

GENDER EQUALITY IN EMPLOYMENT IN TURKISH LEGISLATION WITH COMPARISONS TO EU AND INTERNATIONAL LAW

KADRIYE BAKIRCI

Istanbul Technical University

ABSTRACT

As a candidate for membership of the European Union (EU), Turkey has to harmonize its existing legislation with the EU requirements for gender equality in employment. Also the amended Turkish Constitution states that where a conflict between ratified international treaties and domestic law exists, international treaties shall prevail. These treaties are binding upon the legislative, executive, and judicial organs, the administrative authorities, and other institutions and individuals. Turkey has therefore been undergoing a period of rapid legislative change and development, in order to comply with the EU's *acquis communautaire* and with Council of Europe (COE), International Labour Organisation (ILO), and United Nations (UN) conventions, which have been ratified by Turkey. In this respect, the new Employment Act (EA), the Criminal Act (CA), and the amended Constitution represent a major step forward toward gender equality in employment. However, there are problems of harmonization with EU and international standards in the wording of the EA and CA, and in some provisions of the Constitution. In the present article, the EA's legal framework for women employees is analyzed from a critical point of view. The provisions of the EA, the CA, and the Constitution are compared with EU and international standards and possible changes are proposed.

INTRODUCTION

The level of participation of women in the labor force is very low in Turkey. According to the 2009 data of the Turkish Statistical Institution (TSI), the participation rate for women is around 23% (TSI, 2009). This is the lowest participation rate among the Organisation for Economic Co-operation and Development (OECD) countries. The average participation rate in the European Union (EU) for the year 2007 is 58.3% (Eurostat yearbook, 2009). The Lisbon European Council of 2000 set a target employment rate for women of 60% across the EU for the year 2010.

There are various factors that influence the level of female participation in the labor force in Turkey. These are as follows:

- Religious norms (Kandiyoti, 1991) and cultural restrictions (Esmer, 1991) on women's freedom of movement; hence, employment and/or employers' preferences are based on the traditional male-as-the-only-breadwinner model.
- Traditional family and household responsibilities; the lack of provision of flexible working arrangements designed to help women to combine market work with traditional family responsibilities; and the lack of availability, lack of affordability, and failure to provide adequate quality of child, elderly, and disabled care services (HUNE, 2004, 2009; Tunkrova, 2010).
- The preference of employers for child labor (Anker, 2000; Bakirci, 2002).
- The level of women's education and labor market skills, which is lower than that of men (TSI, 2009).
- The high unemployment rate (TSI, 2009).
- The male-dominated culture/attitudes in the workplace, leading to sexual harassment, gender-based harassment, and mobbing in the workplace (Bakirci, 2001b); these combine with the unfavorable labor market conditions.
- Migration. The changing composition of the labor force, which is moving away from agriculture toward nonagricultural activities, is another reason for low (and declining) female participation rates (Kardam & Toksoz, 2004; Toksoz, 2007). Although both female and male participation rates are higher in rural than in urban areas, when women migrate into urban areas they drop out of the labor force and concern themselves with household work (Cinar, 1994).
- Privatization of public services or subcontracting of public services to private companies. Women workers in the public sector benefit more than others in terms of maternity leave, childcare services, leave in cases of sickness of family members, and job security. Therefore, the largest numbers of women worked in the public sector until the 1980s. However, the privatization of public services and the subcontracting of public services to private companies caused women to return to their homes since they could not enjoy the same benefits in the private sector as in the public sector.

- The gender pay gap (Akder, 2003; Kasnakoglu & Dayioglu, 1997; Pinar, Eser, & Hardin, 2007).
- Perhaps also a discouraged worker effect.
- The inadequacy of legislation promoting female participation in the labor force, which is the main subject of this article. Change has been evident only from early 2003.

When the Helsinki European summit in 1999 granted Turkey official EU candidate country status, the ensuing reform process in Turkey brought many legislative changes in terms of women's rights. As a candidate country, Turkey has to harmonize its existing legislation and practices with regard to the equal treatment of men and women in the labor market with those of the EU. The accession criteria require Turkey to fully adopt the legal framework of the EU (*acquis communautaire*). Gender issues have been a somewhat contentious concern in the Turkish accession process because the European public and some member states consider such issues to be one of the main obstacles to membership of the EU and evidence that Turkey does not belong to "Western civilization." The widespread belief is that the West must liberate nonwestern women. In fact, "oppressed" Turkish women have been very active in participating in the EU accession process and their voices have been heard, and their interests addressed, by the mostly male political elite, to a greater extent than is generally known outside of Turkey (Gunduz, 2004; Tunkrova, 2010).

Moreover, in 2004, certain constitutional amendments were passed to bring Turkey more closely in line with the EU. One of the amendments was related to the ratification of international treaties. According to the amended Art. 90, where a conflict between ratified international treaties in the area of fundamental rights and freedoms and domestic law exists, the international treaties shall prevail.

In recent years, therefore, Turkey has been undergoing a period of rapid legislative change to bring it into compliance with the laws and regulations of the EU (Dogan, 2006), the Council of Europe (COE), the International Labour Organisation (ILO), and the United Nations (UN). The new Employment Act, No. 4857 (EA), was put into effect in 2003. In 2004 and 2010, amendments were made to the Turkish Constitution of 1982 in relation to equality between men and women, with the purpose of guaranteeing de facto equality. The Directorate General for the Status of Women was established in October 2004 in order to strengthen the position of women in social, economic, cultural, and political life. Moreover, the new Criminal Act, No. 5237 (CA), entered into force in June 2005 and new provisions were introduced in order to improve women's fundamental rights. A 2008–2013 action plan was adopted and a Parliamentary Commission on Equal Opportunities for Men and Women was established in 2009; this commission is responsible for examining draft laws and complaints in cases of gender-based discrimination.

The above discussion demonstrates that the EU accession process in Turkey has brought positive changes. However, during this rapid process, many issues have not been addressed, and some problems have been encountered, such as contradictory arrangements arising from a sexist attitude evident in the legislation because of the underrepresentation of women's point of view. There are mistakes and contradictions due to errors made in the translation of EU regulations by unqualified people. Piecemeal amendment of related regulations results in an ill-fitting patchwork of legislation caused by commissions that are unaware of each others' work.

In order to monitor the progress of candidate countries toward fulfillment of the *acquis communautaire* for EU membership, the Commission of the European Communities (CEC) publishes annual progress reports (Flam, 2004; Jung, 2007; Narbone & Tocci, 2005; Tocci, 2007). However, the commission's progress reports at first largely ignored the problem of women's participation in the labor force. Only recently has the EU looked beyond the obvious. The 2005 report was the first that explicitly mentioned the level of participation of women in the Turkish labor market as one of the lowest in the OECD countries. The report also complained about the courts' patchy implementation of the new legislation (CEC, 2005). The 2006 report mentioned for the first time the socioeconomic problems of women, such as poverty and displacement (CEC, 2006). The 2007 and 2008 reports noted several positive developments but also noted that gender equality remained a "major challenge" (CEC, 2007, 2008). The 2009 report noted limited progress. The legislation on employment, discrimination, and health and safety at work has not been harmonized with European standards on combating discrimination. The commission notes that the transposition of community directives concerning discrimination on grounds of gender, racial or ethnic origin, religion or belief, disability, age, or sexual orientation is still incomplete (CEC, 2009). The lack of progress with regard to women was also documented by the 2009 United Nations Development Programme's Human Development Index, which indicated positive trends in many other areas of life in Turkey. In the overall rating, the country was placed 79th out of 182, but on the position of women it ranked 101st out of 109 (UNDP, 2009).

The reason for the limited progress is the lack of political will and women's low level of participation in politics. Despite criticism from the various NGOs, ruling party members continue to state that "men and women are not equal" (T24, 2010); that "married women should have at least three children" (Hurriyet, 2008) (for economic sustainability); and that "the increase in women's employment during the last global crises is a main cause of male unemployment" (Milliyet, 2009). Female MPs continue to make up less than one tenth of the total. In Europe, they make up approximately one quarter, and in the EU parliament, they make up just under one third. With regard to cabinet positions, Turkey is even further behind Europe, with 7% women cabinet ministers compared to Europe's 37% (World Economic Forum, 2009). The reform process placed gender

equality relatively low on the agenda. Women's concerns are seen as unimportant and are marginalized given that the state has had "higher goals" to achieve and that public debate on gender equality is largely absent. It could be argued that the less than adequate attention that the EU paid to gender equality might be one of the reasons why so many issues were left unresolved. While the causes lie predominantly with the national domestic environment, the EU failed to push the Turkish government toward more change, especially by failing to support greater involvement of women in politics and social dialogue. The EU has been criticized for its lack of enforcement of its sweeping gender policies, especially since, in this field, "standards are not so clearly defined and implemented even in older member states" (Stivachtis & Georgakis, 2008: 3; see also Krizsan & Zentai, 2006).

Although the new EA, the CA, and the amended Constitution represent a major step forward toward gender equality in employment, there are problems of harmonization with EU and international standards in the wording of the EA and the CA, and in some provisions of the Constitution, which means that amendment of the Turkish employment regulations is needed. In the present article, the EA's legal framework for women employees is analyzed from a critical point of view. The provisions of the EA, the CA, and the Constitution are compared with EU and international standards, and possible changes are proposed.

THE TURKISH CONSTITUTION

The framework of legislation requiring equality between men and women consists of provisions in the Turkish Constitution, as well as provisions included in ratified international instruments. The formal starting point for considering equality for women is the Constitution.

According to Art. 10 of the Constitution of 1982, all individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations. In 2004, Parliament adopted constitutional amendments that introduced the following provision: "Men and women shall have equal rights. The State has the duty to ensure that this equality is put into practice." In September 2010, a referendum on constitutional amendments resulted in the incorporation of the following words: "Measures ensuring equality between men and women would not be considered a violation of the principle of equality." As a result, the state is now obliged to take positive measures to achieve de facto equality between men and women.

On the other hand, Art. 50 of the Constitution remains untouched. According to Art. 50, par. 2 of the Constitution, no one shall be required to perform work unsuited to his/her age, sex, and capacity. Minors, women, and persons with physical or mental disabilities shall enjoy special protection with regard to working conditions. The inclusion of minors and persons with mental disabilities in the same paragraph as the reference to women gives the impression that women

are not equal citizens but legally restricted persons, who do not have full legal capacity. They are weak, helpless, and in need.

THE TURKISH EMPLOYMENT ACT AND THE CRIMINAL ACT

The Scope of the Employment Act (EA)

The arrangements in Turkish employment law that provide the broadest protection for employees are the regulations issued by the EA and the relevant articles of this act. However, the EA provides for only a limited coverage that benefits only the regulated sector of the labor market, which is a minority sector. In Art. 4 of the EA, some jobs (e.g., female-dominated jobs such as domestic work and work in agricultural enterprises employing a maximum of 50 employees) are left outside the scope of the act. On the other hand, within the EA there is a lack of equality between women workers themselves. Women who cannot benefit from the provisions with regard to job security in the EA are disadvantaged compared to those who are covered by these provisions (Bakirci, 2004, 2006b). This is clearly discriminatory (for an English-language article on the historical development of Turkish labor law, see Sur, 2009; for an English-language article on the position of women in the labor market in the development process of Turkey, see Ozar, 1994).

Gender Discrimination

Discrimination in job advertisements, and in the concluding, conditions, implementation, and termination of employment contracts. A general principle with regard to the prohibition of discrimination in the employment relationship was first stipulated for employees by the EA. According to Art. 5 of the EA, no discrimination based on language, race, sex, political opinion, philosophical belief and religion, or similar grounds is permissible in the employment relationship (par. 1); 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 concluding, conditions, implementation, and termination of an employee's employment contract due to sex or maternity (par. 3).

Pursuant to Arts. 5 and 6 of the EA, an employee who has been discriminated against, either directly or indirectly, is entitled to four months' wages plus other claims for loss and damages.

The provisions of Art. 5 of the EA cover all employees who are within the scope of the EA. However, Art. 5 does not define direct or indirect discrimination (22); and the EA forbids and enforces sanctions only on "discrimination, [exercised] either directly or indirectly, in the employment relationship or in the

termination of the relationship” (Art. 5), but not on discrimination in job advertisements and in “access to employment.”

This deficiency in the EA was in part removed by the CA of 2005 as a result of pressure from women groups. According to Art. 122 of the CA, those exercising discrimination based on sex in employing or not employing workers shall be sentenced to imprisonment lasting from six months to one year or to an administrative fine. In this way, the CA stipulates penal sanctions for conduct, which the EA had not specified.

Under this provision, direct gender discrimination is unlawful, but as a general rule of the criminal law the burden of proof rests on the claimant. Thus there is no case law pursuant to Art. 122 of the CA, because it is very hard to prove discrimination against a job applicant.

The prior upper limit for compensation. According to Art. 5, par. 6 of the EA, if the employer violates the sex equality provisions during the implementation or termination of the employment relationship, the employee may demand compensation to the value of four months’ wages and make claims for other loss and damages. Art. 5, par. 6 establishes a prior upper limit for cases of violation of the principle of equal treatment. However, the European Court of Justice (ECJ) has ruled that establishing a prior upper limit may preclude the provision of effective compensation (*Marshall v. Southampton and South-West Hampshire Area Health Authority*, 1993). The case law of the ECJ is upheld by the Equal Treatment Amendment Directive 2002/73/EC and the Equal Opportunities and Equal Treatment Recast Directive 2006/54/EC.

The prohibitions on women’s access to certain jobs. In the past in some legal systems and under ILO conventions (ILO, 1987), the concept of women’s need for gender specific health and safety protection has existed. The protection of women from danger has been used to justify direct discrimination against women, in particular in the exclusion of women from jobs that are considered too perilous or otherwise unsuitable for women. The early days of the ILO saw the adoption of measures that effectively prevented women from doing certain forms of work. Most notable among such measures was the Night Work (Women) Convention, 1919 (No. 4). The banning of women from night work, like other legislation preventing women from working in certain jobs, including jobs in factories and mines, was in keeping with the times. From the 1919 Convention to the provisions of the 1990 Protocol to the Convention concerning Night Work of Women Employed in Industry, allowing for exemptions to the prohibition contained in the 1948 ILO Convention No. 89 concerning Night Work of Women Employed in Industry, ILO constituents have tried to adapt relevant international labor instruments to changing times. They have sought a new balance capable of offering the best guarantees of protection for women workers while keeping up with social progress and contemporary thinking on the status of women in the working world (ILO, 2009). The general trend in the EU is toward removing protective legislation, retaining only those measures

where the protection relates to women's ability to bear children and therefore the risk to their safety is not the same as for men (Hervey, 2002). The ECJ in several cases has rejected the ground of safety of women as a general justification for the exclusion of women from dangerous jobs (*Johnston v. Chief Constable of the Royal Ulster Constabulary*, 1986; *EC Commission v. France*, 1988; *Habermann-Beltermann v. Arbeiterwohlfahrt*, 1994). Also a periodical review of protective legislation is required by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 11, par. 3.

Various Turkish measures of protective legislation, however, remain in force today. According to Art/50/2 of the Constitution, women are specifically protected in terms of working conditions. Prohibitions on women's access to certain jobs are stipulated in the EA and in the 2004 Regulation on Arduous and Dangerous Work. These provisions will be analyzed below.

Art. 73 of the EA provides that boys under the age of 18 and women irrespective of age must not be employed in underground or underwater work, such as work in mines, cable-laying, and the construction of sewers and tunnels.

The prohibitions in the Regulation on Arduous and Dangerous Work, EA Art. 85, par. 2, specify that regulations shall be issued by the Ministry of Labor and Social Security, after consultation with the Ministry of Health, specifying the categories of work deemed to be arduous or dangerous and the categories of arduous or dangerous work in which women may be employed. The regulation issued pursuant to this paragraph is the Regulation on Arduous and Dangerous Work of 2004. This specifies the categories of arduous or dangerous work that are forbidden to women, and the categories of arduous or dangerous work in which women may be employed (Art. 4/2).

However, the prohibition of some types of employment or work has the effect of restricting the opportunities open to women to participate in well-paid industrial work. Figart and Mutari (1998) state that protective legislation for women workers is based upon the argument that male workers are free agents capable of negotiating their individual conditions of work while women need special protection. The gender-specific restrictions were predicated on society's interest in women's health and safety due to their role as mothers. However, the effect was to limit women's access to highly paid jobs.

Another setback to women's employment included in the Regulation on Arduous and Dangerous Work is the right to menstrual leave for women. The regulation grants women working in arduous and dangerous jobs the right to the benefit of at least a five-day menstrual leave each month, which can be extended with a medical report (Art. 6). Actually, this right is unlikely to be abused (as Turkish women will generally be too embarrassed to let others know that they are menstruating), inspections checking for compliance with this regulation are unlikely to be carried out, and no problems related to this right have been reported. However, if a woman files a complaint against her former employers, claiming that they did not grant her the right to use her menstrual leave, the

company could receive a heavy fine covering the whole period for which the woman worked for this company. This regulation causes serious concern among employers since it is often not possible to employ someone working a rota of 5 days less than a full month each month. It is arguable that the regulation is excessively protective and could be a disincentive to the employment of women of child-bearing age. Menstruation is not an illness but a part of women's biology and normally does not prevent a woman from working (Bakirci, 2010).

Reconciliation of work and family responsibilities. The placement of all parental responsibilities solely on women and the traditional distribution of roles are among the most important obstacles to equality in the working life of women. Family responsibilities should be equally shared by the mother and the father. Otherwise, married women, because of childcare responsibilities, cannot take their place in employment at all or must work in part-time jobs (Figart & Mutari, 1998; Kimmel, 1998) or home-based jobs, with the consequent failure to reach their earning potential.

According to CEDAW 12/2(c), Turkey is under an obligation to encourage the provision of supportive social care services to enable parents to combine family obligations with work responsibilities and participation in public life. Specifically this is to be carried out through the promotion of the establishment and development of a network of childcare facilities. Pursuant to the COE's Revised Social Charter and with a view to achieving equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, Turkey should undertake to develop or promote services, public or private, and in particular child daycare services and other childcare arrangements (Art. 27). Therefore, arrangements for the organization of childcare and family service facilities to be provided free of charge or with reasonable charges in line with employees' income should be made by the state itself. However there are not enough nursing rooms or child, elderly, and disabled care centers in Turkey (HUNE, 2004, 2009; Tunkrova, 2010).

The Regulation on the Employment Conditions of Pregnant and Breastfeeding Women and Nursing Rooms and Childcare Centers, Art. 15, requires employers to establish nursing rooms and childcare centers. However, this requirement applies only to establishments where at least 100 women are employed, irrespective of their age or marital status. If between 100 and 150 women are employed, a nursing room has to be provided by the employer for children of 0–1 years of age (Art. 15/1). If more than 150 women are employed, a childcare center has to be opened by the employer for children of 0–6 years of age.

The fact that it is only the number of women employees that triggers this statutory requirement (Art. 15/1, 2) causes employers to employ fewer women employees than the number stipulated, to escape the obligation. Hence, job opportunities for women are reduced, and discriminatory practice is ingrained. That is why the obligation to open a nursing room and a childcare center should

be determined by taking the total number of male and female employees into account (Sural, 2007).

This regulation is a reflection of the attitude that it is the woman who should take care of the child. This is against the principle of equal rights between men and women, and the principle of equal sharing of family responsibilities.

According to Art. 16 of the regulation, children of male employees can make use of the nursing rooms and the childcare centers in the father's workplace only if their mothers are dead or the children are under the guardianship of the father. This provision can be criticized, because the child should be able to make use of the facilities available in the father's workplace when there is no nursing room or childcare center in the mother's workplace. This arrangement is a further obstacle to equality in the working life of women (Sural, 2007).

The lack of provisions for mothers who would like to return to work. Since there are not enough preschool childcare facilities (HUNE, 2004, 2009; Tunkrova, 2010) and there are no paternity or parental leave provisions for men, some women who leave work after childbirth remain out of the workforce until their child enters primary school. However, the women who take long breaks cannot find suitable jobs when they want to return to work. Getting back into a particular former career can be almost impossible for these women, who need to rebuild the skills and confidence necessary to reenter the job market. They should be provided with retraining opportunities, but there are no special provisions in Turkey for mothers who need retraining in order to return to work after taking long breaks. Under the Revised Social Charter, Turkey is under an obligation to enable workers with family responsibilities to enter and remain in employment, as well as to reenter employment after an absence due to those responsibilities. This includes the provision of facilities for vocational guidance and training (Art. 27 [a]).

Sexual Harassment and Gender-Based Harassment

The problem of sexual harassment is a common one and it often has a profound effect on victims. It can impair their physical and psychological health, their social and economic life, their productivity, and their career prospects. No specific data on the extent of sexual harassment in Turkey have been collected. However, some surveys on gender discrimination in general have been carried out since 1993, and these have noted that, apart from gender discrimination and gender-based harassment, sexual harassment is very common. The surveys have found that most women are reluctant to talk about their experiences and that fear of sexual harassment has forced women to leave their work, to transfer to other work, or to avoid joining the labor market altogether (Bakirci, 2001b).

A definition of sexual harassment is given by the Equal Treatment Amendment Directive 2002/73/EC (Art. 2) and the Recast Directive 2006/54/EC (Art. 2) (Bakirci, 1998). "Sexual Harassment" is said to occur where "any form of unwanted

verbal, nonverbal, or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating, or offensive environment.”

The Equal Treatment Amendment Directive (Art. 2) and the Recast Directive (Art. 2) also prohibit gender-based harassment. In these directives, gender-based “harassment” is defined as “unwanted conduct related to the sex of a person with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating, or offensive environment.”

Under these directives, sexual harassment and gender-based harassment constitute discrimination. The directives promote preventative measures against discrimination by employers, especially in cases of sexual or gender-based harassment.

Under the Revised Social Charter, Turkey has to undertake to promote awareness of, information on, and prevention of sexual harassment in the workplace, or in relation to work, and to take all appropriate measures to protect workers from such conduct and also to promote awareness of, information on, and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work (Art. 26).

The Constitution (Arts. 10, 11, 17, 50, 56), the Obligation Act (Art. 332), the EA (Arts. 5, 18, 24/II, 25/II), and the CA (Arts. 105, 122) make it clear that it is the duty of the employer to treat women and men equally, to show respect for the employee’s person or dignity, to guarantee working conditions that protect the employee’s health and life, to act in good faith, and to protect the employee from unlawful conduct in the workplace. These provisions apply to employers who harass their own employees or fail to adopt appropriate measures that would stop any act of sexual harassment.

The offense of sexual harassment was introduced into Turkey for the first time in the EA in 2003 and the CA in 2005. Art. 24/II of the EA allows an employee to terminate an employment contract without notice on the grounds of malicious, immoral, or dishonorable conduct or other similar behavior. Art. 25/II allows an employer to do likewise.

Art. 24/II (b) and (d) of the EA states that an employee is entitled to break the contract, whether this contract is for a definite or an indefinite period, before its expiry, or without having to observe the specified notice periods if, inter alia, the following provisions apply:

- (b) If the employer is guilty of any words or action constituting an offense against the honor or reputation of the employee or a member of the employee’s family, or if he [the employer] harasses the employee sexually; or
- (d) If, in cases where the employee was sexually harassed by another employee or by third persons in the establishment, adequate measures were not taken although the employer was informed of such conduct.

Art. 25/II (c) of the EA states that an employer may break the contract, whether the contract is for a definite or an indefinite period, before its expiry or without having to comply with the prescribed notice periods if the employee sexually harasses another employee of the employer. On the other hand, paragraph (d) is problematic. If the employer knew, or should have known, of the sexual harassment, the employee should not be required to inform the employer of such conduct.

As stated above, the EA currently provides only the right to terminate an employment contract in the case of sexual harassment. It does not provide any preventative measures or any definition of sexual harassment. It does not regulate it in the context of access to employment and vocational training and does not regulate it as a form of gender discrimination.

Moreover, according to Art. 26 of the EA, the right to break the employment contract for immoral, dishonorable, or malicious behavior (such as sexual harassment) may not be exercised after six working days from the time when the facts become known, and in any event after one year has elapsed following the commission of the act. The deadline for breaking the contract after the facts are known is too short, since most women take a longer time to report the facts (Bakirci, 2001b).

Women victims usually go to court after the termination of their contract, or after being dismissed for lodging a complaint about severance pay and/or compensation for abusive dismissal. Such lawsuits have been available under the general rules of employment law. The oldest lawsuit is dated 1966 (Court of Cassation 9th Division, 1966).

However, the number of lawsuits is limited (Bakirci, 2001a) because some women do not know what sexual harassment is, or what their rights under the law are; because of the difficulty of proving sexual harassment; or because of fear: fear of not being believed, of the loss of their reputation or their subjection to hostility or social stigma, or of not being offered employment by other employers if the lawsuit is reported in the media.

With regard to establishing proof of sexual harassment in the workplace, there exists a landmark decision by the Court of Cassation 9th Division, 2005. In this decision, the court decided that the chronological story of sexual harassment without any contradiction by the victim (employee) was enough to establish that sexual harassment had occurred.

Art. 105 of the CA states that:

- (1) Any person who harasses another person with a sexual intent shall be sentenced to a penalty of imprisonment of three months to two years or a judicial fine, upon a complaint being made by the victim.
- (2) Where these acts are committed by misusing the influence derived from a hierarchical, service, education/training, or familial relationship, or where such acts are committed by taking advantage of working at the same workplace, the penalty to be imposed under the above section shall

be increased by one half. Where the victim has had to leave his/her employment or school or separate from his/her family, the penalty to be imposed shall not be less than one year.

According to the first paragraph of this article, in criminal cases sexual intent is necessary for the offense of sexual harassment to occur. If the perpetrator did not have any sexual intent (note that sexual intent is very difficult to prove), then the offense will consist of an insult, which is regulated in Art. 125 of the CA.

There are fewer criminal cases provided for under the CA than there are civil cases provided for under the EA, since it is very hard to prove the intention of the perpetrator. However, there are a few landmark decisions of the Court of Cassation 5th Division in criminal cases filed by professional women. The Court of Cassation in a decision dated 2004 decided that a professional woman's evidence (in this case a woman lawyer's testimony) should be treated as having satisfied the necessary burden and standard of proof for the court to find that sexual harassment had occurred. The court based this approach on the "ordinary flow of life" principle and said that for a professional woman to lie about being the victim of sexual harassment was against the "ordinary flow of life," because a woman claiming that she was being sexually harassed would endanger her career and her reputation in a traditional society like Turkey, and that no professional woman would risk her career and reputation if no harassment had occurred (Court of Cassation 5th Division, 2004). However, the same court requires a higher standard of proof for a finding of the occurrence of sexual harassment in lawsuits filed by nonprofessional employees.

On the other hand, there is no specific provision prohibiting gender-based harassment in Turkish employment law.

Abusive, Invalid, and Discriminatory Dismissal

The EA Art.17 enables employers to terminate indefinite term employment contracts by complying with the terms of notice. Different terms apply depending on the length of service of the employee:

- a. For an employee who has worked less than six months, two weeks after informing the other party;
- b. For an employee who has worked between six months to one and a half years, four weeks after informing the other party;
- c. For an employee who has worked between one and a half years to three years, six weeks after informing the other party;
- d. For an employee who has worked more than three years, eight weeks after informing the other party, shall be considered terminated.

The EA provides different forms of protection against termination of employment contracts by reference to terms of notice, which depend on the number of employees in the establishment, and the seniority and position of the employee. These stipulations apply to the provisions in respect of abusive, invalid and

discriminatory dismissal. However these provisions have not been drafted carefully. Although the factors that cause abusive and direct discriminatory dismissal overlap, the consequences differ, such as the amount of compensation and the burden of proof which are provided for the victims of abusive and direct discriminatory dismissals. Additionally they cause discrimination between women employees themselves who are protected by the EA.

Abusive dismissal: The EA allows termination if a term of notice is complied with, without the need to give reasons for dismissal, in the case of indefinite term employment contracts in an establishment with less than 30 employees. Reasons need not be given for termination to employees employed in an establishment with 30 or more employees when they do not meet a minimum seniority of 6 months. Reasons also need not be given for termination to the managers and vice managers authorised to manage the entire enterprise as well as the managers managing the entire workplace but who is also authorised to recruit and to terminate employees (Art. 18). Although Art. 17 of the EA gives the employer the right to terminate indefinite-term employment contracts by observing a term of notice, without providing any reason. This right to terminate cannot be exercised in violation of the principles of good faith. In other words, this right cannot be exercised, for example, in a way that violates the principle of gender equality covered in the Constitution (Art. 10) and the EA (Art. 5). Therefore, where there is a possibility of termination without cause, the termination of women employees' contracts, with the intent of discrimination based on gender, becomes an abusive dismissal. Although the termination of employment contracts by compliance with a term of notice is valid, the employer shall be still liable to pay compensation amounting to three times the wages for the term of notice, if the employer acts maliciously (Art. 17). Women dismissed by valid notice cannot claim reinstatement and therefore they cannot benefit from job security.

Invalid dismissal: On the other hand, according to the EA, the employer must have a valid reason for such termination; a reason that is connected to the capacity or conduct of the employee or is based on the operational requirements of the establishment or service (Art. 18). This applies where the employer terminates the contract of an employee who is engaged for an indefinite period, and who is employed in an establishment with 30 or more employees, and where that employee meets a minimum seniority of six months.

In the same article, the cases that do not constitute valid reasons for termination are also stipulated. According to Art. 18/3 (d), "sex, marital status, family responsibilities, pregnancy . . . and the like" do not constitute valid reasons for termination; and Art. 18/3 (e) stipulates that "absence from work during maternity leave when women employees must not be engaged in work, as foreseen in Art. 74" is not a valid reason for termination. According to Art. 21 of the EA, if the court concludes that the termination is invalid because no reason has been given or the alleged reason is invalid, the employer must reinstate the

employee in work within one month. However if, upon the application of the employee, the employer does not reinstate her in work, compensation of not less than four months' wages and not more than eight months' wages shall be paid to her by the employer (Art. 21/1). The employee shall be paid up to a total of four months' wages and other entitlements for the time during which she is not reinstated in work until the finalization of the court's verdict (Art. 21/3). The women in this group are therefore provided with partial job security (Arts. 20, 21).

Discriminatory dismissal: In addition, the EA contains special provisions that prohibit discrimination based on gender (Art. 5). In the EA, discrimination based on sex, either directly or indirectly, against all employees protected by the EA requires sanctions. Women employees can demand compensation of up to four months' wages plus make other claims for loss and damages when dismissal occurs because of gender (Art. 5).

Although the factors that cause direct discriminatory and abusive dismissal are the same, employees who are employed in an establishment with fewer than 30 employees or those who are employed in an establishment with 30 or more employees but who do not meet a minimum seniority of six months have the choice to lodge an appeal in accordance with either the provision on abusive dismissal (Art. 17/6) or the provision on discriminatory dismissal (Art. 5). The same rule applies to the managers and vice-managers which are mentioned above. On the other hand, an employee who is employed in an establishment with 30 or more employees and who meets a minimum seniority of six months can lodge an appeal in accordance with either the provision on invalid dismissal (Art. 18) or the provision on discriminatory dismissal (Art. 5).

As a result of these provisions, which cover discriminatory behavior employees on an indefinite employment contract may get different amounts of compensation depending on their length of service when they lodge an appeal based on either discriminatory dismissal or abusive dismissal. For example in the case of those employees, who meet a minimum length of service of one-and-a-half years, they may get compensation amounting to four months' wages when they lodge an appeal based on discriminatory dismissal (Art. 5). When they base their appeals on abusive dismissal, they may get compensation amounting to three times their wages of six or eight weeks depending on their length of service (Art. 17). This results in higher compensation. However, the disadvantage of filing a suit based on abusive dismissal is that the burden of proof rests on the employee. On the other hand, the burden of proof on the employee is lighter in claims of discriminatory dismissal (Bakirci, 2004, 2006b).

The Burden of Proof

The burden of proof is formulated differently for those who benefit from job security and those who do not benefit from job security.

According to the general principle of proof in the Civil Code (Art. 6), the burden of proof that there has been a breach of the principle of equality rests on the employee. This means that the burden of proof that the termination of a woman employee's contract is due to an abusive exercise of the right to terminate rests on the woman employee, even though there is a gender discrimination element in the abusive exercise. This is a heavy burden for the woman employee.

Art. 5 of the EA provides a special rule on the burden of proof in cases of discrimination based on gender. According to the first sentence of Art. 20/2 of the EA, the burden of proving that the termination was based on a valid reason shall rest on the employer. If the employee shows that there is a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialized shall rest on the employer (Art. 5/7). In this way, the burden of proof on the employee is lightened. This arrangement is in line with Council Directive 97/80/EC, of December 15, 1997, on the burden of proof in cases of discrimination based on gender (Bakirci, 1998).

However although first sentence of Art.20/2 reverses the burden of proof in favor of the employee (i.e., the burden of proof is placed on the employer), the second sentence states that the burden of proof shall be on the employee if s/he claims that the termination was based on a reason different from the one relied on by the employer. In other words, if the employer fails to establish the grounds for dismissal of the female employee, the female employee then has to prove a case that the termination was based on gender. By this second sentence the most important change which was made in the new EA on reversing the burden of proof has been undermined.

Also the fact that the burden of proof is formulated differently for those who benefit from job security and those who do not benefit from job security is itself a form of discrimination.

REPRESENTATION OF WOMEN VICTIMS BY WOMEN'S ORGANIZATIONS

Equal Treatment Amendment Directive 2002/73/EC and Recast Directive 2006/54 provide that persons who have been subject to discrimination based on gender should have adequate means of legal protection. To provide a more effective level of protection, associations, organizations, and other legal entities that have a legitimate interest should also be empowered to engage in proceedings, as the EU member states so determine, either on behalf of, or in support of, any victim, with his/her approval in any judicial and/or administrative procedure without prejudice to national rules of procedure concerning representation and defense in any judicial and/or administrative procedure. Under Turkish law, only trade unions can engage in judicial and/or administrative proceedings for their members. There is no regulation allowing women's associations and/or organizations to intervene in civil and/or criminal proceedings in relation to

women victims. The intervention of women's associations and/or organizations has been constantly rejected by the Turkish criminal courts. The involvement of women's associations and organizations in civil and criminal proceedings is important, because by their engagement feminist values and perspectives can be included in the judge's decision-making. For example, although the CA amendment of 2005 stopped the giving of reduced sentences for honor killings, in many honor killing cases the defense of "unfair provocation" has been used by judges to reduce the killer's sentence. However it has not been used in those cases which proceeded under the scrutiny of women's groups. Therefore the incorporation of viewpoints and perspectives from sections of society that remain underrepresented on the bench might improve the quality of judicial decision-making (Hunter, McGlynn, & Rackley, 2010).

MONITORING AND INSPECTING GENDER DISCRIMINATION IN EMPLOYMENT

In order to address different forms of discrimination based on gender in the workplace and to combat them, monitoring and inspection mechanisms are needed. EU legislation requires the establishment of bodies for the promotion of equality between women and men in every member state. Art. 20 of Recast Directive 2006/54/EC provides that member states shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring, and support of equal treatment of all persons without discrimination on grounds of gender. These bodies may form part of agencies with responsibility at national level for the defense of human rights or for the safeguarding of individuals' rights. Member states shall ensure that the competences of these bodies include the following: carrying out independent surveys concerning discrimination; publishing independent reports and making recommendations on any issue relating to such discrimination; and exchanging available information with corresponding European bodies such as the European Institute for Gender Equality. However, the bodies established in Turkey so far do not have enough power or staff to monitor and inspect inequalities in employment; these bodies include human rights and employment bodies at district and township levels, the Directorate General for the Status of Women, and the Parliamentary Commission on Equal Opportunities for Men and Women. In the Progress Report 2009, the European Commission noted the absence of an independent body dedicated to combating discrimination and to equality of treatment (CEC, 2009).

RECOMMENDATIONS

In order to achieve compliance with the EU and international law related to gender equality in employment, the changes listed below should be made to Turkish legislation:

- Article 50 of the Constitution should be amended, and the working conditions of women employees should be regulated in a separate special provision. In the new provision, direct and indirect discrimination should be prohibited.
- In order to increase women's employment, a quota system at least in the public sector should be introduced.
- Definitions of direct and indirect discrimination should be introduced into the EA. Discrimination in job advertisements and in access to employment should be prohibited and sanctioned in the EA. The provision of the EA in respect of a prior upper limit for compensation should be abolished. Protection against discriminatory dismissal should be provided for all employees in the EA. The burden of proof should be lightened for all employees who are subjected to gender discrimination. The second sentence of Art. 20/2 of the EA in relation to burden of proof should be abolished.
- The intentional publication of discriminatory job advertisements should be regulated as a crime committed by the publisher. Any act of direct discrimination at any stage by an employer should be treated as a crime against the public interest in the CA. All employees who are the victims of sex discrimination would have protection from retaliation, and a victim would be reinstated if dismissed on the grounds of gender.
- In order to reconcile family and work responsibilities, to increase the number of women in employment, and to avoid discrimination between men and women workers, legislation should be passed to ensure the following arrangements are put in place: two weeks of paternal leave for the fathers of newly born children; and parental leave for both the father and the mother without loss of either their employment or any related rights provided for in social protection or employment regulations. In order to ensure the sharing of childcare responsibilities and to promote equality between men and women, new fathers should be allowed to take bottle-feeding leave. These measures should apply equally to persons adopting a child. Leave of absence for both partners in case of the illness of a child or of dependent family members should be permitted. Adequately financed services for families should be developed. These services should operate at local level and cover child-minding services, childcare, the bringing up of dependent children, the provision of reception facilities outside school time, and the care of relatives who are elderly or who have a disability (Bakirci, 2006a). In addition to the state, municipalities, trade unions, and employers should be obliged to establish childcare and family service facilities; also, the provisions in the the Regulation on the Employment Conditions of Pregnant and Breastfeeding Women and Nursing Rooms and Childcare Centers that stipulate only the number of women employees required before nursing rooms and childcare centers need to be provided (Arts. 15/1 and 2) and the provisions on the use of these facilities by the children of women employees (Art. 16) should be amended in a way that observes equality.

- The return to work at the end of a period of parental leave should be facilitated by, for example, vocational guidance and training facilities.
- In order to prevent sexual harassment, the EA should contain certain features. It would need to define sexual harassment as a form of gender discrimination and would need to provide a method for determining when sexual harassment at work should be seen to be illegal. In cases where the employer knew, or should have known, of the sexual harassment, the employee should not be required to inform the employer of such conduct. The legislation should require that employers take reasonably practicable steps to ensure that the workplace continues to be an environment without risk of sexual harassment. It would be necessary for the legislation to include sanctions that are preventative and corrective rather than punitive. Another important feature would be that victims and witnesses of sexual harassment would have protection from retaliation, and a victim would be reinstated if dismissed on the grounds of having been subjected to, or for refusing to be subjected to, acts of sexual harassment. The legislation should also protect victims from publicity. The period for breaking the employment contract in cases of sexual harassment should be extended. On the other hand, the first paragraph of Art. 105 (CA) should be amended, and any acts that have sexual or sexually orientated features should be recognized as sexual harassment without the need to establish the sexual intent of the perpetrator. Gender-based harassment should be prohibited as a form of gender discrimination in the EA and CA.
- To provide equal access for women to all jobs and to avoid sex stereotyping in employment, general prohibitions on women's access to certain jobs should be abolished. Instead of prohibiting any kind of hazardous work for women employees, employers should introduce health and safety measures for all employees. Employees of either sex should not be employed in any arduous or dangerous work without a risk assessment based on a medical examination made either at the time of an employee's recruitment or during his/her employment to prove that s/he is physically fit for the job in question and is robust. The state should also strengthen labor inspection and related regulatory services in order to control violations of health and safety provisions (for an English-language paper on the problems of labor inspection, see Ilter & Metinsoy, 2009; for an EU project to strengthen the capacity of the Turkish Labor Inspection Board, see EU Project, 2008). In relation to the lifting of heavy weights, the muscular strength requirement should be specific to the duties of the particular job and actually necessary (in the strict sense) for the job to be carried out. Even where the requirement relating to muscular strength seems to be directly related to the duties of the job, making it obligatory for the employer to install lifting machinery, for example, would open up to women many jobs involving lifting and carrying. The types of employment or work in question should be reexamined periodically and revised as

necessary, particularly in the light of advancing scientific and technological knowledge. Also, menstrual leave should be abolished (Bakirci, 2010). Instead, the right to take sick leave or to do light work should be recognized for women whose ability to work is affected by their menstrual cycle.

- To provide a more effective level of protection for women victims, provisions should be included in the Turkish Labor Courts Act, the Civil Procedure Act, and the Criminal Procedure Act to empower women's associations and organizations to intervene in criminal and civil cases as interest groups when they have a direct concern with regard to the legal issues raised in a case.
- In order to address different forms of discrimination based on gender in the workplace, and to combat them, monitoring and inspection mechanisms should be set up. Autonomous equal rights commissions and ombudswoman mechanisms should be established. In order to investigate harassment and gender discrimination claims, a Women's Inspection Unit should be established within the Work Inspection Board of the Ministry of Labor and Social Security. The Directorate General for the Status of Women, which is a national body dealing with women and gender issues, and the Parliamentary Commission on Equal Opportunities for Men and Women should be given more power to act for the elimination of gender discrimination. Dialogue between social partners should be promoted.
- Measures should be taken to enable the national statistical service (Turkish Statistical Institute) to collect, compile, and analyze statistics pertaining to gender discrimination and harassment in all aspects of working life.
- Interdisciplinary commissions should produce a coherent, complete body of legislation.

It must be stated, however, that the enactment of such arrangements on paper only would be insufficient. A mentality change, social mobilization, and awareness raising are needed for the successful implementation of such legislation (Bakirci, 2006a).

REFERENCES

- Akder, H. 2003. Rural women and poverty. Retrieved from <http://siteresources.worldbank.org/INTECARETOPGENDER/Resources/TurkeyCGA.pdf>, November 2010.
- Anker, R. 2000. The economics of child labour: A framework for measurement. *International Labour Review*, 139(3): 289–317.
- Bakirci, K. 1998. Sexual harassment in the workplace in relation to EC legislation. *International Journal of Discrimination and the Law*, 1: 3–28.
- Bakirci, K. 2001a. İşyerinde Cinsel Taciz ve Türk Ceza Kanunu On Tasarısı. *Istanbul Barosu Dergisi*, 1: 35–44.
- Bakirci, K. 2001b. Remedies against sexual harassment of employees under Turkish law. *European Public Law*, 3: 473–484.

- Bakirci, K. 2002. Child labour and legislation in Turkey. *International Journal of Children's Rights*, 10(1): 55–72.
- Bakirci, K. 2004. Unfair dismissal in Turkish employment law. *Employee Responsibilities and Rights Journal*, 2: 49–69.
- Bakirci, K. 2006a. *Reconciliation of paid work and family responsibilities under Turkish law*. Paper presented at the 3rd Seminar on Policies to Reconcile Work and Caring Responsibilities, Possibilities for Implementation in Turkey, Joint Project on Gender Equality in the Labour Market by the Ministries of Employment of Turkey and Netherlands, Istanbul.
- Bakirci, K. 2006b. *Termination of employment contract*. Paper presented at the Socio-Legal Studies Association Annual Conference, School of Law, University of Stirling, Scotland.
- Bakirci, K. 2010. Employers see red over extra female monthly leave. *Today's Zaman*, January 17.
- CEC. 2005. Turkey progress report 2005. Retrieved from http://ec.europa.eu/enlargement/archives/key_documents/repors_2005_en.htm, November 2010.
- CEC. 2006. Turkey progress report 2006. Retrieved from <http://www.abgs.gov.tr/index.php?p=304&l=2>, November 2010.
- CEC. 2007. Turkey progress report 2007. Retrieved from http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf, November 2010.
- CEC. 2008. Turkey progress report 2008. Retrieved from http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/turkey_progress_report_en.pdf, November 2010.
- CEC. 2009. Turkey progress report 2009. Retrieved from http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf, November 2010.
- Cinar, M. 1994. Unskilled urban migrant women and disguised employment: Home working women in Istanbul, Turkey. *World Development*, 22(3): 369–380.
- Court of Cassation 5th Division. 2004. Case 2004/4408 E., 2006/2852 K.
- Court of Cassation 9th Division. 1966. Case 923/9195.
- Court of Cassation 9th Division. 2005. Case 2004/13286 E., 2005/7706 K.
- Dogan, N. 2006. Human Rights and Turkey's Bid for EU Membership: Will "Fundamental Rights of the Union" Bring Fundamental Changes to the Turkish Constitution and Turkish Politics? *Turkish Studies*, 7(2): 243–259.
- EC Commission v. France (Re Sex Discrimination in the Civil Service)*. 1988. ECJ. Case 318/86.
- Esmer, Y. 1991. *Values in Turkish Society*. Istanbul, Turkey: TUSIAD.
- EU Project. 2008. Improving the labour inspection system. Retrieved from <http://www.emf-fem.org/Industrial-Sectors/Shipbuilding/Meeting-of-the-EMF-shipbuilding-committee-in-Istanbul>, November 2010.
- Eurostat yearbook. 2009. Retrieved from http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-CD-09-001-07/EN/KS-CD-09-001-07-EN.PDF, December 2009.
- Figart, D. M., & Mutari, E. 1998. Degendering work time in comparative perspective: Alternative policy frameworks. *Review of Social Economy*, 56: 460–480.
- Flam, H. 2004. Turkey and the EU: Politics and economics of accession. *CESifo Economic Studies*, 50(1): 171–210.
- Gunduz, Z. Y. 2004. The women's movement in Turkey: From Tanzimat towards European Union Membership. *Perceptions*, 9(3): 115–134.

- Habermann-Beltermann v. Arbeiterwohlfahrt, Bezirksverband Ndb./Opf. e.V.* 1994. ECJ. Case C-421/92.
- Hervey, T. K. 2002. EC law on justifications for sex discrimination in working life. Retrieved from http://www.juridicum.su.se/stockholmcongress2002/hervey_english.pdf, November 2010.
- HUNE (Hacettepe Universitesi Nufus Etutleri Enstitusu). 2004. Turkiye Nufus ve Saglik Arastirmasi 2003. Retrieved from <http://www.hips.hacettepe.edu.tr/tnsa2003/analizrapor.shtml>, November 2010.
- HUNE (Hacettepe Universitesi Nufus Etutleri Enstitusu). 2009. Turkiye Nufus ve Saglik Arastirmasi 2008. Retrieved from http://www.hips.hacettepe.edu.tr/tnsa2008/data/TNSA-2008_ana_Rapor-tr.pdf, November 2010.
- Hunter, R., McGlynn, C., & Rackley, E. 2010. Feminist judgements: An introduction. In R. Hunter, C. McGlynn, & E. Rackley (Eds.), *Feminist judgements: From theory to practice*: 3–29. Oxford: Hart Publishing.
- Hurriyet. 2008. Başbakan 3 çocuk doğurun diyor ama. Retrieved from <http://www.hurriyet.com.tr/gundem/8407613.asp>, November 2010.
- ILO. 1987. *Women workers: Protection or equality?* Geneva: International Labour Office.
- ILO. 2009. Women at work, past and present: Like night and day. *World of Work*, 65.
- İlter, B., & Metinsoy, T. 2009. Evaluation of the OHS policy, strategy and applications in Turkey. Retrieved from http://web.deu.edu.tr/isamer/Evaluation_OHS_policy_strategy_applications_Turkey.pdf, November 2010.
- Johnston v. Chief Constable of the Royal Ulster Constabulary*. 1986. ECJ. Case 222/84.
- Jung, D. 2007. Turkey's future: EU member or "Islamist rogue state"? Retrieved from <http://www.diis.dk/sw31933.asp>, November 2010.
- Kandiyoti, D. 1991. End of empire: Islam, nationalism and women in Turkey. In D. Kandiyoti (Ed.), *Women, Islam, and the state*: 22–47. London: Macmillan.
- Kardam, F., & Toksoz, G. 2004. Gender based discrimination at work in Turkey: A cross-sectoral overview. *Ankara Universitesi SBF Dergisi*, 59: 152–172.
- Kasnakoglu, Z., & Dayioglu, M. 1997. Female labor force participation and earnings differentials between genders in Turkey. In J. M. Rives & M. Yousefi (Eds.), *Economic dimensions of gender inequality: A global perspective*: 95–117. Westport, CT: Praeger.
- Kimmel, J. 1998. Child care as a barrier to employment for married and single mothers. *Review of Economics and Statistics*, 80: 287–299.
- Krizsan, A., & Zentai, V. 2006. Gender equality policy or gender mainstreaming? The case of Hungary on the road to an enlarged Europe. *Policy Studies*, (27)2: 136–150.
- Marshall v. Southampton and South-West Hampshire Area Health Authority*. 1993. ECJ. Case C-271/91.
- Milliyet. 2009. Şimşek: İşsizlik oranı niye artıyor biliyor musunuz? Retrieved from <http://www.milliyet.com.tr/Ekonomi/SonDakika.aspx?aType=SonDakika&ArticleID=1072654>, November 2010.
- Narbone, L., & Tocci, N. 2005. Running around in circles? The cyclical relationship between Turkey and the European Union. Retrieved from <http://www.cespi.it/Sem-Turchia/Tocci-Turchia.pdf>, November 2010.
- Ozar, S. 1994. Some observations on the position of women in the labor market in the development process of Turkey. *Bogazici Journal*, 8(1–2): 5–19.

- Pinar, M., Eser, Z., & Hardin, J. R. 2007. A qualitative study of the recruiting of men and women for sales positions in Turkey. *Sex Roles*, 57: 879–888.
- Stivachtis, Y. A., & Georgakis, S. 2008. Emancipation or liberation? The European Union's gender policy and candidate states—The case of Turkey. *Journal of Multi-cultural and Gender Studies*, 2(1): 1–18.
- Sur, M. 2009. General framework and historical development of labor law in Turkey. *Comparative Labor Law and Policy Journal*, 30(2): 183–198.
- Sural, N. 2007. Legal framework for gender equality at work in Turkey. *Middle Eastern Studies*, 5: 811–824.
- T24. 2010. 'Kadın ve erkek eşit değil' diyen Erdoğan'a protesto. Retrieved from <http://www.t24.com.tr/haberdetay/109732.aspx>, January 2011.
- Tocci, N. (Ed.). 2007. Conditionality, impact and prejudice in EU-Turkey relations. Retrieved from http://www.iai.it/pdf/Quaderni/Quaderni_E_09.pdf, November 2010.
- Toksoz, G. 2007. Informal labour markets and the need for migrant workers: The case of Turkey from a comparative perspective. In E. Berggren, B. Likic-Brbic, G. Toksoz, & M. Trimikliniotis (Eds.), *Irregular migration, informal labour and community. A challenge for Europe*: 183–198. Amsterdam: Shaker Verlag.
- Tunkrova, L. 2010. The EU Accession Process and gender issues: Central Europe and Turkey. Retrieved from http://www.jhubc.it/ecpr-porto/virtual_paperroom/011.pdf, November 2010.
- TSI (Turkish Statistical Institute). 2009. Household labour force survey for the period of September 2009 (August, September, and October 2009). Retrieved from <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=4162>, December 2009.
- UNDP (United Nations Development Programme). 2009. Turkey: Country profile of human development indicators. Retrieved from <http://hdrstats.undp.org/en/countries/profiles/TUR.html>, November 2010.
- World Economic Forum. 2009. The global gender gap report 2009. Retrieved from <http://www3.weforum.org/en/communities/Women%20Leaders%20and%20Gender%20Parity/GenderGapNetwork/index.htm>, November 2010.

Direct reprint requests to:

Dr. Kadriye Bakirci
 Istanbul Teknik Universitesi
 Isletme Fakultesi
 34367 Macka
 Istanbul, Turkey
 e-mail: bakirci@itu.edu.tr