threats with calls. N.E. and her children were afraid even to go to the park. One day when N.E. went to the market, he called and her daughter answered. Her husband gets mad because N.E. was not at home. He said, "It is time for your marriage." N.E. went to the police station. Receiving legal aid, they got a divorce. N.E. says, "Now, we go everywhere. We want to go to the cinema one day.

We did not go before."

Girls who enter into early pubescence, because of the hot climates, are not necessarily ready for marriage spiritually. These claims were defended by deputies in the General Assembly. Also, the thought that marriage at early age would be deprived legal protection for women could not be reduced justification. However, changes in the Turkish Penal Code in 2004, reducing the penalties applied to religious marriage done without formal marriage, showed that regulations to lowering the age of marriage were not intimate.

According to the New Civil Code, under extraordinary circumstances and for very important reasons, an exception can be made with the permission of a judge. For this permission, the minimum age is 16 both for men and women, and there must be the presence of an emergency or a very important reason. The Civil Code gives the authority to a judge. The judge considers whether the minor in question is psychologically and physically mature enough to marry; pregnancy alone does not constitute a reason or justification for marriage. In making such a decision, the judge hears the opinions of the parents or the guardian whenever he or she has the opportunity.

Minors need their parents' permission to get married, but if there is a complaint alleging an unjust objection on the part of the parents, the final decision is for the judge to make (Articles 126 and 128 of the Civil Code). The judge who decides to marry is a family court's judge. The girl and boy have the right to refuse to get married even if the judge decides in favor of the marriage. With Article 128, the authority grants judges the ability to prevent the abuse of the right to custody of parents over their children, especially over girls. If parents do not allow their children to marry, without a justifiable cause, this permission can be given by the judge.

Minors who marry attain majority through marriage (Article 11 of the Civil Code).

The ability to discern is the second conditions of marriage. (Article 125 of the Civil Code). In the Marriage Regulations, having the ability to discern is defined as: "Not being deprived of the ability to act rationally and to distinguish right from wrong as a result of youth, mental disease, mental infirmity, intoxication, etc." (Marriage Regulations Article 14).

There are some barriers to marriage. Under some circumstances, marriage is forbidden. Some of the barriers are absolute. It means the result is absolute nullity. A transaction involving conditions of absolute nullity, can not acquire legal effect even if it has. It is public interest so it may be demanded by every person involved in the relation or even by a public prosecutor.

The first of the certain barrier to marriage is close kinship. Close relatives who cannot marry are described in Article 129 of the Civil Code and Article 15 of the Marriage Regulations. This closeness covers immediate family (parents cannot marry their children, brothers and sisters cannot marry each other), close relatives (aunts and uncles cannot marry their nieces or nephews, ex-spouses cannot marry each other's parents or children), and an adoptee cannot marry an adopted person; an adoptee and the adopted cannot marry each other's ex-spouses or children.

The second of the certain barriers to marriage is being already married. A person who wishes to remarry has to prove that his or her previous marriage has ended (Civil Code Article 130). The Marriage Regulations state that a person who is recorded as married in the Population Register cannot remarry (Marriage Regulations Article 15). Polygamy is forbidden at first in the 1926 Civil Code. The new Civil Code preserved this ban.

The third and last of the certain barriers to marry is mental illness. The mentally ill cannot marry unless they obtain an official health report stating that there are no medical impediments to their marriage (Civil Code Article 133). The former Civil Code stipulated affliction with a mental disease as a condition preventing authorization for marriage.

There are imprecise marriage barriers. The result of disobedience to these barriers is relative nullity. Relative nullity is invalidity which affects the private interests of the parties of marriage and which can be only claimed by them. If within the special legally determined prescription period (within six months after the recognition of the ground of relative nullity or after the end of threat nullification has been requested), the marriage is to be decided invalid. If nullification has not been demanded, the marriage becomes valid.

The first of the imprecise marriage barriers is waiting period of three hundred days. This waiting period is foreseen under Civil Code Article 132 to guarantee that women are not with child from a previous marriage. Women who do not want to wait have to produce medical proof that they are not pregnant before they can remarry. These three hundred days are calculated starting from the date of the court decision terminating the previous marriage or the date of the death of the ex-husband (Marriage Regulations Article 15). This stands as a discriminatory and humiliating provision which violates women's basic human rights and freedoms with the sole aim of establishing fatherhood which, if requested by the involved parties, could be established easily through DNA tests. This article came from the Sharia law. It was preserved in the 1926 Civil Code and the 2002 Civil Code.

The second imprecise barrier is infectious diseases.Certain sicknesses enumerated in Art.123 of the Law of General Hygiene constitute a bar to marriage.

There are also material conditions for a valid marriage. Marriage is a formal contract, so the processes of marriage are arranged with details. Processes begin to with the application. The Civil Code describes the procedure for application for marriage (C.C. Articles 134, 136). There is an innovation, here. The man and the woman who are going to get married jointly apply to the marriage registry office in the region where one of them is a resident. However, in Article 98 of old Civil Law, which corresponds to this Article, which is also considered the application for marriage has to be held in residence of the marring man. The marriage registry official is the mayor of the relevant district or a civil servant acting on his behalf. In villages, this is the village headman (muhtar). This application is investigated and a decision is reached to authorize or reject the marriage (Civil Code Article 137 and Marriage Regulations Article 23). If the marriage registry Office allows the application, it gives a "Certificate for Permission Marry" that is valid for six months. Couples can marry wherever they want with this permission. The New Code removed the objection to marry and gives the opportunity to prevent to the concerned parties. But the Marriage Regulations and the Population Law still give the right to the concerned parties and Republican prosecutor to the objection to marry and opportunity to prevent the marriage.

Marriage is a registered official event which takes place within a framework set by legislation. During the ceremony both the man and the woman are asked to openly declare their free will in front of the official and two witnesses, upon which they are considered married. Their marriage is registered in the marriage registry during the ceremony. The full and free consent of the couple getting married is a basic condition for marriage. This hold is both for minors and adults. In the case of minors, the permission of their legal guardians is also sought (Civil Code Article 126

and 127). Before the ceremony ends, the couple is presented with a family book (wedding certificate), which officially documents that a civil marriage ceremony has been conducted (Civil Code Articles 142 and 143).

The open declaration and being in front of official are the essential requirements of marriage. Lack of these conditions means a marriage can not be considered valid, and is concerned null and void. It can never acquire legal effect.

According to the Marriage Regulations, in the case of a Turkish couple getting married in a foreign country, the competent authority is the relevant Turkish consul or ambassador (Marriage Regulations Article 10). However, they also may get married before the competent authority of a foreign country. If the marriage does not contravene Turkish law, it will be also valid in Turkey. The couple has to present their marriage documents to the Turkish authorities within one month of the marriage (Marriage Regulations Article 11). This requirement also applies if one of the couple is a foreign citizen.

The Civil Code also arranges marriages with or between foreigners in Turkey. The marriage of a foreigner to a Turkish citizen, or two foreigners who are not citizens of the same state, only can be finalized by an authorized Turkish marriage registry official (Marriage Regulations Article 10). The same article also stipulates that marriage between two foreigners having the same nationality may either be concluded by their countries' representatives in Turkey or by the competent Turkish authorities, if their law so permits.

The New Civil Code clearly states the same as the old Civil Code, that a religious marriage ceremony can only be held after the civil ceremony (Civil Code Article 143) otherwise, the couple is in breach of the Penal Code (Penal Code Article 237). Furthermore, if a religious ceremony is conducted without documented proof

(i.e., the family book) that the civil ceremony has already been completed in accordance with the law, the person who conducts it, too, is considered to have committed a crime. The prohibition of making religious marriage before civil marriage is to help preventing child and plural marriages. However, an amendment to the Penal Code in 2004 mitigated the penalty.

The pre-nuptial agreement, or mahr in Islamic Law, has no legal validity in Turkish law. Mahr was cancelled by the 1926 Civil Code. In both of the Civil Codes, instead, in the case of divorce, there are agencies for material and spiritual compensation and alimony *(iştirak ve tedbir nafakası)* and maintenance *(yoksulluk nafakası)* of poverty. Alimony, is the payment of a husband to his wife or vice versa during the action and to the children after the divorce. Maintenance is paid after the divorce by one of the spouse to the other, as long as she or he is in need. These agencies were in the old Civil Code. The new Civil Code preserved these agencies with some important changes. The new Civil Code, unlike the old Civil Law in material and moral compensation, does not seek absolute fault. It finds it sufficient to be less faulted (Civil Code Article 174). This is an important change. It is unjust for a spouse who is beaten up to lose the right to compensation because of words said in anger to her husband. The amendment concerning maintenance is also important. While in the old law, women's pay maintenance to their husbands only in the case of "if women have welfare state", the new law brings equal arrangement in this regard. (Civil Code Art. 175). This provision, in Turkey where the living conditions of women are not equal to those of men, will lead to new inequalities and injustices.

The bride price is also not valid in the 1926 and 2002 Civil Codes. In rural areas, there is a customary practice whereby the bridegroom pays a bride price to the bride's father in recognition ot the cost of raising the bridge and in compensation for

depriving the family of her services following her marriage. This traditional practice has no validity or place in the Turkish Civil Codes. However, in some cases, families put pressure on their daughters to accept the offer of marriage in order to acquire the bride price. Legally, the bride price offered to her family does not obligate her to marry anyone. When the official carrying out the marriage ceremony asks her if she wants to marry of her own free will, she has the right to refuse. If she does this, no one can make her marry. But in practice, it is not so easy. Most of the time, the bride is a child and under the families pressure. This pressure is very serious. Sometimes her life is in danger.

Article 151 of the 2002 Civil Code gives some rights. Even if a woman bows to pressure and is forced into marriage, she may still file to have this marriage annulled, declaring that she was coerced into matrimony. Adults and minors alike have this right. But it is insufficient. The new sub-commission of The Committee on Equality of Opportunity for Women and Men of the Turkish National Assembly prepared "The Report of the Traditional Marriage" in May, 2011. The sub-commission proposed to accept bride price as a crime and to make it a punishable offense.

## The General Rules of Marriage

The most important changes introduced by the New Civil Code with number 4721 are in the section of general provisions of marriage. The Old Turkish Family Law was based on the concept of the traditional family, in which the husband took on the non-domestic responsibilities, working outside the home and earning the money which supported the household, and where the wife worked at home and

raised the children. In harmony with the concept, the husband had the duty to support the family. He also had the last word in controversial family decisions, such as in determining the family residence, in representing the family, or to carry out the parental authority. This overall picture, however, already had been softened to some extent through certain provisions. The new Civil Code made a complete renovation.

The equality of spouses within marriage is anchored in the Turkish Constitution through an amendment of Article 41 enacted in 2001. With the addition of a new phrase, the Constitution now rules that "the family is (...) based on equality between spouses." The framework for equality in the family thus being set, the new Civil Code brings about further changes in specific aspects of family life. The family is now based on the full equality between the husband and wife in the family. Under the new Civil Code's Article 185, the family is treated as a unit. This Article generally describes the rights and obligations of spouses. With the change of the Article third paragraph "the necessity of a common life" settle both the rights and obligations of spouses.

The important changes are realized under the Article 186. There are three novelties.

First of all, a clause is added which reads "the spouses will choose the house together." According to the 1926 Civil Code, only the husband had the right to choose the family abode. Article 186 completely changes the old law. With the 186/1 article of the new Civil Code, spouses jointly choose where they will live. It is required that the mutually selected house be an independent residence. This is a positive change from the old clause, which assigned the decision-making power concerning place of residence to the husband. Besides this, the clause that said the wife's residence is the residence of her husband has been deleted from the definition

of legal domicile. According to the Old Law, women had no right to have an independent residence unless involved in a divorce suit. This situation put woman in difficult situations in many cases, such as registering her children at school, and during an alimony suit without a divorce suit. Again, women were allowed to have divorce suits in courts located only in her husband's residence or at the place in residence of the last six months. This also caused the woman to live in material and spiritual difficulty. With new legislation women have the right to have an independent residence. So, the wife can register her children according to her residence and can pursue a alimony or divorce suit while in her own residence. With the change, the Civil Code ensures compliance with CEDAW, which gives to women the equal right to choose settlement place.

Article 186 also arranges the equal management of the union. The provision in former Article 152, which reads as “the husband is the head of the household,” has been replaced with “the spouses shall manage the household together.” Until the reform of the Civil Code in 2001, Turkish law designated the husband the head of the family. This arrangement lifted the hierarchical arrangement between men and women. This clause has now been removed and the new Civil Code, the spouses jointly make decisions regarding the marriage union. One spouse’s independent move is subject to the approval of the other spouse’s or judge’s consent.

Participation in the expenses of the family also changed with Article 186. The provision in former Article 152, which provided that the expenses of the marriage are to met by the husband, has been replaced with the new provision that “spouses shall contribute in labor and in property to the expenses of the marriage to the extent they are able to do so.” With Article 186/3 the spouses contribute towards the expenditures of the union with their labor and possessions to a degree commensurate

with their capabilities. This clause deletes and replaces the old principle that the husband is responsible for maintaining his wife and children. Both spouses are required to participate in the expenses. Costs of participating may be connected with "labor or property." Thus, the woman's labor and time spent on housework and child care is appreciated for the first time as property. The law gives positive value to the woman's previously "worthless" labor. It has very positive effects on women everyday lives. But, the "worthless" labor gains material value only if there is wealth. However, in many cases the results of this equality work against women. For example, it is more difficult for women to obtain alimony, if they have any salary, they can't. In addition, they must pay alimony to their husbands. In society, however, women and men are not in the same conditions. Women's traditional roles make life hard for women. The recognition of this reality dictates that women need positive discrimination.

The new Civil Code arranges the surname of the married women in Article 187. According to the provision, a married woman takes the surname of the husband with marriage; however with application to the marriage official or afterwards to the birth registry office, she also can use her own surname as preceding her husband's surname. The regulation is a disappointment, and it based on the idea that women belong primarily to the husband's family and that their identity is absorbed into that of the husband. A name is an obvious and significant symbol of a person's identity. A woman's birth-given name is the name by which she is known and with which her achievements are associated. It is great pressure on the wife to give up her surname upon marriage. This arrangement is also against Article 10 (which states "men and women have equal rights") and 41 and 90 of the Constitution and the provision of the CEDAW Convention as well as the European Courts of Human Rights practice. The

Unat-Tekeli-Turkey case, the Court concluded that a married woman can use her maiden name alone. The marital surname must be left to the free will of the spouses. The new Civil Code arrangements about surname shall result in the limiting the identity right of woman to protect and develop her material and moral existence.

Another new provision is introduce, which reads "both spouses may legally represent the marriage with respect to the expenses of the marital union for the duration of the marriage" and the provision in former Article 154, which reads "the marriage is represented by the husband," was been removed. The authority to represent the union no longer rests solely with the man. Nor is he the one responsible for managing the family's savings under all circumstances. Men and women have equal rights to representation and are jointly responsible as regards third parties (Civil Code Article 189). Each spouse is entitled to represent the family in ordinary matters. On extra ordinary matters, they act together. If one of the spouses abuses or displays shortcomings in using the authority to represent the union, the judge may, in response to an application from the other spouse, remove or limit this authority (Civil Code Article 190).

Article 192 of the new Civil Code, in its first clause, makes a clear statement that neither spouse is obliged to seek permission from the other regarding his or her choice of work or profession. However, a second clause added to the same article makes a vague statement to the effect that "the harmony and welfare of the marriage union should be borne in mind when choosing and performing a job or profession." The Old Civil Code gave the task of family livelihood to the husband. One consequence is that the dependence of the woman to her husband was related her job and career choice. A woman working without permission from her husband could be grounds for divorce. This substance found application, even though this provision of

the Constitutional Court was found contrary to "the principle of equality" and “the person having the right to develop the material and spiritual existence ." In the new regulation, the dominance of the husband's income is gone completely. Both principles are equal. If the judge decides that the profession chosen by the spouses has a negative effect on the union, this divorce case will be evaluated as a defect.

Differences in the legal processes for spouses are also gone. Now, the woman does not need to get approval from judges for certain actions. In the old Civil Law, for woman to take a loan in favor her husband, to be the guarantor, it was required that she obtain permission from a judge. This arrangement is gone. Also, in the new law there is no "prohibition of foreclosure" between the spouses. Both are assumed to be full-fledged partners in making the transaction. There are some exceptions to this.

In Article 194, one of the most important rule exemptions in the spouse’s freedom of legal action is "family residence." This is also one of the most important institutions brought by the new law. The article determines the family residence as the place where "of the spouses carried out all life activities ...". The article prevents without the consent of the spouses of one another to have the right to dispose of the family residence. In the law that one partner, cannot cancel the rental contract of the family apartment, sell the family residence or limit the rights of the other concerning the family residence without the consent other partner (194/1mad.) According to the text of the article consent must be "open." The partner who cannot obtain consent without any logical reasons or convince the other side is entitled to demand justice in court. Because in Turkey most of the real property is registered in the name of the men, the importance of considering the matter arises. Especially in cases of incompatibility, when men sell the family residence or to terminate the tenancy puts

women and children in difficult situations. Despite the fact that "family housing" is the provision in the regulation of divorce in the source law, there is victimization in marriages in Turkey, because it is arranged in the general provisions of the marriage. It is one of the most widely used institutions of the new law. The application is extremely simple. The partner who is not the owner of the family residence can apply to the Land Registry to have an annotation to that effect added to the record. If the family residence has been rented in the name of one of the spouses, the spouse who is not party to the rental agreement can become a party to the contract by means of a written statement addressed to the landlord or landlady. Family housing is considered a descriptive commentary in general. Even if without commentary, savings made by one spouse without the consent of the other can be subject to cancellation.

Article 197 gives the spouses the right to obtain a separate housing when the "common life of one of the spouses endangers the personality, economic security or peace of family of the other spouse." In this case the judge will determine how to use the common property and household goods, and how costs will be shared. In the old law, these measures were arranged only in case of divorce. Article 198 provides making the payments to the other spouse, instead of the payments that would be paid to the spouse who does not attend to household expenses. Article 199 could limit the saving authority of one spouse's over some goods, with the request of the other spouse. This is especially to prevent the attempts to miss financial, moral indemnities and to avoid fulfilling the demands of child support and goods.

In the new Civil Code is arranged according to the obligations of spouses. These are contribute to the happiness of the family, fidelity (the term "fidelity" is understood to mean that the couple should be faithful to each other in all respects,) adultery is an extreme example of infidelity, to live together (this is both right and

obligation of spouses), support and assistance each other; regarding the children together and care in the selection of professional and business.

It also arranges getting married abroad and marriages with or between foreigners in Turkey. According to the Marriage Regulations, in the case of a Turkish couple getting married in a foreign country, the competent authority is the relevant Turkish consul or ambassador (Marriage Regulations Article 10). However, they also may get married before the competent authority of a foreign country. If the marriage does not contravene Turkish law, it will also be valid in Turkey. The couple has to present their marriage documents to the Turkish authorities within one month of the marriage (Marriage Regulations Article 1). This requirement also applies if one of the couple is a foreign citizen.

In Turkey, the marriage of a foreigner to a Turkish citizen, or two foreigners who are not citizens of the same state, can only be finalized by an authorized Turkish marriage registry official (Marriage Regulations Article 10). The same article also stipulates that marriage between two foreigners of the same nationality may either be concluded by their countries' representatives in Turkey or by the competent Turkish authorities, if their law so permits.

## The Financial Affairs of the Marriage

One of the most dramatic changes in the new Civil Code is in matrimonial property regimes. Marital property means the rights and responsibilities of the spouses on the goods acquired before and after marriage and the rules about the division of them in case the marriages comes to an end. At present, unfortunately, quite a great part of marriages do not last long, though they're began with the hope of

life-long duration. Every day there is an increasing number of divorce cases. In this situation, marital property bears great importance from the point of the results of divorce. It must be utilized as a means of providing future support for an economically dependent spouse, who is generally the woman.

The husband and wife are free to regulate their pecuniary relations during the marriage within the limits prescribed by law. In Turkish Civil Codes, there exist two kinds of Marital Property, the Legal Marital System and the Contractual one. If the spouses have not acted an agreement about Marital Property, then the legal system is valid. Since people usually do not think much about the monetary aspect of their future life at the time when they marry, marriage contracts regulating the matrimonial system are rare. The spouses must make an arrangement at a notary to choose one of the contractual systems which is given in the law, before or after marriage. They cannot make an independent contract, whatever they want. They have only the right to choose one of the contractual systems. As a result, the statutory regime is applied widely.

The new Civil Code changed the legal system, first from the "separate property system" to the "participation on acquired property," and then changed the contractual. As a result, the new Civil Code established the Participation on Acquired Property as the legal property regime, which is valid by default if couples do not choose one of the other specified regimes before or after they get married, after 1 January 2002 (Civil Code Articles 202, 203 and 205).

The new legal marital system is important in ensuring women's economic equality. The Old Civil Code's legal marital regime was separation of property which created no special property rights; rather, the married individuals functioned as property owners much as if they had never married. Experience during the years

since the old Civil Code entered into force in 1926 has shown that the separation of property regime usually favored the stronger party, who was in most of the cases the husband, and operated against the wife in the case of divorce or death of the husband. This is mainly because she still normally keeps the household, and does rarely acquire her own property during the marriage. This new property regime provides for an equal division of property acquired during marriage, giving equal credit to each of the spouses for it, irrespective of how and where they work. Thus, the contribution of women's hitherto invisible labor to the well being of the family household is recognized and assigned an economic value, even if she works rationally and gives her earnings to her husband.

If the spouses are not willing to be subject to the legal system, then they have an option of either of the systems, that are the separate property system, the partionary property separation system or the community property system. Even if they prefer any of the above systems or none of them, they may prefer one of them afterwards. The marital property contract may be arranged at a notary public or may be confirmed by some agent. Additionally, it may be declared to a marriage registrar. The latter one need not be in written form, it will be sufficient to be orally declared. To change the property regime, the couple must jointly sign a contract at a notary.

Whatever system was accepted by the spouses before 1 January 2002 when the New Turkish Civil Law came into effect, the one is in the legally valid system as a rule. But if the spouses did not choose one of the property regimes before and not after one year that the new law was valid, they will be subject to the Participation on Acquired Property System, brought about by the New Turkish Civil Law as the legal system. As an example, take a couple who married in 1998 and did not choose any of the said regimes. In this case, they are to be subject to the separate marital property

system until 1 January 2002, and if they did not choose any of the systems until one year after the legislation of the new law they are subject to the participation on acquired marital property system.

The system of participation on acquired property (*edinilmiş mallara katılma*) (Civil Code, Arts. 218-241) is almost from that of the Swiss Civil Code. The system basically is calculated on the property and income acquired during the marriage.

Under this system there are two types of properties, acquired and personal. Acquired property (*edinilmiş mallar*) includes those properties which are acquired by the spouse with his or her effort during the marriage (Civil Code Article 219). Personal properties (*kişisel mallar*) are basically those which belonged to the spouse at the time of the marriage and those which have been acquired during the marriage by succession or other gratuitous means (Civil Code Article 220). Under this system each spouse retains the ownership and administration of all his/her property (acquired and personal property) and has the free enjoyment and disposition of both capital and income. Similarly, both spouses retain control of their individual earnings.

What is meant by personal properties consists of two categories. The first one is the personal properties of the spouses. They may be determined according to the law. They were properties that are the subject matters of personal use, properties that were acquired before marriage, properties acquired by inheritance or donation the properties based on the intangible damages credits and properties substituted as personal properties. The properties which are not the personal property accepted as acquired property. Acquired marital property are fees, salaries, etc; as an actual work, any of the payments made by social security agencies and the income of personal properties such as rents, and interest equally divided between the spouses

during the liquidation of the assets. Acquired property means property which each spouse gains by money after accepting this system. The second kind of personnel property is arranged in Article 221. According to the article, the spouses can make a contract and opt to exclude some properties some of the acquired property, if they are result of the execution of a job or because of business activity.

Besides, there exist two presumptions in the acquired marital property system that have been added as the legal system. The first, all of the properties of one of the spouses are deemed as part of the acquired marital property system, until the contrary is proved. Secondly, the property whose ownership is not proved is deemed acquired marital property.

Under this system each spouse retains the ownership and administration of all his/her property (acquired and personal property) and has the free enjoyment and disposition of both capital and income. Similarly each spouse retains control of his or her individual earnings. Each spouse remains solely responsible for his own debts incurred either before or after the marriage. Yet each spouse (usually the wife) must contribute “reasonably” to the expenses of the household. In case of divorce, each spouse keeps his or her property and entitled to one half of the acquisitions of the other spouse (Civil Code Article 236).

The most important difficulty of the system is the separation of personal and acquired property, which is not pure. Mostly they are mixed with each other. For example, one spouse had a house before marriage. He/she sold this house and added some money from the acquired property and bought another house. The last house is mixed personal and acquired property. So it is quite difficult to divide it. In this case according to the Turkish Civil Code, contributions must be considered. In addition, there may some smuggle sale which they find and account. There may some debts

for acquired property. Most of them are evaluated. Debts are removed from the acquired property and the found value divided in two. The acquired marital property system is quite detailed and has many problems during the liquidation of the assets; yet it has an aspect of justice.

Though the new system is seemingly complicated, its aim is to protect the rights of aggrieved parties after a marriage has ended. It provides for an equal division of property acquired during marriage, giving equal credit to each of the spouses for it, irrespective of how and where they work. Thus, the contribution of women's hitherto invisible labor to the well-being of the family household is recognized and assigned an economic value. This is an achievement in terms of the economic empowerment of women. Married women are economically stronger as equal partners under this marital regime. This will increase women's self-esteem and self-confidence.

The last word about this regime is about dowry. There are no specific legal provisions regarding dowries brought by the bride. However, under the new legal marital regime, dowries fall under the category of personal possessions and are regarded as the legal property of the bride. So, the bride retains them in the case of the termination of the marriage.

Women have been strengthened by the legal marital regime economically. However, with a last minute change, this marital regime was deemed to be valid only for property acquired after 1 January 2002. So, many married women are outside of the system. Especially in long-term marriages the couples bought their goods. These women now are outside of the legal marital regimes.

The Civil Code has three contractual marital regimes. The couples can chose one of them, instead of legal marital regime.

The first of them is the separate property regime, which is the legal marital regime of the Old Turkish Civil Code (Civil Code Article 242). In the reality this regime means no marital regime. The system protects the power spouse, so it is better to arrange as an elective one which requires a notary's marriage contract. Under this regime, each spouse remains the exclusive owner of his or her property, administers the property alone and assumes responsibility for his or her debts; subject, however, to the legal provisions respecting the family patrimony are the protection of the family residence and furnishings, and the spouses' joint responsibility with regard to debts contracted for the family's day-to-day needs. For example, even if one of the spouses is the sole owner of the family residence, he or she cannot dispose of it without the other spouse's authorization.

If the regime is dissolved, the spouses retain their own property, providing they can prove ownership. Spouses have no statutory right to claim a share of each other's property upon divorce. It operates each spouse can take from the marriage the property that she or he brought into the marriage. A separate property system, taken in isolation does not adequately protect the weaker spouse (usually the wife.)

The second contractual regime is "the common property system," which was arranged under the Article 256. It is also a selective marital property. It has been used in Switzerland for very long time. Under this regime, the property of the spouses is divided into two categories: community property and private property. Each of the spouses administers the community property and administers his or her own private property.

The community property consists of all the property except the private property. Private property of a spouse is determined by law or contract. In general, private property consists of compensation received by the spouse as damages for

moral injury, unrequited gains from a third person and the allocation of the items for personal use.

On dissolution of the regime, the community property is divided equally between the two spouses and each spouse retains his or her private property. There are two types of this regime in the new Civil Code.

The third and the last contractual system is the "the partionary property separation system," which was arranged as a legal marital system, at the beginning of the preparation of the New Turkish Civil Code. Austria has a similar legal system. It was debated for a long time so many couples still think that it is the Turkish legal marital system.

There are two types of property in this system, and acquired (shared). The system based on the separate property system. However, in the end of the regime, the property acquired by one of the spouses after the establishment of the Partionary Property Separation Regime and used jointly by or for the benefit of the family or investments which have been invested for the future economic benefit of the family or corresponding assets shall in the event of the termination of the property regime be shared equally between the spouses. For property related to a business, economic unity will be taken into consideration during the division process. (Civil Code Article 244-255).

This is a regime under which each spouse owns and administers his or her own private property and acquisitions and is solely responsible for any debts contracted, except for debts contracted for the day-to-day needs of the family, for which both spouses are responsible.

The women's movement strongly opposed attempts to establish this regime as the legal property regime on the grounds of the ambiguity involved in dividing

property into that used by and for the benefit of the family and that used for other purpose.

The new Civil Code also arranged some extraordinary circumstances about the marital regime. One of them is resolving disagreements. In the case of a disagreement over an issue of importance to the marriage union or failure on the part of one of the spouses to fulfill his or her matrimonial obligations, the spouses can individually or jointly ask for judicial intervention. The other one is financial contribution. In a new provision dealing with the financial contribution of each of the spouses to the livelihood of the family, Article 196 of the Civil Code gives either of the spouses the right to ask a judge to specify the amount of financial contribution each should make. In establishing the amount of the contribution, the judge takes into account housework and childcare and unpaid labor in the business of the other spouse. If the need arises and if one of the spouses makes an application, the judge, in order to protect the family's economic assets or to secure the fulfillment of a financial responsibility resulting from the marriage union, can rule that disposals of assets specified(Civil Code Article 199.)

Marriage terminated by the death of, default of or changing of the spouse's sex.

The invalidity of marriage can be classified in three. One of them is the nugatory. It means marriage is deemed absolutely null and void, it can never acquire legal effect. Lack of consent of the parties, celebration before non-authorized officers, the marriage of two persons having the same sex are nugatory. That means null and void from the beginning of the agreement.

The second invalidity is absolute nullity. It is a kind of nullity, arising directly from the law. The principle motivation of absolute nullity is the public interest.

Nullity may be demanded by every person involved in the relation or even by a public prosecutor. Mental sickness, polygamic marriage, marriage between members of the prohibited degrees of consanguinity are absolute nullity that cannot acquire legal effect even if they have not suited.

The last one is the relative nullity: invalidity which affects the private interests of the parties of marriage and which can be only claimed by them. If within the special legally determined prescription period (within six months after the recognition of the ground of relative nullity or after the thread) nullification has been requested, the marriage is to be decided invalid. In other words, a marriage becomes valid if nullification has not been demanded.

## Divorce and Judicial Separation

Divorce is the legal dissolution of the marriage relation by court decision according to the grounds enumerated within the Civil Code Articles 161-166. The New Civil Code gets some important innovations in the subjects.

The court authorized to deal with a divorce or separation case is the Court of First Instance in the region of domicile of either one of the spouses or in the last place where they lived together for at least six months, as mentioned before (Civil Code Article 168.)

Divorce causes in the New Civil Code are separated into two main groups, specific grounds and general ground. Adultery, attempt against life, cruelty and serious insult, infamous crime and dishonorable life, willful desertion and insanity are special divorce causes. General divorce causes are incompatibility causing the unity of marriage to irretrievably decline, divorces in which the spouse at fault may

take an action against the other party, divorced by mutual agreement, and actual separation.

Adultery *(zina)* is arranged in Civil Code Article 161. It is one of the oldest grounds for divorce. Adultery is voluntary sexual intercourse by a married person with someone other than one's spouse. Adultery is both a breach of fidelity and a specific ground for divorce. The adultery of the husband and the wife offers same conditions and rights as a ground for divorce. It is not a crime in the Turkish Penal Code anymore, but it is still one of the causes for divorce. Adultery must be committed voluntarily. Involuntary sexual intercourse is not adultery. A divorce action should be brought within six months from the time of discovery of the adultery. If the aggrieved spouse forgives the adulterer, he or she cannot claim divorce on the grounds of adultery. A divorce suit on this ground is not admissible if five years have lapsed since the act of adultery. In practice, taking indecent pictures of a person of the opposite sex and being seen together in indecent situations in discreet places are considered adultery by the Supreme Court.

Other private divorce causes are attempt against life, extreme cruelty and behavior against honor, *(cana kast ve pek kötü veya onur kırıcı muamele)* which are stated in new Civil Code Article 162.Attempt against life means that one of the spouses has tried to kill the other in any way. Cruelty and bad treatment are injuring the spouse's mental or physical health by hitting, torturing, locking up in the house, forcing abnormal sexual relationship, etc. Unlawful beating or other physical violence and insults, which may at the same time cause the incompatibility. Behaviors against honor are insulting his/her spouse's personality, family, or creating rumors about him/her. This reason is newly arranged. It did not exist in the Old Civil Code. The judge decides on the seriousness of the treatment and the insult. The

forgiven party does not have the right to file a case. The spouse must sue within five years after finding out the cause. Otherwise, the case is dropped.

The other specific causes for divorce are infamous crime and dishonorable life *(cürüm ve haysiyetsiz hayat.)* The articles of these causes are arranged in Turkish Civil Code Article 163. Infamous crimes are crimes that are defamatory and contrary to the ethics of public, such as illegal trafficking of drugs, forgery, buggery, smuggling, and embezzlement. Conducting a dishonorable life is an offens to good morale and living contrary to the public traditions. This kind of conduct has to be appeared in the marriage and has to be continued. Examples of dishonorable conduct are prostitution, alcoholism, and homosexuality. The judge must investigate whether these causes make life unbearable for the other.

Willful desertion *(terk)* is also a cause for private divorce. Since cohabitation is one of the obligations of the spouses in the family, desertion is a ground for divorce. If one of the spouses leaves the matrimonial home to avoid the duties of the marriage, and does not return or offer justification for this absence, this constitute is desertion. In order to be considered an acceptable ground for divorce, desertion must last at least six months and a notice to return to the matrimonial home must be issued officially by the court (Civil Code Article 164). Otherwise, even a long-lasting separate life does not confer the right for a divorce.

Insanity *(akıl hastalığı)* is the last of the private causes. Mental illness is a bar to marriage if it existed before the marriage. It is also a specific ground for divorce, under certain conditions, if it appears after the marriage. One of the spouses must have a mental illness with no amenable treatment for opening this type of divorce case. In addition to these conditions, living together must be intolerable to the other spouse (Civil Code Article 165).

Incompatibility *(geçimsizlik)* is the general ground for divorce, which gives the court to make its own judgment in discretion. The cases deemed incapability vary from person to person. A conflict between the spouses may not be decided a ground strong enough to be divorced, while for another spouse it is an unbearable sort of life. If the harmony and the happiness of the spouses have been lost absolutely, it may be decided that they are incompatible.

Not every conflict but only severe ones justifies divorce due to Article 166. Actions damaging the union of marriage fundamentally are assumed to be severe incompatibility. Article 166/1 states that " if the foundation of marriage is irreparably shaken either of the spouses may file for divorce." But this is not enough. Living together must have become unbearable, too. For example, if one of the spouses becomes paralyzed or he/she is taken ill very badly or one of the spouses is sterile, these situations cannot be the only cause of divorce. In addition, continuing the generation in danger or the marriage becoming unbearable for the other spouse are accepted as causes for divorce. Also the revealing of family secrets, making insulting statements about the other, creating false rumors, bedwetting, disgusting breath, etc have been accepted as grounds for divorce. We'd like to make clear again that in these cases the judge can not make a decision of divorce if the marriage hasn't become intolerable.

In two normative cases, the family relations are deemed to be injured fundamentally. One of them is three years separation after the rejection of divorce case and the other one is the mutual agreement. In these cases, the judge only investigates the facts.

If a previous action for divorce on various grounds has been rejected by the court, but the spouses could not come together to sustain a family and have lived

separately for at least three years, the action depending on the accusation of incompatibility should be accepted by the court (Civil Code Article 166/IV).

Divorce by mutual agreement is another way of divorce. If the marriage has lasted for at least one year and they have agreed to divorce, the judge accepts their demand. The parties must agree also to the legal consequences of divorce. The court is only authorized to examine the conditions according to the benefit of the children and the parties.

The role of the Judge in a divorce suit is very important. The judge is not, as a rule, bound by the declarations of the parties in a divorce suit, unless she or he personally is convinced that there is a real incompatibility in the family. The judge must take the steps necessary to protect the interests of the persons involved, including the children, and to determine the amount of alimony (Civil Code Article 169) to be paid by one of the spouses, usually the husband, to the other spouse and children during the divorce process. There are no official specifications on the amount of alimony to be granted. The judge determines it according to the ability and the needs of the spouses.

The spouse who has the right to bring a divorce suit may demand judicial separation. The judge may also order judicial separation if there is a possibility that the spouses could live together again in the future. Judicial separation may be obtained on almost the same grounds as divorce, and the court relieves the petitioning spouse from the duty of cohabitation. The husband and wife relationship continues despite judicial separation. A widow, therefore, may have a claim against her separated husband's estate for maintenance after his death, although no similar right accrues to a divorced wife (Civil Code Articles 170-172). Judicial separation is rare in Turkey.

There are many legal consequences of divorce. The law protects the personal legal status that a woman obtained in marriage. She may keep the nationality of her husband which she has acquired by marriage. The wife resumes her previous name. This is an innovation of the New Civil Code. In the Old Civil Code women only reverted to their maiden name. If that surname is not her maiden name and if she wishes to revert to her maiden name, she may do so with the judge's permission. She may, however, keep the family name of the husband, if she convinces the judge that she has an interest in using this name, and if this does not damage the interest of the husband (Civil Code Article 173/ II). This is also an important innovation.

There are also financial benefits of the divorce claimable by the spouse who is not primarily at fault for the breakdown of the marriage. These are damages and allowances. Damages are the legal consequences of divorce, which are material and moral damages. The party least at fault whose actual or potential interests are injured on account of the divorce is entitled to claim a reasonable amount of compensatory damages from the party at fault. The court can rule that this shall be paid in a single lump sum or periodically. The party whose personal rights have been infringed upon because of the events that led to the divorce can claim general damages from the party at fault. This type of damages can only be paid in a single lump sum (Civil Code Articles 174 and 176).

Either spouse may get an allowance from the other after the divorce for an indefinite period of time. This is called maintenance which is payable if one of the spouses is needy and is blamed less at fault for the breakdown. The amount of the maintenance has to be commensurate with the paying party's financial capacity. Previously, there was a clause stipulating that for a man to be able to claim maintenance from a woman, she had to be wealthy. This was annulled on the

grounds of "discrimination against men," thus rendering both spouses equally liable to pay maintenance (Civil Code Article 175). Depending on the court decision, maintenance is paid in a single lump sum or periodically. Periodical compensatory damages and maintenance payments terminate automatically in the event of the remarriage or death of one of the parties. The same payments are cancelled by court decision if the receiving party lives with someone else as man and wife without a formal marriage, ceases to be poor, or leads a dishonorable life (Civil Code Article 176). The authorized court in alimony cases is the court in the residence of the party who is claiming alimony (The Civil Code Article 177). This frees women from the former obligation to go back to the region of the family abode to claim alimony, which for various reasons discouraged women from following up alimony cases in the past. The right to file a case related to a marriage that has ended in divorce must be exercised within one year of the date of the final divorce ruling (Civil Code Article 178). This alimony may cease, be reduced or increased later on according to the changing conditions.

In the introduction of my thesis I stated that my goal was to investigate the reflections of the new law on the everyday lives of the women. The law reflects the social reality, as well as alters this reality. However, the examination of the provisions of the law is not enough to understand how they have lead to change the community. As well as the process and effects of the prevailing views in a law must be explored. In my thesis, I tried to explore the real meaning of the new Civil Code.

The concept of the New Civil Code is "equality." The equality of the Civil Code is "formal equality," which means "equality in front of the law." The equality of Article 10 of the Constitution is also "formal equality." The New Civil Code's equality concept is suitable to the Constitution. This new approach has changed the

women's role in the family.  Now, the family is a union and the spouses have equal rights. The husband is no longer the head of the family, spouses are equal partners, jointly running the matrimonial union with equal decision-making and repetitive powers. The spouses also have equal rights over the family abode, over the property acquired during marriage. These are, of course, important gains for women. The surname of the woman and the effectiveness date of the matrimonial regime are the defects of the New Code. In addition to, the New Code is silent about de facto equality. Women, not one by one, but as a group, historically have been excluded in the family and society. The Code does not give a solution to the disadvantageous position of women. The Committee on Equality of Opportunity for Women and Men was established in 1999 to changed women's disadvantages position. This was a step for real equality. The equality of opportunity means to remove the obstacles which are the reason of the inequality. It is a work for the future. But women need more. They also need to take measures to close the gap from the past.

# CHAPTER VI

# CONCLUSION

Civil law and the amendments entered into force on 1 January 2002 are an important step forward in the struggle for women's equality. In Turkey, the women's movement started in Ottoman society between the late nineteenth century and the beginning of twentieth century along with the world women's movement. During the second Constitutional period, modernization efforts accelerated, and so this started the process of the secularization of the political structure. This also started to change the legal status of women. The spread of the struggle for gender equality and the law has been ongoing in many years.

The second part of the thesis was about the status of women in the Sharia and Family Law Decree of 1917 and 1926 Civil Code, which meant to replace the Sharia. The 1917 decree was the first arrangement about women in Turkey. During the preparation of the first part of my thesis I examined Sharia law to see improvement provisions against women. The status of women in Turkey was determined for many years under the provisions of the Sharia. In Sharia law the status of women is community gender-based, appropriate for the division of labor, bound to men and is in a secondary position. At the end of the nineteenth century women's position in Europe began to be determined by law. The Ottoman intellectuals were under the effect on the Modernization Theory, based on the belief that for a society to reach the modern economic development phase it needed to pass through a cultural and social transformation process. Modernization Theory was not "just a theory." It was more like a political project through which the development process of the pre-modern

societies were maintained politically and economically. The theory reflected in legal field as codification. The codification of the family law was the Decree on Family Law in 1917. The 1917 Decree was prepared by Ottoman intellectuals. Because of the restrictive provisions of male dominance, it was possible to enact legislation as a decree, not as a law. The status of women was raised with the Family Law Decree. The prohibition of child marriages and limiting polygamy were the most important changes of the Decree. However, the target of the decree was not women as in the later legislation, but the nation-building and modernization process.

Traditional and religious organizations protested the Decree of Family Law strongly. It was repealed in June 1919. However, it influenced the 1926 Civil Code deeply.

Under the leadership of modernization pro-intellectuals such as Mustafa Kemal Pasha, the War of Independence was won and the new Republic of Turkey was founded in 1923. To create a nation-state it was important to create a new life style so, women were a symbol of the modernization, secularization and westernization process.

The abolition of the Caliphate, the adoption of a secular structure allowed changes to the status of women. In 1926, the Switzerland Civil Code was adopted to the structure of Turkish society. This law engaged in a radical change in the status of women in Turkey. It gave very important rights to women. The marriage age was increased. Polygamy and traditional marriage practices were outlawed. Both spouses were given the right to divorce with the same reasons. However, the secondary status of women in the family was repeated. The Family Law Act of 1917 was added to the law under the name of customary. That expanded the rights granted to women by law, but the logic remained the same. Women continued to be in secondary and

dependent positions. They were not equal under the law. In the law women were not viewed as individuals, but as a part of family and society. The law raised the status of women for nation-building and modernization purposes.

The women's organizations in this period consisted of educated, economically upper and middle class women. Women's organizations kept their old structures. Although the traditional roles of women were the source of conflict, these organizations gave weight to the laws. This situation prevented women's organizations from expanding and spreading to the community. As a result, the 1926 Civil Code provided the fundamental rights to women, but has not sufficient to prevent gender discrimination or eliminate violations of women's human rights. In Turkey, women's lives has continued to be shaped by customary and religious practices that contradict the existing laws, such as early and forced marriages, honor crimes, polygamous marriages, and restriction on women's mobility.

In the third section of my thesis, I examined the conditions in which the new law was developed. The new law also itself, like the previous laws was greatly influenced by developments in foreign countries. Changes in the international arena in the field of women's rights had also the greatest impact on women's organizations in the country. The most important international development was the Convention on the Elimination of All Forms of Discrimination against Women. This document, in a sense, is defined as the "International Women's Rights Act." CEDAW aimed at ensuring the equality of women before the law and referred to states to take measures for women's equality in political, social, economic and cultural life with men. This is a basic contract prepared as a result of joint work of governments and women's organizations. It was approved by the United Nations in 1979 and entered into force in 1981.

After the established of the New Republic, Turkey entered into direct economic and political relations with the Western Bloc and the United States of America. In the Cold War period these relations increased and Turkey was reconstructed in accordance with the international developments. Women's movements gained importance in this process as before.

Turkey had the third military coup on 12 September 1980. After the coup, all the freedoms were restricted. This depoliticized environment became an independent political movement by women intellectuals under the influence of the international movement. Women's organizations, which determine their own goals, succeeded of becoming the first democratic opposition in the country. During this period, the country implemented the policies of free market economy under the leadership of Turgut Özal. Free trade expanded and became integrated into the global world. To develop the relation with the world, Turkey signed the CEDAW agreement in 1985. By accepting the Convention, Turkey committed itself to undertaking a series of measures to end discrimination against women in all forms. Thus, Turkey took important steps in women rights and applied for membership in the European Union in 1987.

In 1999, the optical protocol was made in the Convention. The Optical Protocol was the largest contribution to opening two new vehicles for the use of women. These were "personal right to appeal" and acceptance of the CEDAW Committee, which was composed of independent experts, as the authority to review. Since, according to these, women could apply to the CEDAW Committee for violated rights which were grounded by the CEDAW Convention, after passing through the national judicial routes. Protection of women, not as a member of the family, not as a daughter or wife, but as individuals is essential.

Turkey signed the voluntary protocol in 2002 to strengthen its hand in its bid to become a member of the European Community. The first official report presented to the CEDAW committee in 2003, along with there was non-governmental organizations, which were mostly women's organization, which prepared shadow report. International developments and women's organizations emerged as new actors in determining women's social status.

The second important development regarding women's status was in the European Union. When the Community was established, the principle that men and women should receive equal pay for equal work was started in the Rome Treaty. Positive Discrimination was provided with the Social Protocol of the Maastrich in 1992. The Treaty of Amsterdam gave the Community the task of integrating equality between men and women into all its activities in 1997. It is known as "gender mainstream." In the Treaty of Lisbon gender equality became the social policy of the European Union. The directives and the decisions of the European Court of Human Rights were also important for the development of women's status.

The EU laws and directives on equality between men and women are an element of the "package" all candidate countries have to accept before becoming members of the EU. The new Civil Code was influenced by the process of Turkey's entry to EU. This interaction was not limited only with the activity of legalization. The women's organizations which had influence on the occurrence of the law were affected by international developments. The members of women organizations are mostly well educated. They are able to follow developments closely. They entered into relationships and cooperate with international organizations when needed. So, the members of the government and the Assembly were forced by these organizations. Their requests were taken seriously. In this section, the main

international developments about gender equality which was effected the New Civil Code were discussion.

In the fourth section of my thesis I concentrated on the work of the parliament on the law. The developmental stages of the civil bill and council meetings are examined. The speeches in the Parliament gave important clues about what the new law was going to change. There were six parties in the Assembly, representing different political thought. There were social democrats, centre-rights, nationalist and Islamism parties. Despite these differences, there was a consensus in the Parliament. Most of parties accepted the bill. So, the Civil Code passed through the General Assembly in a short time, without much discussion. The common consensus points gave us important clues about the main meanings of arrangements..

I examined the content of the consensus. Two deputies spoke on behalf of each party. They mentioned the advantages and disadvantages of the New Civil Code. There were similarities and differences in the thought of each party and sometimes deputies in the same party. The main similarity was that women were taken not as individuals, but as the family. There also was no discussion about changing gender roles. No deputy from any party either gender mentioned positive discrimination. The differences were in the points of the adoption or elimination of the unfair situation created by social roles. Interestingly, the general approach of the female deputies was not much different from that of the males. Age, equal rights of spouse and the marital property regime were discussed most. The deputies also mentioned international agreements as a necessity of the changes.

The speeches in the Parliament and the last minutes changes in the Civil Code show that the changing the women's status was not the point of the deputies consensus. The consensus changed women's status according to the international

developments. The new Civil Code was a new type of modernization and westernization study as was for most deputies.

The last and main part of the thesis was about the innovations brought with the law. The new Civil Code made a complete renovation. This chapter examined the provisions of the law. The Turkish Civil Code has drastically changed the legal and economic status of women in the family. It scraps the supremacy of men in marriage and establishes the full equality of men and women in the family. The New Civil Code has raised the minimum legal age for marriage to 17 for men and women. Spouses have equal rights in the family. They will choose where they live together. They have equal rights managing and representing the family. They also have equal rights regarding the children. The only unequal provision in the subject of the personal relation is about the surname. Women still have to take their husband's surname with the marriage. By law, they have the right to use their previous surname with their husband's.

The "family residence" is an important innovation. It limits the authority of saving of the one spouse without the others consent about family residence.

The new Civil Code also gives women equality in terms of economics. The old legal marital regime which was a separate property regime changed with the acquired property regime. The old regime usually favored the stronger party, who was in most cases the husband. When the marriage was dissolved women found themselves virtually empty-handed. This was mainly because they still normally kept the household, and rarely acquired their own property during the marriage. So, the wives were economically dependent their husbands. Economic dependency was a big obstacle for women to use their rights. The new legal property regime provides for an equal division of property acquired during marriage, giving equal credit to each of

the spouses for it, irrespective of how and where they work. With this change for the first time, the invisible labor of women gained an economic value. With the dissolving of the marriage, women receive half of the goods which were acquired in the marriage. In this condition it will be easy to decide to divorce. The new legal marital system grants economic equality between men and women in the family.

Because of its importance, the adaption of European legislation on matrimonial property regimes was among the priorities in the 1998 Vienna Action Plan. The innovation was discussed in the Turkish National Assembly most. At the end, the new Civil Law was to be applied from January 2002 onwards and stipulated that the property regulations would be valid only for couples married after this date. This law created a new discrimination, this time among women themselves. About 17 million women who had married under the old property regime – the separate property system – did not benefit from the progressive steps taken by the legislature for future generations. This was a big disappointment for women. This was the second disappointed about the law. The third disappointment in the law was the lack of positive discrimination. The Code only supplied the formal equality. But, in the reality, women have suffered from the traditional roles and status. The gender roles prevent access to basic rights for women, such as education, personal development, working and engaging with politics. The Civil Code must contain provisions to help eliminate past and present discrimination based on these traditional roles. Unless these provisions, are granted the formal equality in most cases will be a disadvantage for women.

As this thesis made clear, women's status in Turkey has been transformed considerably as a result of both international and national developments. What this study aimed to do way to show the transformation of women's rights in which the

social structure of Turkey was reconstructed in accordance with international developments, and maintain the status of women in this process. Turkey again, has passed through a new reconstruction process nowadays. Due to both the European Union accession process and the new world order, Turkey has been reconstructed. After all, the new law, similar to other laws before it, without addressing the woman as an individual, during the European Union accession process, was accepted in an effort to become integrated with the world, and is almost a new movement of modernization. It is important and positive to give to women formal equality. However, the Code is silent about gender roles, on which the conflict is based. As long as women's traditional roles do not change the conflict will continue.

Ten years have passed since the promulgation of the new Civil Code. The women's literacy problem has not been solved. Nineteen percent of women are not literate. Women's employment is at 22.2%, although this is decreasing gradually. But the rate of woman suffering violence is increasing every day. The number of female murder victims was 83 in 2003, 164 in 2004, 317 in 2005, 663 in 2006, 1011 in 2007, 806 in 2008 and 976 in 2009. Despite the law, women are not protected from violence. Representation rates in politics are very low. Women's representation in Parliament is 9%. With this ratio, Turkey is in 126th place among 134 countries worldwide. In this case, to ensure women's human rights, it is obvious that, additional tactics are needed. The combat must focus on everydayness and micro perspectives. The division of labor at home, promoting education, review of the conditions of working life, and the availability of child and elderly care service institutions would help women to participate in life. The placement of "everydayness" as the basis of the struggle for equality will be "key" to expanding the women’s movements and to changing gender roles.

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