POLITICAL REFORMS IN TURKEY AND EU MEMBERSHIP: HONOR KILLINGS AND KURDISH LANGUAGE RIGHTS

by

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HONOR KILLINGS AND KURDISH LANGUAGE RIGHTS

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ÖZET

TÜRKİYEDE SİYASAL REFORMLAR VE AB ÜYELİĞİ:

NAMUS CİNAYETLERİ VE KÜRTÇE DİL HAKLARI

DENİZ ERDEM

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Anahtar Kelimeler: Avrupa Birliği, uyum paketleri, namus cinayetleri, azınlık hakları, vatandaşlık ve kimlik çalışmaları

Türkiye 1999 yılında Avrupa Birliği'ne (AB) üyelik için resmi aday statüsünü kazandı. Türkiye 1999-2004 yılları arasında AB müktesebatına uyum sağlamak ve Kopenhag kriterlerinin sağlanması için yedi uyum paketi kabul etti. Bu tez çıkarılan uyum yasalarının ne derecede uygulandığınına dair farkları incelemektedir. Uygulama farklarının incelenmesi için vaka çalışması olarak özel Kürtçe kursların kapanması ve namus cinayetlerine verilen ceza indirimleri gazete ve uygun Internet sitelerinin içeriklerinin

incelenmesi yöntemiyle çalışılmıştır.

Çalışmanın sonuçları hukuk ve uygulanması arasında bir fark olduğunu ortaya koymuştur. Haksız tahrik iddiası üzerine verilen ceza indirimlerinin uygulanmasındaki fark hakimlerin ve savcıların kendi aralarındaki bir konvansiyondan kaynaklanmaktadır. Bu konvansiyon çeşitli STK ve akademisyenlerin namus üzerine yaptığı araştırmaları doğrulamakta ve toplumun genelindeki namus anlayışıyla örtüşmektedir. Özel Kürtçe kurslar alanındaki uygulama farkı ise hem devlet bürokrasisi hem de Kürt milliyetçilerinden kaynaklanmaktadır. Çalışma sırasında devlet bürokrasisinin işlemleri geciktirerek kurs sahipleirni ekonomik zarara uğrattıkları ve bu sebeple kursların kapanmasına sebebiyet verdikleri gözlenmiştir. Bunun yanı sıra Kürt milliyetçileri de eğitim konusunu politize edip kurslara maddi katkıda bulunmayı reddederek bu kursların kapanmasına sebebiyet vermişlerdir. Sonuç olarak, namus cinayetleri ve Kürtçe kurslar alanındaki hukuk ve uygulama arasındaki karşılaştırmalı analiz uygulama sorununun farklı sebeplerden kaynaklandığına ve bu sebeple farklı çözümlerin gerektiğine işaret etmektedir.

ABSTRACT

POLITICAL REFORMS IN TURKEY AND EU MEMBERSHIP: HONOR KILLINGS AND KURDISH LANGUAGE RIGHTS

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Turkey became an official candidate for European Union (EU) membership in 1999. Between 1999-2004, Turkey passed seven harmonization packages to comply with the EU acquis and to abide by the Copenhagen criteria. This thesis explores the extent to which the harmonization laws are implemented in Turkey. The gap is analyzed by examining the closure of Kurdish private language courses and penalty reductions given to honor killings by using content analysis of the newspapers and pertinent Internet sites as methodology.

The findings of the study reveal that there is a gap between law and implementation

Turkey. The gap on sentence reductions upon provocation stems from a juridical convention between the judges. The juridical convention between the judges is similar to the general attitude towards honor in the society as the researches of various NGOs and academicians about how honor is perceived in Turkey indicate. The gap between law and implementation regarding the private Kurdish language courses stem from the state bureaucracy and the Kurdish nationalist stance towards education. During the study, it was observed that the state bureaucracy lingered the opening of the courses, which brought the course owners in an economically disadvantaged position. The Kurdish nationalists obstructed the process and caused the courses to close by politicizing the issue and refusing to provide economic funding to the courses.

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INTRODUCTION

The Turkish Republic was established on the basis of a state-centric modernity model composed of four elements - a strong state tradition, national developmentalism, an organic vision of society and the republican model of citizenship (İçduygu and Keyman 2005, p. 5). These four elements together composed what İçduygu and Keyman (2005) calls state-centric functioning of society, which entered a legitimacy crisis that began in the 1980s and became well entrenched in the1990s (pp. 5-8). In other words, the path in front of Turkey has become bifurcated between partial democracy, in favor of the state, and full democracy, in favor of society (İçduygu and Keyman 2005, p. 9). While there are developments indicating that Turkey is moving towards full democracy, there are also examples pointing to the continuation of the traditional state-centric modernity model with only partial democracy. The aim of this thesis is to explore the issues corresponding to Turkey's journey towards full democracy. It does this by examining the gap between the laws pertaining to civil rights and their implementation. With this purpose, two subjects are explored: Kurdish minority rights and women's rights.

Kurdish minority rights are analyzed by exploring why the Kurdish language courses were closed shortly after they had been made legal by the parliament. The implementation laws guaranteeing women's rights, which were passed by the parliament to comply with the EU acquis in 2002 and 2004, respectively, is investigated by examining the application of

sentence reductions for honor killings.

The effect of the EU on Turkish democracy is examined in the first chapter, "Turkey and the European Union-Historical Background of the Relationship." This chapter first provides a detailed description of the history of Turkish-EU relations. Secondly, it aims at describing a summary of the laws passed to comply with the EU acquis. The first part of the thesis is devoted to the history of Turkish-EU relations since the main objective behind the harmonization laws was to comply with the EU acquis, which will not be fully understood without a background of the relationship. The turning points of this relationship are particularly emphasized in the chapter and special attention is given to the harmonization laws passed to comply with the EU acquis.

The second chapter of the thesis follows from the first chapter and conducts a more detailed analysis of these laws that were passed to improve the conditions of minorities and women in Turkey in line with the Copenhagen Criteria. Turkey passed seven harmonization packages and many laws and decrees between the years 1999-2004. These laws included the amelioration of fundamental civil rights and liberties, political rights, the rule of law and civil-military relations. This thesis is concerned with fundamental civil rights and liberties. Among these civil liberties were the rights given to the Kurdish minority regarding the use of the Kurdish language. Another aspect of fundamental civil rights was introduced by providing more equality among the sexes through altering the civil code. The second chapter aims at providing a thorough description of these laws before the subsequent chapters, which explore the extent to which these laws are implemented in Turkey.

Chapter three explores the dynamics of the gap between law and implementation regarding the sentence reductions given to those guilty of honor killings. To provide a valid and reliable analysis of this gap, several sources which provide information on honor killings and sentence reduction cases were used. The first resource was the raw data provided by the Diyarbakır Bar Association on the rationale behind the sentences given to the perpetrators of honor killings between 1999-2005. The data was analyzed according to the genders of killers and perpetrators and reasons of sentence reductions. However, since most of the cases were finalized before the civil code reform of 2004, more resources were used to analyze the rationale of the judges regarding sentence reductions on honor killings. Accordingly, various newspapers and feminist websites were examined to understand why the judges still continue to implement sentence reductions.

In chapter four, the reasons behind the closing of private Kurdish language courses were examined to see if a gap between law and implementation on Kurdish minority rights existed. Analyzed were the seven Kurdish language courses that began in 2004 and were closed down by their owners one year later in 2005 on the grounds that there were not enough students. However, the courses were opened with massive demonstrations, with thousands of activists participating in the celebrations. The thesis began by asking if there were other reasons for their being closed besides lack of interest in them. At this point, it was hypothesized that there was a gap between the law and its implementation that lead the closing of these courses.

Various sources and methodologies were used to test this hypothesis to provide validity and reliability. The first methodology employed a content analysis of Turkish daily newspapers and pertinent Internet sites that made reference to the course owners and their

declarations on the issue. Second methodology was in-depth interviews were conducted with Betül Çelikand a Kurdish language rights activist (Remzi Çakın)

In conclusion, this thesis aims at exploring various dynamics regarding the gap between law and its implementation in Turkey with respect to civil rights. The primary aim is to detect the patterns in which the gap is revealed in the implementation process in women's lives and the Kurdish minority. The thesis is relevant in the sense that it examines two significant case studies which have remained rather unexplored in the literature. The case of honor killings has been studied by many feminists; however, the provocation clause and the legally correct way of applying the provocation clause have not been studied thoroughly. This thesis also aims at providing the existing academic works on the provocation clause, which is vital when it comes to sentence reductions in honor killings.

CHAPTER 1

HISTORY OF
TURKISH-EU RELATIONS

Turkey applied to the European Economic Community (EEC) for associate membership in 1959 and the Ankara Agreement was signed four years later in 1963 after drawn out negotiations (Dedeoğlu 2003, p.95-97). The lengthy negotiations of the Ankara Agreement became a characteristic pattern between EU and Turkey because of the doubts in Europe about Turkey, which are still valid today. They have to do with, for example, the implementation of fundamental civil rights, freedom of speech, minority rights, Armenian dispute, the Cyprus Conflict, the size of Turkey's population, cultural differences, religion and economy. These problematic issues and the historical background of Turkey and EU have been discussed and analyzed by many scholars, including Meltem Müftüler Baç (1997, 2001, 2008), Semin Süvari Erol (2001), Berdal Aral (2005), Fuat Keyman (2004), Sanem Aydın (2004), Beril Dedeoğlu (2003), Esra Çayhan (2003), Edward Weisband (2008), Nicholas J. Kiersey (2008), Aslı Ceylan Oner (2008), David Dansereau (2008), Yannis A. Stivachtis (2008), Aylin Güney (2008), Ozgur Tonus(2008), and Ioannis N. Grigoriadis (2008).

Meltem Müftüler Baç explores EU-Turkish relations from a realist international perspective and argues that the onset of relations has been a matter of restoring stability in Europe, especially after the Cold War (pp. 119-120). According to Baç, the cornerstones of the relationship are the Ankara Agreement (1963), application for full membership (1987), the beginning of the customs union (1995), acceptance of candidacy (1999) and the start of accession negotiations (2005).

Beril Dedeoğlu (2003) argues that today's Europe has its roots in ancient Greek civilization, Ancient Rome and the Middle ages, the Renaissance, the Reform and Westphalia, which altogether characterize the nature of unification in Europe. Dedeoğlu also argues for a possibility of a United States of Europe due to this common history.

Esra Çayhan (2003) states that the acceptance of Turkey's candidacy was among the most important turning points of the relations. Çayhan further argues that the future of membership status depends on the political will of Turkey regarding the implementation of reforms.

Fuat Keyman and Sanem Aydın (2004) examine the relations from the perspective of the extent to which Turkey has succeeded in implementing the Copenhagen Criteria and argue that the EU is an important catalyzer for the consolidation of Turkish democracy.

Berdal Aral (2005) takes a different position regarding the ability of the Turkish state to harmonize with the EU acquis and argues that Turkey has been materially worse-off in its relations with EU, which is evident in its trade deficit with the EU countries.

Edward Weisband, Nicholas J. Kiersey, Aslı Ceylan Oner and David Dansereau (2008) also take a skeptical view and argue that the main obstacle to Turkey's membership has not been the Cyprus problem. Instead, they argue that the main issue of the relationship is a matter of whether or not to include Turkey as a full member, which in return will change the future of Europe. In this sense, the authors also argue that Turkey has been facing organized hypocrisy against her. In this sense, the future of membership will not only depend on Turkey's ability to harmonize with the acquis, but also to the discussion regarding the Union's future among the member states.

Ioannis N. Grigoriadis (2008) and Semin Süvari Erol (2001), on the other hand, disagree with the above authors and discuss how the Cyprus problem has been an obstacle between Turkey and EU.

Yannis A. Stivachtis (2008) explores Turkish-EU relations from the perspective of identity politics and argues that how the EU views Turkey is a matter of its policy against "others." In other words, according to the author, Turkey has been an important factor of identity in Europe in terms of defining its own identity and this forms the basis for the problematic nature of the relationship.

Aylin Güney (2008) concentrates on the accession negotiations after 2005, and analyzes the possible problems that Turkey might face during the negotiations. These include, for example, psychological barriers, technical difficulties, the Cyprus issue, and the integration capacity of EU.

Ozgur Tonus (2008) looks at Turkish-EU relations from a macro-economic perspective and argues that the primary objective of Turkish aspirations as been achieving stability.

The above work of the scholars is included in this chapter to provide a literature review of the relationship. The following part of the chapter will provide the historical background and chronology of Turkish-EU relations with references to some of the above authors and official websites of EU and the Turkish government.

1.1 HISTORY OF TURKISH-EU RELATIONS

1945-1969

End of neutrality and beginning of the Western Alliance

Turkey maintained a policy of neutrality during the Second World War (WWII) even though the government was under pressure by the European states to declare war and of actively engaging in WWII, Turkey symbolically declared war on Germany at the end of the war in order to be included in the United Nations (Baç 1997, p. 53). Accordingly, the end of neutrality between Turkey and West commenced right after WWII, when Stalin demanded Turkish territory (Baç 1996, p. 30). Acccording to Baç (1997), this period marks an interval characterized by Turkish endeavors to be recognized as a European power (p. 55). Turkey aimed at realizing its aspirations to become a European power by "joining all the right clubs" (Baç 1997, p. 54). These clubs include the OECD in 1948, the Council of Europe in 1949 and NATO in 1952. Turkey further enhanced its relations with Europe and U.S. by receiving Truman aid .

In other words, the immediate post-WWII years were the beginning of Turkey's allegiance to the European states (Baç 1996, p. 30). These years also witnessed the beginning of a particular relationship with another state, which has been, and continues to be a vital element interfering with Turkish-Western relations: namely Greece (Grigoriadis 2008, p. 151). Greece and Turkey were both allies of the west against the Soviet Union (USSR) after WWII and received Truman aid. The relations ameliorated during this period and the Ankara agreement was signed on September 1963.[1] Ankara Agreement aimed at integrating the Turkish economy and the EEC with the goal of achieving customs union followed by eventual membership and it began with the prologue "the aim of this Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people" (*Devlet Planlama Teşkilatı* 1993).

The terms of the agreement stated the need to establish a customs union to realize the aims mentioned in the sentence. The customs union and eventual membership was to be realized in three stages: preparatory, transitional, and final (Baç 1996, pp.57-58).[2]

Preparatory stage: Planned to last between 5-9 years. Consisted of unilateral concessions on behalf of the EC and Turkey's responsibility was to maintain economic development.

Transitional stage: The time interval for the transitory stage was between 12-22 years. Turkey and the EC would make mutual concessions in this period regarding tariff reductions, including the concession of granting free movement of workers by 1986.

1 (http://www.ikv.org.tr/sozluk2.php?ID=989)

2 Full text of the Ankara agreement can be retrieved from Devlet Planlama Teşkilatı, Avrupa Topluluğu ile ilişkiler Genel Müdürlüğü, 1993, *Ankara Anlaşması ve Katma Protokol*, cilt 2: http://ekutup.dpt.gov.tr

Final stage: Was to be initiated when Turkey is ready to become a full member and establish a customs union. A customs union would be realized after the integration of Turkey into the Common Agricultural Policy and aligning its tax structure with the EEC.

Turkish-EEC relations between 1964-1970 constituted the above-stipulated preparatory stage of the Ankara Agreement. These years witnessed significant changes, for both the EEC and Turkey. The stagnant Turkey of the 1950s was left behind and a new economic boom coupled with a new democratic constitution (Birand 2005, pp. 140-141).

The new era of democracy in Turkey was introduced with the comparatively liberal 1961 Constitution after the 1960 coup. The 1961 Constitution enabled the marginal voices, such as the Turkish Workers' Party (TWP), to be represented in the parliament.[3] Furthermore, the Justice Party (JP) (which was the continuation of DP, banned after 1965) headed by Süleyman Demirel won the majority of the seats in parliament. The new JP government gained prestige as the economy boomed and inflation rates dropped to 15-20 % in 1966. Another development during this era was the migration of Turkish workers to Germany, which operated as a significant source of foreign currency income.

The Protocol was signed in this plight on November 23, 1970, at which time Turkey accepted the model prepared by EEC on following terms (Baç 1996. p.59):[4]

Obligations of Turkey: To incrementally reduce tariffs on European imports; this would be realized in two phases. In the first phase, to last for twelve years, Turkey would

3 Even though there is general contention that the 1961 Constitution was rather democratic, scholars like Heper & Çınar (1996) claim that the 1961 Constitution initiated the dominance of the bureaucratic staff over the will of the nation by introducing National Security Council (NSC), Council of the State and Constitutional Court.

4 Original document of the Additional Protocol can be downloaded from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21970A1123(01):EN:NOT

be obliged to reduce tariffs on 55% of industrial goods. In the second phase, to last twenty-two years, Turkey would reduce tariffs in the remaining 45 %.

Obligations of EC: In return for Turkey's reduction of tariffs, EC was to gradually introduce its common tariff policy against trade with third parties. A total reduction of 20% had been introduced by 1978, when the relations were frozen. The EC agreed to reduce all tariffs on 37% of agricultural exports of Turkey. Among industrial products, Turkey was to enjoy a zero tariff policy except for textiles and petroleum products.

BETWEEN 1970-1980

Additional Protocol and Deterioration of Relations

The EC enlarged to nine members upon the finalization of negotiations with three new member states (Britain, Ireland and Denmark) in 1971 and the signing of their membership treaties in 1972 (http://europa.eu).[5] While the EC was busy with enlargement, Turkey encountered another military intervention on 12 March 1971. The intervention did not suspend the parliament but replaced Demirel with Nihat Erim and the civil government continued to rule, although under the auspices of military. The Additional Protocol was signed during this crisis of 1971.

The oil crisis of 1974 triggered an economic crisis in Europe that lasted until the 1980s and resulted in the EC diverting its attention to the oil-exporting Mediterranean countries. This meant that Turkey was losing its preferential status granted by the Additional Protocol and the Turkish workers were no longer welcomed due to high unemployment rates, leading to the deterioration of the relationship between Turkey and EC (Baç 1996. p. 60). Furthermore, in 1974, the Cyprus Crisis came added on top of these issues and also marked

5 All electronic citations hereafter cited in the text of this thesis in abbreviated form; complete citation link is to be found in bibliography.

a turning point regarding Turkey's relations with EC – one which would impede the membership process from then on, until today.[6]

Greek application forced Turkey had to make a critical decision regarding her own status (Birand 2005, pp. 204-260) . The contention revolved around whether to impede the Greek application process by submitting a Turkish application. The EC was aware of the tension created in Turkey by the Greek application. The EC agreed to give make some concessions regarding the Additional Protocol during this period to ease the Turkish tension. However, Turkish officials did not have a consensus regarding which parts of the Additional Protocol to amend. In sum, Turkey was unable to take advantage of the Greek application either by extracting concessions via negotiation or by impeding the process by applying in 1976-1977.

The following year, 1978, was a crucial period in Turkey because economy was on the verge of collapsing: the IMF warned all the global financial institutions about not lending money to Turkey (Birand 2005, pp. 261-291). Domestic terror was increasing every day and the government was unable to control the violence. In such a predicament, in the Commission meeting of 1978, Ecevit demanded a period of exemption from the Turkish obligations of the Additional Protocol. The EC accepted the exemption demand and relations were frozen until 1979, when Demirel won the elections partially and changed the EC policy. To the surprise of the EC, Demirel suspended the exemption policy of Ecevit and prepared for application for full membership in October 1980. However, the military coup of 12 September 1980 interfered with this process.

6 Starting in 1974, the Cyprus dispute became an intricate impediment on Turkish membership up until today. Therefore, separate space is reserved particularly for the Cyprus Conflict, which can be found at the end of the chapter.

BETWEEN 1980-1990

The Military regime and the Özal Government

The military junta of 12 September 1980 strained the relations between Turkey and the EC. The relations were not frozen until the beginning of 1981 but military junta showed its despotic face in the second half of 1981 when consecutive capital punishments were carried out for those suspected of involvement in terrorism and other penalties were imposed. These incidents met with grave protests in Europe, especially from syndicate representatives.

While the above events were taking place in Turkey, Greece became a full member and acquired veto power starting as of January 1, 1981 – which was another turning point in Turkish-EC relations. In 1982, the EC suspended all relations with Turkey because of the undemocratic policies of the military junta.

Elections took place in 1983 and Turgut Özal, the ex-president of State Planning Organization (SPO) became the prime minister. The EC believed that the 1983 elections were undemocratic and that the election of Özal, an opponent of Evren (president of the military intervention), gave rise to beliefs that plural democracy was in fact still operational in Turkey (Birand 2005, pp. 313-340). However, even democratically held elections did not help to ameliorate the relations since the capital punishment continued to be imposed on politicians. There were other issues on the EC agenda regarding Turkey's problems and many of those issues crystallized in 1984-1985. Among these problems, which were vehemently debated in the European Council, were the Kurdish problem, the Armenian problem, democracy and human rights, and the Cyprus and Aegean disputes.

In this political situation, Turgut Özal submitted the official application in 1987 despite the negative signals from the EC to do otherwise. It took the EC two years to make an official declaration on Turkish application. The application was rejected on the grounds that EC was not ready for another period of enlargement until 1993 due to the start of the single market. The abolition of Berlin Wall and the eventual end of the Cold War in 1990 altered all dynamics in the world and in Europe. Turkey benefited from this far-reaching alteration of the balance in the European order and in 1990, the Commission issued a package to improve relations with Turkey.

BETWEEN 1990-2008

Official Candidacy and the beginning of accession negotiations

1990 witnessed the end of Cold War and beginning of a new era for Turkey in terms of its strategic importance in Europe. It was in this period that Turkey began to understand the importance of the EC (which became the European Union (EU) with the Maastricht Treaty in 1992). Europe attributed a new importance to Turkey as well. In 1991, the official Association Council meetings re-started for the first time since 1986, when Turkey had walked out on the EC because of the Cyprus dispute. The revival of the relationship came in 1992, when Turkey was underlined as a state that "had increasingly gained importance in the wake of political circumstances" during the Lisbon Treaty of 1992 (Birand 2005, p. 349).

In 1993, the President of Turkey, Turgut Özal died; he was succeeded by Süleyman

Demirel. Tansu Çiller, who was a western/modern-looking woman, became the prime minister, which raised hope in the eyes of the public. While these events were happening in Turkey, a very significant summit was taking place in Copenhagen, issuing the Copenhagen Criteria. At that time, the Copenhagen Summit's primary importance for Turkey was its stipulation on Cyprus since Cyprus had been excluded from the list of candidate countries. In other words, Turkey was not aware that the Copenhagen Criteria would be critical in future negotiations with the EU. Before the Copenhagen Summit, the political and democratic conditions had been policed by the Council of Europe and the European Court of Human Rights as its main instrument (Hale 2003, p. 108).

The Copenhagen Criteria gave the European Council the opportunity to officially audit the candidate countries by stipulating that "membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for protection of minorities" (Hale 2003, p. 108). Turkey strived to harmonize its legal system with the Copenhagen Criteria, beginning in 1993 up until 2004, when she was agreed to begin negotiations for full membership.[7]

The Customs Union was the main theme of relations between 1993-1995, when in 1995, the United States interfered by pressuring the European Countries to accept Turkey into customs union. Finally, on 6 March 1995, the Customs Union Agreement was signed and a one-year period was provided for implementation despite the domestic disagreements within the EU (Baç 1996, p. 69).

The Customs Union did not manage to bring a sustainable amelioration of relations.

7 A detailed summary of the laws passed to harmonize with the EU and abide by the Copenhagen Criteria is written at the end of this chapter.

Furthermore, in 1996, Turkey and Greece reached the verge of war when the Kardak Crisis exploded. Kardak was a piece of rock in the Aegean and it had a symbolic value regarding the historical animosity between Turkey and Greece in the Aegean. The EU sided with Greece in the Kardak dispute. Besides this foreign predicament , 1996 was also a year of domestic instability in Turkey. The Yılmaz-Çiller government failed to reach a consensus and lost credibility. However, the government did not give up its aspirations to be included on the list of candidate countries and Yılmaz engaged in a rigorous itinerary of lobbying to realize this goal at the December 1997 Luxembourg Summit. However, Turkey was disappointed at the Luxembourg Summit since she was excluded from the list of candidate countries, while many of the newly applied countries such as Slovakia, Lithuania, Latvia and Bulgaria were included. This also caused resentment in the public opinion.

The above events caused the relations between Turkey and the EC to become strained until 1999 Helsinki Summit, which was a turning point for EU-Turkish relations since Turkey was included on the list of candidate countries (Baç 2008; Çayhan 2003). Even though the relations had been strained before 1999, Turkey had achieved the status of candidacy as a result of the following events: the Kosovo crisis, the US support for Turkey to be included in the EU, German politics being ruled by Social Democrats again, the new coalition composed of Ecevit-Yılmaz-Bahçeli passing many laws to harmonize with the democratic criteria of EU, the capture of Abdullah Öcalan (leader of the PKK), the beginning of a peaceful process in southern regions, and the amelioration of relations with Greece with Smitis-Papandreu (Birand 2005, pp. 391-392). Because of these developments, coupled with Turkey's concession to Cyprus regarding the acceptance of its membership with or without a political solution, Turkey was granted candidacy status. However, it was not until the 2001 Nice Summit that the European Commission agreed to “publicly approve” the Accession

Partnership Document (Dansereau, Oner, Kiersey & Weisband 2008, p. 52).

Domestically, the year 2000 began with disagreements among coalition partners which kept the process from coming up with a unified program for enacting harmonization laws. Furthermore, the harmonization laws included drastic reforms that the coalition partners refrained from issuing (Birand 2005, pp. 409-430). Among these were the most critical Copenhagen conditions regarding the abolition of capital punishment, reduction of military power over civil administration and enacting laws regarding Kurdish rights. During 2000 nobody, including Günther Verheugen (European Commissioner for enlargement), believed that these radical changes could have been made in a few years time. For example, the Commission expected the Accession Partnership Document (APD) in June 2000 at the latest, but it was not prepared until the June of the following year (Birand 2005, pp. 409-430). The capture of Abdulllah Öcalan, the leader of PKK, on February 1999 played the leading role in delaying preparation for APD.

The multiparty coalition managed to meet the expectations of the EU after Öcalan was captured. The nationalist segment of the government, with Bahçeli, played a vital role and did not impede the process of abolishing capital punishment (Birand 2005, pp. 409-430). In sum, the tumultuous circumstances after Öcalan's capture ended with the enactment of significant reform packages and preparation of the APD at the end of 2001. However, besides these positive political developments on the road to the EU, 2001 also witnessed one of the most disastrous economic crises in Turkey. The Turkish Lira was devalued by 70-80% within a few days during February 2001, and twenty-one private banks went bankrupt (Birand 2005, pp. 409-430). The government was under an unprecedented pressure. It was in this context, during March, that the Commission declared the ADP and

also the National Program (NP) to adopt the ADP in line with Copenhagen Criteria.

The NP included many of the most sensitive issues including the abolition of capital punishment and minority rights, but to the shock of EU, the Turkish parliament passed the NP without any major objection. Furthermore, serious steps were taken regarding the Cyprus conflict when the possibility of bilateral meetings between Denktaş and Clerides emerged (Birand 2005, pp. 409-430). In sum, in 2001 there was an initiation of a metamorphosis in Turkey, both politically and economically, even though the former was a positive and the latter was a negative process. Towards the end of 2001, on 11 September 2001 (9/11), however, the whole world system and politics literally changed when the World Trade Center was attacked.

George Bush declared the Bush Doctrine in his speech on 9/11: "We will make no distinction between the terrorists who committed these acts and those who harbor them" (http://www.whitehouse.gov). Furthermore, in subsequent speeches, Bush highlighted the nations which are on an "axis of evil" versus an "axis of good," with Turkey taking a position under the rubric of "axis of good" by allying with the U.S (http://www.acronym.org.uk).

Meanwhile, the European Council announced that Turkey had made "good progress and … was closer to the EU" in its report of the June 2001 meeting (Dansereau, Oner, Kiersey & Weisband 2008, p. 52). In October, parliament enacted the first harmonization package, which had not yet included the most controversial issues. To summarize, 2001 was a positive year in Turkey regarding Turkish-EU Relations.

Turkey went through a series of changes in 2002. Three developments marked the significance of this year: developments regarding the Cyprus conflict, acceptance of revolutionary harmonization laws and the election of Justice and development Party with majority in November (Birand 2005, pp. 409-430) . With respect to the Cyprus Conflict, in January, Denktaş and Clerides met, but no solutions came out of that meeting. The main problem lay with Ecevit and Bahçeli, who were in favor of keeping the status quo in Cyprus rather than initiating a political solution. The United Nations decided to intervene after the failure of these talks, with the Annan plan being issued on 11 November 2002 after the JDP won the parliament seats with a majority (Birand 2005, pp. 409-430). Prior to these events, the enactment of the third reform package made its mark on the coalition government in August as its last act before its demise. This reform package included the abolition of capital punishment and the recognition of Kurdish minority rights, including those of education and broadcasting. However, it was the JDP rather than the coalition partners that made the enactment of this package possible, since the nationalist Bahçeli and his deputies refused to vote for the package. Instead, the JDP supported the package from outside. Ironically, two months later, the JDP emerged as the majority party in the parliament, altering Turkish policies in many areas, including Cyprus.

The new Cyprus policy of Erdoğan and his JDP altered the previous stance arguing for keeping the status quo. Denktaş was among those opting for the status quo and this was the main reason why he refused to accept the Annan Plan of 11 November 2002. The strenuous endeavors to find a solution continued during 2003; the final step turned out to be holding a referendum on both the Turkish and the Greek Cypriot sides (Birand 2005, pp. 409-430). Erdoğan's new policy worked and the Turkish side accepted the plan in a referendum while the Greek Cypriots rejected it in 2004 (Birand 2005, pp. 409-430). The

JDP made other radical transformations and passed the fourth, fifth, sixth and seventh reform packages between 2003-2004. In sum, with the beginning of a serious effort to find a solution to the Cyprus problem and the enactment of radical reform packages, Turkey took a leap forward towards the EU.

Overall, between 2001-2004, Turkey passed 175 clauses and ratified twenty-eight international agreements to harmonize with the Copenhagen criteria (Birand 2005, p. 456). Even though there was opposition, especially on behalf of Kurdish Organizations in Europe regarding the Turkish eligibility for the start of negotiations, EU officials recognized these developments and Turkey began negotiations for membership on 3 October 2005.[8] However, this decision to begin negotiations was open ended and does not include a guarantee for membership in the end.

The screening process was completed one year after the Summit, in October 2006, at which time Turkey began accession negotiations. However, negotiation on eight chapters were frozen on 11 December 2006 due to disputes between the Turkish government and the EU regarding Cyprus and opening Turkish ports to Greek Cypriots ships and airports to planes. This was reflected in a deterioration of relations between Turkey and the EU. These developments lead to suspicion among EU scholars, such as Müge Kınacıoğlu (2008) who states that "it will take at least a decade for full membership to materialize due to the lengthy negotiations of the 35 chapters but also due to the language used by the European Council in its reports stating that negotiations are an open-ended process, the outcome of which cannot be guaranteed beforehand" (p. 75).

8 For example, Kerim Yıldız, *The Kurds in Turkey: EU Accession and Human Rights* (London, Pluto Press, 2005), discusses that Turkey had not fulfilled the Copenhagen Criteria.

In conclusion, the above events and decline in the relationship between EU and Turkey because of the Cyprus conflict are the impediments to Turkish membership. However, between 1993-2004, Turkey took some positive steps by passing many harmonization laws to comply with the Copenhagen criteria. These will be summarized in the next section. In sum, even though the future of Turkish-EU relations seems to be deteriorating, the developments like the ones discussed below also indicate prospects for amelioration.

1.2 DEMOCRATIZATION REFORMS 1993-2004

The reforms and amendments mentioned in this section of the chapter are borrowed directly from Ergun Özbudun and Serap Yazıcı, *Democratization Reforms in Turkey (1993-2004).* A more condensed version of these reforms can be found in Keyman & Aydın (2004).

The reform packages amended the 1982 constitution, which had been designed under the tutelage of a military regime, aiming mainly at protecting the state from the citizens rather than granting the citizens fundamental civic rights and liberties to protect them from the state. The 1982 Constitution was amended eight times after the restoration of democracy in 1983 in 1987, 1993, 1995, 1999 (twice), 2001, 2002 and 2004. These amendments mainly aimed at restoring the democratic system and lessening restrictions of fundamental rights, rule of law and military prerogatives. Besides constitutional amendments, in 2002-2003,"harmonization laws," composed of seven comprehensive reform packages to achieve further democratization, were enacted.

The constitutional and legislative amendments made to the 1982 Turkish Constitution between 1993-2004 can be traced under the following four headings

- Fundamental civil rights and liberties
- Political Rights
- The Rule of Law
- Civil-Military Relations

Reforms made regarding fundamental rights and liberties and political rights which are relevant to the purposes of this study are paraphrased from Ergun Özbudun and Serap Yazıcı in the following section.

FUNDAMENTAL RIGHTS AND LIBERTIES (pp. 13-27)

The constitutional amendment of 2001 was the most comprehensive one in terms of reforming fundamental rights and liberties. Article 13 on the General Grounds for the restriction of Fundamental Rights and Liberties was amended so that the "essence" of basic rights was protected. In other words, with the amendment, general grounds for the restriction of fundamental rights were limited. Following Article 13, Article 14 was also amended and by changing it to *"None of the rights and liberties embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State with its territory and nation, and endangering the existence of the democratic and secular Republic based on human rights..."* from *"none of the rights and liberties*

embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, of endangering the existence of the Turkish State and Republic, destroying fundamental rights and liberties, of placing the government of the state under the control of an individual or a group..." Restrictions on personal liberty and security were eased by shortening detention periods. Liberty and individual life was further taken under protection by bringing a guarantee, through an amendment to Article 20, against unlawful searches and seizures of a person's private papers and belongings. Article 21 was amended similarly to that of Article 20, regulating the inviolability of one's domicile. Freedom and confidentiality of communication and freedom of residence and travel were further taken under constitutional protection. This was done in two ways. The first was removing the authority of administrative units to violate confidentiality of communication without having first obtained the consent of a judge authorized to make decisions regarding such matters. The second was abolishing restrictions on the citizen's freedom to travel abroad, which had previously been subject to the National economic situation (pp 13-27).

Freedom of expression was expanded by a significant change to Article 26 – by which the phrase "language prohibited by law," which had originally been included in the Constitution to enable the military to ban the use of Kurdish, was deleted. Furthermore, the NSC (National Security Council) passed a law to that effect without mentioning Kurdish. Although this law was repealed in 1991 and there has been no language prohibited by law since then, the deletion of the phrase from the Constitution is crucial in terms of avoiding future introduction of the prohibition of any language.

Another crucial change regarding freedom of expression includes the exclusion of the wording “thoughts and opinions” from Article 176, which had stated that “no protection shall be afforded to thoughts and opinions contrary to Turkish National interests, the indivisibility of the State with its territory and Nation, Turkish historical and moral values; and Atatürk's nationalism, his principles, reforms and modernism. The words “thoughts and opinions” were replaced by the word “activity” in this phrase.

Another constitutional amendment regarding freedom of expression – the abolishment of the state monopoly on radio and television, was introduced in 1993. This led to an immediate proliferation of private radio and TV channels, which contributed to considerable political pluralism.

The Anti-terror Law passed in 1991 repealed the notorious articles 141, 142, and 163 of the Penal Code, which punished communist and anti-secular propaganda and organization. Another amendment was made to the Article 312 of the penal code punishing people who incite hostility and hatred on the basis of the differences of social class, race, religion, sect and region. The amendment guaranteed that such expressions were to be considered as crime only if they constitute a danger against public order. With the reform package of August 2002, an amendment to Article 159 of the penal code, which considered insulting and deriding the Republic, Turkishness, The Grand National Assembly, the Government, the ministries, the military and security forces and the moral personality of the judiciary as criminal offenses, was enacted. With the amendment, it was stipulated that criticisms without the intention of insult or contempt would not constitute an offense. The last vestige of such “thought crimes” was eliminated by the Sixth Reform Package of July 2003, which abolished Article 8 of the Anti-terror law penalizing separatist propaganda.

1) Freedom of the Press: Article 28 was amended in a similar fashion to that of Article 26 amending the phrase “language prohibited by law.” A further improvement was brought by the constitutional amendment of 2004, according to which printing presses and their annexes would not be seized, confiscated or barred from operation on the grounds of being an instrument of crime.

2) Freedom of Association: Article 33, which originally prohibited associations from pursuing political aims, engage in political activities, receive support from or give support to political parties, or take joint action with labor unions, public or professional organizations or foundations was extensively amended in 1995 . The amendment removed the ban on the political activities of associations and permitted them to engage in collaborative action with political parties and other civil society organizations.

3) Freedom of Assembly: The amendment of 2001 broadened the scope of freedom of assembly considerably compared to the original text of Article 34. For example, the clauses requiring the authorization of the local authority determining the route and site of the demonstration, or prohibiting a meeting where there is the possibility of disturbing the public order were removed. Furthermore, the Second and Third Reform packages further liberalized certain provisions of the Law on Public Meetings and Demonstration Marches.

4) The Right to a Fair Trial: The right to a fair trial was added to Article 36 in 2001.

This amendment also concerns the State Security Courts combining military and civilian judges designed to deal with the crimes against the security of the state. Article 143 of the constitution was amended in June 1999 to eliminate military judges and prosecutors from the courts.

5) Abolition of the Death Penalty: the death penalty was restricted to crimes committed in cases of war or the imminent threat of war, and terror crimes by the constitutional amendment of 2001. The Third Reform package in 2002 also eliminated the terror crimes exception. Finally, the 2004 constitutional amendment totally abolished death penalty including the cases of war or the imminent threat of war.

6) Prevention of Torture and Mistreatment: Even though the 1982 Constitution explicitly forbids torture, mistreatment and inhuman treatments in Article 17.

Equality of Sexes: The original text of Article 10 states that "all individuals are equal without any discrimination before the law, irrespective of language, sex, political opinion, philosophical belief, religion and sect or any such consideration. No privilege can be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings." The amendment in 2004 further underlined the equality between the sexes by stating that "women and men have equal rights. The State is obliged to put this equality into effect."

POLITICAL RIGHTS (pp. 27-31)

1) Turkish citizenship: With the constitutional amendment of 2001, Article 66 was changed to replace the sentence “citizenship of a foreign father and a Turkish mother shall be determined by law” with the sentence “the child of a Turkish father or a Turkish mother is a Turk.”

2) The right to vote: 1995 amendment lowered the voting age to 18.

3) Eligibility to enter Parliament: the very broad and vague term precluding the eligibility to enter parliament based on involvement in “ideological and anarchistic actions” were amended in December 2002 as only “terror actions”.

4) Regulation and Prohibition of Political Parties: Articles 68 and 69 on the regulation and prohibition of political parties were extensively amended in 1995 and 2001 and the constitutional guarantees for political parties were significantly strengthened.

5) Right to Petition: Also in 2001, the right to petition was extended to foreign citizens residing in Turkey.
6) Provisions concerning Civil Society: By a change in Article 135,a ban on the political activities of public professional organizations was lifted.

1.4 CONCLUSION

Turkey's journey to membership in the EU has been going on since its application for associate membership in 1959. Now, after nearly half a century since the application, a key *Eurobarometer* opinion poll shows that 59% of Europeans oppose Turkish membership, with only 28% in favor (http://news.bbc.co.uk). Moreover, the present leaders of Germany and France contend that Turkey is not compatible with European democratic norms and thus does not have what is necessary to become an EU member (http://news.bbc.co.uk). There are polls in Turkey, too, indicating a sharp decrease in support for EU, from three quarters of Turks to only half or even less of the population (http://news.bbc.co.uk).

Several problems lie ahead of Turkey and also the Union regarding Turkish membership. The EU opts for a Turkey continuing with democratic reforms including a political solution to the Kurdish problem and enlargement of democratic rights to minorities. Furthermore, freedom of speech laws continue to constitute a major obstacle for membership. Among these, is no. 301 of the penal code, on the basis of which many intellectuals have been prosecuted for. The Cyprus dispute is another issue impeding membership since Turkey refuses to open free trade with Greek Cypriots while the Turkish side is still suffering from sanctions. The last concern the EU has concerns the Armenian issue. Turkey refuses to accept the Armenian claims of genocide and there is resentment among the Armenian population in Europe about this.

Despite all these grievances, EU is reluctant Turkey since it is now Europe's sixth-largest economy, a major transit route for Europe's energy needs, and a major regional power

(http://news.bbc.co.uk). However, this does not change the fact that there are serious reservations concerning Turkey's huge population and Muslim heritage. France and Germany support conditional membership or a special partnership to protect themselves from the unrestricted inflow of

workers. However, Turkey refuses conditional membership and is pushing for equal status with that of existing members. The end of the negotiation process is still vague and the EU as a whole still says Turkey will not be ready to join until at least 2014 (http://news.bbc.co.uk).

CHAPTER 2

DEMOCRATIC REFORMS AND EU MEMBERSHIP

2.1 INTRODUCTION

The 1982 constitution was designed under the tutelage of the military junta to protect the state from citizens rather than granting citizens fundamental civic rights and liberties so as to protect them from the state (Özbudun and Yazıcı 2004, p. 13). This illiberal constitution was amended eight times after the restoration of democracy - in 1983, 1987, 1993, 1995, 1999 (twice), 2001, 2002 and 2004 (Özbudun and Yazıcı 2004, p. 13). However, of these years, 1999 is a turning point since Turkey became an official candidate for EU membership at the Helsinki Summit. In other words, 1999 marks the beginning of a phase in which Turkish democracy is transformed, via eight reform packages, to comply with the democratic stipulations the Copenhagen Criteria imposed on candidate countries.: the stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities" (Yıldız 2005, p. 33). These reform packages mainly aimed at restoring the democratic system and lifting restrictions on fundamental rights, guaranteeing a rule of law and limiting military prerogatives. In other words, Turkey has

been going through a phase of radical legal reforms, leading to a transformation in almost every aspect of social life, including human rights, freedom of speech, minority rights, regulation of civil-military relations and women's rights.

The above-mentioned legal reforms are the beginning of a new period in Turkish democracy and, accordingly, need to be elaborated in more detail. With the two democratization packages that transformed the system in 2003, the Political Parties Law was further liberalized, the fight against torture was strengthened, freedom of the press was further expanded, the procedures for setting up associations were eased and the restrictions that applied to the acquisition of property by non-Muslim community foundations were abolished (Keyman and Aydın 2004, p. 16). Furthermore, as for minority rights, and Kurdish rights in particular, legal cases were given the chance for retrial based on the verdict of European Court of Human Rights. This opened the gate for a retrial of formerly convicted Kurdish nationalists such as Leyla Zana, who was a former Kurdish deputy from Democratic Peoples' Party defending Kurdish independence.

Besides the above reforms, the ground-shaking reform package regarding the Kurdish issue came with the Sixth Reform Package, which became effective as of mid-July 2003 and generated debate regarding the abolishment of Article 8 of the Anti-Terror Law (thus further expanding the freedom of speech), as well as the restrictions on the use of the death penalty and the expansion of broadcasting rights in Kurdish (Keyman and Aydın 2004, p. 16). However, it was not until the last set of democratic reforms were enacted in late July 2003 that radical democratic changes were made by empowering civilian control over military domain, weakening torture with additional measures and invigorating fundamental freedoms (Keyman and Aydın 2004, p. 16). In May 2004 and July 2004, there was another

set of constitutional amendments and alteration of the penal code to comply with the Copenhagen Criteria and the Constitution was modified to take into account the previous reform packages. The same year, another crucial modification, - the reform of the penal code, had major ramifications for women's rights in particular.

This ongoing practice of reforming every layer of society via legal reforms began with the proclamation of the Turkish Republic in 1923. This first phase of legal reforms transformed all layers of society, including the status of women. This initial reform process, however, did not encompass minority rights. Instead, the republic was constructed as a homogeneous Turkish Nation excluding all sorts of identities apart from Republican Turkishness. Minority rights were introduced only after Turkey aspired to become a European Union (EU) member, with its candidacy becoming official at the Helsinki Summit of 1999. The Helsinki Summit marks a significant turning point in Turkish legal history in terms of women's and minority rights since it triggered a stage of radical reforms. In terms of women's rights, these reforms were incarnated in the form of Civil Code (2001) and Penal Code (2004) reforms. Under the previous system, men legally superseded women in marriage regarding decision making_and women's were familial commodities belonging to men. These juridical frameworks legitimized human rights violations like forced marriages, marital rape, honor killings etc (Women for Women's Human Rights (WHHR) 2005).

The following part of the chapter will elaborate on women's and minority rights in particular with respect to recent legal reform enacted.

2.2 LEGAL REFORMS IN TURKEY-WOMEN'S RIGHTS

In the history of the Turkish Republic (TR), there have been two major phases of legal reforms to improve the status of women. The first phase, which was between 1926-1934, consisted of the introduction of legal equality between the sexes. The most important of these legal reforms were the establishment of equal property rights, including inheritance, and suffrage rights. Furthermore, polygamy and Islamic courts were abolished; civil courts of law, based on a secular principles, replaced religious courts, based on sharia. Men and woman came to be treated on an equal basis in a court of law.

Almost seventy years later, beginning in 1999, a new phase of reforming women's status began when Turkey became an official candidate for EU membership. The reform process continued until 2004 when Turkey achieved the right to begin official negotiations for full membership. These reforms, including equal rights in marriage, divorce and property ownership and treating female sexuality as a matter of individual rights (as opposed to a matter of societal order) was considered by EU officials to be satisfactory in terms of fulfilling the Copenhagen Criteria and Turkey gained the right to begin official negotiations. However, in the study of the World Economic Forum of 2006 (Global Gender Gap Report), Turkey ranked 105 out of 115 on gender equality, behind Tunisia and Ethiopia (*European Stability Initiative, Sex and Power in Turkey, official report 2007, p.1*). This indicates the inadequacy of social improvement by mere legal transformation. However, altering the juridical status of women is the first step for such ameliorations. The following part of the chapter will discuss these legal reforms.

In the official parlance of the Turkish Republic, women's status was regarded as having an

equal status with men since the establishment of the Republic in 1923. As of 1923, women in Turkey were expected to appreciate and be grateful for the legal reforms granted to them by the ruling Republican men.[9] This was mainly the result of many legal reforms which took place with the adoption of the civil code in 1926, when Atatürk outlawed polygamy, gave equal divorce rights, introduced equal custody rights to both parents and gave suffrage rights by 1934 (Kandiyoti 1987, p. 320). However, the implementation of these laws in reality were problematic; furthermore, there were clauses in the constitution rendering the sexes unequal. Many feminists and sociologists examined the patriarchal nature of the Republic and concluded that the inequalities that prevailed until the Civil Code was reformed in 2001 with the subsequent reform of the Penal Code in 2004.[10] Baç also noted the plight of women in 1999 by saying that

> "the seemingly bright picture – Turkey as the most modern, democratic, secular Muslim state that also secures women's rights – is misleading in many ways. In fact, I propose that this perception is more harmful than outright oppression because it shakes the ground for women's rights movements by suggesting that they are unnecessary." (Baç 1999, p.313).

Despite the fact that women were subject to blatant oppression within the legal system until 2001, there was a vibrant women's movement beginning in the 1960s and 1970s that prepared the background for the 2001 reforms (*European Stability Initiative, 2007*). In this initial stage, academicians like Deniz Kandiyoti (1987) investigated the changing family

9 This official ideology is still prevalent as illustrated by the following extract from the Office of the Prime Minister Directorate General of Press and Information, regarding the evaluation of 1926 civil code and other legal reforms of the newly established Republic: *"Through imposing nationwide consistency in the Turkish system on what had previously been a patchwork of differing legal practices, the Turkish Code succeeded in keeping the country from plunging into a judicial chaos. It furthermore guaranteed all Turkey's citizens equal rights before the law, irrespective of their language, religion, race or gender, thus sweeping away all of the traditional and legal obstacles to implementing a fully just legal system. Finally it bolstered the social status of Turkey's women, providing them with the same rights as any other citizen."* http://www.byegm.gov.tr/on-sayfa/new-civil-code.htm

10 The Official ideology regards the 1920s reforms as revolutionary for the conditions of the time they were enacted and concludes that laws need to change by time to adopt society. As illustrated in the Office of the Prime Minister Directorate General of Press and Information in the following extract from why the civil code was reformed in 2001: Yet living conditions undergo constant change, society's needs and the very nature of human relations cannot help but be touched by new circumstances arising from economic and technological progress. Therefore, laws are fated to always fall behind the times; they must be periodically amended and renewed. http://www.byegm.gov.tr/on-sayfa/new-civil-code.htm

structure through case studies in Ankara.

According to the European Stability Initiative Report (ESI 2007), these sociological studies revealed the problematic nature of the 1920s reforms: they did not penetrate the society and remained distinct to the small, urban elite. Following from these findings, the patriarchal nature of the society and Islam was blamed. However, beginning in the 1980s, feminists altered the way they analyzed the women's plight in Turkey (European Stability Initiative 2007). Şirin Tekeli was among these new feminists who identified that the main problem aroused not merely from rural backwardness but from the law itself and found that patriarchy was the defining feature of the Civil and Penal Code prevailing in Turkey (European Stability Initiative, Sex and Power in Turkey, official report 2007, pp. 7-9). Among such examples of patriarchal inequality of the Civil Code were the obligation to obtain permission from the husband to work and unequal criminal treatment of husband and wife regarding the punishment of extramarital sex.

The above obstacles to gender equality were further crystallized when Turkey became part of the UN Convention on the Elimination of Discrimination against Women (CEDAW), ratified in 1985, which vividly underlined the limitations of the Turkish law in the eyes of the public (European Stability Initiative, 2007). The public was informed that Turkey had many reservations to the CEDAW since its existing legal code did not permit gender equality regarding marriage, divorce, property ownership and employment.[11] The CEDAW played a significant role in terms of guiding feminist movements towards achieving a goal: to comply with CEDAW's international gender equality standards. Turkey promised to withdraw its reservations in 1995 and did so in 1999. However, the amendment of the Civil Code had still not been made. Another actor - the EU - came into the picture at this point,

11 According to ESI Report 2007, reservations were made to the Article 15 and Article 16 of CEDAW.

triggering the enactment of gender equality in civil law in line with the criticisms of the EU via progress reports. Beginning in 1999, many women's activist NGOs, scholars and feminists joined the campaign to reform the civil code.[12] The campaign was successful and the following changes were made to the civil code.

CIVIL CODE REFORMS OF 2001

The new civil code ratified on 11 November 2001comprises 1,030 articles, including amendments to the civil code and to family law (http://www.byegm.gov.tr).

Amendments:

Conditions for marriage: The new civil code altered the minimum age of marriage with Article 124 by changing the minimal age to 18 for both men and women, from 17 for men and 15 for women. However, a Court of Peace judge has the right to reduce the age required to get married in extraordinary circumstances after hearing from the guardians of juveniles.

Enforced waiting period of three hundred days: A three hundred-day mandatory waiting period is imposed on women starting from the court decision granting divorce or the day of husband's death (Article 15 of the Marriage Regulations); this is to ensure that a woman is not pregnant from previous marriage. Women have to prove that they are not pregnant if they want to marry before the end of this period. The WHHR views this clause as discriminatory against women in the name of

12 For a detailed analysis of how women's organizations strived to achieve civil code reform see the publication of Women for Women's Human Rights (WHHR)-New Ways , "Turkish Civil and Penal Code Reforms from a Gender Perspective": The Success of Two Nationwide Campaigns," February 2005.

establishing fatherhood. The WHHR proposal for the fatherhood conflict is a contemporary one – the use of DNA testing rather than imposing a discriminatory waiting period on women (WHHR Report 2005).

Women in the family, the legal framework: The constitutional amendment of 2001 (Article 41) brought about equality between the spouses by initially demarcating a general framework for the establishment of "head of the family" with the following phrase: "the family is ....based on the equality between the spouses." In line with altering the general framework, the following details were added to realize further equality between spouses:

1. Decision-making power: The new Civil Code in 2001 (Article 186) set the terms of decision-making as equal between the spouses as opposed to the previous clause rendering the husband solely responsible for maintaining the family.

2. Place of residence: The previous Civil Code, considering that the husband was the primary decision-maker of a married couple's domicile, established the wife's legal residence as that of her husband. However, with the new code (Article 186), the place of residence is to be determined by the spouses jointly.

3. Family abode: Spouses have equal rights pertaining to the decision regarding all matters of home (Article 194). For instance, none of the spouses can change the rental terms of the house, end an

agreement made upon the home or hand over the residence rights of the abode to a third party if the other spouse has not explicitly agreed to do so.

4. Surname: According to Article 187 of the new Civil Code, the wife has the right to continue keeping and using her maiden name in front of the husband's surname, whereas in the previous code no such opportunity was given.

5. Representative authority: In the previous code, the husband was granted the sole authority to represent the family in outside matters, and was responsible for the family finances. The new Civil Code (Article 189) poses equal representation rights regarding family matters, including savings and finances. Furthermore, to protect equality, upon application of one of the spouses, the judge may limit the authority of the spouse exploiting the representation. (Article 190). In addition to the relations with third parties, Article 193 gives both spouses equal entitlements to establish legal transactions with third parties.

6. Work: Until 1990, the Civil Code recognized the husband to be the sole authority in the family, which gave him the legal right to proscribe his wife from working. However, in 1990, this clause was removed, albeit with no insertion of a replacement, from the Civil Code. The 2001 Civil Code reform recognized this need and, with

Article 192, it explicit that “neither spouse has an obligation to seek the permission to work from the other.” However, the following clause still makes this improvement insufficient by stating that “the harmony and welfare of the marriage union should be borne in mind when choosing and performing a job or profession,” since it could be used to legitimize limiting women's working rights to achieve harmony and welfare of the marriage union.

7. Financial contribution: Article 196 of the new Civil Code introduced for the first time the recognition of unpaid housework of the wife by establishing the right to appeal to the court to determine the amount that each spouse should contribute to the household. By giving women the right to explicitly discuss the value of housework in terms of contributing to the household, women were given the chance to assign a value to the hitherto unrecognized housework.

8. The legal regime: According to the new regime regarding the ownership of acquired property, each spouse has the equal right to the property acquired after marriage, irrespective of how and by whom it was obtained. In other words, women's invisible housework is assigned an economic value with the introduction of this clause. This is done by introducing two different types of property to the marriage. Acquired property (Article 219) and personal property (Article 220). Personal property consists of possessions acquired before marriage and acquired property is comprised of possessions

acquired after marriage. Personal property belongs to the owner whereas acquired property is to be divided equally, endowing women with new economic security in case of divorce or death of husband. Furthermore, under personal property, the woman has the right to keep her dowry since it is considered as a property obtained before the marriage.

De Facto Relationships (WHHR Report 2005): De facto relationships are not legally recognized by the state. In other words, unmarried women in a relationship, whether living together or alone, cannot claim any legal rights of property or alimony. The improvement of the Civil Code was not in terms of recognizing de facto relationships but in terms of removing the term "illegitimate" from its clauses defining children born out of the marriage. With the new Civil Code, children born out of wedlock have the same inheritance rights as children born to a married couple; they are legally treated equally with respect to all matters. According to Article 329, an unmarried mother has the right to claim alimony if she is the one looking after the children. Another improvement regarding women's rights was made in the final decision regarding children in marriage. The clause stating that the father has the final decision in case of disagreement between the spouses was removed, opening the way for legal equality vis-à-vis rights over children. Furthermore, step- children acquire legal protection with Article 338, since it establishes an obligation to take care of and show compassion to them.

Alimony: Alimony rights were re-established on equal terms with the new civil code. In the new Civil Code, men also have the right to claim alimony even if the woman is not wealthy, unlike the previous provision stipulating the need to prove women's financial prosperity.

One clause that was altered in favor of women concerned the place of the authorized court to claim alimony. The previous alimony article made it mandatory for the woman to go back to the family abode to claim alimony, and some women refrained from following up alimony cases as a result of this obligation, for various reasons.

PENAL CODE REFORMS OF 2004

The Turkish penal code was adapted from the Italian penal code in 1926. In 2004, almost half of the penal code was already amended but a considerable number of clauses were still out dated and discriminatory towards women. The reformed version of the penal code was on the parliament's agenda during the late 1990s but it was only in 2002 that the draft Code was re-introduced to the government's agenda thanks to the EU accession process.

Amendments:[13]

1) Adultery: Clauses on adultery were subject to annulment in 1996, 1998 and 2003, respectively. In 1996, Article 441, regarding adultery committed by men, and in 1998, Article 440, on adultery by women, were removed on grounds that they are against the constitution. More importantly, Article 462, which granted sentence reduction in case of injuring or murdering a family member of committing adultery, was abandoned in 2003 with the introduction of the Sixth Reform Package.

2) Rights of women deserted by their husband: The new Penal Code provides for a

13 These amendments to the Penal Code are paraphrased from Women for Women's Human Rights (WHHR)-New Ways , "Turkish Civil and Penal Code Reforms from a Gender Perspective": The Success of Two Nationwide Campaigns," February 2005.

penalty of one year in jail for any man who deserts a woman he has impregnated, regardless of whether she is his wife or a single woman.

3) Violence against women: In 1998, the law called the Law on the Protection of the Family (No: 4320) introduced many improvements on behalf of women, who are the main victims of domestic violence. Accordingly, with this reform, any member of the family who is subject to abuse can obtain a court order against the abuser. Furthermore, the new Penal Code (Article 96) provides for three to eight years of imprisonment to those abusing a spouse or other family members.

4) Sexual rights and sexual violence:

   i) Sexual abuse in the family and marital rape: Criminalization of marital rape and sexual abuse were the two most important achievements for women and children in 2004. Marital rape (Article 102) is now subject to up to twelve years imprisonment. Sexual abuse of children within the family is also subject to imprisonment ranging from 5 to 12 years.

   ii) Sexual violence against women and girls: In the new Penal Code, as different from the previous one, crimes are re-defined thoroughly under the rubric of "Crimes against Sexual Inviolability." In the old version of the Penal Code, sexual violence was regulated in terms of "Felonies against Public Decency and Family Order" under "Crimes against Society." In the new penal code of 2004 (Articles 104 & 105), sexual assaults are defined as crimes committed against the

individual integrity of people and are subject to much longer sentences. This underlines a significant rupture from the old notion of considering sex as a patriarchal notion, thus introducing a break from the old system.

iii) Rape: Rape is regulated under the sentences of "Sexual Assault" (Article 102). According to the article, sexual assaults are subject to two to seven years of imprisonment while the number of years can be raised up to twelve for rape. The definition of rape is extended so that insertion of any object into the body besides the sexual organ is considered rape.

iv) Sexual Harassment: Article 105 of the new Penal Code defines sexual harassment in detail: "any act of harassment with sexual intent" is considered to be sexual harassment and can be penalized up to two years of imprisonment. This article also defines sexual harassment in the workplace, giving up to three years of imprisonment to those abusing the hierarchy in the workplace. This includes harassment between employers, superiors or coworkers.

5) Honor Crimes: Honor crimes are among the most prevalent human rights violations of women in Turkey. The WHHR defines an honor crime as the murder of a woman "suspected of having transgressed the limits of sexual behavior as imposed by traditions; for example engaging in a premarital relationship with someone of the opposite sex or having extra marital affairs" (WHHR Report 2005

(b), p. 62). A wide range of human rights are violated when a woman transgresses traditional limits of chastity; this includes her right to mobility and bodily integrity. According to the WHHR report of 2007, it was the success of women's rights activists that got honor killings finally recognized as a particular method of assault on women in the world. For example, in its 23rd Special Session, the United Nations General Assembly passed a resolution rendering all states responsible for "national legislation and other protective and preventive measures aimed at the elimination of (...) crimes committed in the name of honor"(WHHR Report 2005, p. 62).

In line with the above global developments, Turkey witnessed improvements regarding the treatment of honor killings in Turkey, thanks to the new Penal Code. Unlike the previous code, in the new Penal Code, honor killings are not granted sentence reductions. This is realized by the amendment of "Unjust Provocation" article to "Unjust Acts." This change ensures that *not all* honor killing cases are subject to sentence reduction. However, it leaves a loophole for treating some honor killings as the result of "Unjust Acts," resulting in sentence reductions. This is the weakness of the new Penal Code in terms of criminalizing honor killings.

Another weakness of the Penal Code is separating "killings in the name of custom" (*töre cinayeti*) and "honor killings" by separating the two. The distinction between the two types of killings is as follows: in "custom killings" a family assembly gathers and makes a decision about whether a woman who has acted contrary to the general norms of chastity will live or die. However, in terms of honor killings that are not custom killings, the murderer (can be a husband, brother or another family member) is assumed to have been a

spontaneous decision to kill based on the societal norms of honor, thus characterizing him as a "victim" of such norms, and, accordingly, is granted a sentence reduction. These sentence reductions stem from the vagueness of the Penal Code because it gives the judges an opportunity to interpret the killings as having been committed in name of honor. The notion of provocation will be elaborated in detail in Chapter 3.

Besides the above weaknesses of the Penal Code, there are strengths aiming at deterring honor killings. The previous code made it possible for the adult males of the families committing honor killings to circumvent imprisonment by forcing juveniles to commit the crime. It used to be the case that a murderer under the age of eighteen got sentence reductions and those under the age of eleven were not charged with any offense at all. legal guardians of these juveniles were not held responsible for the crimes committed. However, with the new code (Article 38), anyone engaging in forcing another to commit a crime is deemed eligible to receive the same penalty as the person actually committing the offense. Furthermore, if the person forced to commit a crime is under, the sentence for the adult is increased.

The above problems regarding honor killings constitute one of the most prevalent problems of implementation in Turkey. Besides the legal problem of defining the concept, there is a loophole giving the judiciary some opportunity to impose sentence reductions for honor killings. Therefore, it is imperative to have a closer look at the issue of honor killings and sentence reductions in Turkey as case studies of the implementation of law. The detailed evaluation of the implementation of women's rights and honor killings, in particular, will be dealt with in subsequent chapters to illuminate the extent to which the EU harmonization laws are implemented.

2.3 LEGAL REFORMS IN TURKEY-MINORITY RIGHTS

The status of the minorities in Turkey was determined by the 1923 Treaty of Lausanne, which included solely non-Muslims under the rubric of minorities. This is among the reasons why the minority issue in Turkey is demarcated between Muslims and non-Muslims; they are treated differently. According to Keyman & Aydın (2004), in Turkey, the minority issue, and particularly the Kurdish issue, is very much linked to improvements in human rights. In this respect, the period between 1999-2004 witnessed considerable transformations of human rights that were beneficial to non-Muslim minorities, and Kurds in particular, because of the acceleration of the EU accession process. These reforms can be evaluated under two separate headings as pertinent to the problem of minorities in Turkey; reforms made to ameliorate the condition of the non-Muslim minority and the legal measures taken to improve the condition of Kurds, in particular. The following part of the study will concentrate on reforms made to improve Kurdish minority rights vis-à-vis the general aim of the thesis, as well as evaluate legal reforms directed towards the non-Muslim minorities.

Legal Reforms Enacted to Ameliorate the Condition of Non-Muslim Minorities

Non-Muslim minorities were first protected under the 1923 Treaty of Lausanne. The Treaty ensured non-Muslims the right to equal protection and nondiscrimination under the law, the right to establish private schools and provide education in their own language, the conditional entitlement to receive government funding for instruction in their own languages at the primary level in public schools, the right to settle family law or private issues in accordance with their own customs and the right to exercise their religion freely

(Keyman and Aydın 2004, p. 31). However, the implementation of Lausanne rights have not been fully realized especially regarding property issues and religious/educational institutions, which in turn, has necessitated the revision of the issue with amendments during the EU accession process with harmonization laws (Keyman and Aydın 2004, p. 31).The following amendments to the constitution were made to invigorate the implementation of these minority rights.

i) A general framework regarding the derogation of minorities was demarcated by amending Article 312 of the Penal Code, introducing penalty to ones degrading ethnic or religious minorities.

ii) One of the most significant problems of religious minorities was solved by amending the foundations law to return confiscated real estate to community foundations.[14]

iii) The number of non-Muslim minorities legally recognized was increased in 2003, giving the opportunity to benefit from Lausanne rights.

iv) The Construction Law was amended as to allow religious communities to build their own places of worship.

According to Keyman & Aydın, these terms of the Lausanne Treaty ares legally satisfactory to implement equality between the Muslim and non-Muslim Communities. It

14According to Keyman & Aydın, real estate could be confiscated by the stated based on law NO 2762 (1936) since only the properties written under this law were legally recognized as belonging to the foundations. The number of foundations that could benefit from this law was only 160. This resulted in huge number of religious minority real estate confiscations. The harmonization packages aimed at returning these properties by amending the foundations law. However, the returning of these properties was rather problematic. For example the foundations had to prove that they owned the property and they are still using it, which introduced immense bureaucratic procedures paving a way for future confiscations. p.33

is in the implementation of the Lausanne conditions what problems arise, so steps need to be taken to change the mentality of the bureaucracy, which is slowing down the reform process designed to ameliorate the minority problem. According to Keyman & Aydın (2004), this can be done through introducing an effective process of dialogue between the bureaucracy and non-Muslim communities (pp. 33-34). The lack of communication exacerbates the implementation problem and reveals itself, for instance, in the form of the infamous real estate confiscations of community foundations.

Legal Reforms Enacted to Ameliorate the Kurdish Issue

The period following winning the War of Independence witnessed a Turkification phase, including measures taken to make a monolithic republic and resulted in trouble within the Kurdish-populated southeastern region (Kirişçi & Winrow, pp. 89-110). However, a unified Kurdish identity did not emerge until the 1950s due to the divided tribal structure of the Kurdish community. According to Keyman & Aydın (2004), it was only after the urbanization period of the 1950s that Kurds began to form a unified identity and demand their rights with respect to their new societal position in the cities (p. 35).

Following from the urbanized organizations, the most famous of Kurdish illegal military movements emerged in 1977; the Kurdish Workers Party (PKK) becoming the most influential over time. The PKK, which was established in 1977 and began its actions in 1978, became the most important actor between the Kurdish minority and the Turkish state for a period of almost thirty years. The PKK engaged in activities defined as terrorist by the state, causing the death of more than 35,000 people (Keyman and Aydın 2004, p. 34). This

organized violence triggered many measures enacted on behalf of the state, which led to many human rights violations ,including the anti-terror law, the ban on the use of the Kurdish language in public, the state of emergency declared on ten Kurdish populated provinces, enforced migration, and the village guards system (Keyman and Aydın 2004, p.34).

These measures led to a state of mistrust between the government and the Kurdish minority since the regional governors and village guards with extraordinary powers engaged in arbitrary and uncontrolled human rights abuses (Keyman and Aydın 2004, p. 37-40). In other words, the uncontrolled and extraordinary regional powers of the administrators and village guards led to mysterious fatalities among the Kurdish people, an occurrence that is still a prevalent problem.

The above problems still constitute a significant issue to be solved in terms of Kurdish rights in Turkey. However, with the EU accession process, especially after the 1999 Helsinki Conference, considerable measures have been taken in terms of minority rights. These measures can be grouped under two headings; the reforms that have indirect benefits to the Kurdish minority and the reforms which are directly beneficial to them. Below is a summary of these reforms taken from Keyman & Aydın (2004) and Özbudun & Yazıcı (2004).

Among these reforms, the limiting of death penalty had a favorable impact on many Kurdish prisoners sentenced to death on the grounds of separatism. Freedom of speech was extended by removing Article 8 of the Anti-terror Law, which had prohibited written or

oral propaganda aimed at disrupting the indivisible integrity of the State of the Turkish Republic, country and nation. The state of emergency in the ten provinces was also lifted to introduce development in the Kurdish populated areas.

The PKK's loss of influence in 1999 with the capture of Abdullah Öcalan and the EU accession process gave rise to a procedure of laws that specifically benefited the Kurdish minority (Keyman and Aydın 2004, p. 35). These reforms included the right to broadcast in Kurdish, the right to learn the Kurdish language and the right to give children Kurdish names, putting a legal end to the many years of repression on these basic human rights issues. These legal reforms and amendments, as listed by Keyman and Aydın (2004) are as follows (pp. 35-40):

i) In 2001, the articles that contained (Article 26) the clause stating the list of languages prohibited by law was removed from the constitution. Furthermore, with Article 28, the languages that were banned from broadcasting were also removed, opening the way for broadcasting in Kurdish.

ii) The implementation of the broadcasting in Kurdish was realized with the third democratization package of August 2002, and within a year, this right was expanded to the public and private radio and television stations.

iii) August 2002 (third package) also witnessed an amendment paving the way for the opening of Kurdish private language courses. However, this initial amendment included many bureaucratic difficulties rendering the

amendment ineffective in terms of realization of the courses. Among these bureaucratic statements were the obligation to have a separate building with separate teachers and staff to open a Kurdish course. Further amelioration was introduced with the seventh package of July 2003, lifting these bureaucratic obligations and permitting the operation of Kurdish courses in the already existing private language courses, thus making them feasible. This seventh package also introduced an indirect benefit for the Kurdish language since it endowed the parliament with the decision- making and regulatory power regarding the languages to be taught and excluded the military National Security Council (NCS) from the process.

iv) The seventh package, drawn up in July 2003, amended the Civil Registry Law and permitted the use of Kurdish names.

v) Following the seventh package, in August 2003 another law was enacted on "social reinsertion" The social reinsertion project aimed at integrating ex-PKK militants into the society by introducing partial amnesty which in five months led to the release of 524 prisoners out of 2067 applications and the surrender of 586 PKK militants (Keyman and Aydın 2004, p. 35).

The above legal ameliorations are coupled with projects like the "Return to Home and Village" project, aimed at restoring the lives of internally displaced people. However, these projects and the laws are not without shortcomings. Upon closer inspection, there are serious drawbacks regarding the implementation of these reforms. For example, the internally displaced people (IDP) who want to benefit from the "return to home and

village" policy are to subject to serious threats to their lives by the village guards (Çelik, Kurban, Ünalan 2007, p. 86). The amount of broadcasting time in Kurdish is also limited. Language rights are also impeded, especially in the area of education in Kurdish. For now, Kurdish can be taught at only private courses and no Kurdish center exists at universities.

2.4 CONCLUSION

1999 was a significant year for Turkey since it witnessed the temporary halt of PKK violence and also became an official candidate for the EU. The initiation of EU candidacy marked the beginning of a phase of legal reforms that unprecedentedly transformed all levels of society including minorities and women. Eight harmonization packages were passed between 1999-2004 to ensure that Turkey's political status regarding democracy and human rights was compatible with the political criteria of the Copenhagen Summit. The amendments and laws of the harmonization packages were welcomed and celebrated by women and minorities but soon after it turned out that years of patriarchal Jacobin bureaucracy delays the implementation of the reforms (Keyman and Aydın 2004, p 36).

The implementation of the reforms underlined in this chapter depends on the people entitled to execute the reforms in reality. There are many examples of the lack of implementation of legal frameworks in Turkey. Minority rights are a significant case illustrating the problems of implementation. This is mainly because in reality the terms of the Lausanne Treaty are legally satisfactory in granting the non-Muslim minorities certain rights but they are not implemented in reality. Similar problems exist in the case of women's rights and non-Muslim rights. In sum, the changes in the Penal Code and the Civil Code with ameliorations made to the constitution to democratically comply with the EU's Copenhagen Criteria constitutes only the first step; problems of implementation should

also be addressed to realize the execution of laws in daily life.

CHAPTER 3

KILLINGS IN THE NAME OF HONOR

3.1 Introduction

The Turkish penal code, which was first established in 1926, was reformed in 2005 to comply with the EU acquis and became effective beginning in June 2005. As illustrated in more detail in chapter two, the reformed code, which was created with the main motive of complying with the EU acquis, included clauses aiming at achieving gender equality by removing sentence reductions for killings in the name of honor. However, since the lawmakers did not explicitly include the term honor as an act to be exempt from sentence reductions, some judges find a legal loophole and continue to implement sentence reduction to killers upon provocation of dishonorable conduct.

The main aim of this chapter will be to analyze the reasons beneath the gap between law and implementation regarding sentence reductions given to culprits of honor killings. With this purpose, the chapter will first focus on discussions in the literature regarding the proper labeling of the killings in the name of honor. In this part, first various propositions regarding how to label the killings and what to encompass when talking about honor-related crimes will be elaborated.

Second, the theories of Nükhet Sirman and Dicle Koğacıoğlu on the reasons for killings in the name of honor and the prevalence of sentence reductions will be described. These two

theoretical frameworks were deliberately chosen for the analysis of the reasons behind honor killings since they complement each other by approaching the issue from different angles. The perspective of Nükhet Sirman is one of concentrating on the family unit and the relation of the individual to the state whereas Koğacıoğlu mainly focuses on the effect of institutions.

Next, the third part of the chapter will provide the literature on the killings in the name of honor by providing qualitative and quantitative studies on why honor is an issue leading to the murder of women in Turkey. This part will also discuss how people perceive honor and in what circumstances some people commit these crimes by providing explanations based on the theoretical framework of Sirman and Koğacıoğlu.

The last part will analyze various honor killing cases in which the judges have made sentence reductions to indicate the pattern of such sentence reductions. This last part is the major section of the chapter since it presents the analysis of the raw data from the study conducted by the Diyarbakır Bar Association and also carries out an analysis of data from National Police, UNDP and Dicle University.

3.2 Literature Review

The dispute about labeling killings in the name of honor has two dimensions. The first dimension concerns the appropriate labeling of the issue. The second dimension pertains to the substantive part of the killings and it revolves around which crimes to include when elaborating on killings in the name of honor. In other words, there is a debate between the feminists and sociologists regarding the scope of these killings and discussions revolve around whether or not to include all types of human rights violations under the rubric of honor crimes. One of the sociologists who emphasizes that the concept should include all types of human rights violations and not just murders is Nükhet Sirman.

Nükhet Sirman (2006) argues that the concept should be addressed as "honor punishments" (*Namus cezaları*) rather than "honor killings" or "*töre* (traditions, established social norms) killings"(p. 43). The appropriate naming should be honor punishments and not anything else since women are subject to many human rights violations in the name of honor and being killed is only one of these violations. For example, the honor punishments encompass the complete human rights violations of women including the right to work, the right to travel, the right to their own bodies and finally the right to live" (Sirman 2006, p. 43). One concrete example to this large scope of honor punishments is cutting the woman's nose to mark her permanently if she engages in dishonorable conduct. Following from these examples, Sirman (2006, p. 45) further criticizes naming the issue merely as "honor killings" since such a conceptualization opens the way to interpret the problem as only belonging to a particular region or a specific culture just as similar to calling the issue merely a result of *töre*.

Confinement of the issue to a particular region and culture renders the problem

insignificant and/or secondary since modernization of the particular region within the general policy of total national development is seen as the panacea to the honor killing problem. In Turkey, such a reduction is reflected as attributing the concept of "*töre*" to the killings and attaching the problem to the traditional underdeveloped cultural values and norms of the Eastern-Southern Kurdish region. Koğacıoğlu (2004, p. 121) agrees with Sirman that confining the issue to the Eastern Kurdish region by calling it merely "*töre*" killings constitutes one of the major obstacles to resolving the issue since once the tradition is blamed institutions, individuals do not take as much responsibility .

The above discussions by Sirman and Koğacıoğlu are relevant in the sense that they indicate a mentality revealed in the discourse of the media and decision-makers regarding the confinement of the issue to only the Kurdish populated regions of Turkey. For example, during the review of newspapers, various feminist websites, independent news sites and books, it was observed that the term "honor" and "*töre*" was being used interchangeably and synonymously. This synonymous labeling indicates a specific mentality confining the problem to the Kurdish populated region in Turkey mainly characterized by *töre.*

This chapter recognizes the importance of above discussions regarding the appropriate labeling of the issue and including all sorts of human rights violations of women when it comes to crimes committed against women in the name of honor. However, the scope of this chapter is concerned with the violations in the name of honor regarding the life of women, namely the killings. In this respect, the terminology used by KA-MER (*Kadın Merkezi*), the NGO based in Diyarbakır which has established shelters and emergency call centers for women who are in danger of falling victim to acts carried out in the name of honor. The term includes the connotation of killing in particular but detaches it from the

positive term “honor” by using it as “killings in the name of honor” instead of honor killings.

After this conceptual clarification, the following part will focus on various theories on the reasons underlying killings committed in the name of honor. One of these theories belongs to Nükhet Sirman and focuses on the relationship between family and state and the other to Dicle Koğacıoğlu which concentrates on the role of institutions.

Reasons for Killings in the Name of Honor

Nükhet Sirman (2006) identifies various types of societies including kinship-based, household-based and the love-family based units (p. 44-61). According to Sirman (2006), Turkey is a love-based nation state derived from the Ottoman Empire, which was a household based entity centered on conquest (p. 50). However, the Ottoman Empire also had residues of kinship-based units and this is the main explanation why honor has different meanings for men and women in Turkey (p. 49). For instance, a dishonorable man in Turkey today is an unreliable one who cannot control the sexuality of women under his responsibility, whereas a dishonorable woman is the one with no control over her sexuality (Sirman, 2006, p. 49). According to Sirman (2006) such a discriminatory perception of honor is still prevalent in Turkey today because the household-based structure of the Ottoman Empire revolved around attributing honor merely to women's sexuality and such a mentality continued in the Turkish nation state albeit in different disguise. Below is the discussion regarding how the concept of honor regarding women's sexuality and control was established in the Turkish Republic.

According to Sirman (2006), in the nation state, the main basis of connection between the

state and individuals is rational love and the nuclear family (p. 53). For example, the regulations of the nation-state, such as the Civil Code, assume that the individuals are responsible for controlling their own sexuality (Sirman 2006, p.53). In other words, with the new nation state, new laws and regulations were brought to organize sexuality and honor on the basis of individual responsibility and the rights of large families or conglomerations on individual's honor were removed (Sirman 2006, p.53).

Accordingly, the nation state delegitimized all allegiances besides the allegiance to the nation state. Among these delegitimized allegiances were cults and large family units (Sirman 2006, p.54). Sirman criticizes this policy on the organization of sexuality in the nation state through love-reason-based individualism since the approach "fails to see how the patterns of politics and gender established by kinship, large households and family operate together" (p. 54). In other words, the strategies of the people who adopt the view that individuals will come to terms with the irrational attribution of honor on gender discrimination and finally abandon the backward practice of honor killings are bound to fail.

Sirman (2006) also argues that the honor killings in Turkey will not disappear on their own, since their prevalence is the product of the contract between the men and the nation state based on the equality between men which was institutionalized with the Civil Code (p. 58). In other words, the Civil Code established equality among all men regardless of their age, education or economic situation by giving them the status of family leadership and husbands. The code on the surname is another byproduct of such an institutionalization. The emphasis of the new nation state then, becomes the concept of gender in relation to honor, which is sustained over women's bodies and revealed in the form of killings in the

name of honor and women's human rights violations (p.59). In other words, honor is a gender-based power relation type in the supposedly modern family-based nation states and it aims at disciplining women. This disciplining function of honor is also underlined by Koğacıoğlu as discussed below.

Koğacıoğlu (2004), agrees with Sirman that the newly established Republic provided only men with equality and preserved the status quo regarding gender inequality. Koğacıoğlu (2004) also adds that the "tradition effect" is the main reason why the violations are still prevalent in Turkey. In other words, "honor" is demonstrated as a static and unchanging traditional phenomenon in the media and this opens the path for institutions to eschew responsibility on the grounds that honor killings cannot be changed by institutional intervention due to their ossified static structure.

Koğacıoğlu (2004), on the other hand, argues that the concept of honor has to be reconstructed every day to survive and adapt to the changing institutional-economic-social structures over time. The reconstruction of honor reveals itself in the form of various strategies to manipulate sentence increases for honor murderers such as to commit suicide or manipulating the killing stories to benefit from the provocation clause. Such manipulative strategies are implemented not only with respect to honor killings but also vis-à-vis other forms of killing practices such as blood feud. For instance, according to the experiences of Vildan Yirmibeşoğlu, a lawyer in Gaziantep, blood feud murderers depict their stories in the form of honor killings and not as vendettas, so as to avoid increased sentences and benefit from reductions (2006, p.51). In other words, just as Koğacıoğlu illustrates, various traditional practices evolve over time in terms of their representation as legal cases and in terms of how the murderer plans the action. Then the relevant question

becomes the reasons underlying the prevalence of such killings in the name of honor despite the evolution and reconstruction of honor over time.

Koğacıoğlu (2004) explains the prevalence of honor killings by emphasizing the role of various institutions such as the European Union (EU), the Justice and Development Party (JDP) and the juridical system, as well as the initial patriarchal establishment of the Republic as a nation state. The JDP has been the ruling party with a non-coalition majority since November 2002 and has taken the primary role regarding penal code reform and various other harmonization packages to make Turkish law compatible with the EU's acquis. In this respect, the party's stance towards the women's issues is significant since the JDP is the main actor, widely criticized for not including honor killings under the crimes to be exempt from sentence reduction of provocation.

The JDP contributes to the prevalence of killings in the name of honor by placing women mainly within the family domain, and also confining the issue to the Kurdish-populated regions (Koğacıoğlu 2004, p. 129). By confining the problem only to a particular region, the JDP illustrates that the developed cities and the Turkish populated regions are exempt from the issue.

In fact, this was much easier to do few years ago when there was no statistical information regarding the honor crimes. However, studies on honor crimes by the Turkish National Police, UNDP and Dicle University reveal striking facts about killings in the name of honor, most of them being contrary to the general beliefs and contentions on the issue as depicted in the mainstream media and various political spheres. These studies will be elaborated in detail in the following parts of the chapter. However, for the purposes of this

theoretical part, they are used to illustrate how the lack of information makes it possible for the ruling party to further establish the tradition effect and confine the issue to a single region to eschew institutional responsibility.

Koğacıoğlu, however, underlines that institutions are not eschewing the responsibility by emphasizing tradition as a strategy; on the contrary, it happens on its own once tradition is blamed. This, in fact, makes the effect of tradition even more dangerous since once it is in operation, the possibility that an institutional set-up can take measures to initiate prevention seems impossible. In other words, the emphasis on tradition makes the issue of killings in the name of honor a problem that institutions cannot do anything about after a point and they are left to time to be solved since traditions are so resistant to change.

Contrary to the above static vision on traditions, Koğacıoğlu criticizes the EU for not including the gender equality issue in the short term priorities of candidate countries 2004, p.134). Koğacıoğlu (2004) adds that EU is a mainly market-based institution giving priority to the market integration of the candidate countries and placing the market related gender equality such as social security and equal participation in the labor market as priorities (p. 135). In this institutional mechanism of market forces, the issues that cannot be easily related to market mechanisms are marginalized and they are not considered urgent and primary for the accession of candidate countries (p. 135). It is in this way possible for the jurisdiction in Turkey to take measures that still make it legally possible to impose sentence reductions for honor killings.

Sentence reductions are still implemented on the basis of provocation, although the reformed penal code gives judges the authority to pronounce life time sentences to

murderers who commit killings in the name of honor. The reformed penal code is problematic in the sense that it only explicitly states that the "*töre*" killings are exempt from the reductions based on provocation and leaves honor killings out. This gives the judges the legal space to interpret the supposedly dishonorable acts of murdered women as provocation. Koğacıoğlu (2004), states that the judges can implement punishment increases to people who commit killings in the name of honor if they commit the crime against a minor and a family member, which is usually the case in the honor issues. However, the judges almost never take up such measures and, furthermore, they implement sentence reductions.

Koğacıoğlu (2004) calls this phenomenon "juridical convention" where "there is an established way of interpreting and applying laws that is reproduced through the social relations of legal professionals" (p. 124). It is this juridical convention taking the social norms into account when giving sentence reduction to the culprits of honor crimes even though they find the practice primitive. Judges sympathize with their colleagues who implement sentence reductions since the juridical convention necessitates taking the social norms into consideration while reaching a verdict. Social norms are taken into account not just in Turkey but in other countries as well (Yirmibeşoğlu 2006, p. 44).

In other words, considering the effect of social norms on crimes is a prevalent practice in jurisdiction but in countries where rule of law s not established, the social norms are applied as superior to the universal laws in the country (Yirmibeşoğlu 2006, p. 44). In this sense, according to lawyer Yirmibeşoğlu (2006) who worked on honor killings for many years, the main problem under the sentence reductions is the lack of rule of law in Turkey since the judges apply the social norms rather that the universal laws by finding loopholes

in the law. Vildan Yirmibeşoğlu (2006), criticizes this practice of judges and claims that the modern legal establishment necessitates the rule of law, which should be superior to social norms (p. 44-46).

Accordingly, Yirmibeşoğlu approaches the issue from the perspective of rule of law and states that in Turkey, the regional laws and social norms still prevail over the universal laws, which is among the main reasons behind the sentence reductions. Such a juridical convention is also underlined by the feminist lawyer Hülya Gülbahar (*Feminist Yaklaşımlar*, 2006) who states that sentence reductions should be applied to only the actions that cause grief and anger in the culprit. Furthermore, and more importantly, the actions of the victim should also be unjust/wrong for the murderer to benefit from provocation. However, the judges implement reduction upon provocation by considering that wearing a piercing, jeans or white pants are unjust acts and none of these acts are unjust-wrong in the universal laws of Turkey. All these cases indicate that the juridical convention is the main reason behind the sentence reductions and merely reforming the penal code is not sufficient to deter the killings in the name of honor in Turkey.

At this point, I want to underline that violence against women and the gap between law and implementation is not particular to Turkey. There are examples of legal cases failing to implement sentence reductions from other countries, such as England as well. In England, there is no phenomenon called “killings in the name of honor”, however, killings in the name of honor, are only one form of establishing patriarchal control over women and there are other types of establishing disciplining control over women's bodies common in US and Europe as well.

For example, domestic homicide is another type of the killing of women where jealous husbands in England get away with murder with sentence reductions based on a provocation clause. Mandy Burton (2003) criticizes the English judges for still applying the provocation clause to husbands who murdered their wives on the ground of jealousy even though a case was issued in 2000 stating that "male possessiveness and sexual jealousy should not today be an acceptable reason for loss of self control leading to homicide" (p. 280). Burton analyzes three legal court verdicts that the provocation clause based on jealousy was applied, despite the changes in the English common law over the last decade in advantage of women regarding the provocation clause (p. 280). In other words, according to Burton, there is a gap between law and implementation in England regarding the sentence reduction upon provocation and the main reason beneath this discrepancy is the judges' patriarchal mentality.

Shahrzad Mojab (2002), also underlines the universality of patriarchal violence and states that "the culture of patriarchal violence is a myth and dividing the cultures into violent and violence free is a patriarchal myth" (p. 2). Violence free society, according to Mojab (2002) is a myth because women are subject to male violence and killing everywhere, including the most modern countries such as U.S. and Sweden, where about ten women are murdered every day for wanting to divorce or leave the man. Even though the main motives of the killers in U.S. and Sweden are not identical to the motives of honor murderers in Turkey, they are similar in the sense that both aim at exerting control over women. In a nutshell, even in the countries where rule of law is well established, the problem of gender-biased interpretation of laws to the disadvantage of women, giving way to sentence reductions is prevalent.

In sum, in her juridical convention analysis, Koğacıoğlu argues that, murderers getting away with murder even though the sentence reductions are no more legally viable with the changes in the legal system is not just valid not only for Turkey but also for other legal systems where interpretation of the judges constitute the basis for verdicts. In this respect, the last part of the chapter will underline this juridical convention by demonstrating the similarities of the verdicts on sentence reductions based upon provocation before and after the penal code reform, after the following analysis the prevalence of killings in the name of honor.

3. 3 Prevalence of Killings in the Name of Honor

This part of the chapter includes the literature review regarding the killings in the name of honor. The reviewed five studies belong to UNDP ("Dynamics of Honor Killings in Turkey: Prospects for Action", Istanbul: 2005), Dr. Mazhar Bağlı (unpublished research, 2008) and Dr. Aytekin Sır (KAMER Vakfı Yayınları, Diyarbakır, 2005), of the Turkish National Police (*Töre ve Namus Cinayetleri Raporu" Istanbul:2005*) and KAMER (Reports on Honor Killings 2005, 2006). These studies are discussed below. The first study examined is that carried out by first elaborating on the UNDP on how people perceive honor and why honor crimes are committed. The next study reviewed is that conducted by KAMER, which is an in-depth analysis regarding the profile of women who are threatened by their families for having engaged in dishonorable conduct. Aytekin Sır's study will follow KAMER's and illustrate that KAMER's findings are confirmed by a wider quantitative study. Last, Mazhar Bağlı's recent study conducted with killers will be elaborated following the discussion of analysis made by the Turkish National Police.

3.3.A UNDP's Report On Honor Killings

The UNDP's report entitled "Dynamics of Honor Killings in Turkey, Prospects for Action (2005), was conducted in various districts in Istanbul, Adana, Batman and Urfa by in-depth qualitative interviewing. The participants were 195 in total and consisted of people from various professions, people living in different districts and representatives of NGOs.

According to this report, the perception of honor depends on the person's age, social background, familial ties and residence (urban or rural). During the interviews, the UNDP observed that some people consider honor to be the ultimate reason for living but could not define it properly. The definition the 19-22 year old, male university student from Şanlıurfa seems to be very widespread:

"Honor is the reason for our living now. That means we live for the cause of honor now. I don't know, but without honor life has no meaning… It is okay if you don't have money, but you must have dignity."

As the above quote illustrates, even for the males who are at the highest level of education, who are expected to be rather articulate, at university, honor is a vague but indispensable reason for living.

The findings of the UNDP's study also indicate that there is a difference between the honor perceptions of young and middle-old age men who are immigrants. Young men between the ages of 18 and 25 were hard liners and could easily talk about killing women who want

a divorce or perform acts against chastity while middle aged men were rather tolerant and forgiving. The reasons for this difference is unclear in the report but it seems like honor is a more vital part of young men's identity compared to middle aged men, who probably define their identity not primarily in terms of honor but vis-à-vis other norms as well such as taking care of the children and family and avoiding prison.

The interviews conducted by the UNDP indicate that honor is mainly a term attributed to female sexual chastity and virginity. A woman from Batman, working at a women's NGO stated that 70% of people who respond to their questionnaires claim that honor is synonymous with the women in their families. The honor of a man, on the contrary, is defined not on the basis of sexuality but on economic terms such as respecting the father and handing his earnings to the family.

However, the findings also reveal that the honor of women is not just about sexuality but a much wider concept which can go beyond sexuality and be used to exert discipline over women when they disobey. The below quote from the UNDP study illustrated the perception of honor as going beyond sexuality.

"Honor is not only related with sexuality. But what is understood by sexuality is quite wide. In Batman, a girl was executed just because she wanted a song in from the radio program 'from all lovers to those beloved'. In Mardin, the same thing happened when a girl went to the cinema and to another one when she wore trousers to a wedding…" (UNDP 2005, Batman, female, age 31, NGO activist)

The respondents' conception of honor killing and *töre* killing differed, especially in

Istanbul, among the immigrant respondents. For example, the respondents from the Black Sea region insisted that there were no *töre* killings in their region but only honor killings. A man from Southeastern Turkey said that they do not have *töre* killings in their family and like many other respondents he distanced himself from *töre* killings as much as possible. As the below quote illustrates, *töre* is considered to be distant and brutal since it is a planned action but honor killings are seen as the only fair treatment a dishonorable woman deserves.

"Töre killings are something different…It is brutality. I'm from Şirvan, but I never heard about it there. Maybe in Şanlıurfa, Adana, Mardin… However, when there is dishonorable conduct, the morals dictate to kill. In my family, there are family councils, but no killing decision has ever been made. In my family, morals are more contemporary… In my opinion, 99% of honor killings take place spontaneously depending on the situation at that moment…but in 'töre' killings some people decide beforehand that it should be done." (UNDP 2005, Istanbul, male, age 33, elementary school, from East Turkey)

In sum, the above results of the interviews point to a wide and vague perception of honor in the eye of the respondents. In other words, at the widest description, acts against honor consist of any behavior engaged in by women that challenges male dominance and family control. Taking this perception into account, the report identified the following specific dishonorable conducts as sufficient reasons to kill a woman.

3.3.A.1 Dishonorable Conduct Leading to Killings in the Name of Honor:

The UNDP's report identifies seven reasons for committing killings in the name of honor. The dishonorable conducts, from most dishonorable to least dishonorable are as follows:

1. A married woman having an extra-marital relationship

The UNDP's report involves the stories of 20 women who were involved in extra marital relationship and 14 of these cases resulted in murder. The findings indicate that extramarital relationship is the strongest reason to kill a woman in the name of honor since the definition of the term itself very much revolves around loyalty to the husband. The respondents tell that in case of such a relationship, it is not only the woman but also the male lover who gets killed. Furthermore, nobody, including the male lover's family, questions these murders. However, as illustrated below, there are various dynamics leading to the decision of the family to murder or to release the woman, illustrating the non-static nature of killings.

The dynamics of killing change if the husband cannot prove the relationship and the lover has high economic status. For example, the husband or other family members stalk the woman when she goes out to see her with her lover or the woman should get pregnant from the lover when the husband is away to be killed. In other words, mere suspect of the husband is not sufficient to kill. Furthermore, the respondents from the UNDP report stated that tribal relations play a significant role in determining punishment. For example, if the lover comes from an economically well-off tribe, than it becomes much harder to kill him. Instead, families have other settlements such as bargaining for money in return. The phenomenon of exchanging material goods or money in return for the tainted honor indicates that honor has connotations in economic power relations as well. In other words, as people describe honor as the sole issue to be lived for, and as a concept that cannot be gained once tainted, from time to time it is possible to bargain for the tainted honor.

The respondents of the UNDP report told the stories of families who had to sell their houses for such restoration of honor. These economic transactions in return for cleansing the honor support Koğacıoğlu's finding that traditions and the concept of honor is not static; it evolves and adapts to changing circumstances.

Another dynamic which determines the decision to kill involves the mentality of the husband regarding the adulterous conduct. For example, in one of the cases where the woman met her lover in a car, the husband protected the wife and told the family that they would migrate. The family respected husband's decision but they cut the woman's nose to leave a life time mark on her face. This incidence shows that honor over women's body is not a phenomenon between husband and wife, but as Sirman (2006) states, "patterns of politics and gender established by kinship, large households and family operate together" (p. 54). This joint operation of large households and family reveal itself in the form of killing the married woman in a relationship since the husband does not see divorce as a solution. Divorce is not an option because, according to the UNDP's respondents, being engaged in a relationship even after divorce is not an option for the ex-wives.

2. A married woman running away with a man

The same rules of killing apply to a married woman running away with her lover. The act is considered a very serious one in the society and has a specific name like "running away from the marriage bed," In all the stories, the woman, the man or both were killed. In one of the cases where the woman and the lover escaped, the brother of the lover was killed in the name of honor and the lover's family had to accept this.

The most striking inference from the stories of the dishonorable married woman is that, according to the respondents, the incidents are disguised and covered up by the families. In other words, none of these incidences reached the police or the court. This can especially be possible since the women who were killed do not have any type of identification cards; they do not exist in the state records. This makes it much easier for families to get away with murder.

3. A married woman getting separated or divorced

The woman deserves to be killed even if she did not commit adultery like in the above cases. It is sufficient to opt for divorce or separation. According to the report, the woman can get divorced when the husband wants to get a second wife and the second wife insists on official marriage. Another acceptable divorce is when the woman's family decides that the husband cannot take care of the daughter and gives permission for divorce. However, a woman cannot decide on her own, independently to divorce the husband since it is considered an extremely devious act deserving punishment.

Even if a woman succeeds at obtaining a divorce, she still risks getting killed on the grounds of dishonorable conduct if she has a relationship with another man after the divorce. Furthermore, a divorced woman is in a very strictly controlled environment by her ex-husband, her family and relatives since she is seen as a potential threat to the family honor as someone who has already acted disobediently.

4. A divorced woman having a relationship with another man

Besides married and divorced women, unmarried women are also in danger of being killed if they have lovers or run away with a man. In the case of unmarried women, the stories of

the respondents indicate that the younger the woman is, the more likely she is to be killed. Single girls committing a dishonorable act are killed at the age of 13-14. However, single women are supposedly luckier than married woman if they get lovers because there is the possibility of getting married with the lover and cleaning the honor in that way. However, in incidents where marriage is not possible, such as if the man is already married, the family usually decides to kill the girl.

5. A young unmarried girl having a relationship

The findings of the report have indications contrary to the prevalent idea that the sons in the family always obey the family verdict to kill the daughter. For example, there are incidents where the brother independently acts against the family decision and goes for another solution to the issue by helping the eloped couple to get married. There were respondents who were even against killing the single girl if she was caught in bed with the lover:

"I had a friend and he had a girl friend. He loved her very much. I heard that they were caught in bed, the woman was killed and the man is still hiding. We have denounced these people…They loved one another; okay what they did was not right, but one should not do this. They should have called them before everybody heard about this affair and they could have gotten them married in an appropriate way…If people hear about it, then they would probably blame them, make them feel ashamed later when they have a home or start a family." (UNDP 2005, Şanlıurfa, male, age 35)

7. A woman (married or unmarried) being kidnapped and/or raped

The above quote belongs to a man with rather more tolerant principles, at least towards an unmarried girl. However, according to the report, there are people ready to kill a raped girl since she no longer has a value as a non-virgin. In other words, there are a significant number of people who consider the raped woman (married or single) as guilty as the man who rapes her. The anecdote below from a women's NGO in Diyarbakır illustrates the attitude against raped woman.

"I observed it at her (a raped girl's) funeral; she had been killed by her brother and the brother was in jail…Usually mothers do not cry after the dead in such cases; however, I think the fact that the victim was taken up by women's organizations and other NGOs had encouraged the woman and aroused her instincts as a mother so that she started to cry by her grave. At that moment, her younger son (9 or 10 years old) warned the mother by kicking her and saying 'Why do you cry after all? Cry for our brother who is in jail instead of that whore. He will stay in prison for so many years…' Then one starts to think about the young people who become murderers. Families put so much pressure on them, saying that they could clean the family honor; then they are forced to kill their sisters. In other words, it is different when people themselves feel that 'it is our honor, we have to go and kill', but when the family forces the young person by saying that he must kill, this is his task, etc., this situation is really more complicated." (Şanlıurfa, from a group interview of women at a women's NGO)

3.3.B KAMER's Findings on Prevalence of Honor Killings

The above findings of the UNDP are supported by KAMER's 2006 report on killings in the name of honor. KAMER reports the statistical information regarding women who applied

to them for protection and shelter. 158 women who were in danger of being killed applied between 2003-2006.

94% of these women were subject to violence by their families, including the spouse, father and brothers, before applying. The death verdict was also given by primarily the woman's family or spouse. The study confirms that the most common reason to kill a woman on the basis of honor is actually disobedience and not chastity. In other words, KAMER's report adds to the UNDP's report by extracting the disobedient acts deemed to be dishonorable acts by the victim's family. Among the disobedient acts are refusal to marry the person the family chooses, refusing to have sex with a member of the family, complaining about the husband to the police, challenging the elders or husband by arguing and refusing prostitution. Slander turned out to be the second reason and UNDP's seven dishonorable conducts came only after these two most common accusations. This comparison of the UNDP and KAMER reports is striking in the sense that the difference indicates the possibility of a significant variation between what people say about honor and what happens in reality. In other words, the comparison of KAMER's report, which was inferred from real stories, and UNDP's report which concluded by interviewing people on the concept, reveal that in reality, attitudes towards disobedient women is much harsher even though people would not report that a disobedient woman would deserve to die.

The reports of KAMER and the UNDP in brief¨; the two studies indicate considerable qualitative results regarding the prevalence and underlying reasons of honor killings. However, there is no generalizable quantitative study on honor killings except for the study of the Turkish National Police encompassing the urban cities and Prof. Aytekin Sır's research on people's perception of honor conducted in Eastern villages and cities in the East where migration is high.

3.3.C Aytekin Sır's Research

Aytekin Sır's research (KAMER Vakfı Yayınları, Diyarbakır, 2005) is compatible with the findings of the UNDP but since it was conducted with 423 people from the Kurdish, Zaza and Alawi villages in the East, the extent of its generalizability is questionable. However, the findings indicate striking results especially with a qualitative question asking whether a single girl refusing to marry the uncle's son should be punished, 91% said no. The discrepancy between such a declaration and KAMER's findings that disobedience is a significant factor contributing to the killing of women should be researched.

3.3.D The Turkish National Police Study

The Turkish National Police (*Töre ve Namus Cinayetleri Raporu" Istanbul:2005*) questionably categorized 1091 murders in all 81 cities between 2000-2005, all of which were all considered under the rubric of töre. According to the national police *töre*, then is an all encompassing term which includes blood feud, killings in the name of honor, familial conflict, bridal exchanging, sexual harassment, forbidden relationship (such as adultery or premarital sex) and rape. In other words, the analysis conducted by the national police indicated that killings in the name of honor and killings in the name of rape, forbidden relationship, bridal exchange, sexual harassment and familial conflict were not the same thing. However, reports of Aytekin Sır, KAMER and the UNDP indicate that families kill women in the name of honor when they are raped or sexually harassed or engage in forbidden relationships.

In this sense, the analysis of the findings of the national police regarding the killings in the

name of honor should be re-evaluated as follows.

Department's Categorization and Analysis Regarding the Reasons of *Töre* Killings:

Table I. The reasons for the Killings that can be Categorized under the Rubric of Töre									
Province	Blood Feud	Bridal Exchange	Familial Conflict	Sexual Harassment	Forbidden Rel.	Rape	Honor	Other	Total
81	109	30	318	95	159	36	322	19	1091

Above, is the categorization made by the national police. It can be seen that honor killings make up most common reason to kill in the name of *töre* (29%). Familial conflict is in fact as strong as honor but the content of the familial conflict is not explained. However, the findings should be re-arranged as follows based on the studies conducted.

Table II. reasons for the Killings that can be Categorized under the Rubric of Töre **Re-arranged**					
Province	Blood Feud	Familial Conflict	Honor	Other	Total
81	109	318	642	19	1091

With this re-arrangement, the percentage of murders in the name of honor becomes 59%, which is much more striking.

The study, however, contrary to expectations indicates that most of the victims are men even though 59% of the killings were made in the name of honor. Out of 1190 killed, 710 (60%) were men and 480 (40%) were women. The ratio between men and women who were perpetrators is as expected; out of 1593 suspects 1413 (89%) men and 180 (11%) women. Even though this study indicates that more men are killed than women in the cities

when it comes to honor, the number of women who were killed is still significant and the fact that almost all the murderers are men confirms the patriarchal violence against women and men in the name of honor.

The above qualitative and quantitative studies confirm that killings in the name of honor occur in all parts of Turkey in all sorts of social, economic and ethnic milieu. Furthermore, such violations are supported by the state just as the following example depicts. In the UNDP's report, a journalist from Adana stated that it is not only the family members and tribes but also the state officials, including the police, who demonstrate tolerance towards people who commit crimes involving honor, as illustrated in the following quote.

"The woman was divorced and she had relationships with other men. People in the community start to provoke her son. Then the son goes and kills the lover of his mother. I was in the room when the police interrogated him. I saw how the police officers were acting toward him. They were in a way praising him by saying 'good for you; here, have a cigarette, have a cup of tea on my account' etc…" (Adana, male, age 30, journalist, Adana native)

Such a tolerant, and even admiring, stance towards honor murderers continues in prison as well. Mazhar Bağlı, from Dicle University conducted interviews in 2007 with murderers to understand the rationale behind the killings and was kind enough to share the first findings of the unfinished study. According to his interviews, the murderers do not regret what they have. They also say that they would have done the same thing even if the punishment was much more severe. Also many think that they could have received much lesser sentences if they had had a better lawyer. They are well respected in prison by other criminals and they

are accepted into all kinds of social environments after they get out of prison.

The findings of Bağlı also disprove many widely held beliefs about the killers. For example, the interviews indicate that the murderer's economic situation or education does not have an independent effect on the killings. Furthermore, the families do not usually make minors in the family commit the crime; usually the elders kill the dishonorable woman.

In sum, the social respect and acceptance after the cleansing of honor acts as the strongest motive for the killers to commit these crimes. In other words, the social psychological factor of compliance plays a significant role in the murder of these women and this is also the main rationale of the provocation clause of the penal code. However, the provocation clause can be interpreted by the judges to the disadvantage of woman sometimes considering wearing jeans as provocation under the rubric of "unjust-wrong acts." The following is the analysis these legal cases before and after the penal code reform, illustrating the social convention between the judges either supporting or having the same mentality with the killers who committed the murders in the name of honor.

3.4 **Legal Cases Where the Provocation Clause was implemented**

The first part of this section will include a comparison of the old penal code and the new penal code regarding the provocation clause. In the second part, the legal cases in which the provocation clause was implemented on the basis of the old penal code will be discussed. Finally, the gap between law and implementation regarding the provocation clause of the new penal code will be analyzed by providing examples of legal cases.

3.4.A Comparison of Old and New Penal Codes and Legal Description of the Provocation Clause

Devrim Aydın (2005) compares the old and new penal code in terms of the provocation clause. Aydın defines provocation as a legal term as follows "provocation, in its simplest form, is the sentence reduction in a crime where the suspect committed a crime as a result of other people's unjust-wrongful acts and committed a reaction crime" (p. 228). The author states that the provocation clause has a place in modern law but the main issue is about the interpretation of the concept.

The interpretation of the provocation clause became problematic with the new penal code since the term honor was not included under the rubric of qualified murders that require life sentences. However, the term *töre* was included, instead, which according to prominent feminist lawyers such as Hülya Gülbahar, should be interpreted to encompass all sorts of honor killings (http://www.bianet.org). Aydın (2005) makes a similar argument and states that the provocation clause should not be interpreted to include honor killings because the new penal code defines provocation not only on the basis of provocation but also on the basis of unjust-wrong acts of the victim. Another change regarding the provocation clause in the new code is removing the differentiation between modest and excessive provocation and leaving the amount of sentence reduction to the judges' discretion.

Aydın (2005) states that the above changes aim at preventing *töre* and honor killings as explained in the rationale of the law in the penal code. Accordingly, for the provocation clause to be implemented in the new penal code, the victim should engage in wrongful and unjust act that generate feelings of rage and suffering (*hiddet ve elem*). In other words, the effect of the unjust act on the suspect's feelings which cause a crime of passion is attributed

a legal value with the provocation clause.

Aydın (2005) make a thorough explanation of what constitutes an unjust act. The unjust act should primarily cause feelings of rage and suffering in the suspect. Secondly, the unjust act should be unjust-wrong (p 233). Being unjust-wrong is defined as being against the law, e.g., adultery, which does not constitute a crime per se but is a cause for divorce in the civil law (p. 234). Aydın (2005) states that provocation with an unjust act can be accepted as provocation and sentence reductions can be implemented if the unjust act is against social norms as well. The rationale behind the imposition of unjust acts is to preserve the legal order and this constitutes the main rationale behind implementing sentence reductions when the victim engaged in acts that are incompatible with law.

Accordingly, acts such as not greeting someone on the street, not visiting the family during the holiday, acting against general traditional codes of conduct are not acceptable legal unjust acts even if they provoke the suspects because they do not contradict law. Aydın (2005) criticizes the lawmaker for not including the term honor in the law itself but just writing it under the reasons-justifications clause and leading to confusion regarding sentence reduction on honor killings. In conclusion, the old penal code legally gave the judges discretion to provide sentence reductions to killers who committed crime in the name of honor and many judges did not choose certain clauses over others to avoid sentence reductions and implement punishment increase (Koğacıoğlu, 2004). However, with the new penal code, the judges who implement sentence reductions are not only using their own discretion of interpretation but acting against law when they implement sentence reductions to murderers of honor killings (Hülya Gülbahar, 2006, http://www.bianet.org/). Below is a comparison of the sentence reductions before and after the penal code reform,

which confirms the continuation of the juridical convention to the disadvantage of women, illustrating the gap between law and implementation.

3.4.B Legal Cases Before and after the Reform

The legal cases that ended with sentence reduction verdict before the reform were taken from the book of lawyer Vildan Yirmibeşoğlu (2006) and the study of the Diyarbakır Bar Association. The sentence reduction of honor killings after the reform, constituting a period of three years between June 1st 2005 and May 2008 were taken from newspapers and various feminist web sites such as *BIANET, Uçan Süpürge, Kazete and Feminist Yaklaşımlar.*

3.4.B.1 Analysis of the Gap between Law and Implementation before the 2005 Reform

The Diyarbakır Bar Association's work is a rather compressed one analyzing the cases between 1999-2005 to find out the juridical attitudes towards honor, the defenses of the families and the reasons why the judges implemented sentence reductions. During the period between 1999-2005, 59 legal cases reached a verdict in which 46 resulted in sentence reduction due to provocation. There were 71 victims and 81 murder suspects. Half of the victims were men and the other half were women. The findings of the study reveal that when the victims were men, the justification for sentence reduction upon unjust provocation were rape, sexual harassment, abduction and forcing for prostitution. The killers of women, on the other hand, benefited from sentence reductions because the women acted against chastity, flirted with other men, engaged in relationship with other men and cheated.

Table III. Rationale of the judges to implement sentence reductions upon significant provocation when the victims are men	
Raping the perpetrator's wife/daughter or sister-in-law	6
Forcing the daughter of the perpetrator into prostitution	1
Sexual Harassment	1
Having relationship with the wife	3
Abducting the niece	1
Total	12

Besides the above analysis of the Bar Association, a detailed analysis of the cases were was conducted to provide a better understanding of the patterns that led to the provocation decisions. I reached the following by utilizing the data provided by the Diyarbakır Bar Association regarding the rationale of the judges about giving sentence reductions.

Table IV. Rationale of the judges for granting sentence reductions Upon simple Provocation when the victims are men	
Raping the perpetrator's sister/daughter/wife	7
Slandering the perpetrator's wife	1
Sexually harassing the perpetrator's wife	2
Abduction/Attempt at abduction	4
Joking about honor	1
Forcing the perpetrator into prostitution	2
Having relations with the perpetrator's wife	3
Forcing the perpetrator's sister into prostitution	1
Total	21

Table V. Rationale of the judges for granting sentence reductions Upon Significant Provocation when the victims are women	
Gossip about the women that she has been acting against chastity	1
Going around with men	1
Gossip about the woman that she has been cheating	4
Cheating	2
Total	8

Table VI. Rationale of the judges for granting sentence reductions Upon simple Provocation when the victims are women	
Gossip about the women that she has been acting against chastity	7
Gossip about the woman that she has been cheating	2
Being raped	1
Going around with men	3
Leading a dishonorable life and insulting the perpetrator	1
Cheating	3
Total	17

Even though the above number of perpetrators and victims is rather limited to make generalizable inferences. Certain patterns can be detected in whether and to what extent a judge decides to impose a sentence reduction. There seems to be a difference in the degree of sentence reductions made for men and women. For example, judges decided on lesser sentence reduction for two women who killed men who had forced them into prostitution, while handing out greater sentence reductions to man who had killed the person who had f forced his daughter into prostitution.

From another perspective, for the judges, joking about the honor of a man was considered as provocative as forcing a woman into prostitution. A pattern emerges from these cases: judges implement sentence reductions to female suspects if the victim has committed something against the law whereas male suspect get sentence reductions even if the victim has not done anything wrong as detailed below.

In the case of women victims, reductions were given even if the woman was the victim who got raped. Furthermore, gossip about the women was reason enough to kill; judges gave sentence reductions to killers who had committed murder only on the basis of gossip. These decisions are not legally justifiable since the acts of the women are not illegal and they legally cannot be interpreted as unjust provocations. In sum, based on the definition of Aydın and the interviews of Hülya Gülbahar, the judges were making decisions illegally even before the penal code since they were not interpreting the provocation clause properly.

In addition to the Bar Association's study, Vildan Yirmibeşoğlu, an attorney, published a book including many cases regarding sentence reductions and honor killings.

Yirmibeşoğlu (2006) includes 300 legal cases between 2000-2005. Her findings are interesting even though many of the cases she describes do not include the verdicts of the judges but the rationale of the murderers. The cases strikingly reveal that the defendants occasionally change their stories after talking to a lawyer. There have even been cases of blood feud where the culprit told the story as one of honor but the judge caught the loophole in the story and imposed a life sentence on the basis of blood feud. This example illustrates that when the victims are men, judges may more often be more suspicious of stories of the perpetrators.

Yimibeşoğlu's cases show that the judges gave sentence reductions even for the murder of a girl who liked to wander around a lot. In this case, the 15 year- old brother killed the 16 year-old girl. In the defense, the lawyer of the 15 year-old claimed that *töre* and the societal relations forced the boy to commit the crime. In other words, even the lawyer accepted that the murder was a constructed and panned one. However, in the end, the prosecutor could not find any evidence that the murder was planned and the boy was released after two and a half years.

Besides the gender-discriminatory decisions, Yirmibeşoğlu's study involves decisions of judges that do not consider, for instance, gossip as a reason for sentence reductions. For instance, in a case where the perpetrator claimed that his wife had a relationship with the son, the judge decided that the suspect was telling conflicting stories after listening to witnesses. In the end, the judge decided a sentence reduction was not appropriate when the perpetrator feels rage and anguish from a non-existing event. Therefore, the provocation clauses were not used. At a presentation in 2008, Yirmibeşoğlu begins by stating that the judges are affected by the regional traditions and social norms when reaching a verdict but

she also analyzes the changes in the judges' attitudes especially towards the sentence reductions regarding the women's personal lives such as marriage and divorce. Yirmibeşoğlu adds that there are even contradictions in the decisions of the same judge after the reform regarding sentence reductions, which can be regarded as a positive improvement (http://www.europarl.europa.eu).

In conclusion, the studies of the Bar Association and Yirmibeşoğlu indicate that there is a juridical convention regarding the decisions on honor crimes leading to use of the provocation clause that discriminates between the genders. Furthermore, some cases in Yirmibeşoğlu's study show that, just as Koğacıoğlu (2004) argues, the judges can pick some clauses over others to reject the use of provocation clauses. The case studies also demonstrate that the mentality of the judges plays a significant role in decision- making since the sentence reductions are based upon interpretation and unlawful interpretation is usually not subject to appeal. Based on these patterns, the following part of the study will evaluate the sentence reductions after the penal code reform of 2005 with the hypothesis that the juridical convention among the judges still continues and sentence reductions prevail as a result of this convention.

3.4.B.2 Analysis of the Gap between Law and Implementation after the 2005 Reform

Below, I will present fourteen cases of sentence reductions that were implemented between 2005-2008. A detailed inclusion of the judge's rationale was identified from various sources, including the Internet, newspapers, feminist sites and independent news networks. The analysis of these cases together points to the following six patterns regarding the reasons behind the gap between law and implementation regarding sentence reduction:

1. The lawyers either are not aware of the new law or they demand sentence reduction upon unjust acts with no justifiable defense

2. Judges are either not aware of the law or they continue to apply the sentence reductions by considering the women's act as an unjust-wrongful act when it is against social norms

3. The court of appeal *(yargıtay*) usually agrees with the judge's decisions

4. The judges who oppose sentence reductions when there is no unjust act in contradiction with the law are women

5. There are positive improvements regarding the extinction of sentence reductions for the murderers of raped girls.

6. A new clause (765 of the new penal code) is used as grounds for sentence reduction (proper conducts of suspects during trial including, proper behavior in the courtroom and not escaping).

Sentence Reductions on the basis of Unjust-Wrong Acts, Legal Cases:

Legal information before beginning the analysis of the cases is necessary to clarify some of the decisions. In cases where there are no witnesses or counter evidence the court considers the perpetrator's depiction of the story as reality and decides accordingly.

For example, in February 2008, Ahmet Demir (56) was sentenced to 15 years after killing his wife Hatice Demir (41) upon significant unjust provocation on the grounds that she was cheating on him with her ex-husband (http://www.nethaber.com). The perpetrator also claimed that his wife tried to kill him by giving him a heart attack by having sex after giving him strange herbal tea. In addition, he claimed that he had increased heart

palpitations every time they had sex after having that tea and he somehow later found out that the herbs in the tea worked as to give him heart attack during heavy physical activity like sex. The perpetrator, who is blind, also claimed that when he suspected his wife's cheating he asked her about the issue and the wife replied by saying that “I am enough for both of you.” After these so-called provocations the perpetrator killed the victim with an ax. His explanations were sufficient enough to consider the murder as having been committed under extraordinary provocation and the sentence reduction was decreased to 15 years from life imprisonment.

Ahmet Demir's case illustrates that there is limited knowledge of the new code since the term significant unjust provocation is still used even though with the new code there is no such differentiation. Second, sentence reduction is made on the grounds that the victim was supposedly cheating on the perpetrator because there was no clear evidence.

The case below is an example where the decision conflicts with the new penal code. This case was taken from a discussion forum of lawyers and law students where some male students argued that the sentence reduction was justifiable. In this murder case, the crime was committed in 2008 in the name of honor by a father in Adana who shot his 19 year old daughter after she ran away with her lover. The perpetrator was first given a life sentence, but then his sentence was reduced to 18 years due to significant provocation based on the unjust acts of the victim and also proper conduct during the trial.

The father justified the crime as follows (www.radikal.com.tr): “We moved to Istanbul in 2005 and moved back to Adana when we were not able to find a job. My son and daughter stayed in Istanbul and continued working at a factory with my brother. After a while my

brother called and told me to get my children because they misbehaving. When I went to Istanbul, I found out that my daughter had run away with a man who was married with two children. I looked for my daughter and the police finally found her. She was ashamed of what she had done and wanted to come back to Adana with me. One day she told me that she wanted to go back to Istanbul and marry the man. However, I told her that this was impossible since the man was married. Then she told me that she had sexual intercourse with the man in the factory and I went mad at that point. I took the gun and pointed it to my chin asking her to choose between me and her lover. She jumped over me at that point and the gun fired, accidentally killing her..."

According to the news, the family thought that the 18-year sentence was too much for such an honor crime. As depicted in the story of the culprit, the girl was single, 19 years old, therefore, of lawful age, and she had not committed any crime but rather had disobeyed her father. According to Aydın's (2005) and Gülbahar's (2007) explanation on how to use provocation based upon an unjust act, this court decision was contrary to clauses of the new penal code.

Another case from http://www.nethaber.com, is a rather tragic-comic one where the sentence was reduced, after the penal code reform by the court of appeal based on proper conduct in the courtroom, from life imprisonment without parole to simply imprisonment in February 2008. The murderer in this case was a father who murdered his raped daughter after the family had reached the decision that she should die. The murder had been committed four years before and the father was sentenced to life imprisonment without parole, but his lawyer appealed after the reform to enable him to benefit from the proper conduct sentence reduction and he succeeded. This case is an example where the lawyers

and the judges agree on the need to implement sentence reductions even when the rationale of the murder was rape and the decision was a planned one.

Another case where the father received a reduced sentence - brought down from life imprisonment without parole lifetime imprisonment to 17.5 years for murdering his daughter occurred in Trabzon in December 2007 (http://www.nethaber.com). The father killed the daughter on the grounds that he was provoked when his daughter acted against him in a way that was contrary to his sense of honor. The perpetrator had called the victim to his house on the day of the incident and they had had an argument about the dishonorable acts of the daughter. The perpetrator was drunk when he shot the daughter that night. The rationale of the court for sentence reduction was again the same, that the crime had been committed under extraordinary unjust provocation. Again, in this case it can be seen that the new penal code was not implemented correctly and that a sentence reduction was given even though the daughter had not broken the law.

Another similar sentence reduction was granted to a husband in Izmir on the grounds that he had been unjustly provoked when his wife flirtatiously asked the time to a group of strangers and wore jeans (http://www.nethaber.com). The event took place in August 2007 at a shopping mall with the perpetrator stabbing his wife 15 times and killing her in front of their two children. The court decided that the sentence should be reduced to 20 years upon unjust provocation and the declaration of the killer that he regretted his crime. This case is a significant example of where the court decision regarding the sentence reductions can be independent of the norms of the region in a negative way. In other words, Izmir is a relatively large modern westernized city where the norms are quite different from a small town where people are familiar with each other. However, the judge did not take into

consideration this social environment and implemented sentence reductions where there were obviously no acts on the part of the woman that contradicts the law. Furthermore, the acts of the woman in this case did not even contradict social norms. This case is also a good example of the juridical convention that Koğacıoğlu (2004) mentions since the new penal code could be applied clearly but the judge continued to apply the old law.

Women, however, cannot benefit occasionally from similar types of sentence reductions. For example, in November 2006 in Trabzon, a woman killed a man who entered her house and raped her (http://www.nethaber.com). The man went to another room of the house and told the victim that he was waiting for her daughter-in-law and he would rape her as well. The perpetrator stated that the man had tried to rape her again by attacking her from behind and that's when she decided to kill him; she engaged in role playing and acted as if she wanted the intercourse as well. After the man was convinced, she got permission to go to the other room and there she took the gun and shot him. In this case, he court decided that the crime was committed under extraordinary provocation by the unjust act and sentenced the woman to ten years of imprisonment. In other words, the court treated this raped and threatened woman the same as the husbands who murder the wives for wearing jeans or fathers killing the daughters on grounds of acting against chastity. However, the judge in this case, could have implemented the self-defense clause of the new penal code and decide on acquitting the woman just as in the following case.

On September 2007, a verdict was reached to acquit a girl (23) who had killed a man who was raping his mother on a farm where they had been working three years before in 2004 (http://www.nethaber.com). The girl told the court that in the morning of the event she heard her mother's screams calling for help and asking to be rescued. She went out and saw

the half-naked man with an ax trying to rape her mother. Then, she shot the man and claimed that she had committed the crime in the name of honor. The court first decided to sentence the girl to 24 years in prison and then decreased the punishment to 3.5 years and released the girl. However, after the new penal code, a self-defense clause was added with no 27/2 and the case of the girl was reopened accordingly. The court decided to acquit her on the grounds that she committed the crime in self defense.

In the above case, the rape is not even directed at the girl, it is directed at the mother. And the lawyer agrees that the girl could have shot the gun in a way as to injure and not kill the rapist. However, the lawyer also argued, in her defense, that the crime had been committed with anxiety and panic to save the mother and the judge accepted the defense. However, in the previous case, the rape was directed against the woman and she was re-attacked with the threat of her daughter-in-law being raped. Somehow, the court reached the verdict that the woman had carefully planned the murder and had not committed the crime in self defense. The comparison of these two cases depicts the discrepancies of the court decisions regarding honor when the killer is a woman.

The above comparison, in other words, reveals a significant dynamic in the court cases for reducing sentences upon provocation. Another comparison between the two verdicts of the same court with only three weeks in between in the Adana Fifth Criminal Court in July 2004 also represents such a dynamic that discriminates on the basis of gender. In one these cases the murderer was a woman, Rabia Yoldaş, who had killed her husband after being subject to fourteen years of physical and mental abuse. Rabia'a lawyers argued that she should be tried on the basis of significant sentence reduction upon provocation because of relationship's violent history.

The violent history is that, Rabia had to marry the husband when she was fourteen since she was raped by him. After the marriage, the husband began beating her every day, sometimes until she fainted (www.radikal.com.tr). In a letter she wrote from prison, Rabia said that her husband had abused her because breakfast was not ready, she fed the children with his food, she was silent, she replies back, etc... She also said that her head had been cut by an ax, smashed against a wall so hard that her cousin had to come and clean the blood from the wall, which was another reason for her husband to beat her. Finally, after years of struggle Rabia succeeded in opening a divorce case and moving to her father's house. Her husband called her one day and spoke with an apologizing gentle so she agreed to talk to him at home. He came and began insulting her again, threatening to sell her into prostitution. Rabia lost control and shot her husband. Based on these incidents, Rabia's lawyers made their defense and requested that the case be seen in light of extraordinary provocation. However, the five members of the court unanimously decided that these acts of the husband constituted only simple reasons for provocation and convicted Rabia to 24 years in prison. The same court, however, gave different verdicts when the suspect was a man as illustrated below.

The same judges of the above court had issued a verdict and decreased the sentence of a man who killed his ex-wife because she was having a relationship with another man (www.radikal.com.tr). The defense of the man was that he and the victim were separated for a while and he saw a photograph of her at home with another man. After this, he took the children away and let her see the kids outside. One day, when they again met for the kids, the killer saw that the woman was coming out from a luxurious car and he lost his temper at that point. He killed the ex-wife by stabbing her eight times. The babysitter

brought the photographs as proof of a relationship and the court accepted them to be the basis for reducing the sentence given extraordinary unjust provocation. The man first got 24 years in prison but with the sentence reductions, the punishment was reduced to 6 years and eight months.

The comparison of the above cases, which were decided by the same judges, is a relevant example of Hülya Gülbahar's argument that the sentence reductions on the basis of provocation is given to male perpetrators most of the time while women cannot benefit from the reductions since the judges discriminate between men and women (www.kazete.com.tr). Gülbahar states that there are countless examples of cases where the provocation clause is applied only to men. For example, in 1997 the murderers of a woman were sentenced to 4.5 years in prison after their sentence was reduced upon extraordinary provocation from 16 years, since the victim ran away with her lover. In 1996, a 14 year-old boy cut Sevda's throat in the middle of the street during the day and since he was a minor, got a sentence of only 2.5 years.

The above case was also a concern for lawyer Vildan Yirmibeşoğlu (2006). Yirmibeşoğlu talks about Sevda's murder as well and states that the fourteen year old cut her throat with the help of other people who forcefully grabbed her hands to help the murder but none of these people were investigated or accused. In sum, according to lawyer Hülya Gülbahar, these cases indicate that, the provocation clause is used arbitrarily when men are killers and women are victims and it is not easily implemented when women kill men.

The penal code, however, brought some positive changes as well. For example there are cases where the judges no longer give sentence reductions to killers who commit crimes on

the basis of *tore,* after a family counsel has decided that such a crime be committed. The lifetime imprisonment of the murderers of Güldünya Tören, Yasemin Çetin and Meryem Sezgin are examples of such verdicts. In other words, as stated in the penal code, *töre* killings are considered to be exempt from sentence reduction upon provocation in some of the cases. In sum, another dynamic regarding the sentence reductions is the manner in the honor killing is carried out, in the sense that there are judges who do not give sentence reductions to *töre* killings, which are pre-planned crimes rather than spontaneous killings.

The above cases demonstrate that the courts differentiate between *töre* killers and honor killers, punishing *töre* and decreasing the punishment for honor killings. These verdicts are compatible with people's perception of honor as depicted in the UNDP's report, where people distanced themselves from *töre* claiming that there are no such practices in their family but standing up for the concept of honor. The court decisions are in line with such a mentality, condemning *töre* but applauding honor killings. This lauding results in some killings being considered justified in the name of honor and, hence, worry of receiving a reduced sentence, as illustrated with the below court decision.

In this case, the killer claimed that he had murdered his wife in the name of honor. The wife was very pretty and she was known by the nickname “model Aysel” in their neighborhood. The husband stated that he loved his wife very much and was very jealous of her. He sent the son and the wife to Gelibolu for vacation and that was the time when he heard gossip that the woman was having affairs with other men. He called her back to Izmir/Urla and saw the birth control pills in her bag, which provoked him, but he managed to control himself. Later he saw that she had pierced her belly and the last straw was cell phone pictures of her taken with other men. After all of these, the man lost his control and

killed the wife, although he did confess that he regretted what he did. The court decided to reduce the sentence of life imprisonment and give the man 20 years in prison. However, the son got upset by the decision and claimed that the murder had been committed because of economic reasons and his father already knew that the mother was taking pills; in fact, he was the one who had bought the pills from the drug store. The son insisted that the mother had not engaged in dishonorable conduct and the father committed the crime only because of money. This case illustrates that there might be other reasons behind the killings which are much different from honor and the sentence reductions upon unjust provocation makes it easier for the killers to commit crimes against women.

The provocation clause is abused by murderers occasionally to justify their acts. For instance, the murderers of Gülistan Gümüş, who killed the 20 year old in 2006 because she refused to marry the man she was told she had to marry, while she was hiding in a trunk, with Kalashnikovs defended themselves by saying that their arrest was against the law since they committed a crime in the name of honor and not in the name of *töre*. Their lawyer stated that Gülistan was like a bird in a cage; she was very easy to kill by someone who had lost control, and that there was no way that the crime was a preplanned *töre* murder. The lawyer further claimed that *töre* is like the word of *Allah* and comes above everything in the region and this should be a valid ground to reduce the sentences. However, the case was publicized and the defense of the lawyer was widely criticized in the media and among the feminist organizations. After two years of trial, the killers were convicted to life in imprison. This case shows that killers believe that if they argue the crime was committed in the name of honor, they can get a sentence reduction. This is not completely untrue but the case reveals another dynamic in sentence reductions: When the case is publicized, the judges refrain from deciding on sentence reductions.

The final case is a long one and needs elaboration since it represents several dynamics regarding the sentence reductions in killings done in the name of honor upon provocation. These dynamics are the gender of the judges, gender of the victim and the gender of the killer.

The victim, Özlem was killed by her husband in 2004 on grounds that she had refused to have sex with him, kicked him out of bed and insulted him (www.hukuki.net). The court decided that these taken altogether constituted extraordinary unjust provocation and the sentence was reduced to 24 years from life in prison. The prosecutor was a woman, Türkan Yabancı, and she was against sentence reductions on the grounds that the victim was not obliged to have sexual relations all the time and the killer's claims that she insulted the husband is a construct of the murderer to receive sentence reduction.

The important catch in this case was that the husband was occasionally beating the victim and he confessed this during the trial after listening to various witnesses who saw the bruised face of Özlem. However, the judges stated that there was no evidence of physical violence against the victim even though the killer himself had confessed that he had been beating the victim but not as much as the witnesses had claimed. The sentence reduction was given with this rationale, however, with the objection of a woman judge, Şenay Toprak who stated that "I do not agree with the verdict of the court since there are no unjust acts that were in contradiction with the law in the murder and the victim has no guilt at all in this incident..." Finally, the Court of Higher Appeal (*Yargıtay 1. Ceza Mahkemesi*), consisting of five men decided to on a sentence reduction.

The above case was introduced in the discussion forum of www.hukuki.net, a network of lawyers, by lawyer Dilek Kuzulu Yüksel, giving way to a discussion regarding the verdict. It was observed that the discussion took place between male and female lawyers regarding whether the rejection of sexual relations, in combination with insults, would result in unjust and wrongful acts. The females criticized the decision whereas most males claimed that these acts taken altogether can provoke feelings of anger, rage and anguish in the killer, leading to a justification of the sentence reduction. What the male representatives missed, however, was that the "unjust act" defined by law should be in contradiction with law and refusing to have intercourse is not among such an act. This case also shows that there is a possibility of questioning the sentence reductions for honor murderers when the judge and prosecutor is a woman. Furthermore, when the judges are men, sentence reduction are debated less and more easily implemented.

3.5 CONCLUSION

The primary aim of this chapter was to detect patterns of the gap between law and implementation regarding the penal code reform of 2005 using the sentence reductions for killings in the name of honor as case studies. The legal verdicts of sentence reductions before and after the penal code reform were compared with the theoretical framework of Dicle Koğacıoğlu, depicting a juridical convention when deciding the verdicts and not using alternative clauses to increase the punishment of killers.

The first part of the chapter indicates that honor crimes are prevalent throughout Turkey, as stated in the report of the National Police. Furthermore, the profile of the murderers is independent of economic, social and educational and ethnic backgrounds, as determined by Mazhar Bağlı's research. In other words, the findings show that educated and

economically well off people from all parts of Turkey commit honor crimes. Bağlı's research also confirms that the murderers believe they did what they had to do and they would not get any punishments if only they had a good lawyer. Furthermore, they claim that increased punishments would not deter them from committing honor crimes. In sum, this part of the research, which consists of a literature review on the prevalence of honor crimes, indicates that honor crimes are much more widespread in Turkey than portrayed in the media.

In the second part of the chapter, the gap between law and implementation regarding the penal code reform of 2005 was explored. The implementation of the new penal code was confirmed to be problematic, in line with Koğacıoğlu's argument that judges have a juridical convention among themselves, arising from their social relations, that leads to eschewing the implementation of lifetime imprisonment in case of murder of women in the name of honor. In this part, it was also confirmed that when the victims are women and killers are men, the sentence reductions are given much more easily than when the victim are men and murderers are women. In this part, the cases also confirmed that, contrary to the generally accepted stance in the media, the murders take place all over Turkey and the sentence reductions are not only given in the regions where supposedly traditions and social norms prevail. Sentence reductions were given to men who killed their wives in the name of honor upon the grounds of wearing jeans or piercing in Izmir, a relatively liberal modern city. In sum, the juridical convention among the judges is independent from the region over which they preside.

The findings of the second part also underline that sentence reductions are not as easily implemented to *töre* killings if the event is publicized with clear-cut evidence that the

family counsel made the decision to kill and organized the murder. In those cases, the killers get the heaviest sentence of life imprisonment. According to the analysis of the verdicts, the gender of the judges also makes a difference, although the number of cases is insufficient to generalize this finding.

Overall, the literature review, the past cases with the sentence reduction, the reductions after the penal code reform and the recent researches on killings in the name of honor show that murderers use honor as a reason to justify their acts and the issue is depicted in the media to the extent that a solution seems almost impossible. In other words, the statements of apology made by the perpetrators to the feudal family when they cannot not succeed in killing the victim, the stories of people establishing the impermeability of the subject and the quantitative research indicating that a great number of people support killings in the name of honor, all suggest that honor crimes cannot be resolved or prevented. However, the work of various NGOs such as KAMER, Mor Çatı and information regarding the correlation between murders and the amount of the budget spared for shelters indicate that the killings can be prevented. For example, all the 158 women who applied to KAMER between 2003-2006 were saved and supported in beginning a new life.

Feminist NGOs and lawyers like Hülya Gülbahar emphasize the importance of shelters and 24/7 call centers to prevent such killings (www.bianet.org). Furthermore, legal education should be reconsidered and judges should be informed about the new laws. The reforms of the penal code should be implemented and "killings in the name of honor" should be added under the clauses of those offenses to which sentence reductions on the basis of unjust-wrong acts cannot be applied (www.bianet.org).

CHAPTER 4

KURDISH LANGUAGE RIGHTS

4.1 Introduction

The two most prevalent problems hindering Turkey's membership process to the EU have been its poor human rights record and its state mechanism impeding political pluralism (Şahin 2005, p. 101). According to Arus Yumul (2005, p. 89), this poor record stems from the vague definition of citizenship in Turkey. Yumul (2005, p. 89) states that citizenship in Turkey is constituted by three mechanisms that discriminate against minorities; first, is the idea that considers all people who internalize the Turkish language and culture as citizens, second, is the idea that considers Muslims as citizens, and third, the idea that considers ethnic Turks as citizens. Yumul (2005, p.289) also argues that these three views have been operative since the establishment of the Turkish Republic, resulting in a vague definition of citizenship which revolves around ramifications of nationalism.

Turkey has been striving to legally eliminate the above mechanisms, mentioned by Şahin and Yumul that are obstructing political and cultural pluralism, since it became an official candidate for EU membership in 1999. Between 1999-2004, the Turkish parliament passed seven harmonization packages to comply with the EU acquis and the Copenhagen Criteria. In 2004, the European Commission decided that Turkey had fulfilled the Copenhagen

Criteria and was given the right to begin official negotiations. However, there were contentions regarding the implementation of the laws, especially regarding the taboo issue on Kurdish minority rights. This chapter aims at exploring the gap between law and implementation regarding the linguistic rights of Kurds, taking private Kurdish language courses as case study.

The first part of the chapter will elaborate on the literature and provide the history of the problem in order to underline the reasons why the Kurdish minority problem is still a prevalent issue in Turkey today. The second part will concentrate on the theories regarding citizenship in Turkey. This part benefits from the work of Fuat Keyman and Ayşe Kadıoğlu.

The third part will study the private Kurdish language courses as a case to explore the reasons behind the gap between law and implementation regarding the language rights given to the Kurds. In this section, the gap between law and implementation will be analyzed by comparing the declarations of the course owners and intellectuals in various newspapers, interviews with Betül Çelik, who is an academic studying this issue and Remzi Çakın, who was the first person to apply for a Kurdish course in 1996 before the law on the lifting of the ban on Kurdish was passed in 2002.

The last part will concentrate on the private Kurdish language courses as a case study to illustrate the gap between law and implementation and possible prospects for denationalization of citizenship.

4.2 HISTORICAL BACKGROUND

The origins of the Kurdish problem can be traced back to the final years of the Ottoman Empire, the end of nineteenth and the beginning of twentieth centuries. The late-nineteenth century Ottoman Empire was weak and the great powers such as Russia and Great Britain made plans to obtain governing rights in the Middle Eastern provinces of the Empire (Kirişçi and Winrow 2003, p. 68). In other words, the nineteenth century Middle East, which was populated by Arabs and Kurds, witnessed the competition of great powers until World War I (WWI). WWI, however, altered the position of the Ottoman Empire in international relations after it decided to declare war against Britain, France and Russia by joining the Triple Alliance.

The Triple Alliance lost the war and the Ottoman Empire signed the Mudros Armistice, accepting the occupation of the Empire by allies, which was followed by the Sevres Treaty of 1920 which formally divided the Empire. With this formal division, the Empire was to be shared between the allies and Eastern Anatolia was to be divided to open the way for a Kurdish and Armenian nation (Kirişçi and Winrow 2003, p. 68). However, concomitantly with the Sevres Treaty, a resistance movement composed of Turks, Kurds, Albanians, Circassians and Laz began in Anatolia, resulting in the formation of a new Turkish nation in 1920 after successful expulsion of the occupying forces from Anatolia (Kirişçi and Winrow 2003, p. 75). The newly established Turkish state was declared with the Treaty of Lausanne in August 1920, giving independence to Turkey and settling most of the territorial problems with the Allied Powers.

This emergence of the Turkish state, which was internationally recognized, thwarted the emergence of an independent Kurdish state since priority was given to fighting the

occupying forces that were deployed in all parts of Anatolia (Kirişçi and Winrow 2003, p. 75). The Kurdish tribal leaders, however, expected autonomy after getting their territories back, but they were disappointed with the Lausanne Treaty when it was ascertained that an autonomous Kurdish state was not going to be permitted by the allies and the new Turkish government (Kirişçi and Winrow 2003, p. 78).

The failure of an autonomous Kurdish state after the War of Independence is explained by the lack of nationalist sentiments among Kurds and also the lack of unity among different Kurdish tribes (Kirişçi and Winrow 2003, p. 79). The lack of unity can be explained by the fact that there were different Kurdish tribes opting for different resolutions to the territory problem during the War of Independence. For example, there were strong tribal leaders opting for establishing their own dominance and also tribes that joined the War of Independence with Mustafa Kemal and there were also Kurdish groups striving for independence (Kirişçi and Winrow 2003, p. 79). These distinct approaches to the situation of Kurds in Eastern Anatolia made it difficult for the formation of an independent Kurdish nationalist movement and Kurdish people were incorporated in the Turkish state with the Treaty of Lausanne. Below is an elaboration of these different Kurdish groups:

Kurds formed 22 of the 56 delegates of the nascent resistance movement in 1919 Erzurum Congress (Kirişçi and Winrow 2003, p. 79). These Kurdish deputies took executive positions in the Congress and the resistance movement which was to be formulated around Islam and Ottoman patriotism (Kirişçi and Winrow 2003, p. 79). These sentiments of Islam and Ottoman Patriotism were further emphasized in the first Turkish Parliament in 1920, when 74 Kurdish deputies participated (Kirişçi and Winrow 2003, p. 80).

Besides the above resistance supporters, there were Kurdish movements opting for secession. These movements formed the second group of Kurds. This second group organized several revolts against the resistance movement in Ankara between 1919-1920 in order to halt attempts at centralizing the areas that remained outside the occupied territories (Kirişçi and Winrow 2003, p. 80). Among these rebellions, the most serious was the Kocgiri rebellion, which was successfully suppressed and used by Mustafa Kemal to claim that the Kurdish rebels aimed at destroying the attempts to save Islam and the Sultan from the occupying powers. The failure of these rebels marked the failure of an independent Kurdish state as well. In sum, the division and rivalry between the leaders of different Kurdish tribes impeded the process of Kurdish independence. Furthermore, the new map of the Middle East leading to the division of the Kurdish population between Iraq, Iran, Syria and Turkey made the independence project of some Kurdish elites unachievable (Kirişçi and Winrow 200, p. 84).

At this point, it is relevant to explore the history of the Turkish official policy against Kurds. The establishment of the Turkish Republic, which centered on Turkish nationalism, constitutes the major explanation of the emergence of Kurdish ethnic conflict in contemporary Turkey. According to Kirişçi and Winrow (2003), the initial stages of Turkish nationalism were rather defined by territorial nationality and represented a more civic nationalist stance (p. 89). However, for the reasons that will be explored in the following paragraphs, Turkish nationalism turned out to be a strongly centralized system, leading to the denial of a separate Kurdish culture (Kirişçi and Winrow 2003, p. 89). The Kurdish elite struggled to resist this centralization and rebelled many times until the 1950s, but failed to succeed. However, by the 1980s, a new Kurdish elite emerged and began fighting for independence and recognition against the highly centralized Turkish nationalism

that aimed at achieving a homogeneous society.

The highly centralized Turkish nation-building process began emerging at the end of the nineteenth century by some intellectuals within the Ottoman Empire who aspired to introduce Turkish nationalism as a cure to the moribund Empire. However, this emphasis on Turkish nationalism was not articulated after the War of Independence ended and a new nation-building process began. In other words, the period between 1919-1923, where the new Turkish state engaged in war, is marked by an emphasis on Ottoman patriotism and Islam to mobilize people from all ethnic backgrounds. However, the period after 1923 witnessed the emphasis on Turkish ethnicity where the Kurdish identity found no chance of free expression (Kirişçi and Winrow 2003, p. 91).

Kurdish identity was not suppressed during the War of Independence, which ended in 1920, and also until the declaration of the Republic in 1923. On the contrary, it is evident from Mustafa Kemal's telegrams calling the Kurdish leaders that the initial rationale for mobilization against the occupying forces was Islam (Kirişçi and Winrow 2003, p. 92). In other words, people from all ethnic backgrounds, including Turks, Kurds Laz and Circassians, were called together under the rubric of saving the Ottoman nation by Mustafa Kemal. The Ottoman nation, however, at that time, did not mean nation in the modern sense but it referred to the 'nation of Islam' (Kirişçi and Winrow 2003, p. 91). For example, at the opening of the Grand National Assembly in April 1920, which was the official representative of the resistance movement, Mustafa Kemal emphasized the need to save the Ottoman nation, which was composed of all Islamic elements within the territory that the new establishment aspired to win back (Kirişçi and Winrow 2003, p. 92). However, this stance began to change immediately after the end of War of Independence in 1920.

The change in the attitude of the Kemalist elite initially revealed itself in the first constitution of 1921, which have sovereignty to the people, and not to God or Caliph. In Article 3 of this constitution, the notion of 'state of Turkey' was also included, marking a rupture from Ottomanism for the first time (Kirişçi, Winrow 2003, p. 93).

After the declaration of Republic in 1923, a series of reforms were introduced aiming at centralizing the educational system and abolishing the Caliphate, which was the main source of Ottoman legitimacy. The new centralized education system emphasized Turkishness and established Turkish as the language of education, which marked a significant milestone in the development of Turkish nationalism. The period following the declaration of the Republic, between 1923 and the 1940s, and the 1950s witnessed discrimination against non-Turkish Muslims and non-Muslims, with an emphasis on Turkish ethnicity (Kirişçi and Winrow 2003, p. 98).

The emphasis on Turkish ethnicity and lack of civic nationalism in this period saw the creation of 'others' within the Turkish state. One group that constituted the others in the Turkish state was non-Muslims. The stance against the non-Muslims began in the second half of the nineteenth century when reforms were initiated with the promise of an egalitarian form of conduct between Muslims and non-Muslims (Kadıoğlu 2007, p. 286-288).

Another group that was excluded from the newly established Turkish Republic was all elements representing the 'backward Ottoman past' (Kadıoğlu 2007, p.289). With the primary aim of erasing the backward representation of the Ottoman past, several measures

were introduced including the use of the Latin Alphabet in 1928. As Kadıoğlu (2007, P.289) quotes from Feroz Ahmad "at a stroke, even the literate people were cut off from their past. Overnight, virtually the entire nation was made illiterate." In other words, the newly established Turkish Republic aspired to erase all connections with the Ottoman past as fast as possible with the introduction of reforms from above and the Republican elite eliminated all sorts of opposition to this Westernization process.

This is articulated in Kirişçi and Winrow (2003) with a quotation from Lewis: "the basic purpose of the change was not so much practical as pedagogical, as social and cultural and Mustafa Kemal, in forcing his people to accept it, was slamming a door on the past as well as opening a door to the future" (p. 101). Kadıoğlu (2007, p. 289) calls this a process of oblivion and argues that it had led to the exclusion of the non-Muslims and non-Turkish citizens from the primary and secondary school history books. This had culminated in the "ignorance of the new Turks regarding the multi-religious and multi-ethnic past of the land they inhibit." In sum, the exclusion of the Ottoman past contributed to the exclusion of non-Muslims and also the non-Turkish Muslims who spoke non-Turkish languages. Kurds were among the groups who were excluded.

Kurds are among the groups that were excluded due to their different language and different religious sect. The majority of the Kurds belong to the Shafi sect of Sunni Islam and they speak Kurdish as their mother tongue (Kirişçi and Winrow 2003, p. 96). According to Kadıoğlu (2007) Kurds were assimilated with the systematic introduction of various reforms and policies in the first decades of the new Republic (pp 288-289). This assimilation process began with the abolition of Caliphate - a significant representative of Islam - as the major unifying element between Kurds, pushing the tribal leaders to the

periphery of the new establishment (Kadıoğlu 2007, p. 288). Further steps were taken in the field of language restrictions on languages other than Turkish, forbidding the usage of Kurdish in public places by 1928 (Kadıoğlu 2007, p. 288). Other assimilative procedures including altering the names of Kurdish villages with Turkish ones, making Turkish a mandatory course in minority schools and forbidding the use of Kurdish names (Kadıoğlu 2007, p. 289).

In sum, the Turkification process of the Turkish State began in 1923, after the declaration of the Republic and continued with more restrictions in the following years over the Kurdish identity, culminating in 16 Kurdish rebellions between 1924-1938 (Kirişçi and Winrow 2003, p. 100). The rebellion organized by Sheik Said was the most effective one in that it led to a change in the new government and put an end to the nascent democracy in Turkey and ironically strengthened the nationalist Turkish government, paving the way for harsher reforms (Olson and Tucker 1978, p.205).

In other words, the Kurds tried to resist the centralization and Turkification attempts of the nationalist government but failed to formulate a unified movement, which resulted in the consolidation of the newly established Turkish Republic and its Turkification policy. For example, the banning of religious orders, lodges and cells *(tekke, tarikat, zaviye)* was introduced right after the victory over the Sheik Said rebellion, and Islam was removed from the constitution as the official religion of the state in the following year, 1926 (Kirişçi and Winrow 2003, p. 101). However, all these measures initiated the beginning of an ethnic Kurdish awareness centered around religious motifs. In other words, the beginning of a Kurdish national movement occurred in this era, in the first years of the Republic when Kurdish identity and culture were suppressed and Islam was eliminated as a unifying

political element.

After the Sheik Said revolt, there were several revolts expressing resentment to the centralization and assimilation policies of the government. By 1935, there had already emerged a deep resentment among the Kurdish nationalist elite, which is illustrated in the following quote from Dr. Nuri Dersimi who expressed his grievances to Tunceli's governor: "on the one hand when we say we are 'Turks,' on the other we are told 'no, you are not Turks, you are Kurds.' Yet when we, the people of Dersim, say we are Kurds, they hit us hard and say that 'no, you are not Kurds, there are no Kurds'" (Kirişçi and Winrow 2003, p. 105). In sum, as this quote illustrates, right after the declaration of the Republic, and after the victory over Sheik Said, the Turkish government began a rigorous phase of centralization reforms by rejecting the existence of Kurds as a separate ethnic group and fortified its control over the mainly Kurdish territories by 1939 (Kirişçi and Winrow 2003, p. 105).

The above historical background of Kurdish nationalism and the Turkish nationalist stance against Kurdish nationalism was mainly characterized by Turkish dominance and lack of Kurdish unity. However, this picture changed by the end of World War II (WWII) and Kurds began organizing in the cities with a relatively more unified sense of ethnicity. There are various contentions regarding this change, one belonging to Keyman and Aydın (2004). Keyman and Aydın (2004) argue that the main reason behind the nascent Kurdish nationalism during 1950s was modernization and industrialization, which culminated in a mass migration from the Kurdish populated villages to the city centers (p. 34). These Kurds who came to the industrial cities formed political bonds among each other using ethnic and cultural identities as the basis throughout the 1950s.

The decade between the years 1950-1960 also witnessed a turning point in Turkish politics since the era is marked by the introduction of multi-party politics, which resulted in serious economic unrest ending with the military coup of 1960. The military intervention further tightened the assimilation process over the Kurdish minority since it assumed that it was the fault of the relatively liberal governing party, namely the Democratic Party (DP), which the economic situation had deteriorated and Kurds had found grounds for ethnic self awareness (Kirişçi and Winrow 2003, p. 107). With this rationale in mind, the military deported some Kurdish notables from east to west and also changed the names of some Kurdish villages to Turkish. However, all these measures could not prevent the further rise in nationalist sentiments among the Kurds since the liberal 1961 constitution gave people the civic rights such as permission for student associations and autonomy to universities (Kirişçi and Winrow 2003, p. 107).

The Kurdish population and especially the student unions worked in this era to achieve recognition from the state. One of these student unions was Revolutionary Cultural Society of the East (*Devrimci Doğu Kültür Ocakları*), which aimed at gaining linguistic and cultural rights with secessionist rhetoric, in contrast to the rhetoric of the Kurdish rebels that focused on religious motifs during the inter-war period (Kirişçi and Winrow 2003, p. 109). These student groups operated within the left-wing Marxist groups opposing right-wing groups. Massive violence broke out in Turkey between these groups which resulted in military intervention in 1971, when many of the student leaders were arrested.

The period after the 1971 military intervention witnessed a division among the Kurdish Marxist Leninist groups that had different aspirations and aims. According to Kirişçi and

Winrow (2003), there were at least 12 different Kurdish Marxist groups during this period. However, by 1977, one of these organizations emerged as the most radical and influential one, i.e., the Kurdish Workers Party- *Partiya Karkeren Kurdistan* (PKK). The period after the formation of the PKK was the continuation of a chaotic era marked by economic deterioration, political instability and violence between different student groups. During this period of violence, which ended with the 1980 military coup, the PKK organized various meetings and prepared declarations defining the action plan to achieve secession (Kirişçi, Winrow 2003, p. 110). However, after the military coup, all such organizations were hunted down and their leaders were forced to leave the country. Abdullah Öcalan, the leader of PKK also left Turkey during this period but continued to direct the PKK in Turkey. With the strong leadership of Öcalan, the PKK began its actions in 1984, which is a milestone regarding the Kurdish question in Turkey since from then on the PKK became the primary actor of this problem (Keyman and Aydın, 2004, p. 34).

The period that began with the military coup is a significant step in terms of the Kurdish problem in Turkey since both the Turkish and Kurdish sides began taking more violent actions against each other. The Kurdish side, namely the PKK, engaged in violent activities resulting in the deaths of 35,000 people, of which 5,000 were civilians (Keyman and Aydın, 2004, p. 34). The Turkish military rule, on the other hand, initiated a series of laws and decrees that marked the beginning of serious human rights violations in the Eastern Kurdish-populated regions of Turkey. For example, the military issued a law in 1983 banning the speaking Kurdish in public places even though it had already been forbidden by administrative decrees since 1930s to guarantee the assimilation of the Kurdish language. Furthermore, by 1983, the Kurdish region was transformed into a militarized zone, to which the military government that ruled the country until 1983

deployed governors with excessive powers (Keyman and Aydın, 2004, p. 35). Another system was introduced in 1985, namely the village guards system, with the primary aim of gearing the villages against the PKK, but which resulted in the abuse of the villagers by the village guards since they were the least disciplined section of the military.

Besides the above militarization and human rights violations, 1984 witnessed a positive development regarding Kurdish people in Turkey when Turgut Özal declared that he was of Kurdish descent (Kirişçi and Winrow 2003, p. 113). However, Turgut Özal did not prevent the declaration of state of emergency in 1987 in the ten cities with a high Kurdish population. The state of emergency further tightened the control over Kurdish people giving extraordinary powers to local governors to protect order. Furthermore, in 1991, the anti-terror law which defined what terror meant in very broad terms, was passed. This culminated in the detention and arrest of many intellectuals. However, 1991 also saw a positive development when the ban on Kurdish language in public places was lifted after more than one and a half million Kurds migrated to Turkey from the Iraqi border (Kirişçi and Winrow 2003, p. 113).

Unfortunately, the above positive development was not enough to begin the amelioration of the situation in Turkey. Turkey had a very poor human rights record during the 1990s mainly due to the treatment of Kurdish people. For example, during this period, the Kurdish people were forced to migrate from their villages (some NGOs estimate the number as four and a half million) and their homes were occupied by village guards who still inhabit those homes in the pre-Kurdish regions (Keyman and Aydın, 2004, p. 35). These measures were taken to fight the PKK in the region, where they had begun operations in 1984.

The PKK continued its attacks and burned down villages, schools, and kidnapped teachers and tourists up until its unilateral declaration of ceasefire in 1995. During these eleven years, the PKK attacked Kurdish villages and forced some Kurdish people to help the organization. Caught between the PKK and the government military officials, the villagers were further alienated during this period. A village headman (*muhtar*), in Kirişçi and Winrow (2003), states that they were slaves of the Turkish military during the day and of the PKK at night (p. 131).

The PKK attacks also hindered the economic and educational development in the region since one of the activities of the PKK was to burn 192 schools, with the rationale that they were instruments of assimilation (Kirişçi and Winrow 2003, p. 113). The military was given immense powers to fight this situation and it was in this period that massive human rights violations took place in Turkey. These human rights violations were made in the name of achieving military victory over the PKK and by 1995, the attacks of PKK had significantly decreased, resulting in a unilateral ceasefire. The period after 1995 witnessed increased attention of the Kurdish problem, mainly due to the violent actions of the PKK in past decades. Some working papers by NGOs were prepared calling for the state to consider the political dimension of the Kurdish problem and to put an end to describing the issue merely as a matter of terrorism. Prime Minister Yılmaz in 1996 announced that the Kurdish problem should be solved not by military but by political means (Kirişçi and Winrow 2003, p. 144).

Three years later, in 1999, Turkey became an official candidate for EU membership and the governments had to take severe measures in terms of improving human rights measures to

comply with the EU acquis. In 1999, Abdullah Öcalan was captured, bringing relief to the military sphere. With these developments, seven harmonization packages were passed between 1999-2004, when Turkey began negotiations for full membership, after the Commission decided that it had fulfilled the Copenhagen criteria. This decision was lauded by Turkish nationalists but condemned by some Kurdish activists such as Kerim Yıldız, who wrote a book on the issue entitled "The Kurds in Turkey, EU Accession and Human Rights." In this book, Yildiz criticizes the EU for giving Turkey the right to begin negotiations since there is a huge gap between law and implementation.

The above contentions regarding the Kurdish issue in Turkey can be explored under the rubric of citizenship studies. In other words, to understand the Kurdish issue in Turkey, it should be situated under the theories explaining the plight of citizenship in Turkey. With this aim, the following part of this chapter will explore the theories explaining the reasons why the Kurdish minority issue in Turkey is a citizenship problem.

4.3 Theoretical Approaches to the Kurdish Problem and Citizenship in Turkey

In this section, two key studies will be explored. The first one aims at explaining why the Kurdish problem is a significant issue today and emphasizes situating the Kurdish issue within the modernization process. The key study is by Fuat Keyman, who, in his study, initially explores two other paradigms of Turkish modernization and then proposes a more explanatory theory that facilitates the understanding of the Kurdish problem.

The second study focuses on the denationalization of citizenship in Turkey. The key study is by Ayse Kadıoğlu; it aims at exploring whether there is a possibility of a denationalization of citizenship in Turkey. Below is the elaboration of these studies.

Keyman argues that the Kurdish problem cannot be understood if it is not situated within the modern state-building process of Turkey. According to Keyman, the building of Turkey was synonymous with building a nation-state, which he illustrates as follows. According to Keyman (2005, p. 271), the end of nineteenth century marks the beginning of the nation-building process articulated by Feroz Ahmad, "Turkey did not rise phoenix like from the ashes of the Ottoman Empire. It was made in the image of the Kemalist elite, which had won the national struggle against foreign invaders and the old regime."

Keyman elaborates on the nation-state building process in Turkey and then underlines how the problem changed its discourse between the years 1920-1980. He further argues that a possible solution will arise after only the changing nature of the Kurdish problem is recognized and an emphasis on cultural and political pluralism is made (Keyman, 2005, p. 284).

According to Keyman (2005, p. 283), Kurdish rhetoric was Islamic during the 1920s, Marxist in the 1970s and became an identity-based by the 1980s, a phenomenon that continues… Keyman (2005, p. 283) also argues that by the 1990s, the Kurdish problem had become transformed to be one of ethnic assertiveness culminating in violence and identity politics. The period after the1980s is also a period of the modernity crisis in Turkey, which characterizes the Turkish official approach to the Kurdish problem. In sum, to understand the Kurdish problem, first, its historical development situated in the Turkish nation-building process should be understood and second, its changing nature with an emphasis on the modernity crisis of Turkey by the 1980s should be explored.

The modernity crisis that began by the 1980s in Turkey was the result of the failure of the state-centric and homogeneity promoting character of the Turkish state in its attempt to manage the changing economic and cultural shifts occurring in the country (Keyman 2005, p. 278). Keyman (2005) identifies three shifts after the 1980s that the state centric policy failed to adopt. The first shift is characterized by three developments that led to a gap between state and society. These developments are the introduction of economic liberalization and the end of import substitution industrialization, the resurgence of traditionalism and political Islam, and the revitalization of ethnicity, Kurdish ethnicity in particular (Keyman 2005, p. 278). These three developments culminated in the modernity crisis of Turkish government and a shift from ideology to identity was realized at the conclusion of the Cold War. With this shift, after the 1990s, Kurds began claiming identity rights and recognition, a demand the state-centric approach failed to manage.

The second shift occurred between the state and society. This was characterized by the increasing decoupling of the nation from the state, which led to politics of difference and recognition (Keyman 2005, p. 280). The creation of new civil society organizations further contributed to the politics of difference and ethnic recognition, which the traditional strong state tradition failed to manage. In this sense, "the Kurdish question was voiced by regional business and economic organizations as well as by municipalities as a developmentalist (conservative) claim to modernity and regional development" (Keyman 2005, p. 278).

The third shift occurred in the language of citizenship, which began to be seen in terms of duties rather than rights (Keyman 2005, p. 281). In this sense, Kurdish nationalism played a significant role since it operated on "calling for a multi-cultural and pluralist Turkey" (Keyman 2005, p. 278).

In conclusion, Keyman first argues that the Kurdish problem can be understood in its fullest form only if it is situated in the historical analysis of Turkish nation-building process. Second, it should be underlined that the Kurdish claims have changed since the establishment of the Turkish Republic and the recent claims are claims of identity, which can only be solved by the introduction of a multi-cultural and democratic environment. Without the introduction of such a shift in policy, the strong state tradition in Turkey is experiencing a problem of governance and legitimacy, with the danger of rendering the Kurdish problem insolvable.

In order to understand what the denationalization of citizenship entails, first, the nationalization process of citizenship should be explained. Beginning with the French revolution, up until the 1990s, when citizenship was transformed, the notion of citizenship was used synonymously with nationality. In other words, citizenship was defined by allegiances to the nation. However, as Işın and Turner states, beginning in the 1990s, citizenship came to be defined as "social and political recognition and economic distribution" (cited in Kadıoğlu 2007, 284). Accordingly, citizenship and nationality began to separate from each other, culminating in democratization and denationalization of citizenship. Below is the elaboration of the denationalization practices in Turkey.

Kadıoğlu (2007) argues that the Turkish version of discrimination "deprives the others of national identity of political and social recognition as well as economic distribution" (p. 291). The recent changes in Turkey regarding denationalization of citizenship occurred in the form of giving minorities multi-cultural rights so that they could pursue their linguistic,

ethnic or religious differences. The multicultural rights in the new form of citizenship entail a version of new society where cultural differences are welcomed by the state.

The above definition of multiculturalism, however, has not been the practice in Turkey since its establishment in 1923, as elaborated in the previous section of this chapter. On the contrary, the newly established Turkish Republic was constructed on the basis of in the nationalization of citizenship by making the Sunni sect of Islam and Turkish language the only acceptable practices. This project towards homogeneity resulted in the discrimination and assimilation of different cultures, languages, ethnic groups and religions. Another instrument of the nationalization of citizenship was introducing a rupture from the backward Ottoman past with reforms-from-above, such as changing the alphabet from Arabic to Latin.

The above practices began to alter when Turkey became a candidate for EU membership in 1999. Various amendments were made to the constitution pointing to denationalization of citizenship and indicating multicultural citizenship. Seven harmonization packages were passed between 2001-2004 that broadened the concept of citizenship to encompass not just legal rights but also include recognition of different cultural groups. For example, as described in more detail in Chapter 2, minority rights were recognized and freedom of expression in different languages was made possible with an amendment lifting the ban on various languages (Keyman and Aydın, p. 36). However, as Kadıoğlu (2007) points out, there was a huge contention between legislators and bureaucrats regarding the implementation of these amendments.

One area of the gap between law and implementation was the opening of Kurdish private

language courses. In other words, the process of denationalization of citizenship is impeded by certain dynamics in Turkey, including the bureaucracy. However, as will be explained in the next section, another dynamic that impeded the denationalization process came from Kurds themselves. In brief, it was observed that the gap between law and implementation regarding Kurdish language rights stemmed not only from the state bureaucracy but also from the Kurdish nationalists. The underlying dynamics of this gap is explored in the following part.

4.4 The Closing of the Kurdish Language Courses: Analysis of the Gap between Law and Implementation

The main aim of this chapter to identify the dynamics that led to the closing of private Kurdish language courses. The Kurdish language courses were legally permitted on August 2002 with the third harmonization package. The law paving the way for the Kurdish courses permitted radio and television broadcasting and teaching by private language courses of "different languages and dialects traditionally used by Turkish citizens in their daily lives" (Özbudun and Yazıcı, 2004, p.19).

The first application for opening a private Kurdish language course was made right after this law was published in the Official Gazette in Istanbul. The first course was opened in Batman, one and a half years later, on April 2004. During these one and a half years, there were eight applications waiting for approval and they were turned down several times because of bureaucratic or procedural constraints. However, at the end of one and a half years seven Kurdish private language courses were opened, mainly in the Eastern cities of Turkey. One year later, in August 2005, the newspapers reported a lack of interest in the Kurdish courses and eventually all eight courses were closed by their owners on August

2005. This part of the paper aims at exploring the dynamics regarding the closing of these private Kurdish language courses by placing specific emphasis on the gap between law and implementation.

4.4. A . Methodology and Findings

To explore the gap between law and implementation, first of all, newspapers such as Radikal, Özgür Gündem, Yeni Şafak, Akşam, Hürriyet, Sabah, Evrensel and several Internet sources such as www.savaskarsıtları.org were analyzed by using content analysis. Content analysis revealed a gap between law and implementation. Secondly, two interviews were conducted with Betül Çelik of Sabancı University Faculty, and Remzi Çakın of the Kurdish Culture and Research Foundation (*Kürt-Kav*) in order to verify the findings of the content analysis. The interviews also indicate a gap between law and implementation.

The findings also show patterns regarding the reasons for the gap between law and implementation. According to the newspapers and interviews, this gap stems from two sources. The first source of the implementation problem is the state bureaucracy and the regulations that strengthen the local bureaucracy's hand regarding the implementation of the law (www.abgs.gov.tr). Second, some Kurdish nationalists impede the process since their main focus is on achieving rights rather than on using them; this means that once they achieve rights the next action becomes striving for another right rather than using the right already obtained. Third, according to a research conducted by Mazhar Bağlı of Dicle University, Kurdish people did not show an interest in the courses mainly because the language taught by the politicized Kurds in the courses and the Kurdish spoken by people in daily life are different languages. In other words, the courses failed to meet the needs of

people in terms of teaching their daily language. Bağlı also states that even though the mother tongue of many people in the mainly Kurdish cities is Kurdish, the main language they use in every day interactions is Turkish, which decreases interest in learning Kurdish. Bağlı also points out the low economic return of learning Kurdish as compared to English as another factor decreasing the interest in Kurdish.

There was a gap between law and implementation regarding Kurdish language courses that resulted from the actions of the state and some Kurdish nationalists. The state bureaucracy impeded the process by demanding from the Kurdish language course owners' conformity to extreme regulations such as measuring the doors and windows in centimeters or delaying the process on purpose by not sending auditors. The Kurdish nationalists impeded the process by refusing to open language courses and protesting the state. Below is the exploration of these dynamics.

Impediment of the Kurdish nationalists and course owners

The first application for opening a Kurdish private language course was made by the owners of English Fast in Istanbul, Nazif Ülgen, and Remzi Çakın, on August 2002, right after the law on Kurdish courses was passed[15] (www.radikal.com.tr). However, their application was refused two months later since the regulations of the law demanded a separate building with separate furniture and staff (www.radikal.com.tr). Nazif Ülgen protested these bureaucratic procedures, which were applied only to the Kurdish courses since it was impossible for him to afford another building for the Kurdish course only. However, one year later, these bureaucratic procedures were revoked and it became possible to open a Kurdish course in the building of an already existing language course.

15 Remzi Çakın is also one of the founding presidents of *Kürt-Kav* and he owned a Kurdish Language Diploma from Uppsala University in Sweden. This is important since the regulations demanded teachers who were officially authorized to teach Kurdish even tough Kurdish has been a language prohibited by law since the 1930s.

Nazif Ülgen and Remzi Çakın did not file an application this time. An interview was conducted with Remzi Çakın to learn the rationale behind this decision.

The interview was conducted at Kürt-Kav, the first official NGO with the name *Kürt* in its title. According to Remzi Çakın, the main aim of Kürt-Kav is striving to achieve democratic rights via peaceful means. The peaceful means are publishing academic and literary works in Kurdish, opening schools and courses in Kurdish and providing the people in need with credit to begin a business. Çakın also stated that they were the first group to apply for a language course in 1996, six years before the third reform package giving the right to open one. However, the state rejected their demand since the National Security Council (NSC) was responsible at that time for determining the languages to be taught and it refused Kürt-Kav's demand. Kürt-Kav applied to the European Court of Human Rights and the case was still not closed when the law was passed in August 2002. In other words, Kürt-Kav was still officially demanding the right to open a Kurdish language course when the law passed and they got what they strived for with this law.

However, after obtaining the right to open a private course right through this law, Kürt-Kav protested the law and declared that they refused to open a private language course since it is not the duty of Kurdish people but the duty of state to finance the teaching of Kurdish. Remzi Çakın did not give a more specific reason for their radical shift on the issue. He reiterated that the regulations impeded the process and the state was not sincere. In other words, Remzi Çakın could not explain the question asking what had changed between June 2002 and August 2002 that made them alter their position dramatically regarding the opening of private Kurdish courses. However, in an interview on a Kurdish website (www.kusca.com) another co-founder of Kürt-Kav, Fehim Işık deliberately states that the

Kurdish language and the assimilation politics that have been going on since the first years of Republic are inseparable. In other words, it was observed that the Kurdish activists' stance is lenient towards the politics of assimilation in Turkey as well as the achievement of language rights.

In my interview, Remzi Çakın also claimed that assimilation policies played a vital role in terms of the extinction of the Kurdish language. He gave the example that he did not speak Turkish when he first started elementary school but the teacher spoke only Turkish and punished the students who failed to do so. Çakın argued that these policies traumatize Kurdish children and after a while they disdain their own language. This is the main reason why the state should implement positive discrimination for the Kurdish language; to make up for the past assimilation. Fehim Işık rationalizes their refusal to open a language course with a protest regarding the assimilation policies. Işık states that the 2002 law is a positive development regarding the lifting of a taboo/ban on Kurdish but it is far from being adequate. He further argues that the law was incompatible with the realities of Kurdish people.

The above claims, however, do not explain why Kürt-Kav attempted to open a Kurdish course when there was no law. Işık explains their rationale and states that their primary aim was to achieve legitimacy and not to open language courses. He continues by stating that their ultimate aim is to make Kurdish one of the officially spoken languages in Turkey. Furthermore, he argues that Kurdish should be used in every aspect of life, whether official or private, and it should be taught at elementary schools and also at universities. In sum, Işık states that all sorts of impediments on the Kurdish language should be removed and the state should also implement positive discrimination for Kurdish. Remzi Çakın also

agrees with a need for positive implementation and further argues that Kurdish should be mandatory in all schools in Turkey. In sum, for Kürt-Kav, Kurdish language courses are just tools for achieving a level of legitimacy and recognition regarding the Kurdish language.

The above stance of Kürt-Kav was criticized by Betül Çelik in the interview. Betül Çelik states that in conflict resolution and the minority issues there are three steps. The first step is the denial of the minority, the second step is recognition and the third step is positive discrimination. Çelik argues that the state is at the level of passing from denying the existence of Kurds to recognition but Kurds demand positive discrimination without using their recognition rights. According to Çelik, failure to use these rights causes some problems and endangers the achievement of future rights. For example, to achieve Kurdish Institutes at the universities some Kurdish language experts are needed; therefore, these experts should begin to learn how to teach Kurdish somewhere. Çelik states that private Kurdish language courses were going to be instrumental regarding the first steps towards achieving greater linguistic rights. However, now that there are no Kurdish courses, there are no institutions to produce the infrastructure of future rights.

The above criticism of Çelik was also directed at Dilek Kurban, from the Democratization Programme of TESEV, who claimed that the law for the opening of private Kurdish language courses had almost no meaning since it is not reasonable to give Kurds the right to learn their language by paying a fee during her presentation at the Third Enlightenment Symposium on 12.05.2007. In other words, Dilek Kurban said that the Kurdish language courses closed because of lack of interest, but that the law was inadequate from the beginning and this inadequacy led to the failure of the courses. In her presentation, Kurban

added that Kurdish should be taught at schools, officially. Betül Çelik, on the other hand, states that such demands lack a basis for base for implementation. Çelik states that the relationship of the Kurds and the state reached such a level that the Kurds want with no proposal of how to achieve what they want and the state insists on not giving what Kurds want with no basis at all. For example, the feasibility of teaching Kurdish at schools, the availability of qualified teachers who can teach Kurdish or the job opportunities for the graduates of Kurdish Language Department at universities are not explored by Kurdish people who demand these rights.

In sum, the interviews conducted with Betül Çelik, Remzi Çakın, Fehmi Işık and the presentation of Dilek Kurban at the Third Enlightenment Symposium on 12.05.2007 reveal that some Kurdish nationalists impede the process of implementation regarding Kurdish private language courses. The impediment stems from the general stance regarding their ideological position to achieve positive discrimination and refusing to approve any law that brings about less than that. However, Çelik argues that this stance is not realistic since without baby steps, it is impossible to run.

Furthermore, according to Çelik, refusing to open the Kurdish courses harms the Kurdish language since through these courses; the infrastructure for future steps can be created. These include the publication of books and the establishment of a method for teaching the grammar since Kurdish is not yet a written language. In a nutshell, even though the state bureaucracy was a major factor in of the development of a gap between law and implementation, as illustrated in the next section, some Kurdish nationalists themselves also impeded the process with their stance of not settling for less than positive discrimination.

Impediment of the state bureaucracy

After the law permitting the private Kurdish language courses was passed in parliament in August 2002, some regulations were added to obstruct the implementation of the law. These regulations constituted the bureaucratic impediments, which include not approving applications for eight months on the grounds that the course had not fulfilled the regulations regarding building structure or the height of doors and windows. Another source of the rejection of applications revolved around the appropriate naming of the courses. All together, the bureaucratic delays economically harmed the course owners since they continued to pay rent while waiting for approval. Furthermore, according to some course owners, the long waiting time for the courses diminished the enthusiasm of some eager students and also decreased the eagerness of the course owners to fight with the bureaucracy. In some, the bureaucratic procedures played a significant role in terms of harming the implementation process of Kurdish language courses. These impediments are explored by giving examples in more detailed in the following part of this section.

The first application to open a private Kurdish language course was made by Nazif Ülgen in Istanbul; right after the law was passed on August 2008 (www.radikal.com.tr). Nazif Ülgen applied to open a course in his already existing language course, English Fast. However, his application was denied on the grounds that the regulations (*yönetmelik*) of the law on Kurdish private courses require a separate building with separate furniture and staff. At this point, Nazif Ülgen gave up his intentions to open a Kurdish course since renting a separate building would not be feasible. However, one year later, this regulation was revoked and Nazif Ülgen did not apply for a Kurdish course. The possible reason for this is discussed in the previous section regarding the impediments coming from the Kurdish

nationalists.

The second case in which the state bureaucracy impeded the implementation of the law on private teaching of Kurdish occurred nine months later, in Urfa (www.radikal.com.tr). The owner, Ömer Kurt, claimed the he was being kept for no meaningful reason and he has been losing money since the National Director of Education in Şanlıurfa (*Şanlıurfa Milli Eğitim Müdürlüğü*) demanded that he change the name of the course. The Director demanded that the name be changed to "Urfa Private Local Dialect Language Course" from "Urfa Private Kurdish Language Dialects Teaching Center." The owner rejected the proposal of the Director of Education and he was in return denied approval. This case first illustrates that not only physical impediments, but obstruction regarding what to call the course were obstacles slowing the process of establishing Kurdish language courses. Second, since the owner did not accept the proposal of the directorate, it is evident that the Kurdish courses involve some political gain of the owners. In other words, the primary aim is to prove something politically rather than to contribute to the Kurdish language. This politicized stance is not criticized in this thesis. However, it should be underlined that in the case of Kurdish courses, politics harmed education.

Another case of bureaucratic difficulty occurred in Van, where it took one year and three months to get the permission to open the course (www.evrensel.net). The owner, Hasan Güven, stated that the local bureaucracy first did not give permission due to the regulations on the fire escape even though they applied to open a course in an already operational language course building. According to Güven, this indicates that the local bureaucracy is discriminatory against Kurdish. Further impediments they faced included the disapproval of the name and structure of the building. However, on March 2004, the course opened

after one and three months of strife with thousands of Kurdish people celebrating.

Similar popular support was given to Aydın Üneşi, the owner of the Kurdish Language Course in Batman (www.miliyet.com.tr). The course in Batman was one of the first courses to begin lessons in April 2004 after tragicomic bureaucratic impediments that took more than nine months. One of the bureaucratic procedures that had to be met had to do with the standardization of door heights; the inspectors demanded that the doors be at least ninety centimeters whereas the existing doors were eighty five centimeters. After the doors were fixed, the Local Director of Education postponed the application since the name of the course was not appropriate. The name of the course was the Batman Private Kurdish Language Course but, according to the regulations, the inclusion of the word "dialect" was mandatory. The application was rejected again for this reason. Finally, after almost a year, the Batman Kurdish course opened in April 2004.

Besides the above courses in Van, Batman and Urfa, the courses in Adana and Diyarbakır faced similar problems. Eventually, they were all opened in 2004 and began Kurdish lessons. However, in August 2005, exactly one year after the first course in Batman was opened, all the owners gathered to announce that they were closing the courses. The main reason published in the newspapers was that the courses could not finance themselves due to lack of interest. The findings confirm the lack of interest. However, the findings also indicate other reasons for the closing of these courses, as illustrated below.

4.5 CONCLUSION

The content analysis of various web sites and interviews indicates two patterns leading to the closing of the seven private Kurdish language courses, which were first opened in August 2004 and all closed by August 2005.

Various statements were made by both state officials and Kurdish nationalists regarding the reasons behind the closings. State officials stated that the main reason was lack of interest in the Kurdish language. There were two types of explanations from the Kurdish nationalists and course owners. The first explanation was a kind of criticism of Kurdish people. For example, Aydın Üneşi, the owner of the course in Batman, argued in an interview that one of the reasons for the closing was the insensitivity of the Kurdish people in the sense that thousands of people gave support at the opening but only a couple of hundred showed real interest (www.yeniasya.com.tr).

The above self-criticism by Aydın Üneşi, however, was rare among the course owners and the Kurdish nationalists. On the contrary, the majority of course owners and Kurdish nationalists such as Remzi Çakın blame the traditional state policy against Kurds, constituting the second type of explanation on behalf of Kurds. During the interview, Remzi Çakın argued that the main reason for closing is not lack of interest. He claimed that there are many unofficial Kurdish language courses in Turkey, including Istanbul, where hundreds of Kurdish courses are offered in various NGOs and centers of the Democratic Society Party (*DTP*). However, when asked, he could not give specific names or specific course hours. His rhetoric made it seem more like he was talking about a general enthusiasm about Kurdish rather than a concrete interest.

The above stance of Remzi Çakın was also observed in the content analysis of newspapers. According to the analysis of the declarations of and interviews with the course owners and Kurdish intellectuals, lack of concrete interest is the result of three factors. First, only elementary or middle school graduates are allowed to participate in the courses. This is objectionable because it becomes too late to teach a language after a certain age. The second factor concerns the security of the people who attend the courses. Remzi Çakın argued that the students who register for the courses are also registered in police records and, considering the policy against Kurds, this constitutes a threat to the lives of students. In other words, the identification of the names of the people in police records is a kind of stigmatization, deterring people from registering.

The two above factors, which led to the closing of the courses, stem from the third factor, the prevalent assimilation policy against the Kurds since the 1930s. The assimilation policies included the ban on the Kurdish language and, according to Remzi Çakın, there were times when Kurds were charged money for each word of Kurdish they spoke in Diyarbakır. Such policies led to Turkish being preferred over Kurdish over time. This also explains Mazhar Bağlı's finding regarding the rate at which Kurdish was used in daily life (http://arsiv.sabah.com.tr). According to this research, which was conducted in nine cities with two thousand and one hundred seventy household heads, the rate of Turkish used in daily interactions is 63% whereas for Kurdish, it is 32.8% (http://www.haberx.com). Bağlı also states that the type of Kurdish used in these courses and in Kurdish televisions is radically different from the Kurdish used in the daily interactions of people. Bağlı argues that:

> "The language that the politicized Kurds use has problems. The politicized Kurds want to use the dialect of a time when Kurds were more secular and even when they had different religious beliefs. In other words, the Kurdish used by these politicized groups and the Kurdish spoken by the people are very different. It is different in its structure and grammar. In other words, the Kurdish taught at these courses is not functional in daily life; therefore, it is not surprising that they had to close." (http://www.haberx.com/n/1064422/kurtce-kurslarina-talep-yok.htm).

As stated in the above quote by Bağlı, besides the pressure and impediments from the state there are other reasons for the closings of the Kurdish courses. However, the pressure on the Kurdish language still continues. For example, in the human rights report of Amnesty International 2003, Turkey was criticized for failing to implement the freedom of speech laws regarding the Kurdish language, meaning Kurdish courses (www.radikal.com.tr). Turkey was also criticized for prohibiting Kurdish names and prohibiting the use of Kurdish in official places.

This dark picture and the contentions with respect to Kurdish minority rights make the discussion of the theories of citizenship in Turkey relevant. For example, how legitimate is it to argue that Turkey is moving towards denationalization of citizenship? To evaluate this, the case of *Eğitim-Sen* (the education and science laborers syndicate) is a relevant example. *Eğitim-Sen* was sued by The Ankara Chief Prosecutor's Office in 2002 and in 2004 with the intention of getting it closed down because it argued for the right to be educated in one's mother tongue (www.radikal.com.tr). However, both cases were rejected by the Court of Labor and the Court of Press in Ankara, on the basis of international agreements (http://arsiv.sabah.com.tr). This indicates that the Turkish state bureaucracy is not homogeneous and that there are different views regarding citizenship and minority rights. One of these groups is rather traditional, opting for a strong central state and homogeneous

society. However, some others opt for a more multicultural society and for denationalization of citizenship. In brief, as Kadıoğlu argues, the latest developments in Turkey indicate a move towards denationalization of citizenship, unless a nationalist backlash occurs. This chapter revealed a similar tension.

CONCLUSION

This thesis was mainly concerned about the legitimacy crisis of the republican model of citizenship that was "challenged during the 1990s by the language of rights and freedoms which involved both individual and group-based claims to autonomy, pluralism and democracy" (İçduygu and Keyman 2005, p.8). This crisis entered a new phase in 1999 when Turkey became an official candidate for EU membership. After this date, Turkish legislation was altered to comply with the EU acquis to encompass a pluralistic notion of citizenship based on rights rather than membership.

Transformation of citizenship from membership to rights has been the main focus of studies on the metamorphosis of nation state, which are mainly concerned about the divorce of the nation from the state. In other words, the recent literature on citizenship questions the notion of citizenship which had hitherto been defined merely as membership in the nation state (Kadıoğlu 2008, p. 167). Recent studies criticize the old notion of citizenship as membership, which pushes different identities such as ethnicity, gender or religion to the rear and aims at manifesting a citizenship primarily around duties. The contemporary notion of citizenship, on the other hand is mainly concerned with the rights of individuals and the celebration of different identities by providing then the same rights with the mainstream identities. This thesis explored this contemporary notion of citizenship in Turkey by asking the extent to which different identities are recognized and given the same rights as the mainstream identity.

The mainstream identity in Turkey is Sunni Muslims who complied with the project of the Kemalist elite after the establishment of the Republic in 1923. This project aimed at modernizing Turkey via revolutions from above and involved the exclusion of many identities. Among these excluded identities were non-Muslims, non-Turkish speakers, non-Turks and women (Kadıoğlu 2007, Koğacıoğlu 2007). In sum, the Turkish republic and the Kemalist elite summoned the Sunni Turkish-speaking men who detached themselves from the backward Ottoman past as the mainstream actors in the then-newly established state. This version of citizenship was protested by many excluded groups and Kurds in particular, which revealed itself in the form of rebellions beginning in 1925 and continuing today. Another excluded group was women, who were incorporated into the system by removing their individualities as women and assigning them duties within the larger project of modernization (Kadıoğlu 1999, p. 123).

This exclusive version of citizenship of the Republic, however, entered a legitimacy crisis during the 1990s due to the effects of globalization, which contributed to the dissolution of nation-state (Kadıoğlu 1999, p. 64-67). This legitimacy crisis was partially solved by legislating seven harmonization packages to comply with the EU acquis between 1999-2004. However, the contentions regarding the implementations of these laws continue. They revolve around the argument that even though Turkey fulfilled the Copenhagen Criteria by the harmonization packages, there are still major problems of implementation. This thesis explored these problems of implementation by studying the cases of Kurdish private language courses and sentence reductions given to the perpetrators of honor killings. Kurdish private language courses were allowed by the third harmonization package in August 2002 and the sentence reductions given to the murderers who committed crimes in the name of honor were removed from the penal code in 2004.

However, it was observed that these laws were not implemented in various cases and the main aim of this thesis was to study the findings pertaining to the cases where the gap between law and implementation was manifested.

The findings of the thesis are that there is a gap between law and implementation regarding both the sentence reductions and Kurdish courses. However, the dynamics of the gap leading to the interruption of implementing the laws are different. In the Kurdish case, the problems of implementation arise from the mainstream Turkish bureaucracy and also from Kurdish nationalists. In the women's case, however, the continuation of sentence reductions stems only from the juridical convention and women have no role in the interruption of implementation. Both sides impeded the implementation process in the Kurdish case whereas only the state bureaucracy impeded the implementation in the women's case as detailed below.

The state bureaucracy in the women's case is attached a specific name-juridical convention by Dicle Koğacıoğlu (2007). The juridical convention was detected as the main pattern leading to sentence reductions in the third chapter of this thesis. It was confirmed that the judges prefer reducing the sentences of the perpetrators of honor crime even though they can opt for alternative clauses in the penal code to increase the punishments. The main reason beneath the judges' preference is their mentality, which considers women's chastity and honor as the property of men. Furthermore, the judges' mentality is compatible with the general understanding of women's rights and honor in Turkey as confirmed by the studies of the UNDP and KAMER.

The studies of the UNDP and KAMER indicate that women get killed not because they act

against the general customs of chastity but because they refuse to obey. In other words, the notion of honor is used as a cover by the society to discipline women. The judges share this same mentality and they implement sentence reductions under the cover of "wrong acts" provoking the perpetrator. The wrong acts include wearing jeans or piercings, depicting the mentality of judges. Other research such as the study conducted by Mazhar Bağlı draws a pessimistic picture regarding the prevention of honor crimes. According to this research, the perpetrators of honor killings are widely respected in prison and are also accepted into all social environments after they get out. In other words, the study shows that even if the sentence reductions were not implemented, this would not deter the honor killings since the society respects men who kill in the name of honor.

This pessimistic picture, however, is illuminated by the activities of feminists like Hülya Gülbahar lobbying for the opening of shelters and 24/7 call centers. The activities of various NGOs such as KAMER show that individual cases can be prevented by providing women with shelters. For example, KAMER saved seventy lives between 2003-2006, indicating the importance of call centers and shelters. In sum, the prevention of honor crimes is a long-term project and it was confirmed in the thesis that they cannot be prevented just by issuing laws. Besides the laws, the juridical convention and the mentalities of people should be altered – something that can only be achieved by investing in the positive discrimination of women at every layer of society.

Positive discrimination is also demanded by the Kurdish nationalists and this constitutes the primary problem between the state and the Kurds. Betül Çelik states that the state is at the level of recognizing the Kurdish minority but the Kurds demand positive discrimination leading to incongruence in communication, which has been deliberately

implemented by the Turkish state since the 1930s, when Kurds were denied their language rights. Beginning in the 1930s and lasting until today, the existence of the Kurds was denied by the republican model of citizenship. This picture began to change after the 1990s when Turkey entered a new phase of democratization suedue to its aspirations to become an EU member. The fourth chapter of the thesis explored the democratization reforms regarding the rights of Kurdish minority. The content analysis of various Turkish daily newspapers and interviews revealed that the gap between law and implementation stems from the Turkish bureaucracy and the Kurdish nationalists.

The Turkish bureaucracy impeded the opening of language courses by delaying the application process and not giving permission for sometimes nine months. During this time, the owners of the courses continued to pay rent and lost money. Furthermore, the students who applied to the courses lost enthusiasm since the process took too long. According to the Kurdish nationalists, the main reason for the closing of the Kurdish language courses was this lengthy process, which led to a decrease of interest in the courses. However, some course owners, such as Aydın Üneşi also accuse the Kurdish people since thousands gave support at the beginning but only a few hundred showed up when it came to registering. This accusation of Aydun Üneşi was confirmed with the interview conducted with Remzi Çakın, who applied to open a private language course in 1996 but refused to open one when the law passed in 2002. Çakın stated that he had applied to open a course to make a point; to make the Kurdish language gain legitimacy; and their primary aim was political rather than educational.

This position of Remzi Çakın is criticized by academics like Mazhar Bağlı on the grounds that the failure of the courses stem from their politicized nature. Bağlı states that the

language used by the politicized Kurdish elite and by the Kurdish public in general indicates a serious gap between the aims of the elite and lives of the Kurdish people. In sum, the stance of the Kurdish nationalists combined with the state centric model of bureaucracy led to a decreasing interest in the courses and they all closed by 2004.

In conclusion, this thesis aimed at detecting the patterns emerging from the gap between law and implementation of two case studies; sentence reductions for honor killings and Kurdish private language courses. The thesis explains the problems of implementation with respect to Kurdish courses by using Ayşe Kadıoğlu's (2007) study discussing the prospects of denationalization of citizenship in Turkey. The thesis confirmed Kadıoğlu's study that Turkey is moving towards a denationalized version of citizenship with the harmonization packages passed to comply with the EU acquis. However, this process has its problems of implementation and there are indicators signaling a retrenchment of denationalization, which is manifested by the state bureaucracy and Kurdish nationalists impeding the process. Another danger to denationalization of citizenship comes from the juridical convention among the judges who reach verdicts to the disadvantage of women by preferring some legal clauses over others. The weakness of the thesis emerges at this point regarding the suggestion of a solution to the implementation problems. The women's problem in general requires investment and education, however, suggestion of a detailed action plan for improving women's condition was not included due to time limitations. The solution to the Kurdish case is proposed as a move towards a pluralistic notion of democracy by academics like Fuat Keyman but this thesis could not explore the specific action plans to achieve this pluralistic version due to time limitations. In summary, a nutshell, this thesis aimed at exploring the patterns of democracy problems by examining two case studies, but for a better understanding of the gap between law and implementation

more cases should be explored to enable more patterns of the dynamics leading to the impediment of the process leading to democratization of citizenship in Turkey.

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