

“GENDER ISSUES IN THE JUDICIARY IN TURKEY”

BY

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On June 21st 2016, Dr Kalem held a talk on gender issues in the judiciary in Turkey as part of the Comparative Legal Gender Studies-Network Project.

She presented the preliminary results of her study among women judges in Turkey. The study centres around how gender is constructed, experienced and performed in the legal profession with a focus on the judiciary. It has a feminist methodology meaning that it listens to women judges as well as a feminist objective to expand the scope of feminist research.

Dr Kalem listed three objectives that she aimed to achieve with her study. The first objective was to listen to the narratives of women judges and to make stories visible. Up to date, there are hardly any scholarly articles on women judges in Turkey. Secondly, she wanted to situate the narratives in the existing literature and to compare the situation of women judges in Turkey to the situation of women judges around the world. The study, moreover, aims to make a contribution to feminist research by extending the scope of research beyond situations of violence. A lot of research that is being done on the situation of women focuses on the violence committed against women. Dr Kalem’s study goes beyond the women as victims narrative and focuses instead on women of power and women with authority that are perfectly exemplified by women judges. Lastly, she wanted to contemplate and act upon the narratives. Her research is not meant to be purely academic, but also has a political objective. While there may be a lot of differences between women from around the world, womanhood is the element that transcends other factors like class or ethnicity. It is the defining trait in a patriarchal society.

The starting point of Dr Kalem’s study is the question why women are usually underrepresented in numbers in the legal profession, especially in the positions of power.

There are almost 94,000 lawyers in Turkey. In 2015, 41% of the lawyers were women. This is a stark rise from the year 2000 when only 29% of the lawyers were women. This rise can be explained by the fact that more and more women are studying law. Furthermore, women usually prefer to become lawyers instead of judges or public prosecutors.

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In Turkey, there are different paths to train to become a lawyer on the one hand and to train to become a judge or public prosecutor on the other hand. At the end of the legal education at university, those wanting to become lawyers have to complete a one-year apprenticeship. There is no bar exam at the end. For prospective public prosecutors and judges the apprenticeship takes place during a two-year period. Judges in Turkey are around 24 or 25 years old when they start. Judges usually start out in a rural area and have to deal with cases from every field of law. The rural surrounding may lead to the young judges being affected by the local environment.

In 2012, women constituted 34.4% of all judges. In 2015, the number rose to 36.6%. By contrast, only 7% of the public prosecutors were women. There are several reasons why there are so few women prosecutors. Prosecutors often have to work unusual hours that clash with child care issues. Therefore, women are not favoured by the hiring authorities. Furthermore, gender-related prejudices also play a role; Women are considered to be more emotional and have difficulties handling murder cases.

In order to ascertain the place of women in the judiciary, it is necessary to complicate the numbers and to determine which positions are being occupied by women.

Looking at the numbers of the presidents of local Bar Associations, only 5 of the 79 Bar Associations were led by women. This means that only 6% of the presidents of the Bar Associations are women. This stands in stark contrast to the fact that almost half of the lawyers are women. This percentage is not represented by the number of women in positions of power.

The same phenomenon can be observed among judges. Of the 305 judges that have the power to hand out sentences over ten years there are only 17 women.

In the Court of Appeals, women constitute 14% of the member judges. Member judges are the judges that actually make the decisions. Among the investigative judges, meaning the judges responsible for paperwork which they present to member judges, women make up 35%. This can be explained by the fact that investigative judges can work from home which makes it easier for women to reconcile their work with a family life.

However, the position of investigative judges has a lower standing than that of member judges. This observation fits within the general observations that the more feminised a profession or position becomes the less prestigious the profession or position becomes.

A lack of women in higher positions can also be observed in the chambers. In the 23 civil chambers only four of the presiding judges are women and there are no presiding women judges in the 23 criminal chambers. The percentage of women that work in the judiciary is therefore not represented in positions of power. The higher the position is within the judiciary, the smaller is the percentage of women. This phenomenon can be found around the world.

The barriers that women face in the legal profession can be divided into visible and invisible barriers as well as formal and informal barriers.

Among the visible and formal barriers are legal barriers. The first woman judge in Turkey started practising on 1936. In the 1970's, there was a 10% threshold for women judges in Turkey. This barrier today does not exist anymore. However, the invisible barriers still exist.

They are commonly referred to as the glass ceiling effect. This problem has not been studied yet in Turkey.

In her study, Dr Kalem observed that for women being a judge creates a hardship upon their personal lives. Each judge has to decide about 20 to 30 cases per day. That results in long working hours and judges having to take work home with them. There is also insufficient institutional support regarding child care. Therefore, women judges often have to sacrifice their family life.

Women judges often marry male judges or public prosecutors hoping for support and understanding for the difficulties that are tied to the profession. However, even if both partners are judges, the women still carry the majority of the responsibilities for the household and for child care.

One women judge in the study stated that it was lucky that she had her children early when she was still an intern and in a big city which meant that she was able to profit from child care facilities. Another woman judge who did receive support from her husband stated that he saw it as a favour to her instead of a true equal division of labour.

Men judges often see women judges as a burden since it is the women who give birth and take maternity leave. This leads to women trying to hide their motherhood.

Dr Kalem also found in her study that women judges often neglect their families in order to be good at work but their dedication to their work is still questioned by the men judges.

Therefore, women are always trying harder which in turn leads to women becoming better judges because of their hard work and perform better.

In general, there is a low margin of error for women judges. Mistakes committed by them are not just seen as their personal mistakes but as the mistake of the woman judge.

Judges and public prosecutors in Turkey often live quite secluded lives. They live in public housing and are encouraged to stay out of general society. This is supposed to guarantee judicial independence.

Socialisation patterns are the key for judges and public prosecutors to step up in the judicial hierarchy. Men judges stay among themselves; they go together to dinner or to Friday prayers. This means that the names of the men judges are much more likely to come up for a promotion.

Women judges also sometimes are still referred to as Mr. Judge. The default judge is perceived to be impartial, anonymous, dehumanised, authoritative and always male. The performance of a woman judge is always measured against the backdrop of the feminist qualities that are considered to impair her judgment.

One of the woman judges stated that the men judges always saw the women judges as occupying the seat that in fact belong to a man and that they are sitting in their place and that traditionally male associated qualities are taken as the standard.

There is also a big difference between married and unmarried women. Married women have better chances of a promotion as they are able to go to Ankara with their husbands to introduce themselves. Single women do not go by themselves.

In Dr Kalem's study, single women also complained about their fear of being the target of gossip and the impact this fear had on their professional life. Many felt pressured to act in a

certain way. They did not go into a man judge's office alone and when a man judge entered their chamber they got inquiries from others at the Courthouse about the identity of the man. Many women judges felt that they had to strip themselves of their femininity in order to be taken seriously. They perceived to be seen as woman first and judge second. At the end of the talk, a member of the audience asked what could be done to alleviate the problem of the few women in the judiciary especially in the positions of power. Dr Kalem suggested that there had to be legislative change in the form of quotas for certain positions, e.g. for Court of Appeal judges. Furthermore, there had to be better institutional support for women for example concerning child care.

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