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RESEARCH ON PERMANENT ALIMONY

(A socio-legal and judicial review)

SUMMARY OF THE REPORT

1. Reasons behind this Research on Permanent Alimony

The research produced on Permanent Alimony was conducted by the Foundation for Women's Solidarity with the support of the UNWOMEN *regional programme "Implementing Norms, Changing Minds"*, within the scope of the project *"Promoting the Rights of Women to Receive Information about General and Specialist Support Services Available for Women Victims of Violence and Discrimination, as well as their Rights to Access these Services"*.

The Foundation for Women's Solidarity was established in 1993 in order to combat violence against women and address gender inequality, as the root cause of violence. The Women's Counseling Center provides free social, legal and psychological support to women, who are survivors of violence, in the light of understanding of solidarity and feminist principles and with the support of volunteer women.

This Project is intended to strengthen the rights of women who are survivors of violence against women, and to ensure they receive information on support services and access to these services. This research has been carried out to highlight discussions on the new regulation on permanent alimony, which has been on the public agenda for a while and is expected to be on the agenda of the Turkish Parliament as a part of second judicial reform package in the coming days. As stated by various institutions and authorities participating in discussions on permanent alimony, the discussions are carried out within the framework of individual examples without taking into account sociological data that will reveal the current problems and social needs related to legal practice.

This study investigates whether there is a need for a new regulation on permanent alimony, problem in practice of the implementation of permanent alimony and the issue of violence against women in cases with alimony claims is investigated.

2. Scope and Method of the Research

In order to carry out this study, a study group was formed among the volunteer lawyers of the Foundation and 140 alimony case and divorce case files with alimony claims took place in 11 provinces were reviewed. In the research, qualitative and quantitative analysis was performed where snowball and sampling methods were used together. The discussions on alimony, legislation and doctrine as well as the researches and data in that regard were also included in the report and the issue was investigated in a holistic way by taking into account all the aspects.

In this study, the issue of permanent alimony was addressed from a sociological perspective, analyzing the legal regulations and law enforcement as a socio-judicial review in an interdisciplinary way. The results of the analysis of the cases are presented as tables and figures interpreted by the researchers. In addition to political research was carried out through the analysis of reports and statements written by the Turkish Parliament and various organizations related to the new regulation; the legislations and case laws on permanent alimony were reviewed and evaluated as a doctrinal legal research. Therefore, it has been tried to make the mentioned regulation as the subject of a systematic research, with taking into account various aspects including social reality, the related general and judicial statistical data; in order

to provide a sociological and legal framework related to the discussions in that regard. Finally, a sociological perspective is brought to the analysis to unpack the social reality of these legal frameworks.

Although the research was prepared in the short period of two months in order to contribute to the discussions on permanent alimony in the legislative process, the sampling included in the research is diverse in terms of time, case and type of claim.

3. Data and Results of the Research on Permanent Alimony

The case files investigated in the research were 140 divorce cases which took place in 11 different provinces in 15 years and/or the alimony cases filed after the divorce cases and reimbursement alimony cases. By investigating these case files, it was tried to obtain the updated data on permanent alimony. Of 140 case files reviewed within the scope of this research on permanent alimony; 14 of them are alimony cases (on extending alimony, terminating alimony, temporary alimony and reimbursement alimony cases), 126 of them are divorce cases, 121 of them are contested divorce cases, and 5 of them are uncontested divorce cases.

In this study, it is observed that there are three factors behind the difficulty faced in differentiating the alimony claims in the discussions on permanent alimony. These are: the fact that alimony claims are made in divorce cases and/or made by filing another case; the fact that alimony claims are made in different forms as rehabilitative and reimbursement alimony; the fact that the more than one rehabilitative alimony claims are made simultaneously especially in cases where care for any children needed.

The data and the results of the research are as follows:

- 1- The study identified that there is a significant link between divorce and alimony cases and gender-based violence. Although the reasons for divorce cases vary, 82.9 percent of the case files that were investigated include the implications of violence against women. There is a high claim for alimony in such case files includes the implications of violence against women.
- 2- Most of the cases investigated were filed by women. In 32.1 percent of these cases, women benefited from legal aid due to their financial impossibilities. It is noteworthy that the compulsory court expenses paid by those who do not/cannot receive legal aid are generally much higher than the amount of alimony.
- 3- The data obtained in this study show that the education, occupation and income level of women is far behind that of men, which complies with TUIK data as well.
- 4- In divorce and alimony cases, it was found that alimony claims were significantly related to the situations where care for any children was needed. In these cases, 72.2 percent of women and men have 1-5 children. In 79% of those cases, women got the sole custody of the children, compared to 7.40 % of men in those cases. The type of alimony ruled by the courts at the highest rate with 63.73% is the child support alimony provided to the children. Permanent alimony, which is generally claimed by women, has the second highest rate as 48.83 percent.

- 5- It should be underlined that the amount of alimony is much lower than expected when considered within the framework of general economic data such as minimum wage, hunger and poverty lines. The amount for 66.4 percent of awarded alimony is between 0-500 TL and the average amount is 262 TL. The average amount of alimony provided by the courts for all ranges is only 370 TL.
- 6- The important problem identified in the reviews is the fact that the alimony is often not paid. Of alimony payments ruled by the courts, 20.7 percent was paid by payor spouses, while 0.7 percent was partially paid; 50.7 percent was not paid.¹ The reason for not paying the alimony is the fact that 40 percent of the payor spouse did not want to pay alimony.
- 7- While women hesitate to claim for alimony from low-income men, the higher income does not increase the amount of alimony to be claimed.
- 8- In many cases reviewed, it is observed that women who filed for divorce on account of violence against women, would like to divorce their husbands as soon as possible in order to get rid of this violence and ensure their safety. In order to cut their relationship with their spouses as soon as possible to avoid existing threats they therefore they did not make alimony claims or they withdraw their alimony claims and did not claim any pecuniary and non-pecuniary indemnities.
- 9- Even in cases where the income of the payor spouse is quite high, it is observed that the child support alimony required for ensuring the care for children is kept low in order to convince the former husbands to divorce. It is observed that in most of the uncontested divorce cases where there is no child in concern, women do not claim any alimony for themselves or do not make any objections to the small amounts agreed by men.
- 10- The lawyers of the recent case files stated that the payor spouses refrain from making alimony payments with the expectation of a new regulation on permanent alimony payments, and they perceive the new alimony regulation as a kind of tax amnesty.

4. Evaluation

In this research on permanent alimony, there is no cases, which are victimizing the men, were observed, although the Commission on Preventing Divorces stated that there are such cases. The results of this research are consistent substantially with TBNA (Research on Reasons for Divorce in Turkey) and TAYA (Research on Family Structure in Turkey) conducted by the Ministry of Family, Labor and Social Services and with TUIK data and legal statistics.

The data of Research on Permanent Alimony reveals that the main problem in divorces is the issue of violence against women, and the main problem regarding the alimony is the insufficient amounts of alimony ruled by courts and the lack of ability to collect the alimony.² The inattentiveness of the authorities regarding SED (social and economic condition) review helps the payor spouse to conceal their economic situations by non-covered and informal work and by transferring their goods and

¹ The rest could not be defined from the cases.

² Emine Bulut who was murdered by her ex-husband from whom she divorced in order to get rid of violence during the process of this report, under the pretext of seeing his child, had filed complaint against her ex-husband for not paying alimony, according to the minutes of the High Criminal Court. It was stated in these minutes that this perpetrator was kept in preventive detention once on account of not paying alimony.

although the amounts for alimony ruled by the court are too low to maintain life even in hunger limit, those amounts cannot be collected even via levy for execution. The amounts considered as punishment by the men who avoid to pay are, not only regarding the permanent alimony, which is their obligation to their ex-spouses having limited financial means, but also regarding the child support alimony, which are their responsibility to their children after the divorce in line with civil law. During divorce process, men often refrain from claiming custody of their children and avoid sharing the burden of expenses and care regarding their children.

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