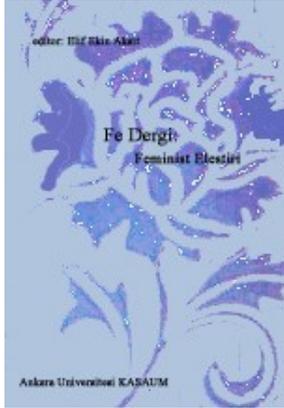


Yayımlayan: Ankara Üniversitesi KASAUM

Adres: Kadın Sorunları Araştırma ve Uygulama Merkezi, Cebeci 06590 Ankara



Fe Dergi: Feminist Eleştiri Cilt 1 Sayı 2
Erişim bilgileri, makale sunumu ve ayrıntılar için:
<http://cins.ankara.edu.tr/>

**Sex Reassignment, Biological Reproduction and Sexual
Citizenship in Turkey**

Ayça Kurtoğlu

Çevrimiçi yayına başlama tarihi: 30 Aralık 2009

Bu makaleyi alıntılar için: Ayça Kurtoğlu, "Sex Reassignment, Biological Reproduction and Sexual
Citizenship in Turkey," *Fe Dergi* 1, no. 2 (2009):79-88.

DOI: Fe0001_0000000008

URL: <http://cins.ankara.edu.tr/aycak.html>

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Sex Reassignment, Biological Reproduction and Sexual Citizenship in Turkey

Ayça Kurtoğlu*

While engaging with the nexus between biological reproduction and sex/gender, this study focuses on the legal regulation of sex reassignment as included in the Civil Code of Turkey. It discusses the constructions of sex/gender and sexualities in the regulation by drawing on the conception of sexual citizenship. By employing the concepts of reproductive femininity and reproductive masculinity, the study claims that the regulation serves to keep sex/gender/sexual categories in order. The study also shows that some women's motherhood and reproductivity are valued more or less exclusively in the private sphere. The study concludes that the hegemonic form of sexuality influences women, transgender and other sexual minorities negatively.

Key words: Sex reassignment, sexual citizenship, feminist movement, LGBTT movement

Cinsiyet Değiştirme, Üreme ve Türkiye'de Cinsel Vatandaşlık

Biyolojik yeniden üretim ve cinsiyet/toplumsal cinsiyet bağlantısıyla ilgilenirken bu çalışma Türk Medeni Kanunu'nca düzenlenmiş olan cinsiyet değiştirme konusuna odaklanmaktadır. Çalışma, bu düzenlemede cinsiyet/toplumsal cinsiyet ve cinselliklerin nasıl kurgulandığını tartışmaktadır ve üretken kadınlık ve üretken erkeklik kavramlarını kullanarak söz konusu düzenlemenin cinsiyet/toplumsal cinsiyet ve cinsellik kategorilerinin bir düzen içinde tutulduğunu iddia etmektedir. Bu çalışma ayrıca, yasaların bazı kadınların annelik ve üretkenliğini ve bunu az çok sadece özel alanla ilişkili olarak değerli gördüğünü ortaya koymaktadır. Sonuç olarak, çalışma hegemon cinsellik formlarının, hem kadınları, hem transseksuelleri hem de diğer cinsel azınlıkları olumsuz etkilediğini ifade etmektedir.

Anahtar sözcükler: Cinsiyet değiştirme, cinsel vatandaşlık, feminist hareket, LGBTT hareketi

“Take a woman, shave and shape her, she becomes a mother”
Sezai Karakoç¹

“The greatest duty of a woman is motherhood. Its significance can properly be understood when it is understood that mother's bosom is the place of the initial education.”
Mustafa Kemal²

“Give birth to at least three children so that our young population not diminishes.”
Recep Tayyip Erdoğan³

Introduction

Turkey is among the few countries, where both sex reassignment surgery and the change of sex/gender on the birth certificate are legally acceptable.⁴ This legal acceptance of the possibility of changing sex assigned at birth can be seen as an indication of the presence of an egalitarian gender and sexual relationships. First, it gives an initial impression that sex is not treated as a biologically fixed phenomenon, therefore not essentialised by the state in Turkey. Second, it gives the impression, especially to those for whom the recognition of transgender rights follows from those of women's and gays' and lesbians' rights, that the state and society has a liberal approach towards sexual minorities.⁵

While engaging with the nexus between biological reproduction and sex/gender, this study focuses on the legal regulation of sex reassignment as included in the Civil Code of Turkey and discusses its implications on the constructions of sex/gender and sexualities.⁶ Concerning the first impression mentioned above, I am asking the questions of whether or not sex/gender is treated as biologically fixed phenomenon and whether or not sex/gender is essentialised and some forms of sexuality are normalised by the state. I consider these questions relevant to a discussion of the nexus between biological reproduction and sex/gender in Turkey given the fact that sex reassignment has been made conditional on one's inability for biological reproduction. This condition

* Eda Acara provided a sensitive and constructive reading of the first draft. I thank her for her comments.

appeared when the Civil Code was amended in 2002 with the declared intention on the part of both the government and the parliament to reach gender equality. Furthermore, I consider asking these questions important in relation to the regulation of sex reassignment because they relate the regulation directly to the politics of gender equality, and gendered and sexualised citizenship. This is despite the fact that the condition of being incapable of biological reproduction included in the amendment process went unnoticed by the women's movement, which otherwise influenced to a large extent successfully the amendment process.

With regard to the recognition of transgender rights coming after women's, and gays' and lesbians', it is easy to show that the above-mentioned impression is erroneous, and that there is no linear progress as attributed by this impression, but historical contingencies. This is given the fact that gay and lesbian rights are yet to be recognised while sex reassignment has been legal in Turkey since 1988. However, this seemingly contradictory, but historically contingent phenomenon begs further explanation. I will attempt to explain it by drawing on the ideas on intra-male/masculinity hierarchies and discuss it in relation to the ways in which masculinities are constructed by the regulation of sex reassignment.

Wright Mills⁷ noted, there are biographical aspects to every study, and the feminist scholarship has long recognised the relevance and validity of personal elements in doing research. Therefore, it is not inappropriate to mention that the reason I am focusing on sex reassignment in the Civil Code is my involvement in the deconstruction of the categories of "woman" and of "man" in order to draw attention to the pitfalls of taking socio-politically constructed sex/gender categories for granted, and as if sex/gender categories are not constructed in particular ways by every relevant policy, politics and laws. In other words, my primary concern is with feminism and I employ a feminist perspective in my analysis. Within this perspective, I methodologically attempt to shed some light on the category of "woman" and of "man", and the underlining assumptions, involved in their constructions in the article of the Civil Code on the sex reassignment by looking at how those who are not generic women/men but rather are in the process of becoming are treated by the law in relation to issues of family and reproduction.

In this study, I argue that the acceptance of sex reassignment in the law does not necessarily follow from an acceptance of and commitment to sex as a biologically unfixed phenomenon. Furthermore, I argue that sex reassignment as regulated in the Civil Code can be read as a way in which sex/gender and gender hierarchies are constructed as well as ways in which the categories of "woman" and "man" are understood by the state. Because sex reassignment is a legal regulation by the state, it directly relates to the question of citizenship. Furthermore, as the regulation has been made in terms of biological reproduction, it relates directly to the constructions of "motherhood" and "fatherhood", and more indirectly to questions of sexual orientation.

In what follows, I will first contextualise the present study in terms of subordinations of women and men. Gendered and sexualised aspects of citizenship are briefly discussed in the second part. The third part consists of an analysis of the regulation of sex reassignment in the Civil Code of Turkey. In the conclusion, I discuss women's positions in relation to both reproduction and the public-private divide and women's movement in relation to the sameness-difference divide.

Framing the Subject: Subordinating Women and Men

A well-known feature of the classical patriarchal gender/societal order concerning women's position in pre-modern times is that, unless occupying a privileged status such as that of royalty, a woman did not have an independent status, but rather her status was designated through men with whom she was socially associated particularly within the family, such as the father or the husband. Another well-known feature of the classical order concerned women's capacity to give birth. In pre-modern times, a woman's status within the family was upgraded by getting married and bearing a child in wedlock, especially one that could be a legitimate inheritor of property.⁸ This gender/societal order was reflected in cultural customs and traditions that were in turn subjected to religious regulations.⁹ Those customs, traditions, and regulations not only followed from the subordination of women, but they also served to justify men's domination in the pre-modern times.

With the formation of nation states, issues concerning family and biological reproduction gained additional meanings beyond that of the gender/societal order, and became more multi-dimensional.¹⁰ The family and biological reproduction, and implicitly women's positions in relation to them became an issue for nation states in order for them to design population policies to create and manage idealised/normalised citizens and develop national identities. They also became an issue to be classified under civil rights.¹¹ Later, these issues

were conceptualised in terms of women's as well as gays and lesbians' equal civil and reproductive rights and became a site of struggle for those who sought to achieve equality on gender and sexuality bases.¹²

Irrespective of whether the classical patriarchal gender/societal order was repressive for women in pre-modern times, but was transformed and changed in modern times, or whether gender hierarchies in pre-modern and modern times are studied and treated differently under a rubric which differentiates the pre-modern from the modern by constructing them in binary dichotomies, the features mentioned above give us cues about the content and direction of gendered power relationships in socio-political contexts. Regarding the family and biological reproduction-related issues, the social and political constructions of women as dependent subjects and in terms of their biological capacity to reproduce can be observed through two analytically distinct forms: the recognition of women as *essentially* mothers or potential mothers and valuing them accordingly, and the recognition of women with reference to their reproductive capacity or some other utilitarian ways. While the former is a seemingly positive and the latter is a seemingly negative construction of the category of "woman", each of these constructions has shown to be misrecognitions by feminist scholarship, and argued to be informed by various assumptions that neglect and discredit women's agency. These constructions or misrecognitions impact on women's real lives through muting their agency. One such assumption is that which equates woman with motherhood and considers that in each woman, there is the propensity to be a mother. Another assumption is that the role of women's biological reproduction in the family is vital for the maintenance of society.¹³ This attributes a moral obligation to women to be mothers. This is also embedded in discourses of reproductive femininity and implicated in the heteronormative constructions of the family and society.¹⁴

It has long been argued that men's control over women's bodies and lives is not merely a function of male dominance over women, but rather a matter of hegemonic masculinity, which diacritically marks out some forms of masculinity and emphasises some forms of femininity while constructing the hegemony of heterosexual men in and through practices and performativities.¹⁵ When the focus is shifted from women to men, and from the inter-gender power relations to the intra-gender power relations, it can also be claimed that the text of the legal regulation on sex reassignment or transgender in Turkey can be read in relation to both an emphasised form of femininity, namely the reproductive femininity, and a hegemonic form of masculinity, namely reproductive masculinity.¹⁶ This is because the regulation stigmatises and marginalises non-heterosexual forms of femininity and masculinity.¹⁷

The present study approaches the issues of biological reproduction and the family by drawing on the concept of sexual citizenship and focuses on the regulation of sex reassignment regulated within the context of civil rights and included in the Civil Code of Turkey. The aim of contextualising the subject within the concept of sexual citizenship is two-fold. First, the study aims to disclose some of the assumptions about sexuality involved in the construction of the categories of "woman" and "man" by the regulation of sex reassignment. This in turn is a way to render problematic the ground on which gender equality policies and gender specific liberties, rights and duties are defined and pursued. While taking a closer look at the regulation of those who experience "identity migrations"¹⁸ - from the sex which was assigned at birth to the other sex to which the transgendered feel they properly belong, the deconstruction of how the state conceptualises women/men, motherhood/fatherhood, reproduction and the family is expected to shed some light onto the constructions of women/men and motherhood/fatherhood. In this sense the present study looks into the field of citizenship in order to focus on ways in which sex and gender categories are constructed in relation to the issues of reproduction (sexuality), the family and gendered aspects of persons' lives. In this connection, the concept of sexual citizenship provides a productive ground.

Second, by focusing on the regulation of sex changes and the transgender issue, the present study aims to shift the focus of the concerns relating to gender equality from the sameness-difference divide to plurality and intersectionalities. This is an attempt to undermine the binary construction of gender equality issues from the framework within which the sameness-difference divide takes place. This is because it has long been argued that dyadic binary constructions are both reflections of masculine rationality and make up one ground on which male dominance relies, is reproduced and empowered. In other words, it can be thought that the sameness-difference divide takes place in a framework which is constructed in a dyadic binary fashion. At the same time, the present study draws attention to the dyadic binary constructions of gender/sex and sexual categories by the law. These constructions in turn impact on gendered and sexualised subjects.

The internally homogenous binary sex/gender constructions become significant when state policies and regulations are built upon them. For instance, state policies and regulations are prepared with reference to the

abstract subject of women/men or as if gender/sex categories are internally homogenous.¹⁹ However, depending on how women are socially situated in the structures of class, status, age and the like, women experience the legal regulations and population policies in different ways. As Elif Akşit's work in this volume points out, there are links between multiple hierarchically layered structures of power and experiences of infertility treatments for women. Women of a lower class or status, who can go only to public hospitals for infertility treatment, have an experience of the said treatment that is different from the experiences of upper class women who are able to get the treatment in private clinics. Accordingly, while homogeneity is attributed to the category of infertile women in state regulations, in practice, women of a lower class or status are more likely to come directly encounter the state's health and population policies.²⁰

In addition to differences among women experiencing state regulations and policies differently in hierarchically layered structures, there is a category of women/men, namely transgender women/men, whose encounters and experiences with the state's policies and regulations of the family and motherhood/fatherhood are entirely different from upper and lower class/status women who are assigned as woman at birth. This is because the legal regulations and the population policies on sex/gender, the family and reproduction not only have impact on their bodily experiences, but also a further impact in their identities and life conditions. These all have direct links to transgender persons' partial citizenship as well as that of non-transgendered persons' because they are built upon heteronormality which is always implicitly in the modern models of citizenship.²¹

Citizenship as a Sexualised and Gendered Concept

Modern citizenship is conventionally understood as merely a legal public status held under the authority of a nation state, and defined in terms of liberties and responsibilities attached to civil, political and social rights.²² It is also thought to be both universal in that it is a status found in all nation states, and uniform in that each and every member of the state is considered to be equal before the law. First, this conventional understanding does not reflect the reality in that there is not one but multiple regimes of citizenship (communitarian, liberal and republican) and significant differences within each regime when deployed and practiced by different nation states. Therefore, citizens of each country are differently situated in the private-public divide of modern nation states. Second, the idea of citizenship as a uniform legal status, namely being inclusive of each and every member of the state, is spurious, and as such has been challenged by various social movements and respective scholarship, which broaden the concept of citizenship and redefined and reconfigured the extent, the content and the depth of it.²³

According to Engin F. Isin and Bryan S. Turner, from the outset, or since the time citizenship was defined with reference to settlers of ancient cities, there has been a generic problem of exclusion, because, in Isin and Turner's words, "that which includes must by definition exclude."²⁴ Accordingly, citizenship has always been exclusionary to some despite the fact that the historical link between citizens as city settlers and citizens as members of modern nation states has been established from the perspective of the included.²⁵ Struggles for making modern citizenship more inclusive for the excluded gave way to new ways to conceptualised citizenship. Sexual citizenship is among them.

As in the case of the Black movement and its related scholarship, some claims about the inclusion of communal/group rights have addressed partiality-related problems involved in the established models of citizenship, but did not challenge the conventional ground of citizenship, namely the public sphere and the triad of citizenship rights. Unlike them, some other movements, such as second wave feminism, and its related scholarship moved beyond the conventional space of the citizenship, which is demarcated by the public-private divide and assigned the citizenship claims into the public. They stretched the demands into "the most intimate corners of the private sphere"²⁶ or what Ken Plummer calls "the intimate".²⁷

While Ruth Lister states that "citizenship claims, made in the name of the intimate, are being theorised through the notion of sexual rights"²⁸, Diane Richardson, argues that every conception of citizenship, irrespective its regime, is gendered and sexualised.²⁹ Despite the clarity in the statement and the argument, the context of this relatively recent concept "sexual citizenship" is contested. It has two different, but overlapping meanings.³⁰ For Richardson, "sexual minorities" are excluded from the legal protection of discrimination or harassment. Therefore, their citizenship is partial because they have limited access to full citizenship rights.³¹ Richardson divides sexual rights into three analytically distinct kinds of claims: Practice-based, identity-based, and relationship-based. A brief explanation will be useful for future reference. Practice(conduct)-based rights are those which are about participating in sexual activity, having sexual pleasure and having reproductive autonomy

(self-determination). Identity-based rights are those which are about self-definition, self-expression and self-realisation in sexual terms. Relationship-based rights are those which are about the consent to sexual practice in personal relationships, freely choosing sexual partner, and getting public recognition for sexual relationships.³²

While Richardson and some others understand sexual citizenship in terms of sexual rights claimed towards the state, Plummer adds a fourth realm to the citizenship triad as formulated by T. H. Marshall. Intimate citizenship, he says, “is concerned with all those matters linked to our most intimate desires, pleasures and ways of being in the world.”³³ This understanding of citizenship goes beyond the conventional framework of citizenship namely the nation state to that of the content, namely public talk and action about the intimate.³⁴

Lister draws attention to the fact that women made citizenship claims concerning the intimate aspects of life namely the private sphere and sexual aspects of women’s lives, such as abortion, marital rape and incest, on the ground of gender equality before the LGBTT movement made sexual citizenship claims. However, the LGBTT movement has addressed the problem of heterosexuality taken as the norm in the mainstream model of citizenship and challenged whether sexuality should be a basis for exclusion from citizenship.

Seen from within the Richardson’s distinction, issues related to sex reassignment in Turkey, or the regulation of the transgendered persons, lays at the intersection of the citizenship claims of women’s movement’s because they relate to bodily integrity and autonomy, and freely choosing sexual partner, and that of the LGBTT movement because they relate to self-definition, self-realisation and getting public recognition for sexual relationships. Yet, the partial citizenship status of the transgendered as well as that of “sexual minorities” is not visible from within the perspective of the conventional triad of citizenship. At the same time, women’s citizenship claims about the intimate aspects of life cannot be fully realised without considering those claims in sexual terms and the constructions of sexuality thereof. Hence, the conceptualisation of citizenship in terms of sexuality as well as in terms of gender can open more space for feminist movement as well as the LGBTT movement in their attempts to fulfil a less exclusionary society.

Transversing Gender and the Regulation of Sex Reassignment

Transgendered practices are historically a part of the culture in Turkey. In the pre-modern times practices, like eunuchs in harems and male dancers dressed up in female clothing in order to entertain the men of upper class, followed from spatial segregation of genders on the one hand and subordinations of women and certain forms of masculinity on the other. Although there was not a uniform and internally coherent treatment of persons like eunuchs and intersex *hümsa*, they were not legally considered equal to mainstream men but in many instances, such as norms and rules on inheritance, they were treated similar to women.³⁵ Maybe as a continuation of misogyny found in socio-cultural practices in pre-modern times, dressing a man in female cloths is still a practice and a method of punishment among men in contemporary times. Maybe as a continuation of the earlier tradition of men dressing up in female cloths for the entertainment of other men, various forms of transgender and homosexual performances make up a significant part of artistic activities. This is also the way in which the issue of sex reassignment entered into the legal system in Turkey.

In particular, Bülent Ersoy entered into the music scene in Turkey as a man in 1971. Shortly thereafter, Ersoy disclosed his true identity as woman, and had a sex reassignment surgery in 1981 in the UK. The surgery was shortly after the governmental circular by the military government formed after the military coup *d’etat* in 1980. This circular was about banning men from getting on the stage in female cloths at night clubs. Ersoy, still a singer but now a woman, applied to the Istanbul Security Department for permission to perform because such permission was required for female singers according to the Law of Duties and Authorities of Police. Her application was rejected because legally she was still a man and there was no way to change this in the state records. She was, instead, banned from singing by the Security Department, because of the aforementioned circular. This decision was approved by both the Istanbul Governor’s Office and the High State Council. The ban along with her struggle within the legal system lasted for seven years until Ersoy got the attention by the-then Prime Minister Turgut Özal and his wife. She got recognition from the prime minister on the basis of the quality of her singing. As a result she began singing on stage shortly before she won the court case. The court recognised her female sex/gender simply on the basis of a health report obtained from a state hospital confirming that she was a woman. In this vein, sex reassignment surgery and the change of sex/gender on the birth certificate or the record of the population register was legalised by adding a statement to Article 29 of the Civil Code of 1926.³⁶

In Turkey, it is not uncommon that laws are tailored for particular persons. In this case, everything indicates that the law was tailored for Bülent Ersoy because it was sufficient to get a health report from a state hospital confirming that the person was male or female in order to do the relevant change in the population register and get a new identification card according to the assigned sex/gender. This legal recognition opened up space for others experiencing sex/gender “identity migrations”. Yet, this does not represent a liberal approach on the part of the state and society towards women and sexual minorities. First, the legal recognition of sex/gender reassignment did not end the ban enforced by the governmental circular mentioned above. The ban was ended in 2003 in the context of the adaptation to the EU standards.³⁷ Furthermore, a woman’s singing at a night club continued to be treated as a prostitution-like activity because female singers, similar to women in prostitution, were obliged to provide their finger prints to the security department and get a health check on a regular basis at a sexually transmitted illnesses hospital run by the state until 2003.³⁸

Article 29 of the Civil Code was amended in 2002 in the context of the extensive changes to the Civil Code to adapt it to EU standards and in order to reach greater gender equality. After the amendment, Article 40 of the Civil Code regulating sex reassignment became as follows:

A person who wants their sex reassigned can demand permission from the court for the reassignment of the sex by applying to the court in person. However, for the permission, the person should be above the age of *eighteen*, [and] *not married*. Furthermore the person should have a transsexual nature and the person must document this with a formal report issued by a health council at an educational and research hospital stating that the sex reassignment is necessary for the spiritual health and that the person must have a permanent loss of reproductive capacity.

When the sex reassignment operation is proved to have taken place with permission [from the court] and conducted in accordance with the aim and medical methods, the court makes the decision to make necessary corrections in the population record. (p. 18) (My translation; my emphasis)³⁹

In the preamble, this amendment was explained as follows:

“With the aim of preventing the breakdown of *the institution of the family, which is the foundation of society*, by persons whose *sex is ambiguous*, first of all, the condition that *the person is not married* is set forth. This condition is included in order to prevent the person from maintaining the marriage on the one side and changing the sex on the other while the marriage is ongoing; because psychological and *moral* setbacks of this can be done while cohabitating with the *spouse or the children*.

Another condition set out is that the bearer of the request is to be *transsexual* in nature. Sex reassignment must be found necessary for the psychological health of the person, and *the person should permanently be without the ability to reproduce*. In this way, sex change is conditioned not only to biological but also spiritual necessity.” (p. 44) (My translation; my emphasis)⁴⁰

Regarding the sex as a biologically unfixed or fixed phenomenon, there is the acceptance that sex reassignment is needed only by some. It is considered necessary for some persons because of psychological reasons, whereas it is not considered necessary for some others. The concern is that potentially some people will abuse technological developments and opportunities brought by plastic surgery, and change their sex biologically despite the fact that they do not feel like they belong to the other sex/gender. However, this ascribed need is not necessarily acknowledged by the recognition of sex as a biologically unfixed phenomenon. In this connection, the word “ambiguous” in the expression “persons whose sex is ambiguous” can be a sign. Indeed, the word “ambiguous” as used in the preamble does not refer to intersexed or what is known hermaphrodite because intersex cases are treated as biological pathology. Unlike the case of sex reassignment, there is no age limit requirement when the plastic surgery should be used in order to determine the biological sex of an intersex person. Many intersex persons undergo several surgical interventions before the age of eighteen. In this regulation “ambiguous sex” should be understood as ambiguous gender or gender not matching with biological sex. Then, it is treated as psychological pathology or disorder that should be corrected.

While maintaining the binary construction of gender categories, this regulation of sex reassignment frames “mismatches” of sex and gender as a pathology to be surgically or psychologically corrected. At the same time, it prevents the emergence of a same sex family situation on the one hand, and creates intra-masculinity and

intra-femininity hierarchies by the same process of considering “mismatched” a gender pathology on the other. In other words, it opens up citizenship for the inclusion of “corrected” genders, given the fact that those who can get their sex/gender changed to the other sex/gender on the identification card given by the state can then enjoy the civil, social and potentially political rights as a member of the reassigned sex/gender, and as much as the reassigned sex. With the condition that one cannot be married, it closes the possibility of a same-sex marriage that might otherwise follow from sex reassignment in cases where a person is already married. In this vein, intra-gender hierarchies are maintained

For female-to-male transgendered persons, there is no known market of economic benefit such as the entertainment and sex industries nor is there any foreseeable socio-cultural advantage for persons to undergo unnecessary sex reassignment for personal benefit. Given this reasoning, the persons who can abuse the opportunities provided by the plastic surgery can only be those who are male-to-female transgender. They are also the ones who are more visible. Hence, despite the facts that gender is not specified in the article, and that both male-to-female and female-to-male transgender persons can refer to the regulation when they demand sex reassignment, it can feasibly be claimed that the gender considered pathological while drafting the article was female or gender of those who are male-to-female transgender. In this case, transgender women are sexualised in that they are associated with the economic activities in which the body and its displays or uses in sexual manner are of significance.

Besides, as Sally Hines shows, medical discourse constructs the transgender body and mind in particular ways such as being trapped in the wrong body.⁴¹ Then, being entitled to have sex reassignment becomes not a matter of being or not being a “genuine” transgender, but acquiring the rhetoric and grasping the rationality of medical discourse and confessing the identity in those terms. Despite this, and irrespective of the initial sex of the demand-maker, those who are considered to be disloyal to their “genuine” nature/biology are authoritatively excluded from the reassignment process instead of considering it as persons’ responsibility towards their own bodies and lives.

Concerning reproductive capacity, the condition of being sterile in the regulation is not considered to be a characteristic or feature of a person at a given time but a characteristic which should be present at birth or not present after bearing a child or children. This is given the fact that in practice, those who are involved in biological reproduction at one point in their lives are not given permission by the court with reference to the condition that the person should permanently be without the ability to reproduce. Reproductive femininity and reproductive masculinity are privileged in that biological mothers and fathers or those who are willing to become biological parents without mismatches of sex and gender are taken as true women and men. They are the ones who are considered to be the true members of the foundation of society, namely the family. They are also the ones whose reproductive rights are secured by the Constitutional Laws of 1961 and 1982.⁴² As a corollary, once the status of a woman or a man is upgraded by being involved in biological reproduction and becoming a mother or father (reproductive heterosexes), it can be claimed that the removal of the status is rendered impossible by this regulation as if their status as parents is always due to their own personal decisions. However, a well known strategy used by families trying to cope with their children’s “ambiguous” sex/sexuality is to arrange a marriage for them.⁴³ The condition that one must be sterile is a way to exert control over the reproductive capacities of persons with children, because it prevents once-reproductive persons from becoming sterile through the surgical interventions involved in sex reassignment. Furthermore, being self-sacrificing, a feature attributed to reproductive femininity,⁴⁴ is assigned to transgender persons with children, because they are forced to sacrifice their desire to migrate to the other sex/gender for their children.

While rendering conversions from motherhood to fatherhood or vice versa impossible, transfers of the attributed gender roles are also made impossible through referring to morality. At this instance, citizenship is sexualised and motherhood or reproductive femininity is essentialised. In contradistinction to homosexuality, heterosexuality is usually not sexualised and portrait erotically by the laws.⁴⁵ However, by referring to the “moral setbacks” of being married and getting the sex reassigned at the same time, sex and gender are pictured in sexual ways. In other words, the co-habitation of same sex persons within the family context is pictured as amoral. This is not due to having two mothers on the part of the children, because there is the cultural acceptance of polygenic marriage which can also mean that there is the cultural acceptance of two mothers for a child, one biological and one adopted within the same family. However, having two mothers in a same sex family is considered amoral. Women’s reproductivity and their agency over it are denied in this context. This is irrespective of the ideas that there is a mother in each woman and that each women should give birth to at least three children.

More importantly, patrilineal inheritance is secured by rendering migrations from fatherhood to motherhood impossible. This article can be read against some other parts of the Civil Code for instance the regulation of the surname of children and the rules of population register system. After a formal marriage, the husband's surname becomes the family name. Article 321 of the Civil Code regulates children's surnames. If a child is born in a marriage or recognised by the father, then the family or the father's surname automatically becomes the child's surname. Furthermore, members of the formally formed family are all registered under the husband's household or the place of registration. This is the main basis for the patrilineal inheritance of ancestry. This regulation secures the perpetuation of heteronormative marriage and patrilineal inheritance and tries to avoid the emergence of matrilineal inheritance even while legally recognising sex reassignment.

In short, Article 40 of the Civil Code does not follow from the deployment of a liberal approach towards LGBTT persons and egalitarian approach towards women, but rather inter sex/gender hierarchies are reproduced and reinforced through the concerns relating to fixing the status of motherhood/fatherhood, fixing patrilineal inheritance of ancestry, and not recognising the agency of persons experiencing "identity migrations". Intra-sex/gender hierarchies are also reproduced and reinforced through by moralising situations which can give rise to the emergence of same-sex relationships, such as co-habitation and the family.

Conclusion

In this study, I have shown that the regulation of sex reassignment is not a reflection of understandings of sex/gender and sexuality that can result in the expansion of liberties and rights for women and "sexual minorities", because the regulation in question shares the assumptions on which male hegemony relies. While the legal recognition of sex reassignment opens some space for some transgender persons, it at the same time serves to keep sex/gender/sexual categories in order. This can be claimed to be one reason why transgender persons with proper recognition of their transgender existence are excluded from civil, political and social rights, and subjected to heavy discrimination and exclusion from the social spaces seen appropriate to male and female heterosexes the ascribed features of which generate gendered and sexualised hierarchies.⁴⁶

The discourses of reproductive femininity construct women by their capacity to reproduce. In the case of Turkey, this seemingly positive notion of femininity is valued within the confines of the private for heterosexual women only. Valuing women's reproductive capacity in the private sphere is not fully reinforced by regulations within the context of economic, social and political rights in the public sphere, but rather motherhood becomes a hindrance and a source of double burden for women when they partake in the public sphere. Hence, motherhood and maternity are not fully valued in the public sphere.⁴⁷ When taking intra-women differences created by the regulation into consideration, it can be said that the reproductive capacities of non-heterosexual and non-generic women are not valued in the private sphere either, because the regulation avoids both the same-sex family situation and sex reassignment of persons with children. The reproductivity of transgendered persons becomes a hindrance for their life choices and identities. It is therefore suggested that inter- and intra-gender intersectionalities have to be taken into consideration while favouring or going against politics, policies and legal regulations, rather than simply referring to the sameness-difference divide. This becomes important at moments of legal reforms and amendments because it is not really possible to make desired changes without employing an understanding of "woman" and/or "man".

The analysis above shows that with the amendment, sex reassignment became a heavily medicalised and judicialised process. While getting a valid health report from recognised hospitals involves a two year psychological and physical treatment, the process starts out with getting permission from a judge and finishes with the approval of a judge. Who is considered to be eligible for sex reassignment is determined by medical and juridical people. In this regard, the regulation of sex reassignment as a right goes into the field of biopolitics, which is also the case when the state regulates women's sexual rights such as abortion.⁴⁸

I have shown some of the ways in which inter- and intra gender hierarchies reproduced in the article regulating sex reassignment. Similar hierarchies can be found in other laws. These hierarchies reinforce hegemonic masculinity. Then, the question is to what extent the feminist movement should intimately engage in the demands of the LGBTT movement, or vice versa. In this connection, the above-mention analytical distinction proposed by Richardson can be a constructive guide.

- ¹My translation; Sezai Karakoç's poem titled "Köpük'ten", see (<http://kitap.antoloji.com/yayinevi.asp?PUB=11243>)
- ²My translation; Mustafa Kemal Atatürk's Konya speech delivered in 1923. See *Atatürk'ün Söylev ve Demeçleri*, 2006, Cilt II, Ankara: Atatürk Araştırma Merkezi.
- ³My translation; Recep Tayyip Erdoğan's Uşak speech delivered first in connection with the International Women's Day on 7 March 2008, and repeated in many other formal and informal occasions. For the current citation see <http://www.hurriyet.com.tr/gundem/8401981.asp>
- ⁴For the other countries see Vanessa Baird, 2004, *Cinsel Çeşitlilik: Yönelimler, Politikalar, Haklar ve İhlaller*, İstanbul: Metis Yayınları, pp. 131-40.
- ⁵Transgender is a highly contested term. It is used here as an umbrella term. For a classification see Chris Beasley, 2005, *Gender & Sexuality: Critical Theories, Critical Thinkers*, London: Sage Publications, pp152-161.
- ⁶Sex and gender are contested terms in the literature. Although there is a general understanding that sex refers to biological differences between men and women and gender refers to that of socio-cultural, I treat sex and gender as discourses.
- ⁷C. Wright Mills, 1959, *Sociological Imagination*, London: Oxford University Press
- ⁸Practices concerning the legitimacy of a child born out outside of wedlock varied. For an overview of practices in Europe see Margaret R. Hunt, 2010, *Women in Eighteen Century Europe*, New York: Pearson, Longman
- ⁹See *ibid*, pp. 90-134.
- ¹⁰For the developments from the Ottoman State to Turkey, see Deniz Kandiyoti, 1997, "Kurtulmuş ama özgürleşmiş mi? Türkiye Örneği üzerine bazı düşünceler", in *Cariyeler, Bacılar, Yurtaşlar: Kimlikler ve Toplumsal Dönüşüm*, İstanbul: Metis Yayınevi, pp.65-84; Ruth A. Miller, 2007, "Rights, Reproduction, Sexuality, and Citizenship in the Ottoman Empire to Turkey, *Signs. Journal of Women in Culture and Society*, V. 32 (2), pp.347-73.
- ¹¹See e.g. Michel Foucault, 1978, *The History of Sexuality*, V. 1, New York: Penguin; Alan Hunt, 1999, *Governing Morals : A Social History of Moral Regulation*, Cambridge: Cambridge University Press.
- ¹²Ruth Lister, 2002, "Sexual citizenship", in *Handbook of Citizenship Studies*, eds. Isin and Turner, London: Sage Publication.
- ¹³For women as mothers see e.g. Floya Anthias and Nira Yuval-Davies, 1992, *Race, Nation, Gender, Colour and Class and Anti-Racist Struggle*, London: Routledge
- ¹⁴For reproductive femininity see Tamsin Wilton, 2004, "Your mum's an oxymoron: sexuality and reproductivity" in *Sexual Disorientation: Gender, Sex, Desire and Self-Fashioning*, New York: MacMillan, pp. 154-176,
- ¹⁵R. W. Connel, 1987, *Gender and Power: Society, the Person and Sexual Politics*, Stanford: Stanford University Press; Judith Butler, 1990, *Gender Trouble: Feminism and the Subversion of Identity*, New York: Routledge; Deniz Kandiyoti, 1997, "Ataerkil örüntüler: Türk toplumunda erkek egemenliğin çözümlenmesine yönelik notlar" in *Cariyeler, Bacılar Yurtaşlar: Kimlikler ve Toplumsal Dönüşüm*, İstanbul: Metis Yayınları, pp. 169-80
- ¹⁶For the term, heterosexual reproductivity, see Wilton, 2004
- ¹⁷See *ibid*.
- ¹⁸Beasley, 2005
- ¹⁹See Carol Smart, 1984, *Feminism and the Power of Law*, London: Routledge; Ayça Kurtoğlu, 2009, "Erkek egemenliği, kültürel şiddet ve hukuk" in *Toplum ve Bilim*, V. 114, pp. 74-98.
- ²⁰See e.g. Patricia Hill Collins, 1999, "Producing the mothers of the nation: Race, class and contemporary US population policies" in *Women, Citizenship and Difference* eds. Nira Yuval-Davis and Pnina Werbner, New York: Zed Books, pp. 118-130.
- ²¹Lister, 2002.
- ²²Engin F. Isin and Bryan S. Turner, 2002, "Introduction", in *Handbook of Citizenship Studies*, London: Sage Publication, p. 2.
- ²³*Ibid*.
- ²⁴*Ibid*, p. 5
- ²⁵*Ibid*.

²⁶Lister 2002, p. 199

²⁷Ken Plummer, 2003, "Intimate citizenship and the culture of sexual story telling" in *Sexualities and Society: A Reader*, eds. Jeffrey Weeks, Janet Holland and Matthew Waites, Cambridge: Polity Pres, pp.33-43.

²⁸Lister 2002, p. 199

²⁹Diane Richardson, 1998, paraphrased in Lister 2002, p. 199; Diane Richardson, 2000a, "Claiming citizenship? Sexuality, citizenship and lesbian/feminist theory", *Sexualities*, V. 3(2), pp. 255-72.

³⁰Lister, 2002, p. 199

³¹ibid

³²Diane Richardson, 2000b, "Constructing sexual citizenship: theorizing sexual rights", *Critical Social Policy*, V. 20 (1), pp. 105-53.

³³Plummer, 2003

³⁴For another somewhat different conceptualisation of sexual citizenship see Ruthann Robson and Tanya Kessler, 2008, "Unsettling Sexual Citizenship", *McGill Law Journal / Revue de Droit de McGill*, Vol. 53, pp 537-71.

³⁵See Hilal Duman, "İslam Hukukunda Çift Cinsiyetliler (Hünsâ), p. 305 (<http://www.cumhuriyet.edu.tr/edergi/makale/348.pdf>)

³⁶Deniz Kandiyoti, 2003, "Pembe kimlik sancıları: cinsiyetlerin yol ayrımında sorun ve çatışma", in *Kültür Fragmanları: Türkiye'de Gündelik Hayat*, eds. Deniz Kandiyoti and Ayşe Saktanber, İstanbul: Metis Yayınevi, pp. 280-1; Yasemin Öz, 2009, "Ahlaksızların mekansal dışlanması" in *Cins Cins Mekan*, ed. Ayten Alkan, İstanbul: ...; see Metin Toklucu, 2009, "Millî Tarih: Bülent Ersoy'un sahne yasağı" in *Radikal* 17.12.09 (http://www. /ek_haber.php?ek=cts&haberno=6744&tarih=17/12/2009)

³⁷Öz, 2009

³⁸Ibid.

³⁹Türk Medeni Kanunu, 2002, Ankara: Seçkin Yayınevi.

⁴⁰Türk Medeni Kanunu Tasarısı ile Türk Kanunu Medenisinde Değişiklik Yapılması Hakkında Kanun Tasarısı ve Ankara Milletvekili Yücel Seçkiner'in; Ankara Milletvekili Esvet Özdoğu ve Dört Arkadaşının; Aynı Kanunda Değişiklik Yapılması Hakkında Kanun Teklifleri ve Adalet Komisyonu Raporu (1/611, 1/425, 2/361, 2/680)

⁴¹Sally Hines, 2007, "(Trans)Forming Gender: Social Change and Transgender Citizenship", *Sociological Research Online*, V12 (1), (<http://www.socresonline.org.uk/12/1/hines.html>).

⁴²In the Constitutional Laws of 1961 and 1982, the family is defined as the foundation of society, and mother and the children are recognised as subjects to be protected by the state and its institutions.

⁴³See Murat Hocaoğlu, 2002, *Eşcinsel Erkekler: Yirmi Beş Tanıklık*, İstanbul: Metis Yayınları; Selin Berghan, 2007, *Lubunya. Transseksüel Beden ve Kimlik*, İstanbul: Metis Yayınları.

⁴⁴Wilton, 2004.

⁴⁵Lister, 2002; an exception to this in Turkey is the regulation of sexual crimes like rape and sexual harassment or practices like virginity tests. For ways in which heterosexuality is sexualised see Ayşe Parla, 2001, "The 'Honor' of the state: Virginity examinations in Turkey" *Feminist Studies*, V. 27(1), pp. 65-89; Kurtoğlu, 2009.

⁴⁶A report on LGBTT persons shows that transgendered people frequently are humiliated and excluded as homosexuals, see LGBTT Bireylerin İnsan Hakları Raporu, 2007, LGBTT Bireylerin İzleme ve Hukuk Komisyonu (<http://www.kaosgl.com/content/lgbtt-bireylerin-insan-haklari-raporu-2007>); See also Pınar Selek, 2008, *Maskeler, Süvariler, Gacılar: Ülker Sokak, Bir Alt Kültürün Dışlanma Mekanı*, İstanbul: Aykırı Yayınevi.

⁴⁷An example of this is mothers' employment conditions. According to Article 74 of the Labour Law and the relevant by-law, employers are obliged to open a nursery only when they employ more than 100 and less than 150 women workers, and a crèche when they employ more than 150 women workers.

⁴⁸See Ruth Miller, 2007.