

GENDER EQUALITY IN TURKEY

with 2018 data

Center for Gender Studies at Koç University (KOÇ-KAM)



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About KOÇ-KAM

The Center for Gender Studies at Koç University (KOÇ-KAM) was established in March 2010 as an interdisciplinary research and application center. Faculty members and researchers from many different departments, including sociology, social psychology, law, philosophy, political science, and history, share their research on gender and women's issues, conduct collaborative national and international research projects, and lead scientific and educational activities both within and outside the university. As a center for gender studies, KOÇ-KAM organizes a research awards program supporting superior research projects, as well as the Gender Certificate Program for Koç University students. Through frequently-held series of conferences, panels, and seminars, KOÇ-KAM promotes communication on gender issues between academics, students, civil society actors, artists, and policy-makers. KOÇ-KAM focuses on gender-based inequalities and stereotypes based on cultural or social prejudices.

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Abbreviations

CC	Constitutional Court
E.	Case number
para.	Paragraph
CD	Turkish Supreme Court Civil Department
ACC	Turkish Supreme Court Assembly of Civil Chambers
General Assembly	Turkish Supreme Court General Assembly on the Unification of Judgments
K.	Decision number
K.t.	Decision date
Art.	Article number
MoE	Ministry of Education
OECD	Organization for Economic Co-operation and Development
O.G.	Official Gazette
TurkStat	Turkish Statistical Institute

I. ACCESS TO RESOURCES

Health

As a basic human right, health is defined by the World Health Organization not merely as the absence of disease or infirmity, but also as a state of complete physical, mental, and social well-being. Therefore, discussion of the state of health of women and girls, who make up more than half of the population, must mention not only health and infirmity, but also risk factors for disease and how such factors may affect women's ability to maintain their well-being. This report uses the latest data on women's health in Turkey to statistically examine not only women's health, diseases, and mortality rates, but also risk factors for disease.

According to the report published by the Ministry of Health in 2018, life expectancy at birth, which is one of the most important indicators of quality of life, is 75.3 years for males and 80.8 years for females in Turkey.¹ Although women's life expectancy at birth is higher and increases every year, it is still lower than that in developed countries, where both genders have equal access to services. Furthermore, it should be noted that the increase in women's life expectancy leads to chronic diseases and geriatric problems, which adversely affect women's health.

Maternal deaths are related to many factors such as age, socio-economic status, parity, number of prenatal visits, and quality of prenatal care. In 2017, the maternal mortality rate in Turkey was found to be 14.6% per 100,000 live births.² Maternity mortality rates were observed to be above average in eastern Turkey and the Black Sea region and below average in western Turkey and the Marmara region. According to results on the causes of maternal deaths, 48% of deaths are due to direct causes, while 52% are due to indirect causes. While the most common direct cause is hemorrhage, the most common indirect cause is cardiovascular disease.³

Among heart diseases, coronary artery diseases continue to be the leading cause of death in women of all age groups in Turkey, as well as across the world. The rate of mortality due to coronary artery diseases is 38% in women, which is higher than the total rate of all types of cancer seen in women. Benign and malignant tumors (19.7%) constitute the second most common cause of death in women, followed by respiratory diseases (11%).⁴

The most common types of cancer among women are breast cancer (24.7%), thyroid cancer (12.1%), colorectal cancer (8.3%), uterine corpus cancer (5.5%), and lung cancer (5.1%), followed by stomach cancer (3.7%), ovary cancer (2.8%), Non-Hodgkin's lymphoma (2.8%), uterine cervix cancer (2.5%), and brain and nervous system cancer (2.1%).⁵ Although breast cancer is the most common type of cancer seen in women in Turkey, 60.6% of women aged 15 and older do not perform breast self-examination (BSE). Only 19.7% of women perform BSE regularly every month, while 11.9% perform the exam less than once every three months, and 7.9% once every three months.⁶

Over the years, a small decrease has been observed in the use of tobacco products, which is a behavioral risk factor for women's health, through the prevention and reduction policies. In 2014, those who had never used tobacco products made up 49.8% of the population over the age of 15. This rate was 28.7% for men and 70.3% for women. In 2017, the rate of those who had never used tobacco products increased to 57.8%. This rate increased to 41.8% for men and 73.7% for women. An examination of those who use tobacco products every day reveals that 31.5% of the pop-

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1 Berrak Bora Başara et al., *Health Statistics Yearbook 2017* (Ankara: T.C. Sağlık Bakanlığı Yayınları, 2018).

2 Berrak Bora Başara et al., *Health Statistics Yearbook 2017*.

3 Turkish Mother, Child and Adolescent Health Institute, "Anne Ölüm Oranları 2017" [Maternity Mortality Rates 2017], accessed May 3, 2019, <https://www.tuseb.gov.tr/enstitu/tacese/anne-l-mleri>.

4 Turkish Statistical Institute (TurkStat), *Ölüm Nedeni İstatistikleri 2017* [Cause of Death Statistics 2017], Press Release 27620 (April 26, 2018), <http://www.tuik.gov.tr/PdfGetir.do?id=27620>.

5 Berrak Bora Başara et al., *Health Statistics Yearbook 2017*.

6 Berrak Bora Başara et al., *Health Statistics Yearbook 2017*.

ulation and 19.7% of women in Turkey continue to use tobacco products every day.⁷ According to the data on physical exercise, another behavioral risk factor—women (13.1%) engage in vigorous-intensity physical activities significantly less than men (36.3%), and women (61.1%) prefer light-intensity physical activities more so than men (37.4%).⁸

Among other controllable biological risk factors, the rate of diagnosis of hypertension, diabetes, and high cholesterol is approximately twice as high in women as in men.

Being overweight or obesity in women are one of the biological risk factors for chronic diseases and their incidence continues to increase over the years. According to the Turkish Statistical Institute, obesity increased by 5.1% from 2000 to 2009 in Turkey, but increased by 15.2% in 2008 and 31.1% in 2016. The rate of increase is found to be 32.3% for women. According to the report published by the World Health Organization Turkey Office in 2018, 28.8% of Turkey's total population was found to be obese. The rate of obesity is 35.9% for women and 21.6% for men. Over one quarter (35.6%) of the population (30.1% of women and 41.2% of men) is found to be in the “pre-obesity” category, a term used to describe the state of being overweight.⁹ Among other controllable biological risk factors, the rate of diagnosis of hypertension, diabetes, and high cholesterol is approximately twice as high in women as in men.

In the last 12 months, 4.3% of men and 9.8% of women have been diagnosed with hypertension, 3.4% of men and 5.2% of women with diabetes, and 3.6% of men and 6.1% of women with high cholesterol.¹⁰

Education

In Turkey, gender equality can only be ensured by identifying the obstacles to women's equal participation in education (the most important and basic area of social empowerment) and implementing solutions to overcome these obstacles. According to research, women benefit from education as much as or more so

Although gender equality in access to education and schooling has to a large extent been ensured in Turkey over the last ten years, geographic and regional differences, the fields of education and types of schools in which female students are concentrated, dropout rates, and women's lower rate of participation in graduate education prove that there is still significant progress to be made.

than men, and investment in women's education in low-income countries is more efficient than that in men's education.¹¹ Although gender equality in access to education and schooling has to a large extent been ensured in Turkey over the last ten years, geographic and regional differences, the fields of education and types of schools in which female students are concentrated, dropout rates, and women's lower rate of participation in graduate education prove that there is still significant progress to be made.

As of 2017-2018, the net pre-school enrollment rate between the ages of 3 and 5 is 38.5% in Turkey – 38.2% for girls and 38.84% for boys. The net enrollment rate in primary education is 91.5% and does not vary significantly by gender: 91.7% for girls and 91.4% for boys. Moreover, the net enrollment rate in secondary education is 94.7% for girls and 94.3% for boys. In 2017-2018, the net enrollment rate in secondary education increased to 83.6%. This rate did not vary significantly between male and female students: 83.4% for girls and 83.8% for boys. However, the enrollment rate for boys in the Southeastern Anatolia region was 71.9%, while it was only 67.2% for girls. According to the Ministry of Education (MoE), the rate of vocational and technical secondary school students in 2018 was 44.9% for boys and 39.5% for girls. This rate was found to be similar across all regions of Turkey.¹² In vocational and technical

7 Sarp Üner, Mehmet Balcılar, and Toker Ergüder (ed.), *National Household Health Survey: Prevalence of Noncommunicable Disease Risk Factors in Turkey 2017 (STEPS)* (Ankara: World Health Organization Turkey Office, 2018).

8 Üner, Balcılar, Ergüder (ed.), *Türkiye Hanehalkı Sağlık Araştırması* [Turkey Household Health Survey].

9 Üner, Balcılar, Ergüder (ed.), *Türkiye Hanehalkı Sağlık Araştırması* [Turkey Household Health Survey]; Bora Başara et al., *Health Statistics Yearbook 2017*.

10 Evan D. Peet, Günther Fink, and Wafaie Fawzi. “Returns to Education in Developing Countries: Evidence from the Living Standards and Measurement Study Surveys,” *Economics of Education Review* 49 (December 2016).

11 Ministry of Education (MoE), *Millî Eğitim İstatistikleri: Örgün Eğitim 2017-2018* [National Education Statistics: Formal Education 2017-2018] (Ankara: Ministry of Education, 2018), https://sgb.meb.gov.tr/meb_iys_dosyalar/2018_09/06123056_meb_istatistikleri_organ_egitim_2017_2018.pdf.

12 Ministry of Education (MoE), *Türkiye'de Meslekî ve Teknik Eğitimin Görünümü Eğitim Analiz ve Değerlendirme Raporu*, [Outlook

high schools providing education in 56 fields, the distribution of male and female students in certain fields is an important indicator of gender roles. For example, the rate of female students is 96% in the department of family services, 99% in the field of child development and education, and 93% in the field of sick and elderly care. Rates of female participation in other fields is much lower: 39% in the field of information technologies, 34% in biomedical engineering, and only 2.8% in the department of electrical and electronic engineering.¹³ When students are grouped according to types of secondary schools, the rate of female students is 56% in religious vocational high schools, 54% in science high schools, 65% in social sciences high schools, and 27.9% in sports high schools.¹⁴

In addition schooling rates, attendance and dropout rates are important indicators of access to education. Studies show that girls are at greater risk of dropping out.¹⁵ According to MoE's 2018 data, primary school dropout rates between the ages of 15 and 19 are 9.7% for girls and 5.9% for boys. This rate increases to 30% for girls in the Southeastern Anatolia region. While the total secondary school dropout rate is remarkably high (43.6%), there is no significant difference between genders. However, the school dropout rate for girls increases to 70% in the Southeastern Anatolia region. An MoE project launched in 2015 aims to find a solution to the problem of early dropout for girls in the Southeastern Anatolia region. This project created a change by enabling 5,022 girls to go back to school in 2018.¹⁶

In 2018, the ratio of women's to men's participation in tertiary education was lower than that in primary and secondary education. In undergraduate education, 45.9% of all students are female, while 54.1% are male.¹⁷ In Turkey, the proportion of women in tertiary education is below the 50% average of OECD countries.¹⁸ While 42.2% of open education students are female, 57.8% are male. In vocational schools of higher education, 41.8% of all students are women, and 58.2% are men. Furthermore, 39% of graduate students are women, while 61% are men. In doctorate programs, 57.4% of students are men, and 42.6% are women.

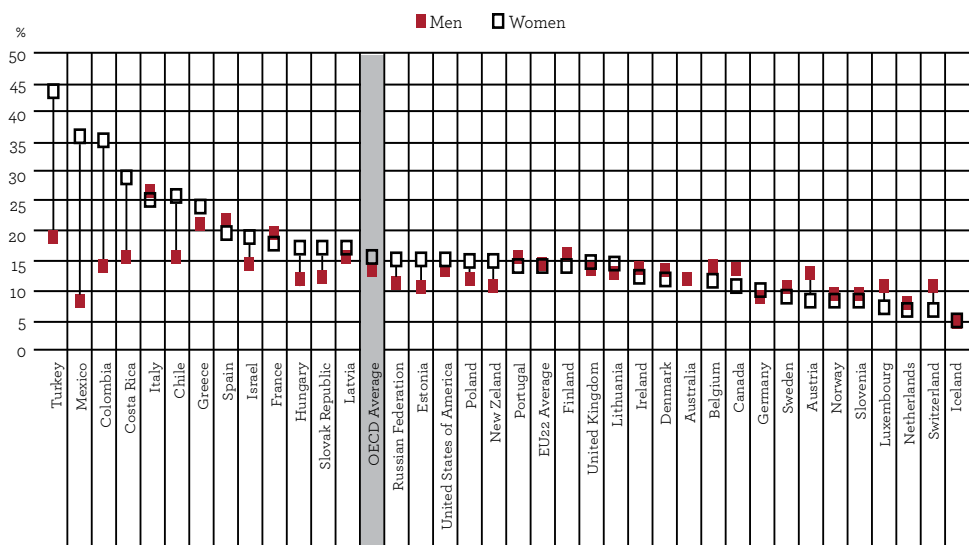


Figure 1. NEET rates by gender between the ages of 18 and 24¹⁹

on Vocational and Technical Education in Turkey Education, Analysis and Assessment Report], Series of Education, Analysis and Assessment Reports, No: 1 (November 2018), http://mtegm.meb.gov.tr/meb_ıys_dosyalar/2018_11/12134429_No1_Turkiyede_Mesleki_ve_Teknik_Egitimin_Gorunumu.pdf.

13 MoE, *Millî Eğitim İstatistikleri: Örgün Eğitim 2017-2018* [National Education Statistics: Formal Education 2017-2018].

14 Zeynep Cemalçılar and Fatoş Gökşen, "Inequality in Social Capital: Social Capital, Social Risk and Drop-Out in the Turkish Education System," *British Journal of Sociology of Education* 35, no. 1 (2014).

15 Burcu Meltem Arık, et al. *Eğitim İzleme Raporu 2017-2018* [Education Monitoring Report 2017-2018] (İstanbul: Education Reform Initiative, 2018).

16 Council of Higher Education (YÖK) Information Management System, "YÖK İstatistikleri" [Council of Higher Education Statistics], (2018), accessed March 1, 2019, <https://istatistik.yok.gov.tr/>.

17 Organization for Economic Cooperation and Development (OECD), *Education at a Glance 2018: OECD Indicators*, accessed March 1 2019, https://www.oecd-ilibrary.org/education/education-at-a-glance-2018_eag-2018-en

18 OECD, *Education at a Glance 2018*.

19 OECD, *Education at a Glance 2018*.

In addition to the labor market, economic conditions, and cultural context, the scope and quality of education is one of the most important factors affecting the transition from education to employment. In Turkey, one of most significant indicators of gender inequality in the transition from education to employment is NEET. The concept of NEET (*Not in Education, Employment or Training*), which refers to the “invisible” population involved in neither education nor employment, indicates a highly serious problem. As shown in the graphic below, Turkey has the highest NEET rates for women among all OECD countries.

Examining women’s employment rate by educational status, we see that although labor force and employment rates increase as the educational status improves, the labor force participation rate in 2018 was 71% for women with tertiary degrees. While the employment rate for women with tertiary degrees was 59.6%, it was 89% for men. On the other hand, the OECD average for the employment rate for female university graduates aged 25-34 was 80%. While the employment rate for women (aged 24-34) with secondary degrees in Turkey was 35%, the OECD average for the same group was found to be 68%.²⁰

Another notable data set in statistics on education and women is the gender-based breakdown of the teaching profession. While almost all preschool teachers are female (95%), this rate decreases to 59% in primary schools, 50% in secondary schools, and 43% in higher education institutions. According to the OECD’s 2018 data, the difference between gender-based participation in the teaching profession over the last 10 years has been increasing in primary and secondary schools while decreasing in higher education institutions.²¹

Science, Technology, Engineering and Mathematics

In recent years, rapidly-advancing technology has increased the importance of studies in science, technology, engineering, and mathematics (STEM). Women’s representation in these fields will also be effective in making technology equally beneficial for both men and women.

In the 2017-2018 academic year, 49% of all newly-enrolled students in higher education institutions were female. However, this rate decreases to approximately 33-35% in the fields of science, technology, and engineering.

In Turkey, women made up 46% of all students receiving higher education between 2015 and 2018. In the 2017-2018 academic year, 49% of all newly-enrolled students in higher education institutions were female. However, this rate decreases to approximately 33-35% in the fields of science, technology, and engineering. A breakdown of these fields reveals that women are concentrated in certain departments. For example, the rates of newly-enrolled female higher education students in the food, chemical, and textile engineering departments were 72%, 66%, and 61% respectively in the 2017-2018 academic year. This rate decreases to 22% in information and communication technologies and to 17% in building and civil engineering. The fields in which women’s representation was the lowest were engineering departments related to motor vehicles, ships, and aircraft, with a rate of 11%.²² In 2018, the employment rate for STEM graduates was 80%, which was significantly higher than men’s employment rate in Turkey (approximately 65%).²³

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The participation of new graduates in the beginning of their careers of employment is an important criterion demonstrating recent trends in the market. Therefore, it is appropriate to provide the employment rate for young female STEM graduates (aged 22-35). This rate has been 60% in 2017. However, it is noteworthy that only 19% of those who were employed work in professional positions in the fields of science and engineering, according to the classification of occupation known as ISCO 08.²⁴

An examination of the engineering subgroup of STEM reveals that the employment rate for young

20 OECD, *Education at a Glance 2018*.

21 OECD, *Education at a Glance 2018*.

22 Council of Higher Education (YÖK) Information Management System, “YÖK İstatistikleri” [Council of Higher Education Statistics], (2018), <https://istatistik.yok.gov.tr/>.

23 Turkish Statistical Institute (TurkStat), “Eğitim İstatistikleri” [Education Statistics] (2018), http://tuik.gov.tr/PreTablo.do?alt_id=1018.

24 Ömer Zeybek, Aliye Ahu Akgün, İlker Akgün, and Başak Demireş Özkul, “Türkiye’de Bilim, Teknoloji ve Mühendislik Alanlarında Yeni Mezun Kadın Elemanların İstihdama Katılımı: Hane Halkı İşgücü Verileri Üzerine Bir Uygulama” [Participation of Newly-Graduated Turkish Women in STEM Employment: A Statistical Application on Household Labor Force Survey], *EYİ Bildiri* (2018), https://www.researchgate.net/publication/328145170_Turkiye%27de_Bilim_Teknoloji_ve_Muhendislik_Alanlarinda_Yeni_Mezun_Kadin_Elemanlarin_Istihdama_Katilimi.

women graduating from science and engineering departments was above 80%.²⁵ The rate of female engineers working these fields is above 30%, higher than that for young women with STEM degrees.²⁶ The rate of employment for young female engineers is significantly above 70%, the rate of employment calculated for young people with a tertiary or higher education.²⁷ Although the employment rate of young women with engineering degrees is much higher, the employment rate of new STEM graduates at the beginning of their careers in professional occupations in the fields of science and engineering is approximately three times higher for men than for women.²⁸ This data set shows that there is a high degree of vertical gender segregation among STEM graduates at the beginning of their careers in Turkey.

Another important criterion in terms of gender equality is wage inequality. According to a 2017 report of OECD, the average wage gap is 13.4% in OECD countries, while it is 6.9% in Turkey. The HoneyPot report examines women's participation in the field of technology in 41 countries in the OECD and EU. According to the report, the average rate of female STEM students in these countries is 24%, while it is 37% in Turkey. Wage inequality in this field is 3.1% in Turkey, which is considerably below the average (14.7%). However, the rate of women working in the field of technology is approximately 10% in Turkey, which is considerably below the average (17.5%).²⁹

Labor Force and Employment

One of the major problems women face in Turkey stems from the labor force and labour market participation rates, as well as the horizontal discrimination (discrimination based on occupation/industry) in the job market. Turkish Statistical Institute data shows that although women's employment rate was 29.4% in 2018, it has increased by only 2.2% over the last 20 years (according to 1998 data, women's employment rate was 27.2%). Women's share in employment was 31.4% in 2018, while men's share was 68.6%.³⁰ Among OECD countries, Turkey ranked last in women's employment rate in 2018, after South Africa (with a difference of 4.7%) and Greece (with a difference of 12.4%).³¹

Turkish Statistical Institute data shows that although women's employment rate was 29.4% in 2018, it has increased by only 2.2% over the last 20 years.

In 2018, women made up 32.5% of the labor force. Women's labour force participation was 34.3% in 1988,³² 29.2% in 1998, 24.5% in 2008, and 34.2% in 2018. **Figures 2 and 3**, illustrating TurkStat's data for 1988, 1998, 2008, and 2018, show that despite small differences, the patterns of women's labor force and employment rates presented for every 10 years from 1988 to 2018 are highly similar.³³ These patterns bear the traces of the 2008 global economic crisis, and show the reintegration of the agricultural female labor force (mostly consisting of unpaid family workers) into urban labor force via less qualified jobs.

In 2018, the overall unemployment rate for women was 13.9%, and the non-agricultural unemployment rate was 17.8%. A comparison to 1998 data shows that women's overall unemployment rate has increased by 7.1%, and the non-agricultural unemployment rate has decreased by 0.5%, in other words, remained stable over the past 20 years.

25 Zeybek et al., "Türkiye'de Bilim, Teknoloji ve Mühendislik Alanlarında Yeni Mezun Kadın Elemanların İstihdama Katılımı" [Participation of Newly-Graduated Turkish Women in STEM Employment].

26 Zeybek et al., "Türkiye'de Bilim, Teknoloji ve Mühendislik Alanlarında Yeni Mezun Kadın Elemanların İstihdama Katılımı" [Participation of Newly-Graduated Turkish Women in STEM Employment].

27 TurkStat, "Eğitim İstatistikleri" [Education Statistics].

28 Zeybek et al., "Türkiye'de Bilim, Teknoloji ve Mühendislik Alanlarında Yeni Mezun Kadın Elemanların İstihdama Katılımı" [Participation of Newly-Graduated Turkish Women in STEM Employment].

29 HoneyPot, "2018 Women in Tech Index," accessed May 3, 2019, <https://www.honeypot.io/women-in-tech-2018/eur/>.

30 Rates of employment, labor force participation, and unemployment are calculated for the population over the age of 15 in all years. Unless otherwise stated, all data was excerpted from Labor Force Statistics published by TurkStat for the specified years.

31 Organization for Economic Cooperation and Development (OECD), "Employment rate (Women, % of working age population, 2018 or latest available)", (2019), doi: 10.1787/1de68a9b-en, accessed July 16, 2019. The data was presented as percentage rates for the working-age (15-64) population.

32 The report is based on the average of October data for 1988, October and April data for 1998, and annual averages for the years of 2008 and 2018.

33 Turkish Statistical Institute (TurkStat), "İşgücü İstatistikleri" [Labor Force Statistics], (1988, 1998, 2008, and 2018), http://tuik.gov.tr/PreTablo.do?alt_id=1007.

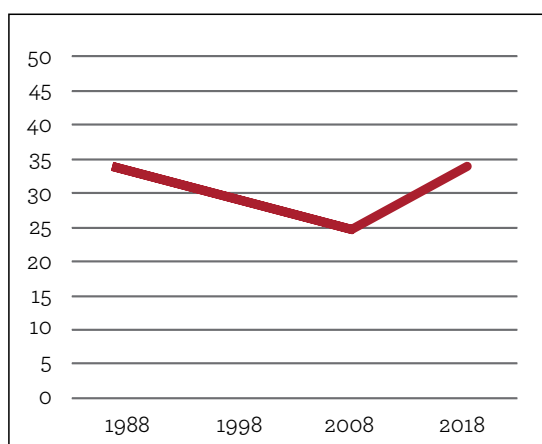


Figure 2. Women's labor force participation rate in Turkey, 1988-2018.

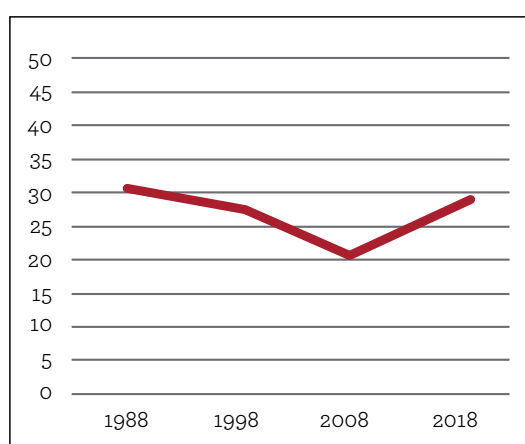


Figure 3. Women's employment rate in Turkey, 1988-2018.

According to TurkStat's 2018 data on labor force dynamics in Turkey with regard to women's educational status, labor force and employment rates increase in parallel with educational status. However, the labor force participation rate of women with tertiary degrees is 71.6%, while their employment rate is only 59.3%. While the labor force participation rate is 16.1% for illiterate women, it is 28.1% for women with below-secondary education, 34.6% for women with secondary degrees, and 42.8% for women graduating from vocational or technical high schools. As the employment rate is 15.6% for illiterate women, it is 25.1% for women with below-secondary education, 27.6% for women with secondary degrees, and 33.8% for women graduating from vocational or technical high schools. When women's unemployment patterns are based on educational status, the unemployment rate is 3.5% for illiterate women, 10.8% for women with below-secondary education, 20.3% for women with secondary degrees, 20.9% for women graduating from vocational or technical high schools, and 15.6% for women with tertiary degrees.

Although it is important to examine the overall employment participation rates, the occupational categories (according to ISCO 08 categorization of ILO) of employed women must also be examined in order to understand the elements of vertical and horizontal segregation. According to TurkStat's 2018 data, the rate of women in managerial jobs is 2.5% (as shown in the figure above), while it is 15.9% for women professionals; 5.1% for technicians and associate professionals; 9.6% for clerical support workers; 21.1% for services and sales workers; 17% for skilled agricultural, forestry and fishery workers; 5.4% for craft and related trades workers; 3.4% for plant and machinery operators, and assemblers; and 20% for elementary occupations.

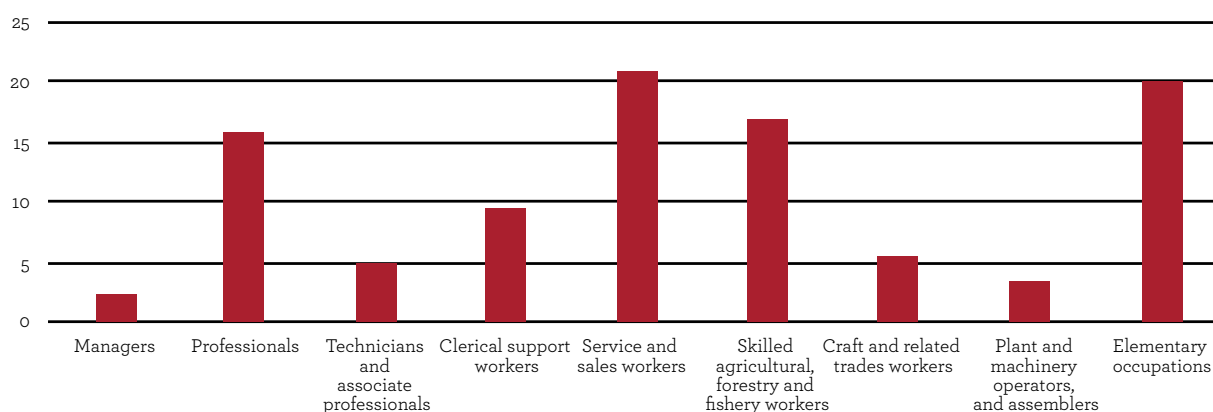


Figure 4. The distribution of women participating in employment in Turkey, based on occupational groups (ISCO 08) in 2018.

In 2018, the gender composition of individuals in managerial positions was 14.7% for women and 85.3% for men, showing that the glass ceiling pattern is a serious and ongoing problem in Turkey.

An analysis of women's status in all industries in Turkey reveals that 65.4% of employed women are regular or casual employees, 1.3% are employers, 9.7% are self-employed individuals, and 23.7% are unpaid family workers.

Lastly, the most common "reason for not participating in the labor force" among women is "being a housewife," with a rate of 54.8%. In 1998, 59.2% of non-working women gave the same reason for not participating in the labor force, showing that one of the most visible barriers preventing women from participating in employment is unequal division of domestic labor. The category of "being a housewife" (which does not exist for men not participating in the labor force) is followed by the category of "being unable to work (due to disability, age, illness, etc.)," with a percentage of 13.4%, and the category of "in school or training," with a percentage of 11.5%.

In 2018, the gender composition of executives was 14.7% for women and 85.3% for men, showing that the glass ceiling pattern is a serious and ongoing problem in Turkey.

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II. INTERSECTIONAL DISCRIMINATION

Disability

Unfortunately, official statistics regarding the living conditions of people with disabilities in Turkey—especially women with disabilities—are insufficient. Two basic official reports exist on this topic.¹ However, the reports in question are inconsistent and out-of-date in terms of data collection methods; therefore, the reliability of statistical information on this topic is limited. In addition to these reports, studies and monitoring reports of certain non-governmental organizations offer insight into the living conditions of women with disabilities.² According to a study conducted by the Turkish Statistical Institute, the rate of people with disabilities in Turkey was 12.3% (approximately 8.4 million people) in 2002, while it was 6.9% (approximately 4.8 million people) in 2011 and 17.5% in 2016. Unfortunately, the reported change in the population rates in question over the years raises doubts about the reliability of the data. In light of these doubts, the following data will be excerpted from the most recent reports.

According to 2016 data, the illiteracy rate for people with disabilities is 30.6%. This rate increases to 40.4% for women with disabilities. According to TurkStat's 2017 data, the overall illiteracy rate in Turkey is 3.5%, and the illiteracy rate for women is 5.9%.³ Assuming that the figures in question are reliable, it is possible to see that opportunities for individuals with disabilities are limited in terms of access to education. A similar conclusion can be drawn in terms of access to job opportunities. According to TurkStat's 2016 data, non-workers⁴ make up 80.4% of the population with disabilities, while the same rate is 86.5% for women with disabilities. In the same year, the overall unemployment rate in Turkey was 10.9%.⁵ The Turkish Employment Agency's 2017 data shows that although a total of 12,151 people were employed in the public or private industry in Turkey, 2,025 of them were women and 10,126 of them were men. In order to understand how segregation occurs, one must consider that women with disabilities may be employed in jobs which are either irrelevant to their education or which conform to traditional gender roles (e.g., telephone operator).

In addition to the inequalities women with disabilities face regarding participation in education and business life, they also are often victims of violence. In 2014, 36% of women were subjected to physical violence, 12% to sexual violence, and 44% and 30% to psychological and economic violence, respectively.⁶ No assessment of disability was made in this study. Therefore, both qualitative and quantitative data on violence against women with disabilities is lacking. The report prepared by the Association for Women with Disabilities for the years 2013 and 2014 is based on media review, complaints of violation of rights, and applications for information. Therefore, both the experiences of women who have no access to the association and incidents not covered by the media are not included in the study. For example, of 893 scanned news articles from 2014, 25 were related to violence against women with disabilities. Among groups with disabilities, women with mental disabilities were more often subjected to sexual violence. The report also addresses the accessibility of mechanisms to prevent violence against women. For example, the Violence Prevention and Monitoring Centers (ŞÖNİM)⁷ in Ankara, Bursa, Diyarbakır, Gaziantep, Mersin, Samsun, and Trabzon found that there were no accessible toilets, no elevators in multi-story buildings, and no suitable vehicles facilitating

1 These reports are the “Turkey Disability Survey” conducted by the Turkish Statistical Institute (TurkStat) in 2002 (then called the “Administration of Disabled People”) and the “Survey on Problems and Expectations of Disabled People” prepared by the Turkish Statistical Institute and the Ministry of Family and Social Policies in 2010. Both surveys, which do not focus on disabled people only but contain statistical information on the disabled, use the data from the *Turkey Population and Housing Census* (2011) and the *Turkey Health Survey* (2012-2016) conducted by TurkStat.

2 For detailed information, please see the *Monitoring Report on Disability Rights From Legislation to Implementation* (2014) and the *Monitoring Report on Physical Sexual Violence, Abuse, and Cruel Treatment Against Disabled Individuals* (2016), prepared by the Turkish Social Rights and Research Association (TOHAD). Also see *Violence Against Disabled Women in Turkey*, prepared by Association for Women with Disabilities (ENG-KAD).

3 Turkish Statistical Institute (TurkStat), “Eğitim İstatistikleri” [Education Statistics], (2016), http://tuik.gov.tr/PreTablo.do?alt_id=1018.

4 It is not clear whether the phrase “non-worker” refers to “unemployment” in the report. Therefore, one must approach our statistical comparison with suspicion.

5 Turkish Statistical Institute (TurkStat), “İşgücü İstatistikleri” [Labor Force Statistics], (2016), http://tuik.gov.tr/PreTablo.do?alt_id=1007.

6 Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, *Türkiye’de Kadına Yönelik Aile İçi Şiddet Araştırması* [Survey on Domestic Violence Against Women in Turkey] (Ankara, 2015), <http://www.hips.hacettepe.edu.tr/KKSA-TRAnaRaporKitap26Mart.pdf>.

7 According to the Law on Protection of Family and Prevention of Violence Against Women numbered 6284, they are the units in 14 cities around Turkey to which women will apply in case they are subjected to violence.

the transportation of women with disabilities. Moreover, the provision of sign-language specialists or other forms of assistance for the disabled, such as tactile flooring or services for the visually impaired, is insufficient. Therefore, women with physical, auditory, or visual impairments who were subjected to violence had difficulty using ŞÖNİMs. The report also states that no record was kept about whether women who called 183, the Social Support Line of the Ministry of Family and Social Policies, were disabled.

According to Article 6 of the 2015 report submitted by Turkey to the United Nations Convention on the Rights of Persons with Disabilities, the Ministry of Family and Social Policies organized two Congresses of

In order to eliminate the inequality faced by women with disabilities in Turkey, qualified data must first be collected.

Women with Visual Disabilities in 2007 and 2008 to increase public awareness about the rights of women with visual impairment and provide a source for policies to eliminate existing problems. They also launched the “Rights-Based Struggle Steps of Women with Disabilities” project with the donation of the Sabancı Foundation in 2012.⁸

In order to eliminate the inequality faced by women with disabilities in Turkey, qualified data must first be collected. In order to raise awareness about inequality and discrimination, monitoring reports published by non-governmental organizations attempt to fill the void of official data available. According to the report submitted to the UN Convention on the Rights of Persons with Disabilities, the measures taken to prevent

The organization of women with disabilities is critical for the empowerment and emancipation of all women, with or without disabilities.

discrimination against women with disabilities and grant them equal rights are insufficient. Activities which consider the subjectivity of disabled women’s struggles and which enable them to fight for themselves are lacking. Disability must not be considered a homogeneous category. More importantly, the organization of women with disabilities is critical for the empowerment and emancipation of all women, with or without disabilities.⁹

Old Age

The proportion of the elderly in the Turkish population increases year by year. According to TurkStat’s 2018 data, the ratio of the population over the age of 65 to the general population increased to 8.8%. While the population over the age of 65 was 5,682,503 in 2012, it increased to 7,186,204 in 2018. The proportions of groups defined by the World Health Organization as “old” (75-84) and “oldest old” (85+) also increased. According to TurkStat’s data, 28.6% of the elderly population is between the ages of 75-84, and 9.2% is aged 85 and above. Considering the percentage of women in the elderly population, one might conclude that age is a women’s problem. Women live longer than men. Life expectancy is 80.8 for women and 75.3 for men. Moreover, elderly women outnumber elderly men and make up 55.9% of the entire elderly population (TurkStat, 2018).¹⁰

The risk of poverty and social exclusion is higher for elderly women than for elderly men. Factors such as domestic responsibilities and lack of access to education either prevent women from being employed entirely or force them to work in temporary jobs or jobs without social security.

Elderly women are in a socioeconomically disadvantaged position. The risk of poverty and social exclusion is higher for elderly women than for elderly men. Factors such as domestic responsibilities and lack of access to education either prevent women from being employed entirely or force them to work in temporary jobs or jobs without social security. This makes women financially and socially vulnerable in old age. Elderly women with no social insurance face serious risk of poverty, especially when their husbands die. In Turkey, 36% of one-bedroom houses are inhabited by elderly individu-

8 Turkish Social Rights and Research Association (TOHAD), *Engelli Hakları İzleme Grubu Projesi* [Monitoring Group for Disability Rights Project] (2018), <http://www.tohad.org/tohad/engelli-haklari-izleme-grubu-projesi/>.

9 Article 6 of the United Nations Convention on the Rights of Persons with Disabilities concerns women with disabilities: “i) States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. ii) States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.”

10 Turkish Statistical Institute (TurkStat), *İstatistiklerle Yaşlılar, 2018* [Elderly Statistics, 2018], Press Release numbered 30699 (March 18, 2019), <http://tuik.gov.tr/Pre-HaberBultenleri.do?id=30699>.

als.¹¹ Women make up 76.7% of all elderly individuals living alone. Elderly women living alone face psychosocial problems and the risk of poverty. The rate of impoverished elderly women was 17.8% in 2011 but increased to 18.6% in 2015. When compared to elderly men, elderly women are highly disadvantaged in terms of participation in the labor force. While the labor force participation rate is 19.9% for elderly men, it is only 5.8% for elderly women.¹²

Access to adequate care is definitely one of the most important problems faced by the elderly. As age advances, health problems and the need for care increase. Most people aged 65 and above (90%) have at least one chronic health condition, while 38% have three or more.¹³ Despite the increasing need for care, long-term corporate elderly care services are limited. According to 2018 data published by the Ministry of Family, Labor, and Social Services, there are 397 residential care facilities in Turkey, with 26,495 people benefiting from those facilities. One hundred and forty-six of these facilities are affiliated with the Ministry of Family, Labor and Social Services. The nursing homes and assisted living residences affiliated with the Ministry serve a total of 14,036 people. Twelve new nursing homes have been built since 2016; however, three of them have not yet been put into use. These new nursing homes opened in Çanakkale, Denizli, Düzce, Erzincan, Isparta, Kırşehir, Kocaeli, Sinop, Tekirdağ, Tokat, and Van.¹⁴ Despite the opening of these new facilities, Turkey's corporate services cannot house even 1% of the elderly population, which amounts to approximately seven million people. Social policy emphasizing home care services has been implemented as a solution to the elderly care problem. A significant number of elderly people (156,000) benefit from home care services, and this number increases year by year. Officers providing home care to the elderly are paid minimum wage, and home service providers are mostly women. These women do not have insurance or retirement pensions.¹⁵ Home care has proven to be problematic, both for the elderly and their care providers; however, no steps have been taken thus far to solve these problems.

Refugees

Since 2015, Turkey has become the country hosting the largest refugee population in the world. It currently hosts approximately 3.9 million refugees. Refugees from Syria who are under temporary protection (according to the Regulation on Temporary Protection) make up 3.6 million of this population. The rest of the population consist mostly of refugees from Afghanistan and Iraq who received or expect to receive conditional refugee status according to the Law on Foreigners and International Protection.¹⁶ According to the data of the Ministry of Interior Directorate General of Migration Management, the number of people who applied to Turkey for international protection was 112,415 in 2017 and 114,537 in 2018.¹⁷

While 141,627 of the Syrian population reside in temporary refugee centers, 3,501,111 reside outside of these centers.¹⁸ Most Syrians living in Turkey within the scope of temporary protection reside in cities. An examination of the distribution of Syrians under temporary protection by province shows that the cities

11 Ministry of Development Special Committee on Aging, *Onuncu Kalkınma Planı 2014-2018* [The Tenth Development Plan 2014-2018] (Ankara, 2014), http://www.sbb.gov.tr/wp-content/uploads/2018/10/10_Yaslanma.pdf.

12 Aylin Görgün Baran, "Türkiye'de Yaşlıların Dezavantajlı Konumu Kapsamında Yoksulluk ve Çalışma Yaşamına Katılım Düzeyleri" [The Levels of Poverty and Participation in the Business Life of the Elderly in Turkey With Regard to Their Disadvantaged Position], *Toplum ve Demokrasi Dergisi* 11, no. 24 (2017).

13 Ministry of Health Public Health Institution of Turkey Department of Chronic Diseases, Elderly Health and Disabled People, *Türkiye Sağlıklı Yaşlanma Eylem Planı ve Uygulama Programı 2015-2020* [Turkey Healthy Aging Action Plan and Implementation Program 2015-2020], (Ankara, 2015), <https://sbu.saglik.gov.tr/Ekutuphane/Yayin/508>.

14 Ministry of Family, Labor, and Social Services Directorate General of Services for Persons with Disabilities and The Elderly, *Huzurevi Sayısal Verileri* [Nursing Home Statistics] (2018), <https://eyh.aile.gov.tr/huzurevleri-envanteri>.

15 Ministry of Family and Social Services Directorate General of Family and Community Services, *Türkiye'de Yaşlı Bakım Hizmetlerinin Proaktif Yönü ve Mali Yükü Analizi Etüt Araştırması* [Analysis on the Proactive Side of Elderly Care Services in Turkey and Its Financial Burden] (2016), <https://ailetoplum.aile.gov.tr/uploads/pages/bilim-serisi/83-turkiye-de-yasli-bakim-hizmetlerinin-proaktif-yonu-ve-mali-yuku-analizi-etut-arastirmasi-2016.pdf>.

16 Ministry of Interior Directorate General of Migration Management, "Uluslararası Koruma" [International Protection], accessed March 1, 2019, http://www.goc.gov.tr/icerik3/uluslararasi-koruma_363_378_4712.

17 Ministry of Interior Directorate General of Migration Management, "Göç İstatistikleri: Geçici Koruma" [Migration Statistics: Temporary Protection].

18 Ministry of Interior Directorate General of Migration Management, "Göç İstatistikleri: Geçici Koruma" [Migration Statistics: Temporary Protection].

hosting the highest number of Syrians are Istanbul, Şanlıurfa, Hatay, Gaziantep, Mersin, Kilis, Adana, Konya, İzmir, and Bursa.¹⁹

In Istanbul, Şanlıurfa, and Hatay, cities hosting the highest number of Syrians, the Syrian population make up 3.71%, 22.18%, and 27.3% (respectively) of the province's population.

Children aged 0-18 make up 46.01% of the Syrian population.

The number of Syrians, who make up the majority of the refugee population in Turkey, increased rapidly from 2011 to 2015 and has been increasing at a decreasing rate since 2016. According to the data of the Ministry of Interior Directorate General of Migration Management, the number of Syrians under temporary protection was 3,426,786 in 2017 and 3,623,192 in 2018.²⁰ As of May 2019, the number of Syrians aged 0-4 under temporary protection is 508,352, consisting of 262,862 boys and 245,490 girls. Syrian infants born in Turkey and newly-registered individuals may have increased the population under temporary protection. According to 2019 data, the number of Syrians aged 0-14 is 1,657,933, and the number of children aged 0-18 make up 46.01% of the Syrian population.

According to the data of the Directorate General of Migration Management, the Syrian population under temporary protection consists of 1,651,193 women and 1,951,895 men.²¹ Although the male population is higher than the female population in all age groups, the greatest difference between the male and female population is in the group aged 19-24; the difference between genders decreases as age increases. The difference between the number of males and females among the young population may be due to the fact that young women are not registered, or that many women remained in Syria, leaving men to migrate alone in order to provide for the family they left behind.

Making up 15.7% of all foreign brides, Syrian brides formed the largest group.

According to TurkStat's data, 553,202 official marriages took place in Turkey in 2018.²² Among these marriages, the number of foreign brides was 22,743, accounting for 4.1% of all marriages.²³ Making up 15.7% of all foreign brides, Syrian brides formed the largest group. The number of foreign grooms in 2018 was 4,119, constituting 0.7% of all marriages.²⁴ Syrian grooms made up 13.1% of all foreign grooms. These numbers show that it is more common for Syrian women to marry Turkish citizens than it is for Syrian men. The fact that only official marriages are included in this data may suggest that marriages between female Syrian citizens and male Turkish citizens will have a significant sociological impact in the future. Considering that there are greater numbers of young Syrian men in Turkey than young Syrian women, it is likely that both marriage age and the rate of marriages with Turkish citizens will increase among Syrian men.

According to the "Child Statistics 2018" report released by TurkStat, the rate of marriage among girls in Turkey aged 16-17 is 3.8%.²⁵ Although there is no available reliable data on early marriage among Syrians under temporary protection, this rate is estimated to be higher among the Syrian population. According to a survey titled "Needs Assessment of Syrian Women and Girls Under Temporary Protection Status in Turkey" conducted by the Association for Solidarity with Asylum Seekers and Migrants (ASAM), the marriage rate for female participants under the age of 15 is 23%.²⁶ Although there is no data on the marriage age of Syrians in Turkey, the Ministry of Family, Labor, and Social Policies concludes that early marriage is more common

19 Ministry of Interior Directorate General of Migration Management, "Göç İstatistikleri: Geçici Koruma" [Migration Statistics: Temporary Protection].

20 Ministry of Interior Directorate General of Migration Management, "Göç İstatistikleri: Geçici Koruma" [Migration Statistics: Temporary Protection].

21 Ministry of Interior Directorate General of Migration Management, "Göç İstatistikleri: Geçici Koruma" [Migration Statistics: Temporary Protection].

22 Turkish Statistical Institute (TurkStat). *Evlenme ve Boşanma İstatistikleri 2018* [Marriage and Divorce Statistics 2018], Press Release numbered 30698 (March 1, 2019), www.tuik.gov.tr/PreHaberBultenleri.do?id=30698.

23 TurkStat, *Evlenme ve Boşanma İstatistikleri 2018* [Marriage and Divorce Statistics 2018].

24 Turkish Statistical Institute (TurkStat). (2019). *Evlenme ve Boşanma İstatistikleri 2018* [Marriage And Divorce Statistics 2018].

25 Turkish Statistical Institute (TurkStat). (2019). *İstatistiklerle Çocuk, 2018* [Statistics on Child 2018]. Press Release numbered 30708 (April 18, 2019). <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=30708>.

26 Association for Solidarity with Asylum Seekers and Migrants and UN Women, *Türkiye'de Geçici Koruma Altındaki Suriyeli Kadın ve Kız Çocukların İhtiyaç Analizi* [Needs Assessment of Syrian Women and Girls Under Temporary Protection Status in Turkey] (Ankara, June 2018), http://sgdd.org.tr/wpcontent/uploads/2018/08/The_Needs_Assessment_TR_WEB.pdf.

among Syrians under temporary protection, especially when considering that both the mean age at first marriage and the mean age at first childbirth are lower in Syria than they are in Turkey.²⁷ The Ministry's report demonstrates the importance of collecting data on the marital status of Syrian girls under the age of 15 when examining the rates of child marriage.

International Migration

The evolution of the international migration regime from labor migration to irregular migration (especially since the early 1990s) caused significant changes in the relationship between migration patterns and countries located on migration routes, such as Turkey. While Turkey was solely a sending country, it has since become a sending, receiving, and transit country.²⁸ Turkey's international migration profile varies in terms of status, country of origin, and reasons and motivations for migration. The region hosts national and international migrants, asylum seekers, and refugees with different socioeconomic statuses and levels of education. Turkey currently hosts four different types of international migrants: regular migration, irregular migration, international protection, and temporary protection migrants.

While Turkey was solely a sending country, it has since become a sending, receiving, and transit country.

Regular migration refers to legal migrants who reside and work in Turkey in accordance with legal procedures. **Figure 5** shows that, as of March 21, 2019, more than 900,000 international migrants residing in Turkey hold a residence permit.

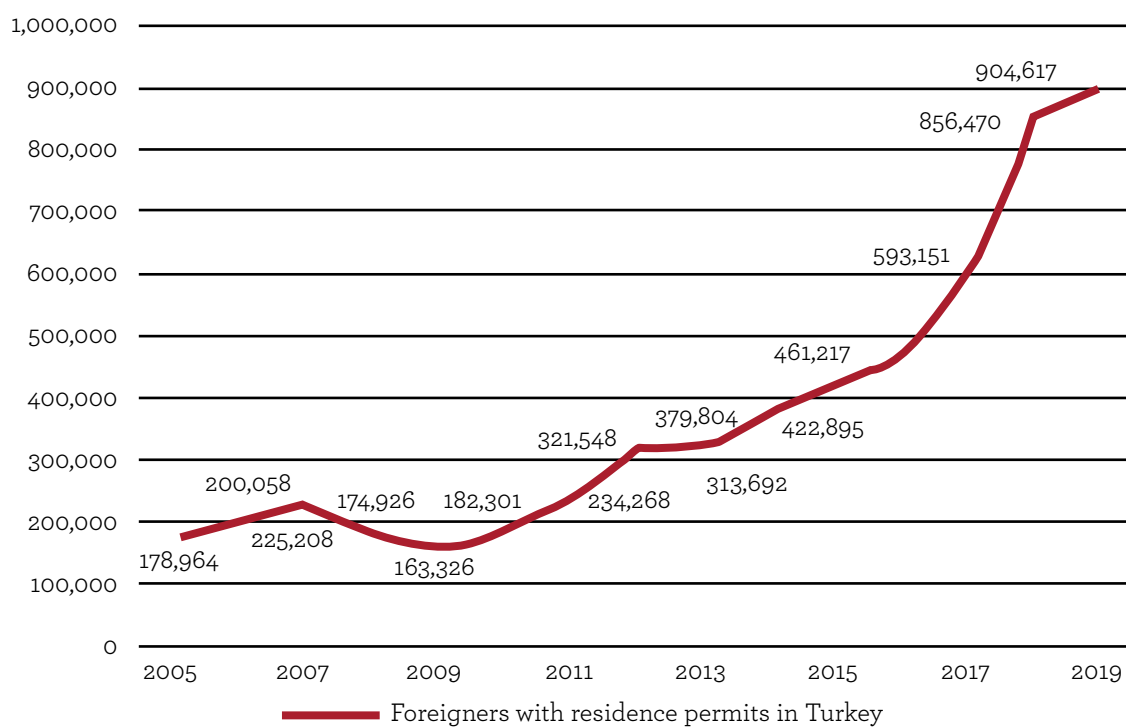


Figure 5. Foreigners residing in Turkey with residence permits by year, according to the data of the Ministry of Interior Directorate General of Migration Management.²⁹

27 Ministry of Family and Social Policies Directorate General of Family and Community Services. *Suriyeliler ile Türkiye Cumhuriyeti Vatandaşları Arasındaki Evlilik İlişkileri Araştırması* [Survey on Marital Relationships Between Syrians and the Citizens of the Republic of Turkey]. Series of Surveys and Policies 43 (2016). www.ailevecalisma.gov.tr/Raporlar/ATHGM/Suriyeliler_ile_Turkiye_Cumhuriyeti_Vatandaslari_Arasindaki_Evlilik_Iliskileri_Arastirmasi.pdf.

28 Çetin Çelik and Ahmet İçduygu, "Schools and Refugee Children: The Case of Syrians in Turkey," *International Migration* 57 (2019): 253-267.

29 Ministry of Interior Directorate General of Migration Management, "Yıllara Göre İkamet İzni ile Ülkemizde Bulunan Yabancılar" [Foreigners with Residence Permit in Turkey by Years], accessed March 21, 2019, <http://www.goc.gov.tr/icerik3/ikamet-iznleri3633784709>.

More than one third of male and female migrants in the work permit category are university graduates.

Regular migration is divided into subcategories such as short-term migration, family residence permit, student residence permit, and work permit migrants. More than one third of male and female migrants in the work permit category are university graduates.³⁰

Irregular migration mainly refers to immigrants without status. Migrants in this category gain an irregular/illegal status after entering the country legally. **Figure 6** below shows the distribution of irregular migrants in Turkey by year, as of March 2019. Although it is not possible to calculate the exact number of irregular migrants due to their status, the number of apprehended migrants suggests that there are approximately 400,000 irregular migrants in Turkey. This group also includes transit migrants on route to Western European countries.

Migrants under international protection are divided into three subcategories: refugees (European citizens who are unable to return to their countries of origin for valid reasons), conditional refugees (those who are allowed to stay until they are resettled in a third country), and secondary protection (those who are not refugees or conditional refugees but will encounter serious threats if sent back). It is important to note that Syrians are not under international protection but hold a different type of status in Turkey. **Figure 7** shows the number of applications for international protection in Turkey by year.

Temporary protection is a status mainly provided to Syrians in Turkey by the 2013 Law on Foreigners and International Protection. As shown in **Figure 8**, this status also regulates access to healthcare, education, and the Syrian population’s labor market, which constituted approximately 3.6 million people in the first quarter of 2019. While only 140,704 of Syrians in Turkey remained in Temporary Refugee Centers in Şanlıurfa, Adana, Kilis, Kahramanmaraş, Hatay, Osmaniye, Malatya, and Gaziantep, the rest reside outside of these centers in nearly all Turkish provinces.³¹ The first, second, and third provinces hosting the largest number of people with temporary protection status are Istanbul, with 560,706 people, Şanlıurfa, with 451,434 people, and Hatay, with 439,910 people.³²

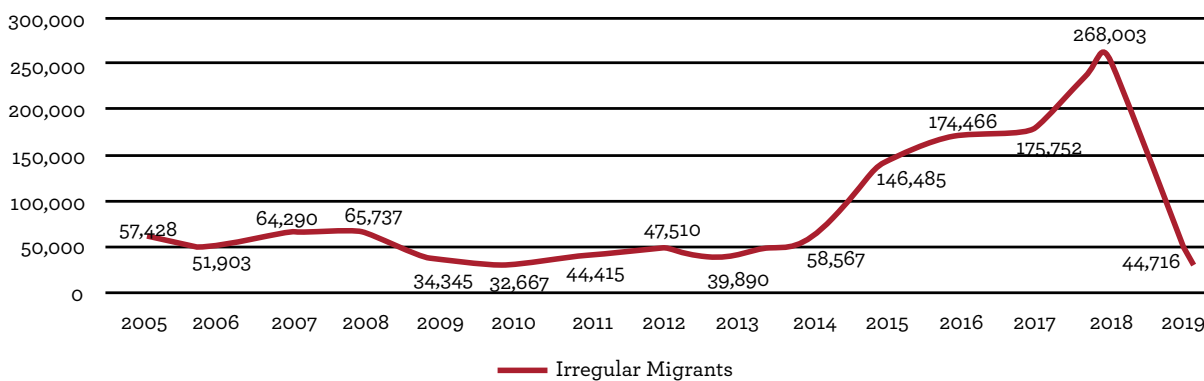


Figure 6. The number of irregular migrants apprehended by year, according to data published by the Ministry of Interior Directorate General of Migration Management.³³

30 Ministry of Family, Labor, and Social Services, *Çalışma Hayatı İstatistikleri / Labour Statistics 2017*, accessed March 21, 2019, <https://www.ailevecalisma.gov.tr/media/3372/yabanciizin2017.pdf>.

31 Ministry of Interior Directorate General of Migration Management, “Geçici Barınma Merkezleri İçinde ve Dışında Kalan Suriyeliler” [Syrians Residing in or outside of Temporary Refugee Centers], accessed March 21, 2019, http://www.goc.gov.tr/icerik3/gecici-koruma_363_378_4713.

32 Ministry of Interior Directorate General of Migration Management, “Geçici Koruma Kapsamındaki Suriyelilerin İllere Göre Dağılımı” [Distribution of Syrians under Temporary Protection by Provinces], accessed March 21, 2019, http://www.goc.gov.tr/icerik3/gecici-koruma_363_378_4713.

33 Ministry of Interior Directorate General of Migration Management, “Yıllara Göre Yakalanan Düzensiz Göçmen Sayısı” [Number of Irregular Migrants Caught by Years], accessed March 21, 2019, http://www.goc.gov.tr/icerik3/duzensiz-goc_363_378_4710.

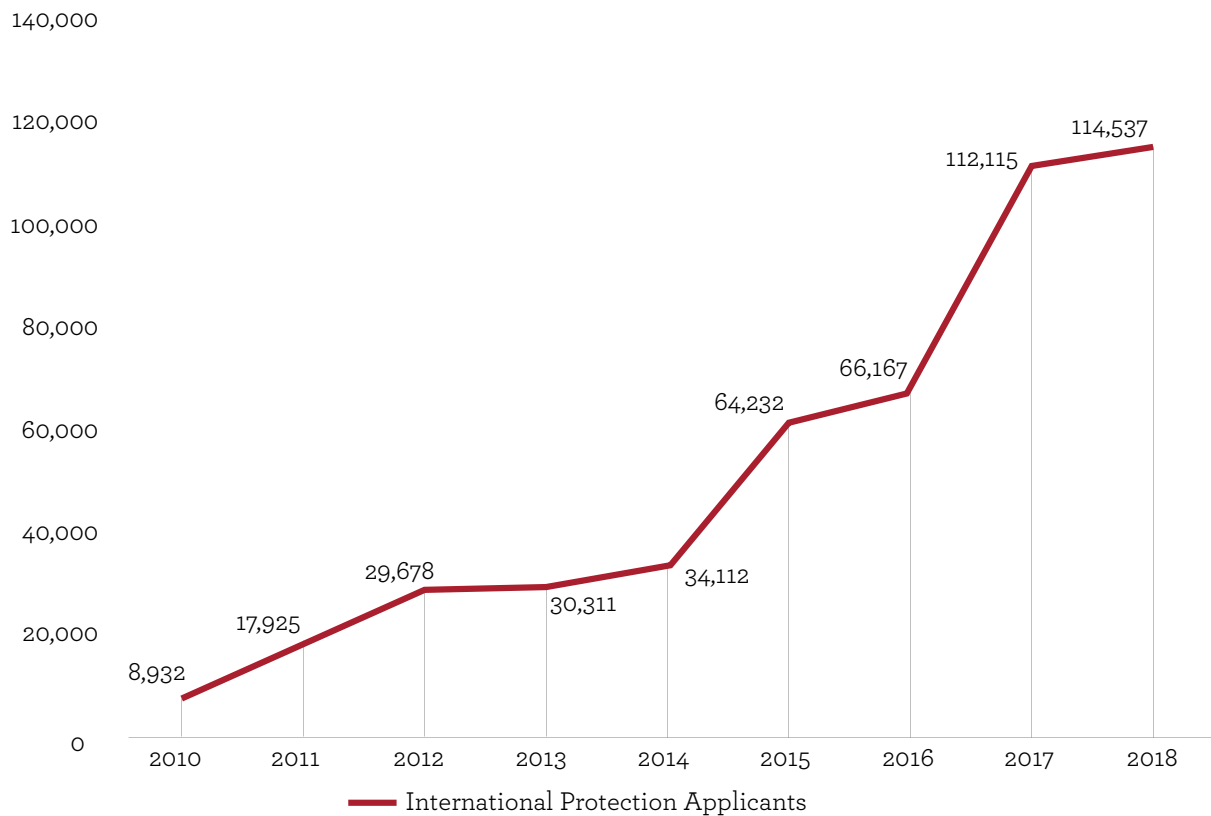


Figure 7. Those who applied for international protection by year, according to data published by the Ministry of Interior Directorate General of Migration Management.³⁴

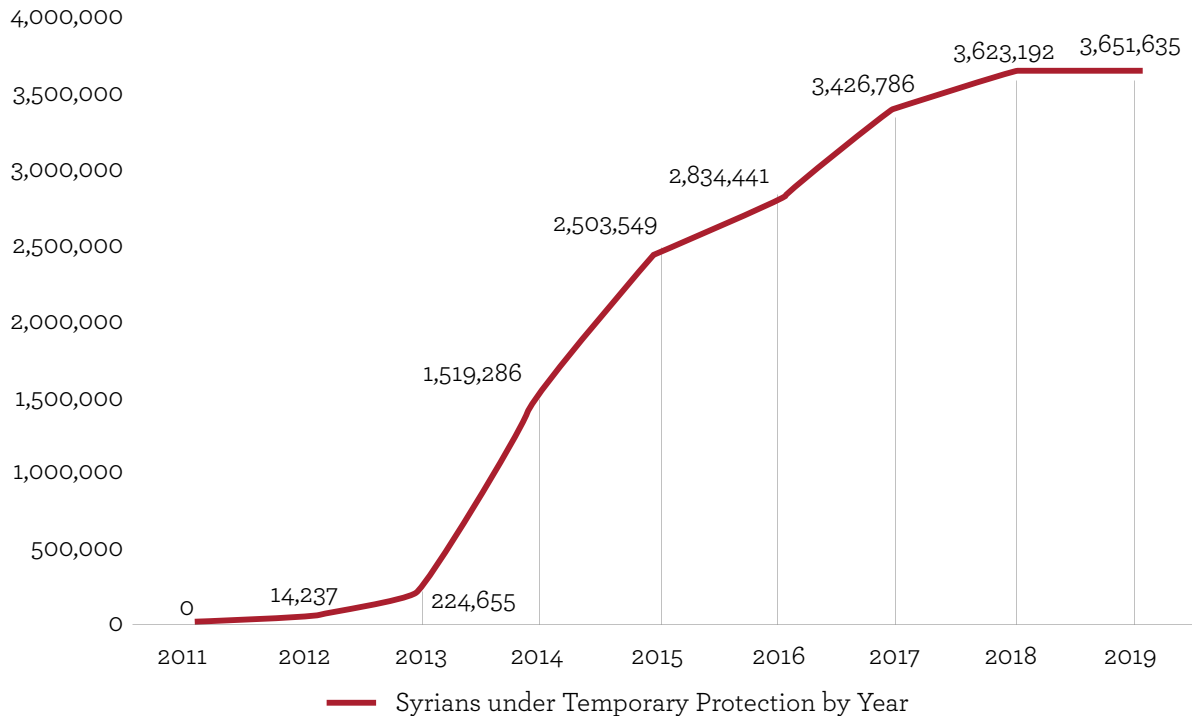


Figure 8. Syrians under temporary protection by year, according to records of the Ministry of Interior Directorate General of Migration Management.³⁵

³⁴ Ministry of Interior Directorate General of Migration Management, “Yıllara Göre Uluslararası Koruma Başvurusu Yapanlar” [International Protection Applicants by Years], accessed March 21, 2019, http://www.goc.gov.tr/icerik3/uluslararasi-koruma_363_378_4712.

³⁵ Ministry of Interior Directorate General of Migration Management, “Yıllara Göre Geçici Koruma Kapsamındaki Suriyeliler” [Syrians under Temporary Protection by Years], accessed March 21, 2019, http://www.goc.gov.tr/icerik3/gecici-koruma_363_378_4713.

As of 2019, there are 1,974,470 Syrian men and 1,666,874 Syrian women with temporary protection status in Turkey, and more than half of this population is under the age of 24.³⁶ Statistical analyses at the regional level show that men are more active in business life and outside of the home, while women usually spend more time at home due to the gender-based division of labor, leading to inequality in the language learning processes of men and women.³⁷

36 Ministry of Interior Directorate General of Migration Management, "Geçici Koruma Kapsamındaki Suriyelilerin Yaş ve Cinsiyete Göre Dağılımı" [Distribution of Under Temporary Protection by Age and Gender], accessed March 21, 2019, http://www.goc.gov.tr/icerik3/gecici-koruma_363_378_4713.

37 Fatma Bölükbaş, "The Language Needs Analysis of Syrian Refugees: İstanbul Sample," *The Journal of International Social Research* 9, no. 46 (2016): 21-31.

III. JUSTICE AND RIGHTS

Gender Equality and Constitutional Review

Cases brought to the Constitutional Court in 2018 were interesting in terms of the protection of gender equality as a right by law. In these cases, the Court interpreted and extended the limits of individual autonomy with respect to gender identity, which had never been previously addressed. However, it failed to sufficiently address topics such as hate speech against the LGBTQ community, the correlation between gender equality and data on attire/dress, and discrimination allegations regarding gender-specific occupations.

Constitutional Protection of Gender Identity and Gender Reassignment

In 2018, the Constitutional Court issued remarkable and leading decisions concerning the relationship between gender identity and individual autonomy. These decisions marked the first time that gender reassignment was addressed at the level of constitutional review and with respect to fundamental rights. The Court concluded that one of the requirements for gender reassignment specified in Article 40 of the Code of Civil Law violated the Constitution.¹ Article 40 regulates gender reassignment as an identity that may be authorized by the court. When granting a judicial authorization, courts are bound by certain requirements specified in the Code of Civil Law. The requirements in question stated that applicants must: be at least 18 years old on the date of trial, be unmarried, and present an official medical board report provided by a training and research hospital, certifying that the applicant is transgender, that gender reassignment is essential for the mental health of the individual, and that the applicant is permanently deprived of reproductive ability. The requirement annulled by the Constitutional Court was the requirement “to be permanently deprived of reproductive ability.” In this decision, the Constitutional Court defines “gender” based on physiological, biological, and genetic characteristics. It classifies gender as “male” and “female,” based on reproductive organs or systems. However, it also acknowledges that this is the definition of “sex” and for the first time uses the phrase “transgender persons,” which, as it explicitly emphasizes, is different from sex. Therefore, the difference between sex and gender identity is recognized as a choice based on individual autonomy at the level of constitutional review. The court addresses the situation of not only transgender persons born without reproductive ability or those who have naturally lost their reproductive abilities, but also those who have reproductive ability but to aspire to change their gender:

Transgender persons identify their gender identity other than their assigned sexes, and they may either be congenitally deprived of reproductive ability or have reproductive ability.²

Therefore, the court interprets the medical reality of individuals with reproductive ability in an encompassing manner that strengthens individual autonomy. It emphasizes that the law requires preliminary surgery in the case that the applicant is not deprived of reproductive ability. The surgery in question is sterilization, a requirement specified in Article 4 of the Law on Population Planning. The court found that forcing individuals seeking gender reassignment to undergo sterilization surgery, and requiring a court decision for gender reassignment (which is a second intervention), violated the “principle of proportionality.” According to the court, the preliminary sterilization surgery is “an intervention that is not essential for the applicant to endure physically and mentally.” Therefore, it violates both the right to integrity of corporeal and spiritual existence—which is the basis of individual autonomy—and the right to respect for private and family life (Articles 17 and 20 of the Constitution).

The problem of requiring transgender individuals with reproductive ability to undergo sterilization as a preliminary medical procedure was also taken to the European Court of Human Rights. In this case, the

1 Constitutional Court, E. 2017/130, K. 2017/165, K.t. 29.11.2017, *Official Gazette* Number: 30366, 20.3.2018.

2 Constitutional Court, E. 2017/130, K. 2017/165, para 21.

Court found a violation in the *Y.Y. v. Turkey* case finalized in 2015.³ Moreover, the violation was found even though the application of *Y.Y.* (which was renewed in 2013 upon the dismissal of his/her previous applications, including his/her Supreme Court applications) was finally accepted on the basis of the mental state of the applicant and witness statements. The Court did not find the dependence of gender reassignment on the loss of reproductive ability sufficient for restricting individual autonomy. The conclusion that the Constitutional Court reached is consistent with the *Y.Y. v. Turkey* decision of the European Court of Human Rights. However, the Court did not use this decision regarding Turkey as a reference norm.

In 2018, the Constitutional Court also issued a decision on gender reassignment in civil registration records on request.⁴ In this decision, it concluded that the provision in Article 40(2) of the Code of Civil Law, which requires gender reassignment in civil registration records to be dependent on court authorization, did not violate the Constitution. The relevant provision stipulates that in case gender reassignment surgery is certified by an official medical board report, civil registration records may be amended by court decision. The Constitutional Court emphasizes that this provision protects public order with regard to civil registration records. It considers the restriction a coercive requirement in a democratic society. The Court's justification on grounds of public order is primarily based on the fact that gender reassignment in civil registration records is a form of "legal recognition."

On the other hand, the same decision refers to certain provisions for women in legislation on labor and social security (e.g. retirement age, prohibition of female labor in mines, or severance pay upon termination of employment due to marriage). The Court is concerned that in case of gender reassignment upon request, such provisions may easily be applied to individuals who are biologically male. In the same context, it is striking that the Constitutional Court considers protectionist provisions (prohibition of female labor in mines, or severance pay upon termination due to marriage) and positive discrimination to be the same. The former is highly controversial, as protectionist provisions restrict female labor. Positive discrimination towards women, on the other hand, involves the adoption of temporary special measures accelerating the participation of women in financial, social, and political life to actualize gender equality (Article 4(2) of the Convention on the Elimination of all Forms of Discrimination Against Women [CEDAW]). The Court's attitude indicates that it continues to affirm the provision found not to violate the Constitution in 2018 and that reinforces traditional gender roles by only granting severance pay to women upon employment termination due to marriage.⁵

Hate Speech Based on Sexual Orientation

In 2018, the Constitutional Court also addressed hate speech based on sexual orientation.⁶ The decision in question was based on the individual application of the Kaos Gay and Lesbian Cultural Research and Solidarity Association (Kaos GL). The subject matter of the complaint concerned a news article titled "Zionist Servants Attack with Terror Again" published on the website *Habervakti.com*. In this article, Attorney Sinem Hun was referred to as "the attorney of the association of perverts called Kaos GL." Attorney Sinem Hun filed a libel complaint against these statements, claiming they incited hatred and hostility. However, Hun's complaint was dismissed with a decision of non-prosecution. Hun then appealed to the Constitutional Court, claiming that her personal rights had been violated. The Constitutional Court stressed that the statement on the news website did not exceed the threshold of insult and humiliation and therefore did not justify a penalty; in other words, they did not consider the language hate speech.⁷ The 2018 decision concerning the same topic was related to Kaos GL's application, which defended that the statement addressing the association and the transgender individuals it represents contained hate speech. It argued that the honor and reputation of the association, the principle of equality, and the obligation to conduct an effective investigation had been damaged.

The Constitutional Court examined Kaos GL's application solely in terms of corporal and spiritual exist-

3 *Affaire Y.Y. c. Turquie*, Requête no 14793/08, Arrêt, 10.3.2015.

4 Constitutional Court, E. 2015/79, K. 2017/164, K.t. 29.11.2017, *Official Gazette* Number: 30366, 20.3.2018.

5 Constitutional Court, E. 2006/156, K. 2008/125, K.t. 19.6.2008, *Official Gazette* Number: 27066, 26.11.2008.

6 Constitutional Court, Application of Kaos GL Cultural Research and Solidarity Association, Application Number: 2014/18891, K.t. 23.5.2018, *Official Gazette* Number: 30445, 8.6.2018.

7 Constitutional Court, Application of Sinem Hun, Application Number: 2013/5356, K.t. 8.5.2014, <http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/aed46493-cef5-414e-982b-f4f721491437?wordsOnly=False>.

tence—the basis of the protection of honor and reputation. It did not make a separate assessment in terms of equality and effective remedy. Within this framework, the court dismissed the allegation of hate speech on the grounds that the relevant news article did not focus on the association, that the full name of the association did not appear in the article, that the association was not pointed as a target, and that attire/dress has been no former incidents that would require a more sensitive approach since the date of publication. Therefore, the conditions in which a minority group based on gender identity grow into the subject of hate speech, become harder.

The Kaos GL decision highlights the importance of media monitoring and systematical data analysis on hate speech against LGBTQ people. Such analyses may be expose the magnitude of gender-based hate speech in Turkey . Although the 2018 Hate Speech in Media Monitoring Report does not provide a systematic statistical review, it shows that hate speech against women and the LGBTQ community is not a rare occurrence.⁸

Data on Attire, Clothing and Gender

Data on clothing is listed as personal data of special nature in Article 6 of the Law on the Protection of Personal Data (KVKK). It is prohibited to process personal data of special nature without the consent of the data subject (Article 6(2) of KVKK). However, personal data, excluding that relating to health or sexual life, may be processed “without seeking explicit consent of the data subject in the cases provided for by laws” (Article 6(3) of KVKK). Within this framework, data on clothing may be processed without seeking explicit consent pursuant to the law. The situation regarding data on clothing was taken to the Constitutional Court with a lawsuit filed by 124 deputies. This case was finalized in 2018. In the case, one of the alleged violations of the Constitution was gender-based discrimination that may arise in the processing of data on clothing. The allegation was clearly of great importance with regard to women’s clothing—specifically, the hijab. However, the extent to which the relevant provision protected individual autonomy concerning women’s or men’s clothing was not clear. The Constitutional Court dismissed this case without examining it in terms of gender equality and individual autonomy.⁹ It never discussed the fact that the relevant provision (which abstractly refers to “the cases specified in the law”) grants the authority to process data on clothing without providing specific reasons. Yet these details are the minimum requirements of the principle of legal certainty. According to the Court, the development of anti-discrimination policy first requires the collection and processing of data that may cause discrimination. However, the Court overlooks the fact that the relevant principles and restrictions must be specified in the law in order to prevent the processing of data from causing discriminatory applications.

Cases Requiring the Employment of Only a Certain Gender

In 2018, a constitutional decision on exceptions to the prohibition of gender-based discrimination was issued in accordance with the Law on Human Rights and Equality Institution of Turkey (HREI).¹⁰ While the relevant provision specifies the scope of complaints to be filed to HREI in terms of the principle of equality, it contains certain exceptions (HREI Law Article 7(1)(b)). “Cases requiring the employment of only one gender” are among these exceptions.

In the action for annulment filed by 122 deputies, the Constitutional Court concluded that the exception in question did not violate the

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8 Ezgi Kan, Merve Nebioğlu, Şeyma Özkan, Funda Tekin, and Gamze Tosun, *Medyada Nefret Söylemi İzleme Raporu*, Mayıs-Ağustos 2018 [Media Watch on Hate Speech Report, May-August 2018] (İstanbul: Hrant Dink Foundation, 2019), 3, 31-38; also see *Medyada LGBTİ'lere Yönelik Nefret Söylemi* [Hate Speech in the Media towards LGBTI People] (Ankara: Pembe Hayat ve Kaos GL, 2015).

9 Constitutional Court, E. 2016/125, K. 2017/143, K.t. 28.9.2017, *Official Gazette* Number: 30310, 23.1.2018.

10 Constitutional Court, E. 2016/132, K. 2017/154, K.t. 15.11.2017, *Official Gazette* Number: 30282, 26.12.2017.

principle of equality on the grounds that the exception must be embodied in practice, not in the law. There are similar exceptions in the EU Law and the European Social Charter. However, they are specified concretely and strictly rather than broadly and abstractly.

For example, according to the EU Directive numbered 2006/54, gender-specific employment is permitted when a characteristic related to sex constitutes a genuine and determining occupational requirement by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, provided that its objective is legitimate and the requirement is proportionate (Article 14(2)).¹¹ On the other hand, the implementation of the exception mentioned in the EU Law is limited to narrowly-interpreted cases, such as close-combat roles in the Armed Forces.¹² However, there are no regulations specifying and narrowing the exception in the HREI Law. The provision lacks legal clarity and therefore may be interpreted in a manner that may prevent sexist practices in business life from being the subject of an application. However, by referring to requirements not specified in the law and relying on the “possibility” that these requirements would be fulfilled in practice, the Constitutional Court concluded that the relevant provision did not violate the Constitution:

Difference in treatment under compulsory circumstances taking the nature of the particular occupational activities and biological reasons into account may be considered as a public interest exception if it is resulted from the nature or performance of the occupation, a requirement of the working conditions related to that occupational activity and also if it serves to protect those who are excluded.¹³

Crimes Against Sexual Inviolability and Constitutional Review

“Crimes against sexual inviolability” are regulated in Articles 102-105 of the new Turkish Criminal Code numbered 5237, which entered into force on June 01, 2005. In 2018, several remarkable decisions were issued by the Constitutional Court with regard to human rights violations in the investigation and prosecution of crimes against (or related to) sexual inviolability.

Decisions of Non-Prosecution

One of the significant individual applications finalized in 2018 was the application of a university student around the age of 25-26 who applied to the Chief Public Prosecutor’s Office with the claim that she had been subjected to sexual assault. Her application was finalized with a decision of non-prosecution.¹⁴ The applicant claimed that the incident, which involved physical contact, took place in an attorney’s office in Ankara. The suspect was a former member of parliament who was still involved in politics. The Ankara Chief Public Prosecutor’s Office issued the decision of non-prosecution on the grounds that it “did not find the statements of the victim sincere, consistent, or credible,” arguing that there were inconsistencies in her statements and that she sought vengeance on the suspect. The fact that no lawsuit had been filed about allegation of sexual assault was examined by the Constitutional Court in terms of the “prohibition of inhumane treatment” (Article 17 of the Constitution and Article 3 of the European Convention on Human Rights). With regard to the prohibition of inhumane treatment, actions of natural persons are within the scope of the positive obligations of the state. Therefore, the state must provide sufficient protection of natural persons, as well as a legal framework against any inhumane treatment committed by them. Article 3 of the Convention imposes the obligation to effectively investigate allegations of inhumane treatment which are “credible” or that “raise reasonable doubt.” To fulfill this obligation, the investigation must be “independent, impartial, and open to public scrutiny,” and competent authorities must “work meticulously and quickly.” The treatment, which is the

11 Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Official Journal, 26.7.2006, L 204/23. Also see last paragraph of Article 20 of the Revised European Social Charter: “Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.”

12 European Court of Justice, Case C-273/97 Angela Maria Sirdar / The Army Board and Secretary of State for Defence [1999] ECR I-07403, 26.10.1999; European Court of Justice, Case C-285/98 Tanja Kreil / Bundesrepublik Deutschland [2000] ECR I-69, 11.1.2000.

13 Constitutional Court, E. 2016/132, K. 2017/154, K.t. 15.11.2017, para. 17.

14 Constitutional Court, Application of G.G.K., Application Number: 2014/19797, K.t. 9.1.2018.

subject matter of the complaint, must reach a “minimum threshold” for the prohibition of inhumane treatment to be imposed. Identifying factors of this threshold include the length of the inhumane treatment; its physical and mental effects; and the gender, age, and health status of the victim.

According to the Constitutional Court, the action should have exceeded the minimum threshold, considering that “the alleged action against the applicant was an attempted sexual assault/aggravated sexual assault involving heavy physical contact” (para. 41). In this context, the judgments issued as a result of the investigation must be based on an encompassing, objective, and impartial analysis of all findings of the investigation. Likewise, according to Article 172(1) of the Code of Criminal Procedure, “there must be no evidence raising sufficient suspicion or no legal possibility of prosecution” for a decision of non-prosecution. In the unanimous decision of the Constitutional Court, it was concluded that the procedural dimension of the prohibition of inhumane treatment specified in Article 17(3) of the Constitution had been violated on the grounds that “a judgment eliminating the possibility of a thorough inspection and evaluation by a criminal court has been issued on this multi-faceted alleged incident” (para. 62).

Both the medical report confirming the incident (hyperemia, abrasions, and mental report) and the testimonies of supporting witnesses, including a witness who was not acquainted with the parties, influenced the Court’s decision of violation. Also, the fact that the investigation had not resulted in a criminal proceeding while, on the other hand, the applicant had been charged with blackmail and slander was found to be problematic in terms of revealing (reaching) the material truth. Another judgment regarding the decision of non-prosecution concerns the alleged violation of the prohibition of inhumane treatment regarding an investigation into the aggravated sexual abuse of a child.¹⁵ The applicant, who was 17 years old according to the registry but 19-20 years old according to bone age determined by medical examinations, attempted suicide by ingesting a large quantity of gastric medicines. At the Bingöl State Hospital, where she was admitted, the applicant stated that she had been sodomized by seven people and took the medicines because her cousin had seen videos of the incident that the suspects had recorded on their mobile phones. As a result of the investigation, a decision of non-prosecution was issued concerning the suspects, all of whom were minors, or in technical terms, “juvenile pushed to crime”. The Prosecutor’s Office was not convinced that the intercourse was non-consensual. Moreover, no element of crime was identified in the investigation into the videos taken by the suspects. In this application, the Constitutional Court ordered an examination to be conducted within the scope of the prohibition of inhumane treatment and evaluated the allegations of violation of the right to fair trial within the scope of the obligation to conduct an effective investigation regarding the prohibition of inhumane treatment. The court explained in detail the abstract principles of the scope of the obligation to conduct an effective investigation; however, it stated that the lowest level of examination ensuring the effectiveness of an investigation would vary according to the particular circumstances of each investigation (para. 125).

The Constitutional Court’s assessment of principle is legally correct. However, certain points raise doubts concerning the facts of the case. The Constitutional Court made the following assessment about the applicant:

As she waited in the courtyard of the courthouse with the juveniles pushed to crime, she stated that they pressured witnesses; however, she did not give any details on the manner of pressure to be used in the evaluation or resort to the remedy of filing charges for perjury (para. 126).

It must be noted that requiring the victim/plaintiff (and witnesses) and the defendants in such a case to be in the same room is in itself a major violation and is not compatible with the obligation to conduct a fair investigation. Furthermore, facts regarding the truth about the conversation between the victim/plaintiff, witnesses, and the defendants were not considered. The court rendered the allegation inadmissible by blaming the victim/plaintiff rather than by questioning whether or not her allegation had been thoroughly investigated.

Furthermore, paragraph 130 of the decision stated that the phone of the individual alleged to have such video recordings was not examined for “ambiguous” reasons. The paragraph contains the following statements: “On the other hand, effective investigation does not mean that all requests of the parties shall be fulfilled,” and “The prosecutor has discretion to a certain extent as to whether or not to collect certain evidence in cases where it does not contribute to or has limited contribution to the interpretation of the material fact as evidence; however, this does not mean that the investigation itself was conducted ineffectively.” Such ambiguity is a serious prob-

¹⁵ Constitutional Court, Application of A.D., Application Number: 2014/7967, K.t. 23.5.2018.

lem, given the importance of the video recording in the prosecution of the crime.

On the other hand, it was acknowledged that the prosecutor “warned” the victim during her statement. According to the Constitutional Court (para. 132):

When warning the applicant, suspecting that some of her statements may constitute defamation, the prosecutor may have had the intention to test the reliability of the statements in order to both remove possible obstacles in the search for solid facts and to prevent the child victim from unknowingly becoming a suspect.

The content of this “warning,” however, was not clear. In the case that it implied or suggested that “the victim was lying,” or that “her statements were not believed to be true,” the warning itself could call into question the soundness of the investigation. Furthermore, the fact that no authority, including the Constitutional Court, considered the causes and implications of the applicant’s suicide attempt poses a problem. The fact that the Constitutional Court dismissed the case without considering such issues, and without testing the minimum requirements for an effective and impartial investigation, is also legally problematic.

Sexual Intercourse with Minors and Incitement to Suicide

Another important court decision concerns the allegations that the right to protection of the integrity of corporeal and spiritual existence, as well as the right to life, have been violated due to the lack of an effective investigation into the complaint of sexual intercourse with minors and incitement to suicide.¹⁶ The daughter of the applicant committed suicide at the age of 17. The medical examination performed the day before the incident found her to be seven months pregnant. The Council of Forensic Medicine determined that the father of the child was A.Y. In his statements as a suspect, A.Y. stated that he and the deceased had consensual sexual intercourse. The Manavgat Chief Prosecutor’s Office issued a decision of non-suit on the grounds that “there was no legal element of the crime of sexual abuse in the consensual sexual intercourse between the deceased, who was older than fifteen years of age at the time of the crime, and the suspect, A.Y.; that it is not possible to initiate criminal proceedings against the suspect, A.Y., since the deceased herself did not file any complaints within the period of prescription; and that there was not sufficient evidence for the applicant’s allegation of the crime of incitement to suicide made against A.Y. and D.N. [his sister].”

In this application, the Constitutional Court linked the right to fair trial to the right to effective remedy under Articles 36 and 40 of the Constitution and examined the applicant’s allegations within the scope of the procedural dimension of the right to life (i.e. the obligation to conduct an effective investigation). As it did not find any defects in this respect, this part of the application was found to be manifestly ill-founded and was dismissed. The examination conducted with regard to Article 17 of the Constitution took into account the father’s objection that no prosecution had been initiated upon filing a complaint within the specified period of time, beginning from the date he learned about the sexual intercourse. The Court referred to the Supreme Court decision’s ruling that the parent’s right to petition is not independent of the child’s (or victim’s) right to petition, and that the will of the child must be prioritized in case of a conflict between the will of the parent and the child.

Murder of a Child after Sexual Abuse

Another court decision on sex crimes was based on the application of the family of a 15-year-old girl, who was murdered after being subjected to the crime of aggravated sexual abuse of a child through penetration.¹⁷ The interesting aspect of this decision was the evaluation of the alleged insufficiency of the punishment imposed on the defendants. A local high criminal court sentenced A.E. to aggravated life imprisonment for instigating aggravated voluntary manslaughter. It also sentenced H.E. to 10 years of imprisonment and V.E. to 8 years of imprisonment for aggravated sexual abuse of a child through penetration. Another defendant was acquitted. The Supreme Court reversed the judgment against A.E. due to lack of evidence but upheld the sentences of H.E. and V.E. Unfortunately, since the judgments regarding H.E. and V.E. were finalized on July 12, 2012 (before September 23, 2012, when the Constitutional Court’s jurisdiction began), this part of

¹⁶ Constitutional Court, Application of Hacı Polat, Application Number: 2014/15959, K.t. 8.3.2018.

¹⁷ Constitutional Court, Application of Nefise Erdoğan ve Abdurrahman Erdoğan, Application Number: 2014/4616, K.t. 7.2.2018.

the application was found inadmissible due to a lack of temporal jurisdiction. Therefore, the proportionality and deterrence of the punishments, with respect to the gravity of the act and the culpability of perpetrators, could not be discussed.

The fact that nobody was sentenced for the murder of the victim was also the subject of the application. The Constitutional Court underlined that the public prosecution against the perpetrator, who was found to have killed the girl, was suspended after his death and that the defendant, who was imprisoned for instigation to commit murder, was found not guilty by the Supreme Court on the grounds of lack of evidence. According to the Constitutional Court (para. 59),

Based on a thorough, objective, and impartial analysis of the evidence against the applicants' allegations, it cannot be said that no conclusion was drawn in the investigation. In this respect, no convincing information or finding supporting the applicants' allegations was obtained.

As a result, "the allegation that the procedural dimension of the right to life regarding the obligation to conduct an effective investigation has been violated" was found to be manifestly ill-founded.

Crimes of Sexual Assault and Decision of Deferment of Judgment

The Constitutional Court also examined the allegation that the prohibition of inhumane treatment had been violated due to the decision of deferment of judgment for a defendant who had been charged with sexual assault.¹⁸ According to Article 231(5) of the Code of Criminal Procedure, a decision of deferment of judgment may be issued "in cases where the defendant is sentenced to imprisonment for two years or less or a judicial fine, or is not even deemed as convicted." According to the same provision, the deferment of judgment "means that the judgment shall not have legal effect for the defendant". In case of a deferment of judgment, the defendant is not imprisoned, does not pay a judicial fine, or is not even deemed as convicted. The incident, which was the subject matter of the case, is roughly as follows. The applicant went to W.J.L.'s house with 10-15 other people, including the defendant. As one of those who wished to stay overnight at the house, the applicant was sleeping alone in the room provided by the host. The applicant suddenly woke up in the morning and saw G.C. standing naked from the waist down in front of her. As accepted by criminal courts, the applicant, who noticed that she was still dressed (in jeans and t-shirt), jumped from the bed screaming when she realized that G.C. was masturbating while touching her breasts and stomach. She then ran to the host, who was in the living room. G.C., still half-naked, followed her there. When the host, W.J.L., learned about the incident, law enforcement officers were called upon request of the applicant. The İzmir 1st High Criminal Court sentenced G.C., who was found to have committed sexual assault, to two years of imprisonment, the lower limit according to Article 102/1 of the Turkish Criminal Code. The court then mitigated the sentence at its discretion, considering "the peaceable conduct of the defendant during the trial and his good conduct throughout the criminal proceedings." The defendant was sentenced to imprisonment of one year and eight months. However, the judgment was deferred, considering "the length of the sentence, as well as G.C.'s personality and no history of criminal record."

Considering this case, the Constitutional Court made a critical assessment regarding impunity and criminal injustice in combating sex crimes:

Although it is not possible for the Constitutional Court to determine the amount of penalty, to exercise discretion in a way to tolerate such incidents may undermine effective judicial protection and damage fundamental rights and freedoms (para. 158).

In this incident, the courts imposed the minimum penalty applicable, despite medical reports documenting the severe trauma experienced by the applicant after she was sexually assaulted while unconscious. In this regard, the sanction must be examined in terms of its deterrent effect.

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¹⁸ Constitutional Court [General Assembly], Application of E.A., Application Number: 2014/19112, K.t. 17.5.2018.

The objective of ensuring real equality requires law enforcers and courts in particular to interpret and enforce rules accordingly. In order to determine the state of gender equality and equal rights in Turkey, judicial decisions indicating how the rules of law applied to actual cases embrace and reproduce traditional gender roles, or, in some cases, enable the implementation of egalitarian roles, must be further examined.

ing real equality requires law enforcers and courts in particular to interpret and enforce rules accordingly. In order to determine the state of gender equality and equal rights in Turkey, judicial decisions indicating how the rules of law applied to actual cases embrace and reproduce traditional gender roles, or, in some cases, enable the implementation of egalitarian roles, must be further examined. Judicial decisions concerning family law disputes bear signs of the distribution of familial roles and therefore, the identification of societal expectations concerning gender roles. Several 2018 Supreme Court decisions highlight the issue of gender (in)equality in Turkey.

Gender-Based Division of Labor in Family Law Disputes

The Turkish Code of Civil Law¹⁹ regulates the right to compensation and alimony of divorced spouses based on the degree of individual fault in the incidents leading to divorce.²⁰ This makes the determination of fault in divorce cases a matter to be adjudicated by the court. The determination of fault essentially reflects an assessment of the behavior expected of women and men in family life. Indeed, attributing certain behavior to the man or the woman as faults within the framework of the divorce case is linked to the accusation that the woman or the man failed to display the behavior expected of them in the marital union and therefore indicates whether courts adopt the understanding of gender-based division of labor. This understanding reduces women to the role of doing housework and fulfilling childcare duties and men to the role of meeting material needs. Court decisions issued in 2018 stated that the “deficiency of women in fulfilling duties such as maintaining the house, cooking, or cleaning” may be attributed as a fault to women if proven²¹ and that “women’s refusal to undergo fertility treatment” is also considered a fault.²² However, the fact that the Supreme Court attributed “bringing one’s hunting companions home and making one’s wife serve them” as a fault of men constitutes a step in re-examining women’s traditional role of serving men.²³ The court also considers men’s failure to pay bills after abandoning the house and the marital union to be a failure of their duties arising from the marital union.²⁴ Other faults ascribed to men include failing to provide an independent dwelling to their wives²⁵ or “pressuring them to work”.²⁶ In other words, material duties are imposed upon men.

Another area where signs of gender-based division of labor are observed concerns disputes regarding the regulation of child custody and the right to establish a personal relationship with the child. When issuing the decision of divorce or separation, the court decides which party will exercise the right to child custody

According to the Constitutional Court, the decision of deferment of judgment must be examined in order to determine whether or not it actually renders deterrent legal measures ineffective. In the case in question, criminal courts did not exercise their discretion in a way that proved such actions to be absolutely intolerable. On the contrary, the case left the impression that “the decision of deferment of judgment is used to alleviate the consequences of the act of sexual assault.”

As such, it was concluded by a majority vote that the procedural dimension of the positive obligation arising from the prohibition of inhumane treatment had been violated.

Gender in Family Law Disputes

Equality before the law does not necessarily eliminate actual inequality and sometimes even reinforces it. The objective of ensur-

19 Turkish Code of Civil Law numbered 4721, OG. 08.12.2001-24607 (“Turkish Code of Criminal Procedure”).

20 Turkish Code of Criminal Procedure Art. 174.

21 2. CD., E. 2016/15692, K. 2018/6039, K.t. 03.05.2018. However, in the decision, it is stated that this incident may not be attributed to women as a fault as it cannot be proved.

22 2. CD., E. 2018/1433, K. 2018/4790, K.t. 10.04.2018.

23 2. CD., E. 2018/733, K. 2018/2648, K.t. 26.02.2018.

24 ACC., E. 2017/1581, K. 2018/1050, K.t. 09.05.2018.

25 2. CD., E. 2016/16304, K. 2018/7280, K.t. 05.06.2018; 2. CD., E. 2018/1433, K. 2018/4790, K.t. 10.04.2018.

26 2. CD., E. 2018/3991, K. 2018/15072, K.t. 24.12.2018.

and how the other party will establish a personal relationship with the child based on the health, educational, and moral interest of the child.²⁷ The Supreme Court considers that weekend visits to the noncustodial spouse may make the custodial parent home-dependent²⁸ every weekend and would therefore prevent him/her from fulfilling his/her duty of custody. According to the court, such a relationship is not in the best interest of the child, as his/her place and environment would change every weekend. The Supreme Court implements this established case-law without discriminating between genders, regardless of whether the custody has been granted to the mother²⁹ or to the father.³⁰ Considering that custody of children (especially young children) is mostly granted to the mother, this arrangement³¹ enables the child to see the custodial mother not only performing care duties on weekdays, but also other activities on the weekend. In this way, the child has the opportunity to spend time with the mother outside of the home, which prevents the child from reducing the role of the mother solely to homemaker/carer.

The Oppression of Women in Family Law Disputes

The Turkish Code of Civil Law identifies spousal violence as a reason for divorce within the classification of “attempt on life, and cruel or humiliating behavior.” However, it also stipulates that the right of action would be lost in case the spouse forgives this behavior.³² The law did not regulate the form of the will to forgive and left the determination of whether the incident is forgiven or not to the discretion of the judge. In a divorce case decision issued in 2018, the Supreme Court ruled that the fact that a woman who had been subjected to violence and had her hair pulled withdrew her complaint regarding criminal proceedings did not mean that she had also forgiven her husband in the action of divorce. According to the decision, the woman’s withdrawal of complaint “was intended to free the man from punishment and does not mean that she has forgiven him, and in order for it to be accepted as forgiveness, there must be an unconditional declaration of will or, at least an actual attitude or behavior indicating forgiveness. Furthermore, those who claim the existence of forgiveness must prove this claim with concrete evidence”.³³ With this decision, which narrowly interprets the will to forgive and places the burden of proof on the party perpetrating the violence, the Supreme Court allowed physical violence to have legal consequences, at least in divorce cases. In divorce cases based on reasons other than physical abuse, violence also plays a role in the determination of the material consequences of the divorce and is one of the factors considered in weighing the mutual faults of the parties in the incidents that have led to the divorce. In such disputes, it is difficult to determine the weight of violence compared to other actions considered as faults since the parties mutually attribute various actions to each other, and the courts need to make a general assessment of which party is more at fault by evaluating these actions collectively. However, many Supreme Court decisions, which have found the husband, perpetrator of the violence, more at fault than the woman who has been subjected to it, indicate that the Supreme Court tends to attach particular importance to violence among other actions considered as faults.³⁴ Such assessments counteract the most established means of oppression that men use to control women. The Supreme Court’s approach may deter violence against women, but only when it is applied regardless of the gender of the party perpetrating the violence. In this respect, this approach, which prevents violence from becoming ordinary and overlooked among

27 Turkish Code of Criminal Procedure Art. 182, Art. 323.

28 The statement of “the custodial parent being home-dependent” mentioned in the decisions refers to the uncertainty for the custodial parent regarding when the other parent will pick-up or bring back the child, and that the custodial parent would have to wait at home for the other parent to come and go, and thus may not plan the weekend for themselves.

29 2. CD., E. 2015/22673, K. 2017/1969, K.t. 27.02.2017; 2. CD., E. 2014/3384, K. 2014/10303, K.t. 05.05.2014; 2. CD., E. 2012/2460, K. 2012/20396, K.t. 05.09.2012; 2. CD., E. 2007/3255, K. 2007/4139, K.t. 15.03.2007; 2. CD., E. 2005/472, K. 2005/1404, K.t. 07.02.2005.

30 2. CD., E. 2014/5632, K. 2014/10716, K.t. 08.05.2014; 2. CD., E. 2009/5173, K. 2010/8027, K.t. 22.04.2010; 2. CD., E. 2007/8454, K. 2007/9365, K.t. 04.06.2007.

31 2. CD., E. 2016/11800, K. 2018/2396, K.t. 22.02.2018.

32 Turkish Code of Criminal Procedure Art. 162.

33 2. CD., E. 2018/1054, K. 2018/2622, K.t. 27.02.2018.

34 2. CD., E. 2016/16353, K. 2018/5418, K.t. 24.04.2018; 2. CD., E. 2016/16883, K. 2018/5547, K.t. 24.04.2018; 2. CD., E. 2016/17092, K. 2018/5458, K.t. 24.04.2018; 2. CD., E. 2016/18281, K. 2018/6370, K.t. 17.05.2018; 2. CD., E. 2016/19085, K. 2018/7049, K.t. 31.05.2018; 2. CD., E. 2016/19101, K. 2018/7047, K.t. 31.05.2018; 2. CD., E. 2016/19814, K. 2018/7260, K.t. 04.06.2018; 2. CD., E. 2016/20858, K. 2018/8072, K.t. 26.06.2018; 2. CD., E. 2018/7079, K. 2018/15283, K.t. 25.12.2018; on the contrary, see 2. CD., E. 2018/4088, K. 2018/15401, K.t. 25.12.2018; 2. CD., E. 2018/6409, K. 2018/15372, K.t. 25.12.2018, it must be stated that physical violence against the mutual child was among the faults attributed to the woman in this last decision.

other types of misconduct; must become widespread regardless of which spouse perpetrates the violence.³⁵

In recent years, we have seen cases concluding in compensation of non-pecuniary damages filed by spouses against third parties engaged in romantic relationships with spouses who have violated their obligations of loyalty in the marital union. The cases that gain recognition are those in which the third party in the relationship with the married spouse is a woman, turning the issue into that of “the other woman’s” obligation in having a relationship with a married man. The fact that the issue is discussed within the framework of “the other woman” is understandable, considering the severity of the consequences that arise when the third party is female. Society’s views of the third party are dominated by different codes, depending on whether this third party—who the judicial body finds to have damaged the marital union and the personal rights of the cheated spouse—is male or female. In this regard, the attitude that judicial bodies adopt in this matter has an effect on women and the behavior expected of them, essentially reinforcing the oppression of women.

Judicial decisions sentencing the other woman to pay compensation to the female spouse interpret the legal obligation of loyalty in a way that affects third parties and privileges the protection of the marital union and the integrity of the family. Within this understanding, a woman’s relationship with a man whom she knows to be married constitutes “illegal behavior according to both the law and the customary law.”³⁶ As the Supreme Court 4th Civil Department and the Assembly of Civil Chambers issued contradictory decisions on this matter, it was ultimately left to the General Assembly on the Unification of Judgments, who, in a decision issued in 2018, stated that only the spouses are bound with an obligation of loyalty, to the exclusion of third parties and that it may not be said that the behavior of the third party having a relationship with the married spouse constitutes a direct attack on the personal rights of the other spouse, as the third party does not have any obligation of loyalty. Therefore, the boundary between the moral values and the rules of law which benefit from the state’s power of sanction, is clearly defined in concluding that “the spouse may not request compensation for non-pecuniary damages from the third party having a relationship with the other spouse during the marital union.”³⁷

Women’s Economic Independence after the Termination of Marital Union

The deprivation of women’s access to sufficient wealth and education is a natural and expected consequence of the responsibility of domestic duties attributed to them throughout marriage. This may lead to irremediable and actual inequalities between men and women during the process of gaining economic independence that spouses undergo after the termination of a marital union.

According to an established case-law of the Supreme Court, pieces of jewelry pinned onto the clothes of spouses at the wedding are considered donations and the woman’s personal property, regardless of who gifted them and regardless of whose clothes they were pinned onto.³⁸ The Supreme Court continued to implement this case-law up until 2018.³⁹ The act of pinning pieces of jewelry at the wedding is considered a gratuitous acquisition gifted by the person who pins them and thereby constitutes a donation under law. This case-law, which assesses the will of the donor in choosing whom to donate to (regardless of whose clothes the piece of jewelry is pinned on), assumes that the piece of jewelry is donated to the woman, unless clearly expressed otherwise. As such, the law benefits women’s financial status after divorce.

According to the Turkish Code of Civil Law, the party impoverished due to divorce—whether male or female—may request alimony as a means of livelihood, according to the financial status of the other party, and provided that the impoverished party is not more at fault in the incidents leading to the divorce. As it is easier for men than for women to participate in economic activities after divorce, the risk of becoming impover-

35 Although it is certain that the woman perpetrated physical violence against the man, the man was found to be more at fault in the incidents leading to the divorce. See 2. CD., E. 2018/5606, K. 2018/14630, K.t. 17.12.2018. In line with this understanding, an analysis of violence shall occur and ultimately lead to consequences also to the detriment of women.

36 For example, see ACC., E. 2017/4-1482, K. 2017/556, K.t. 29.03.2017; ACC., E. 2010/4-129, K. 2010/17 3, K.t. 24.03.2010.

37 Supreme Court General Assembly on the Unification of Judgments, E. 2017/5, K. 2018/7, K.t. 06.07.2018.

38 3. CD., E. 2016/60, K. 2017/8131, K.t. 25.05.2017; 3. CD., E. 2016/7410, K. 2017/17097, K.t. 6.12.2017; 3. CD., E. 2017/16859, K. 2017/17965, K.t. 20.12.2017; 3. CD., E. 2015/8688, K. 2016/5621, K.t. 12.04.2016; 3. CD., E. 2014/10588, K. 2015/3965, K.t. 12.03.2015; however, there are also decisions ruling that only pieces of jewelry pinned onto the woman’s clothes are deemed the woman’s property. See 2. CD., E. 2015/21595, K. 2016/7587, K.t. 13.04.2016.

39 3. CD., E. 2016/19693, K. 2018/6097, K.t. 30.05.2018; 3. CD., E. 2016/13442, K. 2018/2229, K.t. 8.3.2018.

ished is higher for divorced women than it is for divorced men; therefore, disputes regarding alimony generally concern women's requests for alimony from men.

Alimony may only be granted to the person who is at risk of becoming impoverished. As underlined by the Constitutional Court⁴⁰, alimony, which is based on "moral values and social solidarity," aims to "fulfill the basic needs of the spouse who becomes impoverished as a result of the divorce." The concept of impoverishment is not defined by law, as it depends on circumstances and conditions. The definition is left to the interpretation of the courts in order to enable an assessment that is fair and fit for the circumstances of the specific case.⁴¹ When assessing requests for alimony, the Supreme Court thoroughly examines the circumstances of impoverishment. According to the Supreme Court's case-law, for example, immovable property owned by the woman submitting the request may prevent her from being considered impoverished.⁴² Decisions issued in 2018 ruled that judgments regarding requests for alimony can only be issued after investigating whether the woman requesting the alimony is employed, whether her employment is continuous, whether her income is regular and sufficient to support herself, and, in case she is unemployed, whether she left her job voluntarily.⁴³ The fact that whether or not the spouse has left his/her job voluntarily is a matter in question not only points to the importance of the spouse's actual financial situation, but also to the importance of his/her ability to become financially independent. In another 2018 decision, the Supreme Court expressed the same concern, stating that only "the party who lacks the means to sustain himself/herself with his/her own financial resources and labor force" may request alimony.⁴⁴ In other words, alimony is granted not to those who have no income due to their own inertia, but to those who are deprived of the means to earn income.

On the other hand, alimony is only paid as long as the conditions requiring its granting continue. According to legislation, alimony is automatically terminated in the case that the creditor remarries or one of the parties die. In the case that the creditor lives with a partner out of wedlock, is no longer impoverished, or leads a dishonorable life, the court terminates the alimony.⁴⁵ In a 2018 decision, the Supreme Court ruled that if the creditor's income increases, the amount of alimony must be reduced by a reasonable rate according to the principle of equity, even though the creditor may still be impoverished.⁴⁶ Supreme Court practice also confirms that although legislators do not prescribe a termination date for alimony, the rights of the creditor are still not unlimited. Alimony serving the purpose of "ensuring that the spouse who will become impoverished due to the divorce is supported and that his/her basic needs are fulfilled by the other spouse as long as the requirements are met"⁴⁷ may be reduced or completely terminated in case circumstances change.

Divorces

In Turkey, yearly data on marriage and divorce is published by TurkStat. According to the statistics published in March 2018, the crude divorce rate in Turkey was 1.6% in 2017 and increased to 1.75% in 2018.⁴⁸ Compared to the number of divorces in 2017 (n=128,411), the number of divorces in 2018 (n=142,448) increased by 10.6%. In any case, these numbers are significantly below those in OECD countries. In the analysis of the percentage of divorced individuals throughout Turkey, the momentum in 2002, 2009,

In the analysis of the percentage of divorced individuals throughout Turkey, the momentum in 2002, 2009, and 2018 is particularly remarkable.

40 Constitutional Court, E. 2011/136, K. 2012/72, K.t. 17.05.2012.

41 ACC, those who do not have sufficient income to afford essential and compulsory expenses such as "food, clothing, shelter, health, transportation, culture, and education" to improve his/her material integrity are regarded as "impoverished" (For example, see E. 2007/2-275, K. 2007/275, 16.05.2007; E. 1998/2-656, K. 1998/688, 07.10.1998).

42 2. CD., E. 2016/17270, K. 2018/6752, K.t. 28.05.2018; 2. CD., E. 2016/16883, K. 2018/5547, K.t. 24.04.2018; 2. CD., E. 2017/4454, K. 2018/15363, K.t. 25.12.2018.

43 2. CD., E. 2016/20173, K. 2018/2969, K.t. 5.03.2018; 2. CD., E. 2018/4254, K. 2018/15400, K.t. 25.12.2018. On inspection of whether there is justification for the termination of employment, 2. CD., E. 2018/6428, K. 2018/14747, K.t. 18.12.2018.

44 ACC, E. 2017/1579, K. 2018/673, K.t. 04.04.2018; ACC, E. 2017/1584, K. 2018/503, K.t. 21.03.2018. According to these decisions, an income equal to minimum wage shall not prevent the granting of alimony but will be considered when determining its amount.

45 Turkish Code of Criminal Procedure Art. 176/f. 3.

46 3. CD., E. 2018/330, K. 2018/993, K.t. 13.02.2018.

47 Constitutional Court, E. 2011/136, K. 2012/72, K.t. 17.05.2012.

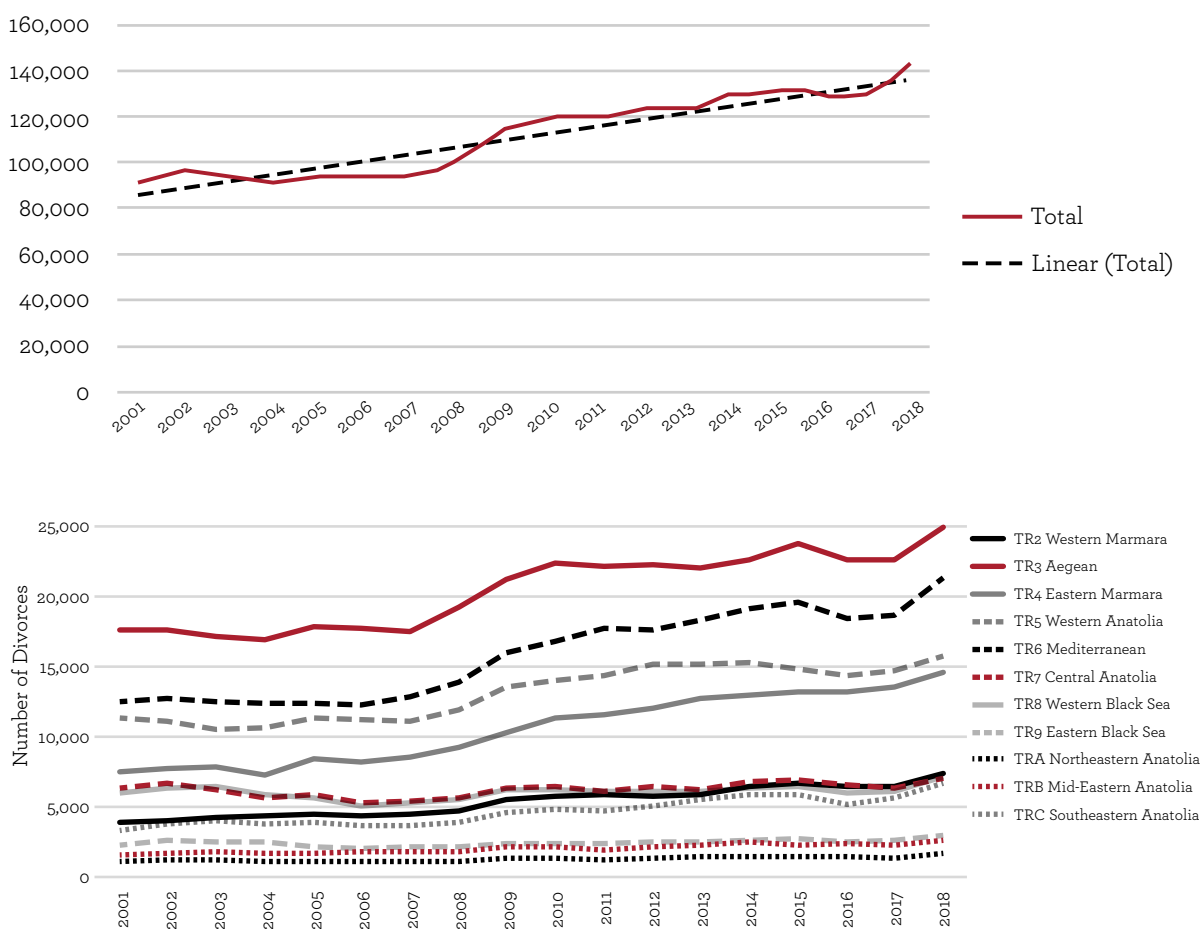
48 Turkish Statistical Institute (TurkStat), "Evlenme ve Boşanma İstatistikleri" [Marriage and Divorce Statistics], (2001-2018), http://tuik.gov.tr/PreTablo.do?alt_id=1068.

and 2018 is particularly remarkable. Although this momentum may be associated with worldwide financial and economic crises during these years, other social factors should not be ignored. Such factors may include legal regulations facilitating divorce mechanisms, increasing tolerance for women seeking divorce (especially in big cities), women’s increased ability to live independently and participate in the labor markets, and an increasingly individualized social order. However, as the data suggests, the class structure of divorced individuals may also be related to the increase in divorce rates. Therefore, a reliable analysis of the relationship between social class, socioeconomic parameters, and divorce requires that new data be collected.

An examination of divorce rates in the three provinces with the highest rates of divorce reveal no major changes between 2017 and 2018. The three provinces with the highest rates of divorce in 2017 were Istanbul (n=28,175), İzmir (n=10,939), and Ankara (n=10,590). Although the 2018 ranking did not change, the number of divorces increased slightly. The numbers of divorces in 2018 are as follows: 30,336 in Istanbul, 11,994 in İzmir, and 11,696 in Ankara.

Figure 9. Variation in divorce rates in Turkey, 2001-2018.⁴⁹

Figure 10. Number of divorces and variation by regions, 2001-2018.⁵⁰



Divorce is usually not caused by a single reason, and the factors separating individuals over the years are complicated. However, individuals choosing uncontested divorces before family courts usually claim “incompatibility” as their main reason for divorce. Similarly, TurkStat’s 2018 data shows that irreconcilable differences are the most common reason for divorce, with a rate of 97.92% (n=139,481). The category of irreconcilable differences is followed by unknown reasons (1.3%, n=1852) and other reasons (0.51%, n=725). These are followed by the category of abandonment (n=161), with a rate of 0.7%, and categories of mental illness (n=98), crime and dishonor (n=46), attempt on life (n=45), and inhumane treatment (n=40), with a rate of 0.3% (see Table 1).

In order to better analyze the causes of divorce and thereby develop social policies, these causes must be better grasped and differences in years must be identified. For example, the categories of reasons for divorce in

49 Prepared based on TurkStat, “Evlenme ve Boşanma İstatistikleri” [Marriage and Divorce Statistics], 2001-2008.

50 TurkStat, “Evlenme ve Boşanma İstatistikleri” [Marriage and Divorce Statistics], 2001-2018.

TurkStat's Family Structure Survey are different than the 2016 categories published in the Ministry of Family and Social Policies.⁵¹ Although the latter identifies the three most important reasons for divorce as irresponsible and indifferent attitude (50.9%), failure to provide for the family (30.2%), and disrespectful behavior towards their spouses' family (24.3%), the 2018 survey did not contain some of these categories. Moreover, the 2016 data grouped reasons for divorce according to gender. For example, an "irresponsible and indifferent attitude" is considered the most important reason for divorce for 61.5% of women and 40.2% of men. This is followed by "failure to provide for the family" and "violence/inhumane treatment" for women, with rates of 42.6% and 36.4%, respectively. The remaining two most important reasons are "the other spouse's family's interference in family relations" and "disrespectful behavior towards their spouses' family" for men, with rates of 24.5% and 24%, respectively. However, because this data was not grouped according to gender in 2017 and 2018, it is not possible to analyze the rates and nature of the more current decisive and gender-specific reasons for divorce.

Table 1. Reasons for divorce⁵²

Reason for divorce	Number of divorces	Percentage
Adultery	98	0.07%
Attempt on life and inhumane treatment	40	0.03%
Crime and dishonor	45	0.03%
Abandonment	161	0.11%
Mental illness	46	0.03%
Incompatibility	139,481	97.92%
Other	725	0.51%
Unknown	1,852	1.3%
Total number of divorces	142,448	100%

Rates of divorced men and women with no children (or those not granted custody) throughout Turkey in 2017 reveal that 40% (n=72,520) of divorced individuals with no children were women, while 60% (n=110,492) were men. In 2018, the rate of divorced women with no children decreased to 39% (n=78,149), while the same rate increased to 61% (n=123,027) for men.

An examination of the relationship between divorce and the duration of marriage in 2018 shows that 37.6% of divorces occurred in the first 5 years of marriage, 20.4% between the years of 6 and 10, and 15% between the years of 11 and 15. According to this data, while divorce rates decrease as the duration of marriage increases, divorces also occur in marriages of more than 20 years among couples aged 50 and above. In 2018, the mean marriage age was found to be 24.8 for women and 27.8 for men. Study of the relationship between the age of marriage and divorces shows that most women divorce between the ages of 30 and 34 (n=27,635), while most men divorce between the ages of 35 and 39 (n=28,384).

An examination of the relationship between divorce and the duration of marriage in 2018 shows that 37.6% of divorces occurred in the first 5 years of marriage, 20.4% between the years of 6 and 10, and 15% between the years of 11 and 15.

The relationship between divorce and remarriage illustrates that remarriage is not considered as much of a taboo (especially for women) as it was in past decades. The rate of remarriage among divorced women (12.3%) or, less frequently, widowed women (0.6%), is 12.9% (n=71,126). The same rate is approximately 14% (n=82,009) among men.

Figure 11. Divorces by age of marriage.⁵³

51 Turkish Statistical Institute (TurkStat), *Aile Yapısı Araştırması*, 2016 [Family Structure Survey, 2016], Press Release numbered 21869 (January 18, 2017), <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=21869>.

52 TurkStat, "Evllenme ve Boşanma İstatistikleri" [Marriage and Divorce Statistics].

53 TurkStat, "Evllenme ve Boşanma İstatistikleri" [Marriage and Divorce Statistics].

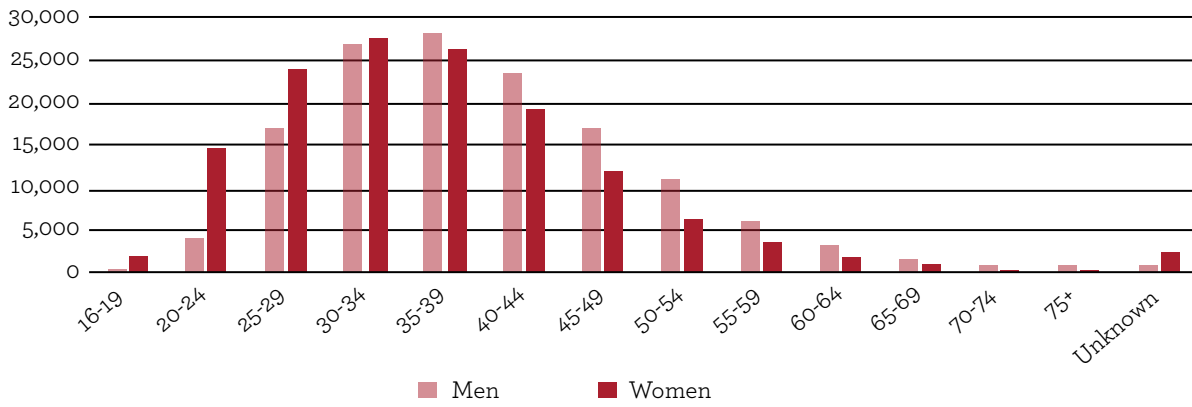
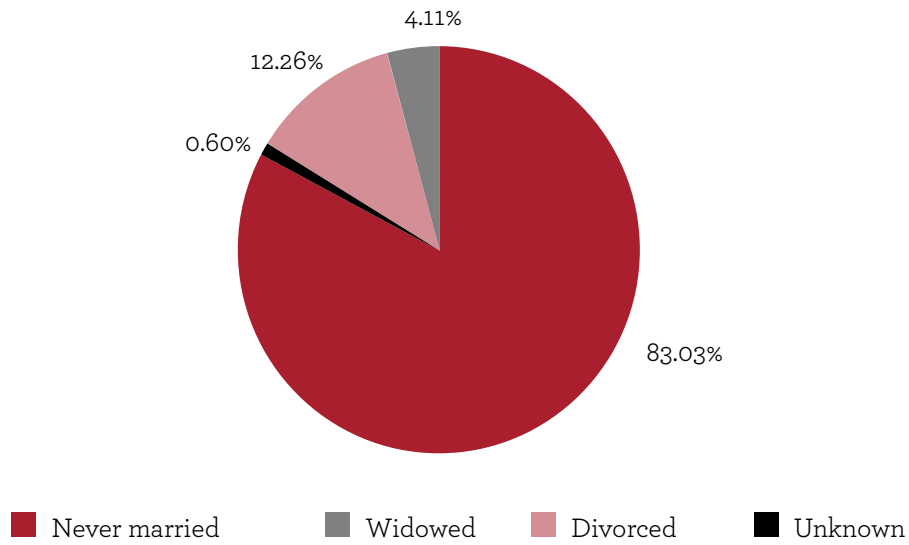


Figure 12. Rate of remarriage (for women).⁵⁴



Although the number of divorces has increased in recent years, this number is still lower in Turkey than it is in OECD countries. This, along with the fact that the number of remarriages after divorce is increasing, suggests that, despite modernization theories and the claims of some neo-conservatives, the institution of family is still very much prioritized in Turkey.

⁵⁴ TurkStat, “Evlenme ve Boşanma İstatistikleri” [Marriage and Divorce Statistics].

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