

## INTERRELATIONS BETWEEN FAMILY, DIVORCE AND CRIME IN THE CONTEXT OF CRIMINOLOGY

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### Öz

*Çalışmada, kriminoloji açısından ailenin ve boşanmanın suç işlenmesi ile ilgisi üzerinde durulmuştur. Bozuk aile yapısı ve özellikle kadına yönelik işlenen suçlarda boşanmanın etkisi değerlendirilmiştir. Bu bağlamda eş kavramının ceza hukuku açısından içeriği ele alınmıştır.*

### Anahtar Kelimeler

*Aile, boşanma, suç, eş, kriminoloji*

### INTRODUCTION

Divorce, as its most basic definition, is the termination of the family unity once formed by a man's and a woman's free will. Termination of family brings a whole lot of negative and unwanted consequences to surface. One of the most critical of these consequences is the psychological destruction that wreaks havoc on men, women and children and leads them into committing crimes or even living a life of crime.

A crime can be defined as sociologically deviant behaviour. With "deviant behavior" used here, an act creating a state of disturbance of peace and order of the society is implied. For the social order to be established and maintained, human behaviour must be kept under a set of rules.

The most efficient and cost-effective method for war on crimes is to clear off the circumstances causing the crimes. Without the circumstances creating them, naturally, crimes will not take place, thus the cost of punishment will also be dramatically reduced.

Taking a look back into the history of law, one can see that also positivist thinkers suggested that the society shall be protected from criminality by taking preventive measures before a crime is committed.

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In this article, the crucial effect of family ties and divorce on preventing crimes is argued.

### **I. The Cost of Crime to Society**

Because of its high cost and burdensome nature, in every century prevention of crime as a social phenomenon has been on the target to maintain security of society and individuals.

Beside its harms to the society, crime causes serious damages to individuals, too. After a crime is committed, carceration of the offender, judicial proceedings made, the punitive actions taken towards the offender and finally the corrective facilities for reintegrating the offender into the society creates a great economic burden on the government.

Fear of crime causes psychological damages on individuals; they tend to isolate from the society and feel the need to refrain from being at particular places at particular times. Specially at the terror-affected regions, it is considered quite dangerous to go out at night time.

Fear of crime may give a rise to xenophobia (fear of foreigners) and leads individuals to withdrawn from social interactions, causing the social integrity process and social control mechanisms to slow down.

Protecting oneself from crime requires economic investments. For instance, alarm equipments, applying for an insurance policy or hiring a bodyguard are among the list of requirements incurred by the fear of crime.

A research from the U.S.A revealed the annual cost of every type of crime. According to this research, the amounts spent on various criminal acts are as follows<sup>1</sup>:

|                        |               |
|------------------------|---------------|
| Voluntary Manslaughter | = 750 M USD   |
| Bodily Harm            | = 65 M USD    |
| Arson                  | = 100 M USD   |
| Home Robbery           | = 450 M USD   |
| Petty Theft            | = 196 M USD   |
| Car Theft              | = 140 M USD   |
| Driving Under the      |               |
| Influence of Alcohol   | = 1.800 M USD |

Reasons creating the tendency to commit a crime may be physical or environmental. A healthy family is the most convenient setting to bring up socially harmonious children.

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<sup>1</sup> **Füsün Sokullu-Akıncı**, Criminology, 7th Edition, 37, fn. 45.

Divorce or dissolution of family ties shows its impact firstly on children at their development years whose safe harbor is their family.

In following sections, firstly relation of family and crime, then relation of divorce and crime, and finally, relation of marital status and crime is examined.

## **II. Relation of Family and Crime**

In Turkey, the importance attached to family unity is quite high. Family is the first social group which the children come into contact with after their birth. A child enters into a family with zero knowledge of life and then by family life learns how to live and socialize. Family is the first social orientation school for the children.

Family is the organisation that meet the vital needs of the children and generally divided into two types as Typical Family and Atypical Family.

Typical Family consists of spouses and their children living together with them. In Atypical Family, on the other hand, beside spouses and their children there are other members. In atypical family, one of the parents is absent or substituted by someone else, or there are stepparents, or there are close or distant relatives taking care of the children. Children that committed a crime usually come from atypical families<sup>2</sup>.

Families that offenders grew up in are generally classified as follows<sup>3</sup>:

1. Other members of family are delinquent, alcoholic, and/or they lack moral values;
2. One or both of the parents are absent because of death, divorce or abandonment;
3. Parents don't have any control over child's behaviour because of physical or psychological illnesses or lack of education;
4. Factors like violence, negligence or enviousness are present in the family life;
5. Problems based on religious or cultural differences are present in the family life;
6. Family is under an economic pressure.

Single Parent Family is the term used for families deviated from the typical family structure because of death, divorce or abandonment.

Members of single parent families compel attention in a criminological context because of their tendency to commit a crime.

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<sup>2</sup> **Dönmezer**, Criminology, 8th Edition, 243.

<sup>3</sup> Ibid., 243.

A research from the U.S.A conducted on court archives points out that a high percentage of criminals were raised in single parent families<sup>4</sup>.

Researchs conducted in Turkey also show the close relationship between single parent families and criminality<sup>5</sup>.

Style of interaction between family members has a strong effect on child delinquency. For the abandonment cases, it is emphasized that after an abandonment children face an overwhelming fear and this fear causes inadaptability to the social life and consequently to the tendency towards crime.

Parental criminality and moral values of parents have a strong impact on child delinquency. Having a criminal parent, children may get to learn about crimes inside their immediate surroundings and then imitate their criminal parent.

Studies about child delinquency shows that economic status of the family is one of the most important criterion regarding this matter. It is found out that child delinquents mostly come from low-income families.

Domestic violence creates children with violent criminal tendencies.

### III. Relation of Divorce and Crime

Relationship between divorce and crime shall be analyzed from two main aspects. The first one is divorce being the end of family unity and a strong factor in child delinquency as explained in previous title. The second aspect is about the consequences following the tragedy of divorce. In Turkey, as seen on mass media, spouses often commit crime of murder in the course of divorce proceedings. Considering Turkey's sociocultural structure and education levels of individuals, it can be observed that contested divorces can easily turn into disasters.

Some examples to these disasters are shown below:

**In Edirne**, a retired police officer, Necip D. , shot his nurse wife Nurcan D., who wanted to divorce him, with 4 bullets just 12 hours before the divorce hearing<sup>6</sup>.

**In Hamzagerek village of Kars**, Yaşar Yuca, aged 42, shot his wife of one year who wanted to get a divorce, with a shot-gun on the village minibus in front of other passengers<sup>7</sup>.

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<sup>4</sup> Ibid., 244.

<sup>5</sup> Ibid., 246.

<sup>6</sup> <http://haber.sol.org.tr/kadinin-gunlugu/kadin-cinayetleri-suruyor-bosanma-davasina-12-saat-kala-olduruldu-haberi-70502> (accessed 15.09.2014).

<sup>7</sup> <http://www.milliyet.com.tr/herkesin-gozu-onunde-korkunc-gundem/detay/1822321/default.htm> (accessed 15.09.2014).

**Murder of Çiğdem Çetin in İstanbul-Başakşehir:** Hakan Çetin, the husband that killed his wife of five months with four bullets, told that he killed his wife because she wanted to get a divorce<sup>8</sup>.

**In Adana,** Fatma Ü., a woman who visited her lawyer for discussing divorce proceedings, is killed by his husband Yunus Ü.<sup>9</sup>

### **III. Relation of Marital Status and Crime**

One of the factors which have a close relation with crime, is marital status. Marital status of individuals change after they start or end a family.

As a rule, it is widely acknowledged that marriage strengthens the feeling of responsibility thus serves as a crime prevention element<sup>10</sup>.

Marital status as a factor of tendency to commit a crime, defines individuals' states of being married, single, divorced or widowed.

Obviously it is not sufficient to explain crimes solely on the basis of marital status factor. There are numerous other factors that effect the process of committing a crime.

It is observed that married individuals are less likely to commit crimes comparing to the individuals having other marital statuses. Married individuals are followed by widowed ones and single ones. Divorced individuals have the highest criminality rate<sup>11</sup>.

It is also necessary to underline the findings from a recent research regarding this matter. According to this research, individuals who got married before age 25 are more likely to commit a crime comparing to their single counterparts. The reason behind this situation is getting married before getting ready for marriage. But when the focus is on the individuals aged between 25-60, it is observed that single group is more likely to commit crimes comparing to married group.

Nevertheless, it is pointed out that married women are more likely to perform criminal acts comparing to single women. Without a doubt, this is the result of women's position in marriages in Turkey.

### **IV. Turkish Criminal Law's Handling of the Matter**

Paying regard to the sociological significance of family as an institution which has crime prevention functions, in Turkish Penal Code, crimes against

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<sup>8</sup> <https://www.sabah.com.tr/yasam/2014/07/23/cinayetin-nedeni-bosanma-davasi> (accessed 23.7.2014)

<sup>9</sup> <http://www.borsagundem.com/haber/adanada-bosanma-cinayeti/189453> (accessed 15.09.2014.)

<sup>10</sup> Demirbaş, Criminology, 163.

<sup>11</sup> Ibid., 163.

family life are defined under the title of “Offenses Against Family Order” between the art. 230 and art. 244. This title includes offenses such as “multiple or fraudulent marriage (art. 230)”; “changing lineage of a child (art. 231)”; “torture (art. 232)”; “breach of obligations conferred upon by family law (art. 233)” and “kidnapping of a child (art. 234)”.

In Turkish criminal law, when a spouse is the victim of a crime committed by the other spouse, regardless of the type of the crime, it is considered that an aggravating factor exists which requires a more severe penalty.

“Spouse” is defined in dictionaries as “*one of the wife and husband, life partner, companion*”<sup>12</sup>. The word’s legal definition is simply “*one of the parties to the relationship founded by the civil (official) marriage procedures according to the Turkish Civil Code*”.

Examining Turkish Court of Cassation’s precedents, it can be observed that the Court searches for the existence of a legitimate and duly conducted official marriage to penalize the acts of voluntary manslaughter and bodily harm as crimes against a spouse<sup>13</sup>:

*“Considering a civil marriage compliant with the provisions of art. 143-185 of Turkish Civil Code is not present between the defendant and the victim, thus the victim can not be defined as spouse, it is contrary to law to implement art.82/1-d of Turkish Penal Code while rendering the verdict about the crime of voluntary manslaughter.”*<sup>14</sup>

It should be pointed out that this practice produces unjust consequences since related provisions are implemented for individuals who have an official marriage between them even if they have lived separately for years, resulting in getting more severe penalties; but not implemented for individuals who don’t have an official marriage but still live together for a long time, even raise a child together and known as “husband and wife” in their social environment<sup>15</sup>.

In our opinion, these provisions should be interpreted in a way making it possible to include individuals who don’t have an official marriage but living together as husband and wife and making this situation visible to the public eye; who had a marriage ritual according to their religion or whose marriages are null and void. Because behind the law’s view in making criminal acts against a

<sup>12</sup> Durmuş **Tezcan**-Mustafa Ruhan **Erdem**-R. Murat **Önok**, Special Provisions, 10. Edition, Ankara 2014, s. 164.

<sup>13</sup> See The 1st Criminal Chamber of Turkish Court of Cassation’s decision dated 07.03.2012 numbered E. 2009/9211 and K.2012/1570. The Court is also in the opinion that the aggravating provision can not be implemented if the crime of voluntary manslaughter is committed in a null and void marriage.

<sup>14</sup> See The 1st Criminal Chamber of Turkish Court of Cassation’s decision dated 21.10.2009, numbered E. 2008/10689 and K. 2009/6189.

<sup>15</sup> See also: İlhan **Üzülmez**, Offenses of Bodily Harm, 18.

spouse an aggravated condition lies the thought of individuals attacking people whom they have a really close relationship with, must have extremely malicious intents<sup>16</sup>.

Taking the art. 10 of Turkish Constitution, Law numbered 6284, creation of aggravated circumstance provision and the usage of this provision until today into account, we are in the opinion that the practice of the Turkish Court of Cassation related to this matter is not correct.

The provisions of the first article of Law numbered 6284, titled "Law Protect Family and Prevent Violence Against Women" are as following:

*"(1) The aim of this law is to protect the women, the children, the family members and the victims of stalking, who have been subject to the violence or at the risk of violence, and to regulate procedures and principles with regard to the measures of preventing the violence against those people.*

*(2) The following fundamental principles are observed to enforce this law and provide necessary services:*

*a) The Constitution of Republic of Turkey, the international agreements to which Turkey is a party, especially the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, and other current regulations shall prevail.*

*b) A fair, effective and speedy method, which is based on basic human rights, sensitive to the equality of men and women, applicable to the social state principle, is maintained in providing support and services to the victims of violence.*

*c) The cautionary decisions taken for the victims and perpetrators of violence are implemented with respect to human dignity and honor.*

*ç) The special measures taken within the scope of this law to prevent the gender based violence against women and protect the women from the gender based violence cannot be interpreted as discrimination."*

As it is understood from the provisions quoted above, existence of a civil marriage procedure is not a precondition for providing protection to women subjected to violence.

In addition to this, while it is considered as an aggravated situation when a violent crime is committed against a child with a mother who have an official marriage, the same provision about aggravating circumstances is not implemented when a child whose mother doesn't have an official marriage is

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<sup>16</sup> See Doğan **Soyaslan**, Special Provisions Criminal Law, 9. Edition, Ankara 2012, s. 101; **Üzülmmez**, Offenses of Bodily Harm, 18; Veli Özer **Özbek**-M. Nihat **Kanbur**-Koray **Doğan**-Pınar **Bacaksız**-İlker **Tepe**, Special Provisions Criminal Law, 7. Edition, Ankara 2012, s. 126.

exposed to those same criminal acts. All these practices leave women, the constant victims of violence, in an extremely vulnerable position.

### **CONCLUSION**

To reduce crime's heavy cost to society, firstly the elements creating the crime must be eliminated. Throughout the history, serious efforts have been made for this purpose, but since crime phenomenon is rooted in various factors, it was not possible to reach this goal. However, it is possible to lessen the criminality by eliminating the factors leading individuals to commit a crime. To achieve this goal, it is important to strengthen the family since it is the first community that a child comes into contact with. Recent researches show that individuals who have a dysfunctional family, who are not able to start a family or who come from a single parent family commit crimes more often than the other groups of people. Therefore, it can be said that it is crucial to start healthy families and protect those families from the impact of divorce for the prevention of crime. In addition to creating a satisfactory legal basis on this matter, the social reality of the society must be considered in the process of implementing the law. Because laws exist to solve the problems that are already present; not to create new problems.