

Equal Opportunities for Women and Men

*Monitoring law and
practice in new member states
and accession countries of the
European Union*

2005

PARTICIPATING COUNTRIES:

Bulgaria
Czech Republic
Estonia
Hungary
Lithuania
Poland
Romania
Slovakia
Turkey



İSTANBUL POLİTİKALAR MERKEZİ
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AT SABANCI UNIVERSITY

Equal Opportunities for Women and Men

Monitoring law
and practice in

Turkey

by Selma Acuner, Nevin Şenol

2005



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NETWORK WOMEN'S PROGRAM

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Preface

BRINGING THE EU HOME

“Bringing the EU Home” is a three-year project (2004–2006) conceptualized as a follow up to the Program on Equal Opportunities for Women and Men in the European Accession Process (EOWM), which was a joint initiative of the Open Society Foundation Romania and the Network Women’s Program of the Open Society Institute*. The EOWM projects stemmed from the Open Society Institute project to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and ensured that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anti-corruption. Given the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with, an independent programme, EUMAP, to evaluate the status of accession countries from this perspective was developed.

An assessment of the status of equal opportunities, *de jure* and *de facto*, was carried out in seven of the ten candidate countries: Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland and Romania. The EU Directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions and practices. The Directives related to the principle of equal pay for work of equal value; equal treatment as regards employment; protection of pregnant, and breastfeeding women, and women who recently gave birth; the burden of proof in cases of sex-based discrimination, and non-discrimination against part-time workers were analyzed in 2001. The remaining Directives on self-employed workers, parental leave, and social security schemes were assessed in 2002.

The final report, including an overview and executive summary for each country, was published in November 2002. Each country report and executive summary was translated into the national language and used as an advocacy/research tool. 2002 and 2003 were years of intensive outreach efforts, both nationally and at the EU level. Countries organized roundtables and meetings for NGOs, government officials, lawyers, and media to publicize the findings of the reports. The English version was used for advocacy at the EU level, and sent to members of Parliament from EU and candidate countries. Country information was presented twice at meetings in Brussels, and the final reports were launched at the European Parliament in November 2002.

* Monitoring the EU Accession Process: Equal Opportunities for Women and Men 2002, <www.eonet.ro>

The project “Bringing the EU Home” aims to promote awareness, advocacy and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level mechanisms effectively. In this context, new, updated monitoring was carried out in 2004.

A detailed assessment of the legislative developments, institutional mechanisms, policies, programs and research at the national level was carried out in Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, Slovakia* and Turkey.*

Each country report contains key recommendations related to legislation, institutional mechanisms, policies and programs, awareness raising and research initiatives and outlines specific areas of concern. On-going updates will be made to the reports and available online, in order to ensure different groups can access the most current information easily.

The project further aims to help raise the significance of equal opportunities on the European agenda within new member states and within the process of on-going and new accession negotiations, and create a unique platform for new member states and accession countries. It is therefore about “bringing the EU home.”

We would like to thank all individuals who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

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Table of Contents

1. Legislative Overview	10
1.1 The Principle of Equal Pay for Work of Equal Value	12
1.1.1 National Legal Framework	12
1.1.2 Institutional Framework	12
1.1.3 Job Classification	13
1.1.4 Available Legal Procedures	13
1.1.5 Means of Informing Employees of Their Rights	14
1.1.6 Out of Court Alternatives	15
1.1.7 The Minimum Wage	15
1.1.8 Role of Trade Unions	15
1.1.9 Women's Factual Situation	16
1.2 Access to Employment, Vocational Training and Promotion	16
1.2.1 National Legal Framework on Equal Treatment	16
1.2.2 Equal Treatment in Employment, Vocational Training and Promotion	18
1.2.3 Protective Measures for Women in the Labor Market	20
1.2.4 Prohibition of Dismissal	21
1.2.5 Women's and Men's Jobs	22
1.2.6 Legal Status of Sexual Harassment	23
1.3 Protection of Pregnant Women from the Inherent Risk of Certain Activities and Related Employment Rights	24
1.3.1 Legal and Conceptual Framework	24
1.3.2 Risk Assessment and Employers' Obligations ..	25
1.3.3 Night Work	25

1.3.4	Maternity Leave	26
1.3.5	Maternity Insurance	26
1.3.6	Prohibition of Dismissal and Employment Rights	27
1.4	The Burden of Proof in Cases of Discrimination Based on Sex	28
1.4.1	Legal and Conceptual Framework Concerning Indirect Discrimination	28
1.4.2	The Burden of Proof and Rules of Evidence ...	28
1.5	Non-Discrimination against Part-Time Workers	29
1.5.1	National Legal Framework and Employment Conditions Concerning Part-Time Workers ..	29
1.6	Equal Treatment for the Self-Employed and Their Assisting Spouses	29
1.6.1	National Legal Framework	29
1.6.2	Social Rights of Spouses	30
1.6.3	Contributory Social Security System for Self-Employed Workers	30
1.7	Parental Leave	31
1.7.1	National Legal Framework	31
1.7.2	Social Security during Parental Leave	31
1.7.3	Parental Leave and Equal Opportunities Policy	32
1.8	The Principle of Equal Treatment of Men and Women in Occupational Social Security Schemes	32
1.8.1	National Legal Frameworks	32
1.8.2	Implementation of the Principle of Equal Treatment	33
1.8.3	Discrimination on the Basis of Sex Contained in the Laws Regulating Social Security	33
2.	Institutional Mechanisms	34
2.1	The Directorate General on the Status and Problems of Women	34
2.1.1	Allocation of Financial Resources	35
2.2	Other Bodies	35

2.3 The Women's Movement and Women's Organizations	36
3. Policies, Programs and Awareness-Raising	37
3.1 Domestic Policies on Gender Equality and Equal Opportunities	37
3.1.1 The General Directorate on the Status and Problems of Women	37
3.1.2 Determination of Policy Agenda	38
3.1.3 Promotion of Women's Access to the Labor Market	38
3.1.4 Measures Taken to Support Desegregation in the Labor Market	42
3.1.5 Policies to Promote Flexible Work Arrangements	43
3.1.6 Policies in Education to Eliminate Sex-Stereotyped Choices in Schools	43
3.1.7 Policies to Remove Obstacles Faced by Women Trying to Reach Higher and Managerial Positions	44
3.1.8 Policies and Resources Dedicated to Sufficient and Adequate Childcare Services	45
3.1.9 The Extent and Result of Gender Mainstreaming in Employment and Social Policies, Education, Research, Budget and Financial Policies	45
3.1.10 Indicators for Assessing Progress in Different Policy Areas	46
3.1.11 Inclusion of Gender Equality Policies in Other Objective Areas	46
3.1.12 Inter-Sectoral Coordination	47
3.2 Programs	47
3.2.1 National Programs on Gender Equality and Equal Opportunities	47
3.2.2 Assessment of Implementation of Existing Legislation on Equal Opportunities	48

3.2.3	Training on Equality Legislation and Women's Human Rights	49
3.2.4	Structures to Support the Implementation of the Acquis Related to Equal Opportunities	50
3.2.5	Incentives to Encourage Men to Take a Greater Role in the Family	50
3.2.6	Progress in Achieving Balanced Participation of Women and Men in Decision-Making	51
3.3	Awareness-Raising	52
3.3.1	Informing Employees of Their Rights	52
3.3.2	Awareness-Raising for the General Public on Gender Discrimination and the Need for Gender Equality in Decision-Making	52
3.3.3	Awareness-Raising of EU Legislation in the Field of Equal Opportunities	53
4.	Research and Statistics	53
4.1	Gender Pay Gap	53
4.2	Job Classification	54
4.3	Women's Access to Employment, Vocational Training and Promotion	54
4.4	Incidence of Sexual Harassment	55
4.5	The Incidence and Situation of Part-Time Workers ..	56
4.6	The Incidence and Situation of Self-Employed Workers	56
4.7	The Extent to which Family and Professional Responsibilities Are Shared	56
4.8	Ongoing Disincentives to Women Entering the Labor Market	57
4.8.1	Women's Low Level of Education	57
4.8.2	Women Cannot Get Permission to Work	57
4.9	Gender Composition in Decision-Making Bodies	58
4.10	Statistics on Women in Decision-Making Positions in the Economy and Society	58
4.11	Transparency of the Pay System	59
5.	Key Areas of Concern and Recommendations	59
5.1	Key Areas of Concern	59

5.2 Recommendations	60
5.2.1 Legislative Measures	60
5.2.2 Institutional Mechanisms	60
5.2.3 Policies and Programs	60
5.2.4 Awareness-Raising	61
5.2.5 Research and Statistics	61
References	62

1. LEGISLATIVE OVERVIEW

In its 2004 Regular Report,¹ the European Commission carefully reviewed the progress towards gender equality between women and men and noted the further steps that should be taken by Turkey.² The main judicial, administrative and institutional reforms, which were mentioned as positive developments in the Report, are as follows:

- A new clause on gender equality was introduced into Article 10 of the Constitution in May 2004 that reads “women and men have equal rights” and “the state is responsible for taking all necessary measures to realize equality between women and men.”
- The new Turkish Penal Code, which eliminates almost all discriminatory provisions and promotes women’s human rights was enacted on September 26, 2004;
- Awareness among the general public, including law enforcement officers, of violence against women is increasing continuously.
- The new Labor Code was adopted by the Parliament on May 22, 2003.³ New regulations introducing the principles of employment of pregnant and breast-feeding women and night work became operative in 2004.
- Maternity leave was increased to 16 weeks and became applicable to civil servants.
- A Circular by the Prime Ministry was issued in 2004 prohibiting gender-based discrimination in the recruitment of civil servants in the public sector.

¹ Turkey was declared as a candidate country to the EU at the Helsinki Summit in December 1999. Since then, two Accession Partnership Documents, two National Programs for the Adoption of the *Acquis* (hereinafter National Program) and four Regular Progress Reports were prepared. These documents are available in English and Turkish at <http://abgs.gov.tr> and <http://dpt.gov.tr>.

² The latest Regular Report devoted much more space to gender equality issues in terms of scope and content compared with the previous reports. Besides, no major errors are observed in this report, as was the case in the report for 2003. For example, on page 26 of 2003 Regular Report, it appears that “in March 2003, for the first time, a Ministry of Women Affairs was established in the ranks of the government.” However, the State Ministry for Women and Family Affairs was already established in 1991 (*Regular Report on Turkey*, 2003, p. 14, 26, 87–89; *Regular Report on Turkey*, 2004, p. 18, 33, 45–47, 109–112).

³ Act No. 4857 of May 22, 2003, the Labor Code; hereinafter Labor Code.

Comments on gender equality issues included in the 2004 Progress Report can be summarized as follows:

- Legal and practical initiatives to tackle the problem of domestic violence remain inadequate.
- Women remain vulnerable to discriminatory practices, largely due to a lack of education and high illiteracy rates among women.
- The portrayal of women in school textbooks reinforces discrimination.
- There is still very little progress in the legislation regarding the protection of workers, including female workers.
- Turkey has not yet accepted Articles 5 to 8 and 17 of the European Social Charter.
- The principle of equal pay for the work of equal value is not being fully realized.

The 2004 Progress Report recommended that:

- Parental leave should be introduced into national legislation.
- An additional effort is required on the issues of burden of proof and compulsory and occupational social security schemes.
- The scope of the labor law should be extended to cover excluded sectors and enterprises.
- The rate of women in decision-making mechanisms should be increased.
- The existing national mechanism must have a legal base.

In addition, it was recommended that Turkey continue its efforts to develop a national employment policy in line with the European Employment Strategy, noting that the very low activity and employment rates, in particular of women, high levels of youth unemployment, the large size of the informal economy and the strong rural/urban labor market divide remain the main challenges.

Further efforts are needed in Turkey towards gender equality in the judicial, institutional and administrative fields. There is also a need to further improve equal treatment between women and men in the labor market. Although equal opportunities and gender equality have yet to be fully achieved, the process of EU accession has generated and encouraged many important reforms, in law in general and in terms of gender equality in particular.⁴

⁴ In this part, major legislative changes and reforms for the European accession process are given. Regulations such as the ones on the Labor and Security Codes are separately discussed in the framework of equal opportunities for women and men for each one of the Directives.

1.1 The Principle of Equal Pay for Work of Equal Value

1.1.1 National Legal Framework

The principle of equal pay for work of equal value was adapted in Turkish legislation for the first time by Act No. 5518 of January 25, 1950 on Amending Various Laws of the Labor Code.⁵ In Article 5 of the Act No. 4748 of May 22, 2003 on the Principle of Equal Treatment, it is stated that “In work relations, discrimination on the basis of language, race, gender, political view, philosophical belief, religion and sect or any such considerations cannot be made and a lower wage cannot be decided upon for a job of the same or equal value on the basis of gender.”

Government Decree No. 25540 of 2004 on the Minimum Wage, published in the *Official Gazette* on August 1, 2004 also indicates that a lower wage cannot be decided for a job of the same or equal value on the basis of gender. Act No. 2822 of May 5, 1983 on Collective Labor Agreements, Strikes and Lockouts clearly stated that no provision could be against the principle of equal pay for work of equal value. There are no provisions concerning equal pay for work of equal value in the Maritime Labor Code No. 854, the Press Labor Code No. 5953 and the Act of Obligations, discrimination based on gender is strictly prohibited in Article 10 of the Constitution and ILO Convention No. 111 of 1958 on Discrimination (Employment and Occupation).

While Article 3 of the Act No. 657 of July 14, 1965 on Civil Servants regulates general conditions of the law, Article 4 describes types of employment in public sector. In this framework, the salary scale for jobs does not depend on gender.

1.1.2 Institutional Framework

Wages and salaries in general, and equal pay for the work of equal value in particular are decided and regulated by the Ministry of Labor and Social Security, the Minimum Wage Fixing Board of the Ministry of Labor and Social Security, the different labor and trade unions, the Ministry of Finance, and the Council of Ministers.

The Act on Collective Labor Agreements, Strikes and Lockouts regulates the right of collective bargaining and wage determination. It is known that collective bargaining agreements do not have any discriminatory provision or clause.

⁵ N. Sural, *Avrupa Topluluğunun Çalışma Yasamında Kadın Erkek Eşitliğine Dair Düzenlemeleri ve Türkiye* (Ankara: KSSGM Yayınları, 2001), p. 175.

The criteria for remuneration for civil servants are regulated by the General Budget Law prepared by the Ministry of Finance. For employees dependent on the Act on Civil Servants, the calculation of salaries is based on the basic indicator of employees' salary. Additional indicators and seniority also affect the calculation.

1.1.3 Job Classification

There is no unified classification system used for determining pay in the public or private sectors as stated by the Directive. The Act on Civil Servants has a specific system of classification, albeit quite different from that in the Council Directive. The new Labor Code does not include a unified classification system as described in the Directive. However, the demand concerning job classification was voiced during the Second General Assembly Meeting of ISKUR (Turkish Employment Organization).⁶ Accordingly, the classification of jobs, the completion of the analysis of occupations and update of the Turkish Occupation Dictionary are all stated to be necessary.

Accordingly, a job classification system shall be introduced as soon as possible in order to establish a sound basis for wages and salaries to be equalized for both sexes. It should be underlined here that 250 occupations have already been classified within the scope of the World Bank Project entitled 'Employment and Training'.⁷

1.1.4 Available Legal Procedures

Article 18 of the Labor Code defines the employees who can pursue legal proceedings in case of discrimination. Article 18 states that an employee who has worked for at least six months in a particular workplace that employs at least 30 employees and who has an indefinite-term contract with the employer will have to present a valid cause of complaint for returning to work in case of unfair dismissal. According to the Labor Code, the employer must reinstate the employee within a month and with back pay corresponding to up to four months' wages that the employee may have received. If the employer fails to reinstate the employee, he/she will have to pay the compensation determined by the court (Article 21). It is often stated by the unionists that even if a court finds the termination of employment to be invalid and orders the reinstatement of the employee, in practice this does not happen because in most cases the employer pays the compensation determined by the court and the employee loses his/her job.

⁶ See www.iskur.gov.tr for the Decision of General Assembly.

⁷ Kenar Necdet, *İş Yaşamı ve Mesleki Eğitim Açısından Meslek Standartları, Sınav ve Sertifikasyon Sisteminin Önemi* (Nisan: TİSK İşveren Dergisi, 2002).

Moreover, employees cannot receive any benefit or legal allocation, thus losing some of their rights. In such cases, the representation of the employee depends on the initiative of the union. In other words, it is not legally compulsory but rather depends on the will of the union. Therefore, the restrictions brought by the Labor Code concerning measures to protect employees against dismissal do not match the provisions of Article 5 of the Directive. According to the data issued by the State Institute of Statistics, only 21 percent of employed women and 28 percent of employed men are working for companies that employ more than 25 workers. That is to say, the Turkish labor market is highly dependant on small and medium size enterprises, which narrows the coverage of job security brought by the new Labor Code.⁸

According to Article 5 of the Labor Code, discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons in the employment relationship, as well as differential remuneration for similar jobs or for work of equal value is not permissible. The same article also states that if an employer violates the above provisions in the execution or termination of the employment relationship, the employee may demand compensation up to his/her four months' wages plus other claims of which he/she has been deprived. Article 99 of the Labor Code states that an employer or his/her representative who acts in violation of the principles and obligations foreseen in Article 5 shall be liable to a fine of approximately 34.6 Euros for each employee, in the context of administrative fines set for 2004. This fine clearly has little deterrent force.⁹

Under Article 21 of the Act on Civil Servants, there is a possibility for civil servants to complain and lodge an appeal in court on account of their private and institutional matters, against unjustified management and procedures by their supervisors and institutions. Civil servants who consider themselves discriminated against have the right to complain and initiate court proceedings according to this article.

1.1.5 Means of Informing Employees of Their Rights

According to Article 35 of the Act No. 2821 on Trade Unions, in workplaces where collective bargaining agreements exist, employees should be informed by the principal agent or representative of the trade union. However, there are no special mechanisms for informing workers in workplaces that do not have collective bargaining agreements. Further measures should be taken with reference to the Directive.

⁸ Data derived from the *Annual Household Labor Survey Results, 2003*.

⁹ For the amount of fines in 2004, please see www.iskur.gov.tr.

1.1.6 Out of Court Alternatives

According to Article 20 of the Labor Code, an employee who alleges that no reason was given for the termination of his employment contract or who considers that the reasons shown were not valid to justify the termination shall be entitled to lodge an appeal against the termination with the labor court within one month of receiving the notice of termination. If there is an arbitration clause in the collective agreement or if the parties so agree, the dispute may also be referred to private arbitration within the same period of time. Private arbitration was regulated by Act No. 18433 on Application to Arbitrators and Official Negotiators.¹⁰ According to its Articles 18, 19 and 20, the private arbitrator has to consider the applications within six days upon the application. In the meantime the arbitrator can consult and ask for information from the parties of the conflict and other interested parties in order to solve the problem. The arbitrator is supposed to come to a decision in thirty days after the initiation of the investigation.

1.1.7 The Minimum Wage

No discrimination based on sex may be made in the determination of minimum wages. The minimum wage is determined by the Minimum Wage Fixing Board and is regulated by Article 6 of the Government Decree No. 25540 on the Minimum Wage. The Committee determines the minimum wage, which is applicable to all occupations, and the amount is determined as per day. There is a distinction between young workers under 16 and workers over 16 when fixing the statutory minimum wage. The determination of the minimum wage is very much related to the socio-economic conditions and income levels of the country.

1.1.8 Role of Trade Unions

There are no discriminatory provisions in the Act on Collective Labor Agreements, Strikes and Lockouts. However, unlike many European countries, some of the trade unions in Turkey cannot put clauses concerning positive action programs, equal pay for equal work, sexual harassment, etc. This situation cannot be explained only by the weakening of the unionization, decreasing membership in trade unions, and lower rate of membership of women in trade unions. Besides the points mentioned above, the fact of limited and insufficient representation of women in the higher ranks of trade

¹⁰ Published on June 16, 1984 in the *Official Gazette*. This Act is based on the Act on Collective Labor Agreements, Strikes and Lockouts adopted in the previous year.

unions should also be taken into consideration. The existence of women committees or women commissions is not a solution to this problem since the relative power of those groups is mostly not that strong. In most of those examples, the terms and conditions of participation in decision-making processes are regulated. They have limited budgets and are considered as marginal bodies. Therefore, they cannot proactively insist on the demand of equal wage for equal work.

1.1.9 Women's Factual Situation

It is not possible to say that women receive equal pay for work of equal value. Because of persisting problems such as low-income levels of families or traditional social frameworks that do not give any priority for the education of their daughters etc., most women do remain outside of the labor market. In case they do have access, they are mostly employed in low-wage, low prestige jobs, even in the public sector. Differences even exist in terms of equal pay for women and men both in the public and private sectors and women again receive lower wages for several reasons, including horizontal and vertical occupational segregation.

Wage differentiation and disparities in the private sector are very clear. According to recent data from the Social Security Institution, women earn approximately 10 percent less than men. It is claimed though that even this calculation is somehow distorted and does not represent the real figures. According to the calculations based on international standards, the difference of wages between men and women increases up to 40 percent, favoring men. There is no doubt that one of the most important reasons of the differentiation of wages is the segregation of men and women in the labor market. In this respect, it is worth mentioning the lack of effective mechanisms to reconcile working and family life and the non-existence of objective job classification and assessment systems.

1.2 Access to Employment, Vocational Training and Promotion

1.2.1 National Legal Framework on Equal Treatment

Article 10 of the Constitution, as amended in May 2004, includes a clause on gender equality as the basis of the law and prohibits gender-based discrimination. It now expressly stipulates that the State has a duty to guarantee equality between men and women.

The principle of equality between the sexes is also regulated under Article 70 of the Constitution where it is provided that “every Turk has the right to enter public service.

No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service.”

Article 5 of the Labor Code, entitled “Principle of Equal Treatment”, regulates working life most extensively. In accordance with this Article, in labor relations, discrimination on the basis of language, race, gender, political view, philosophical belief, religion and sect or any such considerations cannot be made. According to the second paragraph of the same Article, the employer cannot apply a different procedure to the part-time worker against a full time worker, and/or to the worker employed for a definite period against a worker employed for an indefinite period, unless there are material reasons. The third paragraph of the Article states that the employer cannot directly or indirectly apply a different procedure to the worker on the basis of gender or pregnancy in the making of the labor agreement, establishing, implementing or ending its conditions, unless necessitated by biological reasons or reasons pertaining to the nature of the work. According to the fourth paragraph, a lower wage cannot be determined for a job of the same or equal value on the basis of gender. In the fifth paragraph it is said that the implementation of special protective provisions on the basis of the worker’s gender does not justify the implementation of a lower wage. It follows that, if the employer violates the above provisions in the execution or termination of the employment relationship, the employee may demand compensation up his/her four months’ wages plus other claims of which he/she has been deprived.

According to the above-mentioned Article 5 of the Labor Code on the principle of equal treatment, direct and indirect forms of discrimination are prohibited; however, a comprehensive definition of discrimination is not provided and this is a significant shortcoming in the law. Moreover, it would be an overextended interpretation to claim that the concept of “work relations” in Article 5 of the Labor Code encompasses the employment procedure.

Unlike Article 5 of the Labor Code on the principle of equal treatment, the amendments of the Act on Civil Servants are placed under various titles. For example, according to Article 48 of Act on Civil Servants, appointment is bound to the qualifications stated in the work description, and promotion is related to education, merit and duty.¹¹ In relation to those amendments, it is possible to argue that the regulations of the Act on Civil Servants are consistent with the Directive’s first article.

¹¹ Article 3(c) of the Act No. 657 on Civil Servants; Article 36 of 1986 Public Servant Register Regulations; Articles 17, 19, 20, 21 of the Council of Ministers Regulation No. 86/10985).

1.2.2 Equal Treatment in Employment, Vocational Training and Promotion

1.2.2.1 Employment

As mentioned above, the new Labor Code regulates labor relations starting from the “the signing of a contract of employment;” therefore, the process of “engagement” is left out of its scope. Here, it can be said that the clause on gender equality, Article 10 of the Constitution, ought to be taken into consideration. In practice, however, in the work announcements of the Turkish Employment Organization (ISKUR), whose services cover job search, placement and relocation, sex is specified in the requirements. ISKUR publicizes those announcements as it receives them, explaining that the content of them is dictated by market demands.¹²

On the other hand, since 1986, according to the Article 50 of the Act No. 657 on Civil Servants, those who desire to be employed in the public sector must have and pass a civil servant exam. The candidates who are applying for civil servant positions must take the Foreign Language Proficiency Examination for State Employees in Turkey (KPDS), according to the Regulation of Compulsory Examination of Competition and Performance Rating for the First Time Applicants to the Public Service, and produce at least a 70 percent success rate at the exam. However, even the obligation of achievement in the test does not prevent the possibility of discrimination. Namely, in the announcement of the Examination, while it is only compulsory to identify the title, classification, rank, number, position and wage as the qualifications requested for the available positions, gender is also defined in the job announcement. In order to correct this biased practice, the Prime Ministry published a circular in the beginning of 2004.¹³ However, it would be only a temporary solution to regulate such a deep-rooted practice with a circular.¹⁴

There are problematic issues concerning the principle of equal treatment in access to employment both in the public and private sectors. Therefore, it is difficult to say that the Turkish legislation is congruent with the principle of equal treatment as defined in Directive 76/207/EEC.

¹² For the job advertisements, see www.iskur.gov.tr.

¹³ *Milliyet*, January 23, 2004.

¹⁴ Council of Ministers Regulation No. 85/10260 of December 6, 1985 on Compulsory Examination of Competition and Performance Rating for the First Time Applicants to the Public Service. The date of the law which is taken as reference, July 14, 1965, No. 657; it was published in the *Official Gazette* on January 30, 1986.

1.2.2.2 Vocational Education and Training¹⁵

According to Article 3308 of the Act on Apprenticeship and Vocational Education, there is no discrimination between men and women. Moreover, there are technical and vocational education schools for boys and for girls as part of formal education. Women and girls who have had or never had a formal education have a right to this training. Participants do not receive any formal school certificate, yet they can get some sort of certificate of attendance. Although the very existence of vocational and technical schools and many courses for girls are important, there are still some questions about their efficiency in terms of the demand of the market. On the other hand, ISKUR also provides some vocational training courses in order to improve the services for employers and job-seekers. While the expenses of such courses are covered by ISKUR, the employers are expected to provide training and determine the area of employment. Moreover, there are many associations, foundations and private institutions that give non-formal education and training. Women can participate in these courses without any special treatment, such as quotas or positive discrimination.

On-the-job training is not strictly regulated in the private sector. However, according to the Article 214 of the Act on Civil Servants, it is required for all public institutions to provide on-the-job training (in-service training) germane to their institution. In order to realize this requirement every single institution prepares its implementing regulations of special arrangements. These regulations of on-the-job training are prepared to be available to all personnel and mostly do not show any kind of discrimination. Although there are many institutions and a large budget allocated for vocational training, the economic and social returns of vocational training are still debated. On-the-job training remains much more controversial. Therefore, neither the regulation nor its implementation are fully congruent with the Articles 2(2) and 4 of the Directive.

1.2.2.3 Promotion

In Turkey there is no legislation that allows for discretionary practices in terms of promotion. Moreover, in accordance with Article 5 of the Labor Code, “in employment relationships, discrimination on the basis of considerations cannot be made.” Despite this fact, it is hard to claim that the new Turkish Labor Code fully corresponds with the Directive in terms of promotion. It is very well known that women are surrounded by “a glass ceiling” that does not allow them to reach higher

¹⁵ Summary of vocational and technical education and training was derived from ‘Report on Employment Situation’ written by İnsan Tunalı, *İstihdam Durum Raporu, Türkiye’de İşgücü Piyasası ve İstihdam Araştırması* (Ankara: Türkiye İş Kurumu, A.Ü. Basımevi, 2004), pp. 73–88.

positions. At any rate, according to 2004 statistics, the educational status of 71 percent of those offered employment is below high school level.¹⁶

The issue of promotion of the public servants and employees is also regulated by the Act on Civil Servants, through Articles 64 to 72. The criteria of promotion include seniority right, merit, priority, position, and employment record. However, it should be noted that there are no women in the rank of undersecretary of state. It can be claimed that, despite the lack of any provision hindering the promotion of women in legal terms, there is a kind of inequality that can be considered as indirect discrimination. Therefore, it is questionable whether there is complete congruence with the Directive.

1.2.3 Protective Measures for Women in the Labor Market

According to the Article 50 of the Turkish Constitution, no one shall be required to perform work unsuited to his age, sex, and capacity. With this law, women and children enjoy special protection with regard to working conditions.

The basic legal provisions regarding the protection of women in the labor market are regulated by Article 5(3) of the Labor Code. According to the law, if there are no specific points that hinder working conditions such as biological factors or the characteristics of the job, an employer may not treat workers differently, directly or indirectly, in closing a business contract, or deciding, implementing and terminating an employment contract, on the basis of pregnancy and/or gender. The sanctions against the employer in case of discrimination are also indicated in the Labor Code. On the other hand, the number of women who can enjoy such security is very limited because of the restrictions defined in the law. Accordingly, the security applies to an employee who is engaged for an indefinite period, who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months.

According to the Ministry of Labor and Social Security Regulation No. 25548 of August 9, 2004 on the Conditions of Night Work for Women, night work for pregnant women is limited to 7.5 hours. Women are not obliged to perform night work during their pregnancy and for six months following childbirth. According to the Regulation No. 25522 of July 14, 2004 on the Work Conditions of Pregnant or Nursing Women and Nursery Rooms and Child Care Centers, employers are obliged to open a nursery for a workplace with between 100-150 female workers, and a childcare center when the number of female workers exceeds 150. In a country where most of the workplaces are small and middle size enterprises, it is very difficult to reach

¹⁶ Results of the *Household Labor Survey*, July 16, 2004.

the number of 150 female employees. The working conditions for pregnant and breastfeeding women are also regulated with those Regulations.

With the Act No. 5223 of July 14, 2004 on Amending Some Provisions of the Act on Civil Servants, many changes were introduced in parallel to the Labor Code. According to paragraph A of Article 104 of the Act on Civil Servants, the female civil servant is granted maternity leave eight weeks prior to (10 weeks in case of multiple births) and eight weeks after childbirth (total of 16 weeks). Nevertheless, if the health condition is favorable and if the female worker wishes to work she may work in the work place until three weeks prior to childbirth with the approval of the doctor. In that case, the period the female worker has worked is added to the leave period after childbirth. The worker herself determines the schedule of time and length of her daily leave intervals. With an amendment of Article 108 of the Act on Civil Servants a female civil servant, at her request, can be granted a further twelve months of unpaid leave to follow the maternity leave.

It can be claimed that the Turkish regulation granting sixteen weeks of maternity leave is more progressive than those in the Member States. However, it should be noted that, most of the times, public servants are the main beneficiaries of these regulations, since their legal rights are highly protected. The same interpretation cannot be applied to women who work within the framework of the Labor Code. Moreover, women who do not fulfill the conditions set forth in Article 18 of the Labor Code will be divested of that right. With all those points in mind, despite many progressive aspects and legal regulations related to the protection of pregnant women or nursing mothers, Turkish legislation does not fully comply with Article 2(3) of the Directive.

1.2.4 Prohibition of Dismissal

Act No. 4773 in 2002 introduced the term 'job security' to the Turkish Labor Code. According to Article 18(d) of the Labor Code, race, color, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin shall not constitute a valid reason for termination. Subparagraph (e) regulates absence from work during maternity leave when female workers must not be engaged in work, as foreseen in Article 74 (pregnancy leave, nursing leave and periodic examinations). However, it should be noted that only an employee engaged for an indefinite period and who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months can be protected from unfair termination. In the previous Labor Code the minimum number of workers for the establishment was set as 10. In that respect, the scope of protection of a new Law is quite narrow compared to the old one. Hence, considering the insecure positions of women in small business because of the restrictions defined in Article 18(1), the

statements of subparagraphs (d) and (e) do not ensure full compliance with Article 5 of the Directive.

Within the framework of the Labor Code, there are some protective measures envisaged against dismissals based on the principle of equal treatment; and Turkish legislation can be considered progressive in this sense. However, problems can arise when it comes to implementation. Moreover, since the law is valid for women engaged for an indefinite period, who are employed in an establishment with thirty or more workers and who meet a minimum seniority of six months, many women who are employed in small-size enterprises do not enjoy these rights.

1.2.5 Women's and Men's Jobs

According to statistical data from the first quarter of 2004 provided by the State Institute of Statistics, the participation of women in the labor force is only 22.5 percent. One fourth of the total labor force consists of women and agriculture is the primary field of their employment. 83.3 percent of the women employed in agriculture are unpaid family workers. Six percent of the women are self-employed. The service sector is the second most popular field among women. Women are mostly engaged in economic activities in education and health services.¹⁷

In 2002–2003, 95 percent of the pre-school teachers were women. Because of traditional stereotypes on the roles of women and men, pre-school and elementary school teaching are considered and coded to be “suitable” to the “female nature” and maternal role that enable women to function according to their traditional roles.¹⁸ Women comprise the majority in the field of nursing as well. The army and police force are almost exclusive to men. On the other hand, quite paradoxically, the number of women engaged in science and technology is increasing.¹⁹

¹⁷ Household Labor Survey, July 16, 2004.

¹⁸ Işıl Ünal, “İlköğretim Okullarında Demokratik Okul Ortamının Olusturulmasında Kadın Yöneticilerin Katkısı, (The Role of Executive Women in the Creation of a Democratic Environment in Elementary Schools),” in *Eğitim, Bilim ve Toplum* (Spring–Summer, 2003).

¹⁹ For more detailed statistical data, see <http://www.die.gov.tr/turkish/sonist/iscugu> and, and *MEB Sayısal Veriler 2003–2004* (Data for 2003–2004, prepared by the Ministry for National Education or MEB).

1.2.6 Legal Status of Sexual Harassment

The notion of *sexual harassment* is a new concept for the Turkish Labor Code. Although there is no special section concerning sexual harassment, Article 24(d) and Article 25(c) define it among the just causes that entitle an employee and employer to terminate the contract. Pursuant to Article 24(d), the employee is entitled to end the contract immediately if she is sexually harassed by another employee or by third persons in the establishment, and/or if adequate measures were not taken although the employer was informed of such conduct. Article 25(c) introduces a similar logic for terminating the employment contract at the initiative of the employer. According to the law, the right to terminate the employment contract because of the immoral, dishonorable or malicious behavior of the other party may not be exercised after six working days of knowing the facts, and in any event after one year following the commission of the act, this right vanishes altogether. The employee or employer who has terminated the contract for such reasons is entitled to claim compensation from the other party (Article 26).

In accordance with the regulations of the Turkish Penal Code concerning crimes of sexual assault, such as Articles 415–416 on *sexual assault* and Article 419 on *open insult and defamation*, the employee is entitled to apply for legal proceedings. The second paragraph of Article 105 of the draft Penal Code that will be discussed in the fall in a General Assembly Meeting of the Turkish Grand National Assembly deals with sexual harassment in the workplace. According to that, if a female civil servant is sexually harassed or abused by a fellow civil servant to whom she is subordinate or by one who has a hierarchy in that professional relationship, the punishment is liable to be increased by one half (minimum three months, maximum two years). If the woman in question leaves the job because of the harassment, the punishment shall not be less than a year.

One of the recent decisions of the Court of Appeal brought a new interpretation to the issue of sexual harassment in the workplace. A new female intern lawyer was harassed in the office of a law firm and lodged an appeal. The court accepted the fact that the plaintiff was not able to bring in witnesses. The court's interpretation was "it is against human nature to harm himself/herself while trying to harm somebody else" and it punished the defendant according to Article 421 of the Turkish Penal Code. The Court of Appeal ratified the decision of the Court and sent the perpetrator to jail for eight months.²⁰

The introduction of the notion of sexual harassment into Turkish legislation is a progressive step, and the decision of the Court of Appeal may be considered as an

²⁰ *Radikal*, August 10, 2004.

egalitarian example of case law. At this point, the next step should be the adoption of the regulations of Directive 2002/73/EC, which had amended Council Directive 76/207/EEC, into the Turkish Labor Code. As it is known, Directive 2002/73/EC brings in definitions of *direct and indirect discrimination* based on sex.

1.3 Protection of Pregnant Women from the Inherent Risk of Certain Activities and Related Employment Rights

1.3.1 Legal and Conceptual Framework

Article 50 of the Constitution concerning working conditions and the right to rest and leisure states that no person may be employed in a job that is unsuited to his/her age, sex and ability. According to the law, children and women shall be specially protected in terms of work conditions.

In Turkish legislation, there are a number of regulations related to the protection of women, especially pregnant women and mothers, the most important of which are contained in the new Labor Code. With the new regulations, women are granted further rights and the requirements of Council Directive 92/85/EEC are met to a significant extent. However, it is difficult to claim that the new legislation contains all regulations corresponding to the Directive. Despite changes that have already been brought to the labor laws, there is a lack of sufficient guarantees in terms of the equality of women and men, especially concerning pregnant and nursing women. Women continue to face discrimination in employment to varying degrees. The inadequate regulations of the new law concerning the termination of employment contracts do not provide enough protection for pregnant women. The provisions of the Labor Code preventing the dismissal of pregnant workers do not provide complete protection for female workers because employers are permitted to dismiss employees who are pregnant under certain conditions. In the Labor Code, the working conditions of women who are pregnant and breastfeeding are addressed by a Regulation that is supposed to be regulated by a Statute as stated in the previous Act. Unlike statutes, regulations are not checked by Council of State. In other words, because of the lack of control by the Council of State, regulations have a potential to be inconsistent with the law. If Regulations introduce texts that run contrary to law, the case may be sent to the Council of State (Supreme Administrative Court) as the appropriate body, yet the rejection of provisions and the process may take a long time.

The regulations concerning the *protection of pregnant, nursing and breastfeeding women* can be found in the Labor Code, the Act on Civil Servants, Act No. 5434 on the Pensioners' Fund, in harmony with the Labor Code. In line with the Labor Code, the above-mentioned Regulation No. 25548 on the Working Conditions Regarding

Employment of Women at Night and Regulation No. 25522 on the Work Conditions of Pregnant or Nursing Women and Nursery Rooms and Child Care Centers bring comprehensive regulations.

1.3.2 Risk Assessment and Employers' Obligations

According to Article 88 of the Labor Code, the explicit prohibition of certain risky and hazardous types of work, the conditions and standards of risk-free jobs, the period of employment for pregnant women, and women who have recently given birth or are breastfeeding will be regulated by the Regulation prepared by the Ministry of Labor and Social Security, taking into consideration the opinion of the Ministry of Health. In compliance with this article, the above-mentioned Regulation No. 25522 was adopted; the Regulation is in compliance with the relevant sections of Directive 92/85/EEC.

The Labor Code regulates *maternity and nursing leave* in Article 74. A pregnant woman or nursing mother employed in a job unsuitable for her condition shall be reassigned to another appropriate job or to the same job with alleviated conditions upon the prescription of the health authorities, without any reduction in her salary. Article 5 of the same law appropriates the policy of equal pay for equal work and states that the salary cannot be differentiated by gender. Moreover, in the framework of the Labor Code, according to Article 15 of the Ministry of Labor and Social Security Regulation No. 25311 of December 9, 2003 on Health and Safety, women are considered to be a specific risk group and measures must be taken to protect their safety and health. Article 10 of the same Regulation states that in order to provide security and health protection at work the employees should be informed about the potential risks by their employer.

1.3.3 Night Work

According to Regulation No. 25548 of August 9, 2004 on the Conditions of Night Work for Women, night work is to be limited to seven and a half hours for women. Under the same Regulation, night work is prohibited for pregnant employees, starting from the confirmation of the pregnancy by a medical examination. Article 9 of the Regulation No. 25548 and Article 6 of the Regulation No. 25522 state that breastfeeding women up to nine months after giving birth are forbidden to perform night work. This period can be extended up to one year for workers who are breastfeeding to perform their old duties for which the medical assessment has revealed a risk of exposure, which would jeopardize safety or health. In such cases, women can be temporarily transferred from night work to another suitable day work with the same conditions referred to in Regulation No. 25522. For mothers up to eight months after

giving birth and for breastfeeding women up to six months, it is prohibited to perform night work that would jeopardize safety or health, after obtaining a medical report to that effect. This regulation is in compliance with Council Directive 92/85/EEC.

1.3.4 Maternity Leave

Pursuant to Article 74 of the Labor Code concerning maternity and nursing leave, it is strictly forbidden to employ female workers for a period of sixteen weeks, eight weeks in the prenatal and eight weeks in the postnatal periods. In case of a multiple pregnancy, two weeks are added to the period of eight weeks' leave prior to birth. Nevertheless, given that the health condition is favorable, if the female worker wishes to work she may work in the workplace until three weeks prior to childbirth with the approval of the doctor. In that case, the period during which the female worker has worked will be added to the leave period after childbirth. Women workers are granted a total of 1.5 hours daily leave to nurse their children who are younger than twelve months old. The worker herself determines the schedule of time and length of her daily leave intervals.

Article 104 of the Act on Civil Servants states that a female civil servant shall be granted maternity leave for sixteen weeks; eight weeks prior and eight weeks after childbirth. Pursuant to Article 108, a female civil servant, at her request, can be granted a further twelve months' unpaid leave to be continued after the maternity leave.

The new law increases maternity and nursing leave to a period of sixteen weeks, thus exceeding the period prescribed by the Directive. It can be claimed that Article 74 of the Turkish Labor Code granting sixteen weeks of compulsory maternity leave (eighteen weeks in case of multiple pregnancy) is a progressive regulation. However, according to the Act No. 560 on Social Security regulating maternity security, women on maternity leave do not receive a full salary; during their leave for sixteen (eighteen in case of multiple pregnancy) weeks they are supposed to get a reduced salary.

1.3.5 Maternity Insurance

Maternity insurance is regulated by the Act on Social Security. Article 43 states that the benefits below shall be provided in case of the maternity of the insured woman or the uninsured wife of the insured man:

- pregnancy examination and health care;
- providing necessary health care during childbirth;
- granting nursing aid allocation;

- granting allocation to the insured woman for the days she did not work in the prenatal and postnatal periods; and
- transfer of the mother to another place within the country, if necessary.

Pursuant to Article 48 of the Act on Social Security, in order to receive maternity benefits, it is obligatory to pay contributions at least for ninety days in the previous year. In case of an uninsured wife, an insured husband is obliged to pay insurance contributions at least one hundred and twenty days in the previous year and supposed to be married with that woman before the birth in order to receive maternity benefits.

Article 89 of the Act on Social Security states that the allowance for pregnant, nursing and breastfeeding women would be one half or two thirds of their salaries, depending on the medical help provided from their institutions. In this regard, the provision of the Turkish Social Security Law remains inconsistent with the Directive.

In the 2003 National Program under the title 13.1.4, there is a section about the reflection of the EU Directives on equality protection of men and women in the Turkish Labor Code. Accordingly, one of the short-term commitments of the Turkish national program is that, in order to harmonize national legislation with Directive 92/85/EEC, the draft law concerning the necessary amendments in the Act on Civil Servants, the Labor Code, the Act on Social Security and the Act on Pensioners should be prepared by the Directorate General on the Status and Problems of Women and put in force by the end of 2004.

1.3.6 Prohibition of Dismissal and Employment Rights

Pursuant to Article 18 of the Labor Code, the prohibition of dismissal and employment rights are regulated under the title “termination of employment contract with notification of valid grounds and justifiable reasons”. Termination by the employer of the employment contract of an employee having at least a six months service period in a workplace operating with thirty or more employees should be based on a valid reason relating to efficiency or behavior of the employee, or the requirements of the enterprise, workplace or work. Specific reasons that cannot be considered as valid for the termination of contracts are determined in the Act. The termination of employment on the basis of language, race, gender, family role, pregnancy, birth giving, political view, philosophical belief, religion and sect or any such considerations is not allowed, as stated in Article 18(d). Also, according to Article 18(e), female workers who are granted maternal leave for a period of sixteen weeks (eight weeks in the prenatal and eight weeks in the postnatal periods) and in cases of multiple pregnancy (ten weeks in the prenatal and eight weeks in the postnatal periods) women cannot be dismissed from their jobs because of their absence.

Under Article 18(d) of the Labor Code, pregnancy and maternity are among the conditions that cannot justify a dismissal. It can be claimed that dismissal is prohibited through the entire period of pregnancy. However, it should be noted that according to the Labor Code three criteria should be fulfilled simultaneously: the workplace must be operating with thirty or more employees; the employee should have an employment contract for an indefinite period; and at least six months of service experience. If those three conditions are not all satisfied at the same time, the protection against dismissal cannot be secured in terms of the Turkish Labor Code and this situation is incongruous with the relevant articles of the Council Directive.

1.4 The Burden of Proof in Cases of Discrimination Based on Sex

1.4.1 Legal and Conceptual Framework Concerning Indirect Discrimination

Although Article 5 of the Labor Code provides that no discrimination based on sex is permissible in the employment relationship, there are no definitions concerning direct and indirect discrimination.

There are no regulations in the Act on Civil Servants or in other employee laws concerning discrimination. Given that indirect discrimination is the most difficult one to prove, the need for detailed “legal definition” must be emphasized.

1.4.2 The Burden of Proof and Rules of Evidence

According to Article 1 of the Act on Labor Courts, in cases of conflict between the employee and the employer or their representative concerning the labor contract or any sort of legal conflicts based on the law, labor courts must redress the case.

According to Article 4(e) of Act No. 5018, labor courts hear the case when trade unions bring any case or they are sued, or when conflict occurs between the Labor Security Organization and the insured workers or their representatives. If there is no labor court to handle these cases, a local court is assigned this task, without the participation of any representatives. The court handles the issue in accordance with the above-mentioned law. Turkish legislation is in compliance with Article 5 of the Council Directive.

According to Articles 18, 19 and 20 of the Labor Code, if the termination is based on gender, the burden of proof shall rest with the employer. Article 5 provides that except for biological reasons or reasons related to the nature of the job, the employer must not discriminate, either directly or indirectly, against an employee in the conclusion,

conditions, execution and termination of his (her) employment contract due to the employee's sex or maternity. It is also stated that the burden of proof in regard to the violation of the above-stated provisions by the employer rests with the employee. However, if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialized shall rest with the employer. The statements of "biological reasons" or "reasons related to the nature of the job" can be thought of as discriminatory phases for women. Therefore, it is important here to provide some definition of "biological reasons." In this regard, Turkish legislation is partially congruent with the Directive.

1.5 Non-Discrimination against Part-Time Workers

1.5.1 National Legal Framework and Employment Conditions Concerning Part-Time Workers

Article 13 of the Labor Code covers issues on part-time and full-time employment contracts. Accordingly, "the employment contract shall be considered as a part-time contract where the normal weekly working time of the employee has been fixed considerably shorter in relation to a comparable employee working full-time. An employee working under a part-time employment contract must not be subjected to differential treatment in comparison to a comparable full-time employee solely because his contract is part-time, unless there is a justifiable cause for differential treatment." However, 'comparable full-time employee' is not well defined here, nor is 'differential treatment', and Turkish legislation is only partially congruent with Article 3 of the Directive.

1.6 Equal Treatment for the Self-Employed and Their Assisting Spouses

1.6.1 National Legal Framework

Definitions corresponding to those in Council Directive 86/613/EEC are contained in the Act No. 1479 on the Social Security Institution for Small Shopkeepers, Handicraftsmen and Self-Employed Persons, and the Act No. 2926 on Social Security of the Self-Employed in Agriculture. Those laws do not touch upon maternal insurance and thus in order to be pursuant with the Directive, they should adopt those measures to provide security during pregnancy and motherhood.

1.6.2 Social Rights of Spouses

Under the old Act No. 2926 on Social Security of the Self-Employed in Agriculture, women were expected to be “head of the family” in order to be insured. The new Act No. 4956 in 2003 lifted this requirement. Also, with the adoption of new Turkish Civil Code in 2001, the former provision which read as “the husband is the head of the household” was abolished. Therefore, the Turkish legislation complies with the requirement of the relevant article of the Directive.

In accordance with Article 6 of the Council Directive 86/613/EEC, where a contributory social security system for self-employed workers exists, spouses are also supposed to be protected under the self-employed worker’s social security. This Article is not reflected in the Turkish Labor Code. The Acts No. 2925 and 1479 do not have any provisions on maternal insurance. Only in the Act on the Social Security of the Self Employed are women granted the right to be assured if they do not have any other insurance. This Act only covers women and this regulation is not applicable to men.

1.6.3 Contributory Social Security System for Self-Employed Workers

The regulations in the Act No. 818 on Obligations and Act No. 6762 on Commerce comply with Article 5 of Council Directive 86/613/EEC. There is no difference between married couples (spouses) and unmarried persons in terms of the formation of a company.

Under Article 9 of the Council Directive 86/613/EEC, people who consider themselves wronged are enabled to apply to their national jurisdictions in terms of the principle of equal treatment in self-employed activities, to pursue their claims by judicial process, possibly after recourse to other competent authorities. In the Turkish Labor Code there is no specific reference to such provisions. According to Article 125 of the Turkish Constitution every citizen has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures. There is no inconsistency with the Directive in this context; however, this definition should be found in labor regulations as well.

1.7 Parental Leave

1.7.1 National Legal Framework

Turkish legislation does not contain the issue of parental leave. The relevant State Ministry prepared the Draft Bill on the Reorganization of Maternity Leave, and although it has been submitted to the Prime Ministry many times, it has not yet become law. In the draft, it is stated that parental leave should be equally distributed between women and men. The draft further proposes that the father should also benefit from the maximum of six months unpaid childcare leave currently given to the mother following birth, i.e. converting this leave into parental leave. (According to the regulation, women should be granted a six-month paid leave that can be extended a further six months as unpaid leave. Men, on the other hand, should be granted a six months unpaid leave.)

1.7.2 Social Security during Parental Leave

As mentioned above, according to the Article 78 of the Turkish Labor Code, women may take an additional six months of unpaid leave from work after the period of compulsory leave. The Act on Civil Servants states that, upon her request, a female civil servant may be granted a further twelve months of unpaid leave following maternity leave.

The Directive on the Framework Agreement on Parental Leave grants the right to leave on a non-transferable basis. In the Labor Code there is no reference to non-transferability of that right simply because men are not granted parental leave under national Labor Code.

Compliant with Council Directive 96/34/EC, at the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship. In the Labor Code women who wish to use a further six months of unpaid leave at the end of the sixteen-week period of maternal leave are not guaranteed to be returned to the same job.

According to Article 2 of the Council Directive 96/34/EC, rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements or practice, shall apply. The Labor Code does not secure this sort of guarantee.

Council Directive 96/34/EC also states the importance of the continuity of the entitlements to social security cover under the different schemes, in particular health care. However, the employer does not pay insurance contributions during extended maternal leave; hence, it is not possible to enjoy social security cover during unpaid leave. In terms of healthcare benefits, the female worker on unpaid leave and family members depending on her can enjoy those during the leave, as stipulated in Article 40 of the Act on Social Security.

1.7.3 Parental Leave and Equal Opportunities Policy

Although unpaid maternal/nursing leave for women seems to be compatible with Council Directive 96/34/EC, in fact the current situation is incongruent with the meaning of the Directive. The aim of the Directive is to set out minimum requirements on parental leave and time off from work on grounds of *force majeure*, as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women. In case of the Turkish national legislation, the right of unpaid leave is granted only to women, indicating that childcare is considered solely as women's responsibility, not a family one. The same logic applies to Article 16 of the Regulation No. 25522 on the Work Conditions of Pregnant or Nursing Women and Nurseries and Childcare Centers, which describes the qualifications to stay in those rooms and nurseries. According to the Act, children of female employees or (in case of male employees) motherless orphans, and children under the care of the father are accepted to those facilities. In other words, the hidden assumption of this regulation is again that the mother is the primary agent of childcare; only in the absence of mothers are men considered responsible for the child. Within the EU accession process, measures should be taken to reflect the issue of individual parental leave in Turkish legislation and to change the existing conception on gender roles according to which childcare depends on mothers.

1.8 The Principle of Equal Treatment of Men and Women in Occupational Social Security Schemes

1.8.1 National Legal Frameworks

Article 60 of the Turkish Constitution says that everyone has the right to social security. The state shall take the necessary measures and establish the organization for the provision of social security.

Social security rights regulations can be found in the Labor Code, the Act No. 560 on Social Security, the Act on the Pensioners' Fund, Act on the Social Security of

Agricultural Wage Earners, the Act on the Social Security of Agricultural Self-Employed, and the Act on the Social Security of the Self-Employed. There is an effort to better arrange and harmonize the above-mentioned laws, but this has not yet been fully accomplished.

1.8.2 Implementation of the Principle of Equal Treatment

Article 6 of the Act on Social Security states that employed persons should automatically become insured as soon as they enter employment. The rights and obligations of the insured persons and of their employers shall be effective as from the date on which the insured person enters employment. The Civil Servants Pension Fund will regulate the rights and obligations of civil servants as soon as they enter employment. All these regulations are consistent with the Council Directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

It is difficult, however, to claim that *de facto* implementation of equal opportunities has been fully realized. Because of the large number of uninsured workers, as well as a high unemployment rate, most of the uninsured workers do not complain for fear of losing their existing jobs. Moreover, in Turkey, there is a large ‘unregistered’ market. Considering that most women are employed in this unregistered market and they hardly have social security, practically it can be said that they still suffer indirect discrimination.

1.8.3 Discrimination on the Basis of Sex Contained in the Laws Regulating Social Security

Although the Act on Social Security regulates maternal insurance, no reference can be found in the Labor Code, the Act on Social Security, the Act on the Pensioners’ Fund, the Act on the Social Security of Agricultural Wage Earners, the Act on the Social Security of Agricultural Self-Employed, and the Act on the Social Security of the Self-Employed. The latter three Acts need to be regulated to cover maternal insurance. In this respect, Turkish legislation does not comply with the Directive.

The frame of the maternity insurance as stated in the Act on Social Security is also not congruent with the Directive’s principles of equal treatment for men and women. Maternity allowances for insured women do not fully cover the normal salary. Moreover, the employer does not pay insurance contributions during extended maternal leave, which is an additional six months of unpaid leave and granted upon the request of the female worker. Therefore, women cannot enjoy social security benefits in

that period. Pursuant to Article 3(g) of the Council Directive 96/97/EC on the implementation of the principle of equal treatment for men and women in occupational social security schemes, acquired rights of leave stemming from maternal and family reasons cannot be suspended. Accordingly, the Act on Social Security does not fully correspond with the Directive.

According to the Turkish social security system, the retirement ages for men and women are different. Both in the Act on Social Security and the Act on Civil Servants the age of retirement is set as 58 for women and 60 for men. The lower age of retirement for women can be read as less working years; thus women acquire lower retirement pensions. The difference of retirement age for men and women does not comply with Article 3(f) of the Directive.

2. INSTITUTIONAL MECHANISMS

2.1 The Directorate General on the Status and Problems of Women

The Directorate General on the Status and Problems of Women was established in 1990. It was affiliated to the Prime Ministry and continued functioning under the Under-Secretariat for Women, Family Affairs and Social Services in 1994. With the abolishment of the Decree by the Constitutional Court, the Under-Secretariat was left null and void for more than 10 years. Very recently, on October 27, 2004, the Act on the Directorate was approved by the Parliament. The lack of legal support for more than 10 years and its insufficient financial and human resources have inevitably weakened the machinery considerably. The adoption the Law concerning the legal identity of the organization was among the short-term commitments contained both in the 2001 and 2003 National Reports; therefore this obligation is also fulfilled in line with the EU requirements. With this new development, the title of the machinery became the Directorate General on the Status of Women.

As part of the efforts to improve the capacity of the Directorate General on the Status and Problems of Women, the UNDP project entitled “The Integration of Women in National Development” was put into implementation in 1993. A department was established under the State Institute of Statistics (DIE) in order to produce gender-segregated database.²¹ In addition to that, new Women Units were established under the Ministry of National Education, Ministry of Agriculture and the General

²¹ As an article on arguments and more details please see Selma Acuner, “The 1990s and the Institutionalization of Gender Equality at the State Level,” in Aksu Bora-Asena Gunal, ed., *Feminism in Turkey in the 1990s* (Istanbul: Iletisim, 2002).

Directorate on Social Services and the Protection of Children. Also, Gender and Women's Studies Graduate Program at the Middle East Technical University, Ankara University's Women's Research and Studies Center (KASAUM) were established with the support provided by this project. Today, there are women's studies programs in 14 universities and most of them were financially supported with the above-mentioned project.

2.1.1 Allocation of Financial Resources

As mentioned above, the budget share allocated for the national mechanism of the General Directorate on the Status and Problems of Women is quite limited. Therefore, sometimes, KSSGM (now KSGM) has to use external funds to finance its fundamental functions and operations. However, promotion of equality between women and men is supposed to be one of the primary responsibilities of the state. As a matter of fact, according to the Turkish Constitution, the state shall take the necessary measures and establish the necessary organization to ensure gender equality. However, regarding the fact that only a negligible amount of the budget has been allocated to the national mechanism and other institutions, it can be concluded that the good intentions remain on paper and cannot be achieved in reality.

The Ministry of Finance is responsible not only for the allocation and budgeting of the appropriations according to the size determined by the State Planning Organization, but also for submitting it to the Council of Ministers. Since the Ministry of Finance is very much occupied to keep the extra budgetary surplus on the level of 6.5 percent and other issues of that sort, it would be naive to expect an increase of the share allocated for women in the near future.

2.2 Other Bodies

In Turkey there is no institutional body such as the Parliamentary Committee for Gender Equality to ensure women's representation in the Parliament. In the course of the last 15 years, only once, in 1998, an *ad hoc* Parliamentary Commission was established to assess the status of women. This Commission, entitled the Turkish Grand National Assembly's Parliamentary Commission of Research on Women's Status prepared and submitted a Report that included some observations and recommendations to the public. There is also no structure like an Ombudsman for Equal Opportunities. In the Cabinet there is only one State Minister in charge of gender issues and the national mechanism is under the authority of that minister.

2.3 The Women's Movement and Women's Organizations

In Turkey, there is a strong women's movement to ensure the equality between men and women. The Republic of Turkey has had an exceptional and historically unique experience in regards. All decisions made for the advancement and empowerment of women today invariably reflect this historical significance. With the foundation of the Republic in 1923, Turkey experienced rapid social and political transformation. Some of the main axes of this transformation were ensuring equality between men and women; state support for women in entry into the public sphere; radical changes in the legal system; and efforts to transform the social traditions and values which were inherently discriminatory. With the adoption of secular order, women's entry and participation in education, employment and political life were made possible. Through egalitarian public policies the state, in fact, took an active role in encouraging and supporting the participation of women in the public spheres. As a result, Turkey accomplished in 1930s and 1940s, an unparalleled transformation in gender equality that was, by universal standards, most satisfactory at the time. However, contentment with this rapid transformation, coupled with the changing social, political and economic conditions of the Republic, prevented further expansion of women's human rights to levels and areas reached by the western world. The latter, that is a new understanding of women's human rights, which emphasized the *de facto* rights as well as the *de jure* and sought equality in the private sphere alongside the public one, demanding further empowerment of women in all walks of life, was difficult to incorporate into Turkish social and political system. Nonetheless, such demands also found reflection in the Turkish society in the 1980s when women's movement became a strong and increasingly vocal proponent of women's human rights demanding a major overhaul of the existing laws, in particular Civil Code and Penal Code, in order to update them.²²

With the increasing efforts to institutionalization in 1990s and Turkey's participation in the United Nations' 4th World Conference on Women in 1995, there has been a rapid increase in the number of active women's organizations. At present, there are about 300 women's organizations in Turkey. Here it is worth noting that those organizations are not located only in big cities. Besides this, they have acquired the skill on collective work during the course of time. Women's organizations and associations are working in several areas ranging from increasing women's political participation to preventing the use of violence against women, enhancing their economic capabilities, protecting and monitoring of human rights and fundamental freedoms, advocating various issues in the Parliament.

²² F. Acar, S. Acuner and N. Şenol, *Questionnaire concerning the Implementation of the Beijing Declaration and Platform for Action*, 1999 (Ankara: KSGM, 1999). Available at KSGM Department for External Relations.

Women's organizations in Turkey have capacity and commitment to initiate proactive development strategies in many fields, especially in the field of legislation. As mentioned in the Introduction to this Report, there are various research programs carried by women's organizations concerning almost all problems faced by women. For instance, the NGOs working for the empowerment and greater representation of women have studies concerning the election law, regulations and laws on political parties and other related legal procedures. Likewise, organizations focusing on violence towards women often submit their requests to the politicians. The Article 10 of the Constitution amended in May 2004 had been in the agendas of women's NGOs since the second half of the 1990s. The campaign of 1987 to stop violence against women and the one in 1993 concerning the Civil Code can be regarded as the first examples of the proactive strategy.

3. POLICIES, PROGRAMS AND AWARENESS-RAISING

3.1 Domestic Policies on Gender Equality and Equal Opportunities

3.1.1 The General Directorate on the Status and Problems of Women

The General Directorate on the Status and Problems of Women (KSSGM) and the relevant State Ministry are responsible for adopting and coordinating national policies for promoting the equality of men and women. KSSGM was established in 1990 and attached to the Prime Ministry in 1991. In 1994 KSSGM had become a part of the Under-Secretariat. With the abolishment of the law of jurisdiction by the Constitutional Court, the Under-Secretariat was left null and void. Since then, KSSGM had been functioning without a legal base. Although the need for legal regulations for national mechanisms came to the fore in the agenda of the Turkish Grand National Assembly by draft laws prepared by governments for more than 10 years, these drafts had always failed to be accepted by the General Assembly. Finally, the draft prepared by the present 59th Government has been passed by the subsidiary and main committees of the TGNA, and then approved by the Parliament on October 27, 2004. It should be noted here that the new law was prepared under the auspices of the structural adjustment program, within the framework of the principle of "reducing the size of the state". In this line, the law does not envisage to create a provincial organization. Therefore, in the case of a cross-cutting issue such as gender equality, the new law will most likely fall short of coming up with a solution.

For the first four years of its establishment, KSSGM managed to implement policies based on "gender and development". As a result of such an effort, many achievements

in legal and organizational contexts were obtained. After the 1995 Beijing Conference, KSSGM tried to realize the strategy of “gender mainstreaming” (a strategy based on placing gender equality into the main national policies); however, this did not turn out to be a success. One of the most important reasons for the failure of KSSGM is its weak position in the public administration and its vulnerability against political influences. Besides, it is very interesting to observe that both right and left wing parties in power tend to cut budgetary allocations and reduce the personnel, regardless of their different political views. In fact this situation can be regarded as a reflection of the non-existence of political will about ensuring equality between men and women.

The period following the Beijing Conference has witnessed other interesting developments as well. After the Conference, the number of women’s organizations increased rapidly and started to work together on the common agenda, namely women. The first example of this fact was experienced during the negotiation of the draft Civil Code. During this period, various women’s groups formed a sort of loose partnership and worked together. During the discussions of the draft Penal Code, on the other hand, the Turkish Penal Code Platform (TPC) created a much more organized and effective network of collective action. TPC made a preliminary work for the first time and submitted the draft report, raising its claims to all related parties. In addition to that, the group continued intense advocacy and lobbying at the Parliament to achieve legal and policy changes stated in the above-mentioned report. Another particularity of this process was the creation of an online e-mail group (forum) that provided an opportunity for participants to discuss in depth and come up with different tactics and strategies for different conditions.

3.1.2 Determination of Policy Agenda

To sum up, one noteworthy observation about the policy mechanisms concerning the equality of men and women is the weakening of national mechanism, and the strengthening of women’s organizations. In that respect, today, the policy agenda for gender equality is largely determined by the women’s organizations.

3.1.3 Promotion of Women’s Access to the Labor Market

The principle of equal treatment for women in the access to employment, and working conditions in the labor market are all parts of the discourse of the policy makers. However, it is difficult to talk about an enhanced and whole policy agenda at the national level. One of the most important studies to lead the national policies was entitled “Employment and Training.” In 1993, KSSGM, with support from the World Bank, launched a project for the enhancement of women’s participation in

employment. Scholarly research programs were conducted on all faces of women and employment. The recommendations resulting from this project were transmitted to the Ministry of Labor and Social Security, the Turkish Employment Organization (ISKUR) and all other relevant institutions that are responsible to develop labor market strategies and employment policies. However, this process failed in terms of placing this package of recommendations on the agendas of those institutions. Within this process, ISKUR started to implement and financially support vocational education for guaranteed employment for women. This process is still continuing; however, there is no contemporary study evaluating its contribution to the enhancement of women's employment. The training manual on gender equality prepared for this project was distributed to all interested organizations. Moreover, many non-governmental organizations, trade unions, private sector companies made use of this document to implement gender-sensitivity training.

Another endeavor to enhance women's access to employment was provided by the World Bank, with the funding of Japanese donors. This time the issue of women-owned business in Turkey was thoroughly studied and a book was published in the light of this inquiry. One of the most striking points of this book is the inadequacy of the public sector for supporting small-size enterprises for women within the Turkish finance system. On the other hand, loans with low rates and for long periods to women were created by the Turkish People's Bank (Türkiye Halk Bankası) to promote women's entrepreneurship since 1994; these loans have been called "female entrepreneur loans." Women working from/at home and working outside home can utilize this credit to set up their businesses.²³

Moreover, many women's organizations opened local bazaars for realizing women's handwork labor, mostly in coordination with local municipalities. There are also some women's foundations and associations actively supporting enterprises run by women. Here it should be noted that women's organizations are also coming together to form cooperatives. There has been a substantial increase in the numbers of women's cooperatives, especially in less developed parts of the country, mostly founded with the financial support of international organizations. Also, there are some foundations and associations establishing community centers where "community mothers" are providing daycare for children of working mothers to increase employment opportunities for women.

There has also been an effort to be a part of the European Employment Strategy (EES) to enhance women's access to the labor market. In line with the European

²³ Directorate General on the Status and Problems of Women (KSSGM), *Questionnaire concerning the Implementation of the Beijing Declaration and Platform for Action*, April 2004 (Ankara: KSSGM, 2004). Available at <http://www.kssgm.gov.tr>.

Employment Strategy, ISKUR prepared a report entitled “Report on Employment: Labor Market and Employment in Turkey” where women’s participation in the labor market is evaluated in depth. The introduction and conclusion of the report highlights the fact of gender segregation in the labor market.

ISKUR’s 2003 General Assembly Resolution²⁴ also touched on the issue of women’s access to the labor market. There are many recommendations under the title of “The Access of Women to the Labor Market and Protective Measures Regarding Women’s Participation in the Labor Market.” It is stated that modernization of the labor markets, and parental leave for mothers and fathers to raise a child would increase employment opportunities and participation of women in the labor markets. According to ISKUR’s Resolution, women’s and girls’ education and their equipment for high-quality labor are the keys for their empowerment and overcoming of discrimination. It is also noted that there is a need for an education plan to decrease the level of illiteracy of women. The Resolution includes a standard set of policy recommendations that can be seen in many state documents; it basically gives the impression of a package of expectations and wishes.

The recent economic crises and the political and financial measures to deal with the consequences of the crises can be considered among the reasons behind the wishful and unrealistic content of the package. Turkey has witnessed four major economic crises (1994, 1999, December 2000, and February 2001). One of the problems that became worse with those economic crises is unemployment. Contrary to this fact, since 1980s, Turkish economic and financial policies focused on managing internal and external national debts and to reduce inflation figures to a single digit number, in other words below 10 percent. Therefore the issue of unemployment was ranked after the problem of debts and inflation, and remained as a second item in the agenda. Since there is no understanding and policy priority concerning unemployment in general, and specifically unemployment among women, it would be unrealistic to expect some legal and institutional regulations within this approach to solve the unemployment problem.

In Turkey, there is no consistent policy to combat disincentives for women entering the labor market. The increasing importance of women’s access to education can be considered as an only exception to this situation. Compulsory basic education has been raised to eight years from five in 1997, starting with the 1997-98 academic year. It was expected that enrolment rates for the girls and the period of education would increase. However, the results of this policy were somehow controversial. According to a recent announcement of the Ministry of National Education, some six hundred thousand girls do not have access to primary education. On the other hand, it was also said that enrolment rates for the girls were increased. (For the 2003-04 academic year,

²⁴ For decisions of the ISKUR General Assembly, see www.iskur.gov.tr.

enrollment rates for the girls were 95.7 percent.) Despite the fact that primary school enrolment rates of girls have risen in years, and the gender gap in primary education is beginning to close, when it comes to higher levels of education, it is a different story. The proportion of boys enrolling in higher education is much higher than girls in Turkey. For example, while the enrolment of girls in the technical vocational schools is 17.8 percent, it is 28 percent for boys.²⁵

On the other hand, the rate of girls and women are higher in some parts of non-formal education such as crafts schools for girls, public education centers, and household economics classes. The reason is that the pedagogy and curriculum of those schools have parallels to the traditional gender roles of women. Moreover, the relation between labor market and non-formal educational facilities is quite weak.

One other aspect worth mentioning is the lack of effective mechanisms that harmonize women's household and labor responsibilities. Day-care centers and nursing homes are few in number and expensive. The costs of such facilities are almost equal to the average salary of working women. (In 2004, the maximum price for day-care centers and nursing homes is determined to be 635 million TLs. According to the General Directorate on Social Insurance's data, the average salary of female employees is about 667 million TLs.)²⁶ In case of multiple children, covering the cost of such places becomes impossible. Therefore, there is an obvious need for the opening of safe, affordable and accessible institutions of childcare as soon as possible. The legislation concerning the establishment of nursing rooms and childcare centers for purposes of entrusting and heeding and nursing children should be re-regulated and this obligation should not apply only to workplaces that employ 100, 150 or more workers. Research done by a woman academician demonstrated that the existence of nursery and day care facilities is one of the most important factors for women to survive in the labor market.²⁷ At the end of this section, it can be concluded that policy-makers simply do not pay attention the reconciliation of familial/parental and professional obligations.

²⁵ Ministry of Education, *Facts and Figures* (Ankara: MEB Basımevi, 2004).

²⁶ The calculations are based on the salaries determined by the Commission of Fixing Salaries of the Ankara Governor's office. The average salary (667 million TLs for women) is taken from the General Directorate on Social Security (SSK), the minimum salary for a public servant is taken from the Ministry of Finance (1 Euro=1.800.000 TLs).

²⁷ Gülay Toksöz, "Sayımız Çok Az" (We Are Few), in *Neoliberalizmin Tahribatı*, N. Balkan and Sungur Savran, eds. (İstanbul: Metin Yayınları, 2004).

3.1.4 Measures Taken to Support Desegregation in the Labor Market

In Turkey it is hardly possible to talk about comprehensive and consistent efforts to support desegregation of the labor market as well as effective measures and precautions to secure the principle of equal treatment in the access to employment. According to official statistics, labor force participation rate for women has been reducing over the past years. According to 1999 statistics, labor force participation rate for women was 34 percent. For the first quarter of 2004, this figure went down to 22.5 percent. The gradual decrease of the rate of participation of women in the labor force can be seen as a reflection of the deep-rooted traditional social frameworks concerning gender and the lack of effective policies to support desegregation of the labor market.

The primary reason of the decrease of the rate of participation to the labor force for women is a gender-based division of labor and the mindset that reproduces those stereotypical roles. For instance, families invest less in the education of girls. Less education in turn means a decreased rate of entry to the labor market or a reduced time of stay in the market. Moreover, less education also means to be employed in a less prestigious job with lower salary and worse working conditions.

Another indicator of the gender-based separation in the labor market is the concentration of women in given sectors and professions. For example, agriculture is the main sector that employs significant numbers of women workers. According to official statistics, as of 2003, 58.5 percent of women were working in the agricultural sector, 28.1 percent of women were employed in the service sector and 12.9 percent in industry. In the same year, 49 percent of these women were family workers without any social security, 38.1 percent were wage laborers and 13.5 percent of them were self-employed.

The traditional segregationist attitude shows itself in the choice of profession too. According to the traditional mentality, women are supposed to choose professions which will not bother their roles as wife and mother. For this reason, parents and close family may often ask girls to become teachers. Girls in upper social classes are luckier in choosing their field of education and, hence, their professions. This is supported by the fact that 29 percent of medical doctors in Turkey are female. However, even a qualified female workforce is hindered by the well-known 'glass-ceiling' and cannot reach decision-making positions (see Chapter 4 for statistical data). For these reasons, from

education to obtaining decision-making positions, labor market very much needs policies of desegregation *vis-à-vis* women.²⁸

3.1.5 Policies to Promote Flexible Work Arrangements

Like in many other countries, it is thought that the promotion and inducement of part-time jobs would increase women's employment rate in Turkey as well. Because of this reason, the new Labor Code also defines the open-ended employment contract (contract made for an indefinite period). Accordingly, unless there are essential reasons for differential treatment, the employer must not make any discrimination between a full-time and a part-time employee, or an employee working under a fixed-term employment contract (contract made for a definite period) and one working under an open-ended employment contract (contract made for an indefinite period). The details and analysis of this problematic definition were discussed in depth in the section concerning the relevant parts of the Directive. However, here, it is important to highlight one point: working under open-ended employment contract is not an 'ideal type' of employment for women since it does not allow them to develop a career line and be promoted.

Moreover, considering the fact that women keep continuing their traditional roles, such part-time jobs will increase the burden on their shoulders. Other than that, part-time jobs mostly do not provide social security facilities and a reasonable wage that is compatible with human dignity. At this point, it is worth noting that part-time work is not a prevalent type of employment in Turkey. It is intended to be widespread for the development of a flexible employment market.

3.1.6 Policies in Education to Eliminate Sex-Stereotyped Choices in Schools

Despite the lack of any consistent and well-structured policies, there is a sort of sensitivity to eliminate sex-stereotyped choices in education. Academicians and practitioners are working to eliminate sexual stereotypes in books. There is a recent research on the content analysis for gender bias in Turkish primary school textbooks. According to this study, occupational models for two genders are clearly different. While women are fit in occupations such as housekeeper, teacher, nurse/nanny, sales

²⁸ Data taken from the State Institute of Statistics (DIE), *News Bulletin No. 906-126*, dated July 16, 2004; and Directorate General on the Status and Problems of Women (KSSGM), *Questionnaire concerning the Implementation of the Beijing Declaration and Platform for Action*, April 2004 (Ankara: KSSGM, 2004). Available at <http://www.kssgm.gov.tr>.

clerk, tailor, and farm worker, men are represented in the categories of writer (author/poet), farm worker, explorer and architect.²⁹

Despite the fact that the contents of the books perpetuate gender stereotypes parallel to the patriarchal values and traditionally accepted models, there are women who work in male-dominated fields. Women constitute some 31 percent of the architects, 29 percent of the medical doctors and surgeons, 44 percent of teachers, and 26 percent of lawyers. Moreover, the ratio of female professors has reached to almost 25 percent. 18 percent of the judges and prosecutors are women as well. Besides, increasing numbers of female students prefer to enter engineering faculties of the universities.³⁰

3.1.7 Policies to Remove Obstacles Faced by Women Trying to Reach Higher and Managerial Positions

In the context of Turkey, it would be possible to talk only about the potential possibility for women to reach administrative and decision-making positions. Apparently there are no mechanisms or national policies to ensure women's involvement in the administrative circles. Lawmakers claim that the amendment of Article 10 of the Constitution provided the means of 'positive discrimination' or 'special measures' aimed at better representation for women. However, practically no regulation exists for the empowerment of women in higher and managerial positions. One of the recent surveys³¹ indicated that the involvement of women in managerial positions is well accepted and not discouraged. Those are complimentary and quite promising in terms of women's access to high level and managerial positions. The ratio of women in the ranks of administrative/managerial level still remains between seven and ten percent.

²⁹ Sengul Altan Arslan, *Ders Kitaplarında Cinsiyetçilik (Sexism in Textbooks)*, Publications of the Directorate General on the Status and Problems of Women, December 2000 (Ankara: KSSGM Yayınları, 2000).

³⁰ Directorate General on the Status and Problems of Women, *Women 2001* (Ankara: KSSGM Yayınları, 2001).

³¹ Binnaz Toprak and Ersin Kalaycioglu, *The Woman in Work Life, Upper-Level Management, and Politics*, (Istanbul: Turkish Economic and Social Studies Foundation (TESEV) Publications, May 2004).

3.1.8 Policies and Resources Dedicated to Sufficient and Adequate Childcare Services

There has been three conventional ways concerning the childcare of working women. The first, and perhaps the most common one, is the childcare provided by the elder women in the family such as mother, mother-in-law, maternal aunt etc. The second option is the system of public nurseries and childcare centers. Mostly female civil servants benefit from the services of such institutions. The third option is the alternative of private nurseries and childcare centers. However, the service provided by the private sector is quite expensive. For example a civil servant has to spend 40 percent (107 Euros out of 261 Euros) of her salary to make use of childcare service, whereas a worker employed in the private sector has to allocate almost her entire salary to get such a service (350 Euros). Considering other expenses such as transportation, the total cost of childcare exceeds the salary of women working at the private sector.

3.1.9 The Extent and Result of Gender Mainstreaming in Employment and Social Policies, Education, Research, Budget and Financial Policies

No significant development exists in national plans and programs concerning the introduction and acknowledgement of gender equality. Even the idea of gender mainstreaming itself has been problematic. Moreover, Turkey has not been adopting middle and long-term plans for the last 10 years. The Five-Year Development Plans that had been applied since 1963 are replaced with two-year plans called “Preliminary Plans.”³² In that sense it would not be unfair to claim that the lack of provisions and measures in terms of gender equality is groundless. As a matter of fact, in the report of the Directorate General on the Status and Problems of Women (KSSGM) submitted to Directorate of UN Resources on Gender and Women’s Issues, dated April 2004, there are no words about gender mainstreaming. Although there are some projects on education and healthcare within the framework of the report, it is also indicated that the funding allocated from the national general budget to the Directorate is tight and limited this year. Moreover, there is no information about any other public and private institutions that allocate resources for the establishment of institutional mechanisms for gender equality. There is no specific budget line allocated for research and development studies either. Besides some studies carried by women’s studies and research centers at the universities with the funding of the international grants or with their own resources, there is no comprehensive research carried out on the gender equality by public sector. On the other hand, there are many non-governmental organizations

³² State Planning Organization, *Preliminary Plan 2004–2006* (Ankara: Aralık, 2003).

continuing their research with the limited resources of their budgets. To sum up, because the current economic and financial policy of Turkey is based on keeping the rate of the budgetary surplus around the level of 6.5 percent, even a symbolic amount of funding could not be allocated for the introduction of the principle of equal treatment in the main frameworks of plans and programs.

3.1.10 Indicators for Assessing Progress in Different Policy Areas

In Turkey, no special methodology and scale of evaluation for gender impact assessment – such as the one in the Netherlands – exists to audit and measure the developments in various domains of politics. On the other hand, the State Statistics Institute, the Ministry of National Education, and some other institutions carry on research to collect some data on gender biased and discriminatory practices in education, healthcare, and employment.

3.1.11 Inclusion of Gender Equality Policies in Other Objective Areas

With the consistent long-time efforts of the national mechanism, the General Directorate on the Status and Problems of Women and women NGOs, some kind of sensitivity has been developed for the elimination of inequalities and the promotion of equality between women and men. However, it should be mentioned that this attention was paid mostly to the primary and necessary issues such as education and healthcare because those happened to be the most problematic areas for women. According to the 2000 National Census results, one fifth of the 29.5 million women over the age of six were illiterate. Twenty-one percent of women have no degree or certificate, 37 percent of them graduated from elementary schools. Although there has been some decline in child mortality in recent years, it is still high above the normal level with respect to the level of development of the country (something like 36 to 43 per thousand). There is only one study conducted on the rate of mother mortality.³³

In order to evaluate equal opportunities for women and men and gender equality more broadly in other sectors as well, a comprehensive research should be done.

³³ Data from the State Institute of Statistics (DIE), available at <http://www.die.gov.tr>.

3.1.12 Inter-Sectoral Coordination

There is no permanent and sustainable inter-sector coordination mechanism concerning gender equality. One of the main problems here is the weakness of the national mechanism. If the national mechanism had been developed as it was planned, there would have been an Advisory Board consisting of high-level representatives of various professions, academics, and representatives of governmental and non-governmental organizations. However, because of the nonexistence of organizational regulation for the last ten years, such inter-sector coordination could not be developed.

At this point there should be some discussion about the Specialization Committees that were formed during the preparation of Five-Year Development Plans (even if there are some indications that the application of the plan will be abandoned). In those commissions, public officials, specialists, invited NGO representatives from various sectors come together to prepare a report. The report is presented as a supportive document to the Five-Year Development Plans. There is a committee report related to gender issues as well. On the other hand, we can talk about some sort of sustainable inter-sector cooperation between NGOs on the voluntary basis. Especially since the year 2000, regional and national civil society platforms have been working together closely on various matters.

3.2 Programs

3.2.1 National Programs on Gender Equality and Equal Opportunities

The National Program for the Enhancement of Women's Integration in Development, launched in 1993 by the Directorate General on the Status and Problems of Women (KSSGM), and financed jointly by the government of Turkey and the United Nations Development Program (UNDP), has aimed to enhance women's participation in development processes, to produce and compile gender-desegregated data, to enhance institutional capacity, and to create human resources. In the context of this project, a section on social structure and women's statistics was opened in the State Statistics Institute. The establishment of the Women's Library and Information Center in Istanbul was also supported. The Middle East Technical University's Gender and Women's Studies Graduate Program, Ankara University's Women's Studies Center (KASAUM) were established. Currently there are gender and women's studies programs in fourteen universities. Four out of those fourteen universities offer M.A. degrees on gender studies. The National Program for the Enhancement of Women's Integration in Development also provided funding for various research projects and many researchers.

3.2.2 Assessment of Implementation of Existing Legislation on Equal Opportunities

The Directorate General on the Status and Problems of Women is the national institution for the advancement of women by developing national policies and action plans on equal opportunities. Unfortunately, no national plan or program developed by the Directorate General so far, due to its weaknesses. Moreover, because of the very same reason, the Turkish Ministry of Labor and Social Security seems to have that responsibility. In fact, instead of monitoring, the Turkish Ministry of Labor and Social Security has been trying to regulate the adjustment of the 2003 National Program for the Adoption of the *Acquis* in accordance with the Council Directive on the Principle of Equal Opportunities for Women and Men. However, the establishment of a council attached to the Turkish Ministry of Labor and Social Security under the General Directorate of Labor has been planned for monitoring and analyzing the corresponding legislation.

On the other hand, because of the lack of national and local commissions dealing with equal opportunities and discrimination, it is hard to talk about a systematic, sustainable monitoring process. Acknowledging the importance and function of such monitoring mechanisms, women's organizations keep mentioning their demands on this issue. Although they brought their demands to the agendas of the Ministries, Council of Ministers, and Turkish Grand National Assembly, no concrete result has been achieved yet concerning the establishment of commissions dealing with equal opportunities. As mentioned in the Introduction of this Report, an ad hoc Parliamentary Commission was established only in 1998 to assess the status of women. This commission, called the Turkish Grand National Assembly's Ad-Hoc Commission on Status of Women,³⁴ prepared and submitted a report based on its studies to the public. The establishment of a permanent commission to monitor legislation with a gender perspective was also noted among the recommendations of the Commission. On the other hand, quite recently, some active and retired female Members of Parliament came together and established in the Union of Turkish Parliamentarians a commission on gender equality. Moreover, the Turkish Industrialists' and Businessmen's Association (TUSIAD) established the Working Group for monitoring the equality of women and men. In 2001, TUSIAD prepared and launched a report on women's employment and education and women's role in politics. Another association, the Women Entrepreneurs Association (KAGIDER) also should be mentioned here. Despite the fact that it was founded quite recently, KAGIDER achieved a lot to support female entrepreneurs and projects related to gender equality. It is also important to note the

³⁴ Directorate General on the Status and Problems of Women (KSSGM), *TBMM Kadının Statüsünü Araştırma Komisyonu Raporu (The Report of TGNA Parliamentary Commission of Investigation on Women's Status)*, Second Edition, March 2003 (Ankara: KSSGM, 2003).

active commitment and contribution of the women's organizations in monitoring the observance of equal opportunities.

3.2.3 Training on Equality Legislation and Women's Human Rights

According to data provided by the Ministry of Justice, 1,132 judges and prosecutors received training on the new Civil Code adopted in 2001. Moreover, 4,594 judges and prosecutors attended the training on human rights that included human rights of women. 731 judges and prosecutors were also given education concerning the process of harmonizing Turkish legislation with EU law. In addition, some 1,100 judges and prosecutors have participated to the six educational sessions on reform packages for the EU accession process since the year 2002. Such training by the Ministry of Justice still continues.

The Ministry of Labor and Social Security states that it provides training to its personnel including labor inspectors in the framework of the Gender Equality Program and other related ones. Other interested social institutions are also providing training to their members. Many labor organizations have publications on the European Union, business life and women. Employers' unions also have similar activities. However, there is no reliable source of data to know the exact number of people who received training in those institutions.³⁵

The Directorate General on the Status and Problems of Women, Women's Research and Implementation Centers from fourteen universities and many higher education programs on women's issues, associations of doctors, bars, associations of architects and engineers, trade unions are actively executing various public involvement projects. One of the significant campaigns in this respect was the campaign concerning the Turkish Civil Code that was coordinated by the Center for Women's Studies at Istanbul University in 1993. In the context of the campaign, a petition of a hundred and twenty thousand signatures was prepared and sent to the Turkish Grand National Assembly. Psychological training programs for the police, provided by two research centers of universities at Ankara, was another activity held at the beginning of the 1990s.³⁶ Members of the legal profession and security officers were given education in human rights in general, including the human rights of women. In addition, the women

³⁵ The European Commission, *2003 Regular Report on Turkey's Progress towards Accession* (Brussels: European Commission, 2003).

³⁶ For a brief history of the Turkish women's movement, see *2000: Kadın Hareketinin 100. Yılı* (The Year 2000: The 100th Anniversary of the Turkish Women's Movement), Kadın Eserleri Kütüphanesi ve Bilgi Merkezi Vakfı Yayınları, No. 17, 1999, Istanbul.

commissions of bars have given education on legal matters and consulting service for women. Associations of medicine are also managing sensitivity education to accommodate the culture of equality. Trade unions have given training on various issues for male and female workers such as prevention from sexual harassment or the new regulations of the Civil Code.

3.2.4 Structures to Support the Implementation of the *Acquis* Related to Equal Opportunities

As indicated in the 2003 National Program, Turkey accepted to comply with EU standards in the field of gender equality. The decision of the Council of Ministers No. 25027 was published in the Official Gazette dated February 21, 2003 concerning participation to the EU's "Gender Equality Union Program." The Department of EU Coordination in the Ministry of Labor and Social Security has been charged of implementing this program. The aim of the program is to monitor equal treatment of men and women, to secure legal adaptation, to control implementation, and to inform related parties (especially NGOs active in this field). The Ministry of Labor and Social Security announces that, since March 2003, regular seminars involving all parties have been organized on a monthly basis. However, it is not possible to say that the participation of women's organizations has been realized.

Another problem is that the national mechanism (KSSGM) failed to monitor equal treatment of men and women, to secure legal adaptation, to control implementation, and especially to inform NGOs active in this field. But some women's organizations have been organizing training activities on these issues. One of the most recent activities about informing women on the EU jurisdiction has been a training organized jointly by a women's organization and an NGO. Through this training, three hundred women have been reached so far.

3.2.5 Incentives to Encourage Men to Take a Greater Role in the Family

The Article 41 of the Constitution has been amended with a view to establish and reiterate the principle of equality between spouses as a basis for the family. The new Civil Code also abolished the concept of the "head of the family". However, equality before the law is not alone sufficient for women to fully enjoy this right due to the traditional and established patriarchal social patterns. Therefore, it is hard to expect an increase of men's responsibilities towards their families. This fact is also reflected in statistics. According to the State Statistics Institute (DIE), men have almost no

contribution to household duties, domestic work or childcare. It is hard to find a program for men that motivate them to share domestic responsibilities of women.

There are no regulations specifically relating to parental leave in Turkey. Many different proposal drafts have been prepared by the national mechanism of the General Directorate on the Status and Problems of Women concerning parental leave. The last one is still waiting in the related office of the Prime Ministry. This draft proposes that the father should also benefit from the maximum six months of unpaid childcare leave (until the child reaches one year of age). There are no other studies on parental leave.

3.2.6 Progress in Achieving Balanced Participation of Women and Men in Decision-Making

Apart from monitoring the developments on the equal representation of women and men in decision-making bodies, the issue of balanced participation of women and men is not one of the priorities of the decision-makers. Women currently have a representation of 4.6 percent in the 550-member Parliament and 0.52 percent in the local government. The attitude of the political parties concerning the participation of women in the ranks of decision-making circles was once again displayed during the March 2004 local elections. In the course of the local elections, women were excluded from the very initial step of being nominated as candidate for election within the parties. Because of the high cost of being a nominee for candidacy, no women appeared to stand for metropolitan municipality elections.³⁷

However, the representation of women in foreign affairs is higher. In 2001, 21 percent of the consuls of the Ministry of Foreign Affairs were women. It can be said that, on the basis of this ratio, the number of female ambassadors will be higher in the years to come. According to 2003 data, 18.4 percent of public officials representing Turkey abroad were women.³⁸

³⁷ Only 17 of the 3,234 mayors are women; the rate of representation of women in local governments decreased from one percent to 0.52 percent. Association for the Support and Training of Women Candidates (KA-DER), Report on the results of 2004 Local Elections, March 2004.

³⁸ Speech of Mrs Gldal Akit, State Minister of the Republic of Turkey, on the occasion of the international conference "Women and Politics: Experiences, Gains and Problems," organized by the World Academy for Local Government and Democracy, February 25, 2004.

3.3 Awareness-Raising

3.3.1 Informing Employees of Their Rights

Employees are mainly informed about their rights by the trade unions. According to Article 35 of the Act on Trade Unions, in workplaces where collective bargaining agreements exist, employees should be informed by the principal agent or representative of the trade union. However, there are no special mechanisms for informing the workers in the workplaces that do not have collective bargaining agreements. According to Article 33, trade unions and confederations may organize classes and lectures in order to improve the occupational skills and knowledge of workers and employers. These organizations have to spend 10 percent of their revenues for these activities. Despite the fact that the wording of this article is on activities to increase the occupational skills, knowledge and experience of the workers, the indirect meaning of this article can be interpreted so that trade unions carry on the responsibility to inform employees about their rights as well.

On the other hand, according to Article 77 of the Labor Code, employers shall take all the necessary measures and maintain all the necessary means and tools in full to ensure occupational health and safety in their establishments; employees are under the obligation to obey and observe all the measures taken in the field of occupational health and safety. The principles and methods of training shall be indicated in the regulation to be issued by the Ministry of Labor and Social Security.

There is no reliable data available in terms of the numbers of workers informed and the content of such information.

3.3.2 Awareness-Raising for the General Public on Gender Discrimination and the Need for Gender Equality in Decision-Making

There are an important number of women's organizations established with the aim of promoting the equal representation of women at all levels of the decision-making process in Turkey. One of those organizations has seventeen branches across the country and conducts comprehensive campaigns to increase the percentage of women in Turkish political life and to mobilize women to enroll in national and local decision making mechanisms. Such NGOs aim to inform women of their rights to equal representation by organizing educational programs for political parties, professional unions, other NGOs. In one of such training seminars, supported by MEDA, almost 3500 individuals were reached. With the aim of promoting the equal representation of women at all levels of the decision-making process, women's NGOs closely cooperate

with each other, prepare and submit various law drafts and policy recommendations, and advocate for putting their demands on the decision/law-makers' agenda. Although the efforts are well supported by the media, the level of representation of women remains quite below the critical threshold (with the exception of some political parties that have a 33 percent quota provision). Before the 2004 local elections, only a few political parties, which were not represented in the TGNA, applied the quota of 33 percent for women in all elected positions.

3.3.3 Awareness-Raising of EU Legislation in the Field of Equal Opportunities

As mentioned before in this Report, the Ministry of Labor and Social Security has the responsibility to inform all interested parties about the EU Directives on equal opportunities for men and women. However, it is hard to say that there is a significant effort in this respect. Except a publication in 2001 and the organization of some panel discussions, there is no other significant effort held by the national mechanism of the General Directorate on the Status and Problems of Women. It would be fair to say that non-governmental organizations are more active and effective in this respect. For example, two NGOs, one of them being a women's organization, have organized a very successful information/education program in 2003. It is expected that such educational activities and campaigns will increase in the last quarter of 2004.

4. RESEARCH AND STATISTICS

4.1 Gender Pay Gap

According to 2002 Household Budget Survey held by the State Statistics Institute (DIE), while there are 1.7 million salaried women, this figure is 7.4 million for men. If the average annual wage of men and women are compared, it is seen that women receive 22.5 percent less than men. In other words, the women/male wage ratio is 77.5 percent.

Another study (covering large workplaces with collective bargaining agreements) by the Turkish Confederation of Employer Associations indicates that the gender wage ratio is 88.8 percent.³⁹ In the "Country Fact Sheet: Turkey" chapter of the 2004 Human

³⁹ Turkish Confederation of Employer Associations (TISK), *Women Labor Research*, Publication No. 185, (Ankara: TISK, 1999).

Development Report of the UN, the gender wage ratio is given as 60 percent. That is to say, women receive 60 percent of what men receive.

As it appears here, different samples and methodologies yield different results. Therefore, those figures are not comparable. In the light of 2002 Household Budget Survey of the State Statistics Institute (DIE), with the exception of the agricultural sector, it is possible to talk about a positive correlation between the wages and the size of the workplace, the coverage of collective agreements, and being in the public sector.

4.2 Job Classification

The Employment and Training Project held by the Turkish Employment Organization (ISKUR) between 1993-98 has completed the standardization of 250 jobs. However, such standardization and classification is an organic process and must go on. Among the resolutions at the 2003 general assembly of the Turkish Employment Organization, there are recommendations for the continuation of the standardization of occupations and the completion of the analysis, the update of the Turkish Occupations Glossary, and the acceptance of the draft for the Act on National Occupational Standards Authority.

4.3 Women's Access to Employment, Vocational Training and Promotion

According to the 2003 statistics, the number of women above age 15 was estimated to be 24.6 million. Almost one-quarter of women was employed. While the labor force participation rate for women was 26.6 percent in 2003, this level decreased to 22.5 percent in the first half of 2004. The unemployment rate showed similar tendencies: according to the 2003 statistics, the unemployment rate was 10.5 percent (10.1 percent for women); however, the rate increased in the first quarter of 2004 to 12.4 percent (11.2 percent for women.) The unemployment rate for urban areas is estimated to be 19 percent for women. The real situation is worse than the figures indicate. In such a tight market, there is a significant increase in the number of discouraged women who do not want to apply for jobs. This situation is verified by the fact that only two percent of unemployed women (17,455,000 in numbers) stated that they are ready to work.⁴⁰

During the 2003-04 school year, 418,358 girls attended technical-vocational high schools, corresponding to 37 percent of the total number of students. The rate of girls in girls' vocational schools was 82 percent. The rate of female students in medical

⁴⁰ Data from the State Institute of Statistics (DIE), *News Bulletin No. 906-126*, dated July 16, 2004.

vocational high schools was 78 percent. Here one interesting thing should be noted: in the 2003-04 school year, the number of girls receiving on-the-job training was 5,289, corresponding to 35 percent of the total number. Therefore, it would not be wrong to claim that the rate of involvement of girls in non-formal vocational schools is about 30 percent; it can be concluded that most of these girls (70-80 percent) concentrate on professional fields deemed related to their traditional gender roles.

On the other hand, girls tend to choose “traditional female sectors” in formal vocational schools as well. In the practical crafts schools for girls and “maturity institutes,” which are both part of the formal education system, the rate of women is almost 100 percent. The training programs in public education centers are mostly attended by women (approximately 60 percent of the participants are women). However, the connection between those courses and the demand of the labor market is not strong.⁴¹

ISKUR’s Active Labor Force Programs are also well attended by women. For instance, the rate of women who participated to the job-guaranteed courses was 63 percent in the year 2003. The rate of women attending the courses designed for the self-employed was 79 percent. However, it should be noted that such courses reach a limited audience.

The data concerning on-the-job training in the public sector is the following: in 1999, the rate of women who got on-the-job training in 141 institutions was 32 percent.⁴²

4.4 Incidence of Sexual Harassment

According to the Report entitled *The Woman in Work Life, Upper-Level Management, and Politics*, published in 2004, 14 percent of the Turkish women were subject to sexual harassment in the workplace. The same report also indicates that more than half of those women who were sexually harassed left their jobs.⁴³ This number might be even higher. However, women from small towns do not want to talk about and report sexual harassment cases. Very few women are filing a complaint of sexual harassment in Turkey.

The results of another study, done by Dr. Fevziye Sayılan, from the Faculty of Educational Sciences of Ankara University, indicate that 15 percent of women working

⁴¹ Data is taken from the *Booklet of Ministry of National Education on 2003–2004 Statistics*.

⁴² The State Statistics Institute (DIE), *Statistics on Pre- and On-the-Job Training in Public Institutions and Organizations* (Ankara: DIE, 1999).

⁴³ Toprak and Kalaycioglu, *op.cit.*, p. 64.

in the education sector witnessed sexual harassment.⁴⁴ Furthermore, 11 percent of women working in the food sector said that they are disturbed with sexual harassment in the workplace.⁴⁵

Most of the men (almost 70 percent) working in upper-level management in the health sector admit that there is sexual harassment in hospitals. The rate of women who admit this fact is 46 percent in upper-level management, 41 percent among nurses, and only 23 percent among female doctors.⁴⁶

4.5 The Incidence and Situation of Part-Time Workers

As mentioned before, generally, it is thought that part-time jobs are not popular in Turkey. However, with reference to OECD's criterion (below 36 hours per week), the rate of women in part-time work corresponds to 32.2 percent in total female employment. There is no comprehensive study to enable researchers to make interpretations about if part-time jobs are becoming more or less important.

4.6 The Incidence and Situation of Self-Employed Workers

According to the 2002 Household Budget Survey held by the State Statistics Institute (DİE), there were some 1.4 million self-employed women in Turkey. This number corresponded to 17.5 percent among working women. The same rate for men was 31 percent.

4.7 The Extent to which Family and Professional Responsibilities Are Shared

A research conducted by Dr. Fevziye Sayılan,⁴⁷ from the Faculty of Educational Sciences of Ankara University, wanted to determine the problems of teachers, faculty members, public servants and other personnel; it covered 1853 women from 24 provinces in Turkey. One of the most common problems voiced by women was the

⁴⁴ *Milliyet*, October 5, 2003, Sibel Kahraman.

⁴⁵ Directorate General on the Status and Problems of Women, *Working Conditions and the Future of Women Working in the Food Sector*, Publications of the KSSGM (Ankara: KSSGM, 1999).

⁴⁶ Directorate General on the Status and Problems of Women, *Women in the Health Sector*, Publications of the KSSGM, April 2000 (Ankara: KSSGM, 2000), p. 102.

⁴⁷ Fevziye Sayılan, *Eğitim Sektöründe Kadınların Durumu* (Women's Status in the Educational Sector) (Ankara: Eğitim-Sen Yayınları, 2003).

absence of childcare facilities, i.e. nurseries and childcare centers. While 57 percent of the women allocated three hours a day for household and childcare in the weekdays and five hours in the weekends, they were not supported and helped by their husbands for childcare, cooking, cleaning etc.

According to DIE's statistics, 70 to 80 percent of women (especially urban dwellers) do handle household duties such as cooking, washing dishes etc. by themselves.⁴⁸

4.8 Ongoing Disincentives to Women Entering the Labor Market

The on-going disincentives to women entering the labor market can be summarized under five general headings: low level of education among women; men's disapproval of women's work in the labor market; low wages or salaries for women; the lack of effective mechanisms for the reconciliation of family and professional life; and sexual harassment in the workplace.

4.8.1 Women's Low Level of Education

According to the Human Development Report 2004, the combined rate of primary, secondary, high schooling for females is 68 percent. Pursuant with this figure, Turkey has ranked 110th among other countries. There are almost six million illiterate women in Turkey. Despite this fact, the numbers of women entering the labor market increases in parallel to their level of education. According to the 2002 Household Budget Survey held by the State Statistics Institute (DIE) the rate of employment approaches to 69.5 percent among female university and high school graduates.

4.8.2 Women Cannot Get Permission to Work

One of the obstacles that hinder women's access to the labor market is the paternalistic tradition of the society. Traditionally women are expected to ask for permission from their husbands or the elders of their family. With the new Civil Code, women do not have to ask for their husbands' permission for working anymore. However, according to one study, 24 percent of women said that they were under pressure of their fathers

⁴⁸ See www.die.gov.tr.

or husbands to leave their jobs. More interestingly, 64 percent of women leave their jobs after they get married.⁴⁹

4.9 Gender Composition in Decision-Making Bodies

According to the UN Human Development Report 2004, according to the Gender Empowerment Indicator (an indicator that focuses on three variables: women's participation in decision-making, their access to professional opportunities and their earning power) Turkey was ranked 73rd among other countries. Some figures from the report are as follows:

- 31 percent of women are professional and technical workers;
- 7 percent of women are administrators or managers;
- 4.6 percent of the Members of the Parliament are women, according to the results of 2002 General Elections.

Data from 2001 shows us that 29 percent of middle and high-level executives working in the field of public service are women. So far, there has been only one female provincial governor in Turkey. Seventeen of the 850 township governors and four of the 118 candidate township governors are women. Eighteen percent of judges and public prosecutors in Turkey are women. One permanent and two standby members of the Constitutional Court, which has eleven permanent and four standby members, are women.⁵⁰

4.10 Statistics on Women in Decision-Making Positions in the Economy and Society

The data on women's participation in decision-making is regularly updated by the State Statistics Institute (DIE). However, DIE is concerned about the accuracy of this data, because it is doubted whether people answer the questions correctly and honestly or not. More reliable data can be obtained from public institutions. However, these data are not regularly published. The latest study and publication of the State Personnel Department is dated 1996.

⁴⁹ *Çalışmaya Hazır İşgücü Olarak Kentli Kadın* (Urban Women as Labor Force Ready to Work), Publications of the Directorate General on the Status and Problems of Women (Ankara: KSSGM. 1999), p. 109.

⁵⁰ See the speech of Mrs. Güldal Akşit, *op.cit.*

The number of female executives and managers remains unknown for some of the trade unions. This sort of research is not conducted in the field of non-governmental organizations. As of 2004, 8.8 percent of working women are members of a trade union. Women constitute only 15.8 percent of the total trade union members. No reliable data exists concerning women managers and executives in trade unions.⁵¹

There is no system to regularly monitor wage gaps in Turkey. There is no information yet about the regular revision of the job classification system because the system is still in its beginning phases.

4.11 Transparency of the Pay System

The system of wage regulation is relatively transparent in the public sector and it determines to a certain degree the wages in the private sector. However, in general, it is hard to claim transparency of wage regulation especially for the workplaces that do not have collective labor agreements.

5. KEY AREAS OF CONCERN AND RECOMMENDATIONS

5.1 Key Areas of Concern

The existence of political will is one of the *sine qua nons* of the efforts to eliminate inequalities, and to promote equality between men and women. In Turkey political will is mostly motivated by external conditions and provides temporary solutions to the particular issues. This *modus operandi* has been witnessed once again and is still seen in the context and process of European Union accession. Despite many progressive regulations, there is another proposal to re-introduce adultery as a crime into the draft penal code.

It is possible to obtain basic labor market data. However, there is a need for additional statistical information on issues, such as pay gap, vertical and horizontal differentiation, income distribution, female poverty, etc. It would also be important to gather information about women working in the informal sector. There is no collection of disaggregated data in the area of gender equality statistics such as public resources and state budget allocated for women.

⁵¹ Turkish Ministry of Labor and Social Security, *Çalışma Hayatı İstatistikleri 2003* (Labor Statistics 2003), The Turkish Ministry of Labor and Social Security Publications No. 115, July 2004 (Ankara: T.C. Çalışma Ve Güvenlik Bakanlığı, 2004), p. 142.

In Turkey there is no mechanism to remove sex-based inequality with regard to remuneration. There are no legal guarantees that female workers may return to the same or an equivalent or similar job after maternal leave. On the contrary, there are some other obstacles that hinder the return of female workers to the labor market. Since there are no mechanisms for the reconciliation of familial/parental and professional obligations, women themselves mostly tend to stay at home and not to turn back to the labor market.

5.2 Recommendations

5.2.1 Legislative Measures

- A unified classification system for determining pay in the public or private sectors should be developed.
- Turkish legislation should be amended to comply with Article 2(3) and Article 5 of Council Directive 76/207/EEC.
- Turkish legislation should be amended to ensure complete alignment with Council Directive 97/81/EC.

5.2.2 Institutional Mechanisms

- Special attention should be paid and financial and human resources should be allocated for the strengthening of the national mechanism, and legal regulations pertaining to the national mechanism should be adopted.
- The responsibilities of public institutions should be set and the conflict of authority should be reconciled concerning the development and management of gender equality policies and issues as such.

5.2.3 Policies and Programs

- Short, medium and long-term concrete strategic plans should be prepared in order to ensure gender equality.
- Financial resources should be allocated towards the implementation of gender equality standards and the misuse of those resources should be hindered.
- Special attention should be paid and effective, time structured measures should be taken and implemented to ensure the access of NGOs and especially women's organizations to all resources including information.

- There should be a compulsory quota mechanism and positive action measures in education for women and girls, and gender stereotypes should be eliminated from the educational materials and curriculums.
- Well-funded, clearly defined and scheduled plans and programs should be developed to improve the access of women to the labor markets.
- A 33 percent quota, voluntary or involuntary, should be set for women as regards access to employment and promotion; vocational training should be guaranteed when women return to work after a break in employment.
- Professional standards should be determined and measures should be taken for the transparency of remuneration.
- The numbers of affordable and accessible childcare centers, nurseries, and crèches should be increased to support and enable the reconciliation of familial/parental and professional obligations.

5.2.4 Awareness-Raising

- There should be a special effort, especially *vis-à-vis* women, to educate individuals on gender equality regulations through broad educational campaigns, and to generate necessary funding to carry out those efforts.
- The conflict between the Ministry of Labor and Social Security and the national mechanism of the General Directorate on the Status and Problems of Women concerning the harmonization process should be resolved and the status of the national mechanism should be clarified and enhanced.
- Other women's organizations should be encouraged to get involved in the mechanism of information sharing.

5.2.5 Research and Statistics

- The economic value of women's domestic work should be calculated and included in the calculation of national income.
- Data should be collected on non-conventional forms of works (including flexible forms of work).
- More information should be gathered concerning women working in the non-formal sector.
- New measures should be taken into consideration for the evaluation of the effect of the distribution of public resources on gender. In other words, the basic infrastructure for gender sensitive budgets should be developed.

REFERENCES

List of Relevant Legal Instruments

Labor Code No. 4857 of May 22, 2003

Maritime Labor Code No. 854

Press Labor Code No. 5953

Act No. 5518 of January 25, 1950 on Amending Various Laws of the Labor Code

Act No. 657 of July 14, 1965 on Civil Servants

Act No. 2821 on Trade Unions

Act No. 2822 of May 5, 1983 on Collective Labor Agreement, Strikes and Lockouts

Act No. 18433 on Application to Arbitrators and Official Negotiators

Act No. 4773 of August 9, 2002

Act No. 4748 of May 22, 2003 on the Principle of Equal Treatment

Act No. 5223 of July 14, 2004 on Amending Some Provisions of the Act on Civil Servants

Act No. 5434 on the Pensioners' Fund

Act No. 560 on Social Security

Act No. 1479 on the Social Security Institution for Small Shopkeepers, Handicraftsmen and Self-Employed Persons

Act No. 2926 on Social Security of the Self-Employed in Agriculture

Act No. 818 on Obligations

Act No. 6762 on Commerce

Government Decree No. 25540 of 2004 on the Minimum Wage

Ministry of Labor and Social Security Regulation No. 25311 of December 9, 2003 on Health and Safety

Regulation No. 25522 of July 14, 2004 on the Work Conditions of Pregnant or Nursing Women and Nursery Rooms and Child Care Centers

Regulation No. 25548 of August 9, 2004 on the Conditions of Night Work for Women

Books and Articles

2000: *Kadın Hareketinin 100. Yılı* (The Year 2000: The 100th Anniversary of Turkish Women's Movement), Kadın Eserleri Kütüphanesi ve Bilgi Merkezi Vakfı Yayınları, No. 17, 1999, İstanbul.

Acar, F., S. Acuner and N. Şenol, *Questionnaire concerning the Implementation of the Beijing Declaration and Platform for Action*, 1999 (Ankara: KSSGM, 1999).

Acuner, Selma, "The 1990s and the Institutionalization of Gender Equality at the State Level." In Aksu Bora-Asena Gunal, ed., *Feminism in Turkey in the 1990s* (İstanbul: İletişim, 2002).

Altan Arslan, Sengul, *Ders Kitaplarında Cinsiyetçilik (Sexism in Textbooks)*. Publications of the Directorate General on the Status and Problems of Women, December 2000 (Ankara: KSSGM Yayınları, 2000).

Çalışmaya Hazır İşgücü Olarak Kentli Kadın (Urban Women as Labor Force Ready to Work). Publications of the Directorate General on the Status and Problems of Women (Ankara: KSSGM Yayınları, 1999).

Directorate General on the Status and Problems of Women, *Working Conditions and the Future of Women Working in the Food Sector*, Publications of the KSSGM (Ankara: KSSGM Yayınları, 1999).

Directorate General on the Status and Problems of Women, *Women in the Health Sector*, April 2000 (Ankara: KSSGM Yayınları, 2000).

Directorate General on the Status and Problems of Women, *Women 2001* (Ankara: KSSGM Yayınları, 2001).

Directorate General on the Status and Problems of Women (KSSGM), *TBMM Kadının Statüsünü Araştırma Komisyonu Raporu (The Report of TGNA Parliamentary Commission of Investigation on Women's Status)*, Second Edition, March 2003 (Ankara: KSSGM Yayınları, 2003).

Directorate General on the Status and Problems of Women (KSSGM), *Questionnaire concerning the Implementation of the Beijing Declaration and Platform for Action*, April 2004 (Ankara: KSSGM Yayınları, 2004). Available at <http://www.kssgm.gov.tr>

Ministry of Education, *Facts and Figures* (Ankara: MEB Basımevi, 2004).

Sayılan, Fevziye, *Eğitim Sektöründe Kadınların Durumu (Women's Status in the Educational Sector)* (Ankara: Eğitim-Sen Yayınları, 2003).

State Institute of Statistics (DİE), *News Bulletin No. 906-126*, July 16, 2004.

State Statistics Institute (DİE), *Statistics on Pre- and On-the-Job Training in Public Institutions and Organizations* (Ankara: DİE, 1999).

- State Planning Organization, *Preliminary Plan 2004–2006* (Ankara: Aralık, 2003).
- Toprak, Binnaz and Ersin Kalaycioglu, *The Woman in Work Life, Upper-Level Management, and Politics* (Istanbul: Turkish Economic and Social Studies Foundation (TESEV) Publications, May 2004).
- Toksöz, Gülay, “Sayımız Çok Az” (We Are Few). In *Neoliberalizmin Tahribatı*, N. Balkan and Sungur Savran, eds. (Istanbul: Metin Yayınları, 2004).
- Turkish Confederation of Employer Associations (TISK), *Women Labor Research*, Publication No. 185 (Ankara: TISK, 1999).
- Turkish Ministry of Labor and Social Security, *Çalışma Hayatı İstatistikleri 2003* (Labor Statistics 2003), The Turkish Ministry of Labor and Social Security Publications No. 115, July 2004 (Ankara: T.C. Çalışma Ve Güvenlik Bakanlığı, 2004)



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WHAT IS THE SITUATION IN TURKEY?

According to Article 10 of the Turkish Constitution, "Women and men have equal rights and the state is responsible for taking all necessary measures to realize this goal."

There has been a genuine effort in Turkey to harmonize national legislation with EU Directives. The new Labor Law was adopted by the Parliament in May 2003. New regulations addressing the issues of pregnant and breastfeeding women in the workplace and night work became operative in 2004. The latest developments in this direction have been the formulation of a draft bill on parental leave and a draft bill for establishing a Standing Committee on Gender Equality at the Parliamentary level. Turkey will soon ratify the Revised European Social Charter.

In Turkey, the Directorate General on the Status of Women and the Ministry of State for Women's Affairs, Family and Social Services are responsible for adopting and coordinating national policies for promoting the equality of men and women.

There is no consistent policy in the country to promote women's employment.

WHAT DO THE FACTS SAY*?

- From 1999 to 2004, the rate of women's participation in the labor market decreased from 34 percent to 22.5 percent;
- According to a 2002 Household Budget Survey held by the State Statistics Institute, there are 1.7 million salaried women, compared with 7.4 million salaried men. A comparison of the average annual wages for men and women reveals that women receive 22.5 percent less than men;
- Women comprise 4.4 percent of the 550-member Parliament, and 0.6 percent of local government.

* Sources of data: *Turkish Country Report* (prepared as part of the report: *Equal Opportunities for Women and Men: Monitoring law and practice in new member states and accession countries*, available at www.osiaf.org.tr)



DISCRIMINATION AGAINST WOMEN

"Discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

(*Convention on the Elimination of All Forms of Discrimination Against Women, Article 1.*)

THE EU'S COMMITMENT TO GENDER EQUALITY

"The EU has a long-standing commitment to promoting gender equality, enshrined in the Treaty since 1957.

The Community legal framework ensures that women and men are equal before the law. [...] Moreover, equal treatment legislation is a firmly established integral part of the *acquis communautaire* that countries applying for EU membership have to respect."

(*Community Framework Strategy on Gender Equality (2001-2005)*, Introduction; http://europa.eu.int/comm/employment_social/equ_opp/index_en.htm)

THE ACQUIS COMMUNAUTAIRE

"The *acquis communautaire* is the body of common rights and obligations which binds all Member States within the European Union. It comprises Community law, all acts adopted under the second and third pillars of the European Union and the common objectives laid down in the Treaties."

(http://www.eu2005.lu/en/savoir_ue/glossaire/glossaire_a/index.html#Acquis%20communautaire)

WHAT DO THE EXPERTS SAY?

- While governmental efforts to promote gender equality have been gradual, women's organizations have become increasingly influential. Today, the policy agenda for gender equality is largely determined by women's organizations;
- The primary reasons for the decrease in women's participation in the labor force are the inability of the economy to create jobs, a gender-based division of labor, and widespread stereotypes that reinforce traditional gender roles;
- Policymakers in the past have not addressed the reconciliation of work and family life; there is however a new legal initiative for adopting parental leave schemes that could have a modest impact.

WHAT NEEDS TO BE DONE?

- Standing Committees on Gender Equality should be established at all levels, including the local administrations, and the draft bill on establishing a Standing Committee at the Parliamentary level should be enacted as soon as possible;
- Parliament should devise concrete short-, medium- and long-term strategic plans to ensure gender equality and improve women's access to the labor market.

DID YOU KNOW:

Some 600,000 girls do not have access to primary education in Turkey. Day-care centers and nursing homes are few in number and expensive; the costs of such facilities are almost equal to the average salary of working women.

MORE INFO:

www.osiaf.org.tr