



**SCREENING CHAPTER 19  
SOCIAL POLICY AND EMPLOYMENT**

**AGENDA ITEM : EQUAL OPPORTUNITIES**

**Country Session: The Republic of TURKEY  
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## Principle of Equal Opportunities is under the Guarantee of The Constitution

Art.10- All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

Men and women have equal rights and the State is responsible to secure these rights.

No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.



# **INTERNATIONAL HUMAN RIGHTS TREATIES AND CONVENTIONS RATIFIED BY TURKEY**



## UNITED NATIONS CONVENTIONS

- Convention on the Elimination of All Types of Discrimination Against Women (CEDAW),
- Optional Protocol to CEDAW
- International Covenant on Civil and Political Rights (ICCPR),
- International Covenant on Economic, Social, and Cultural Rights (CESCR)



## ILO CONVENTIONS

- C45 - Underground Work (Women) Convention,
- C95 - Protection of Wages Convention,
- C100 - Equal Remuneration Convention,
- C102 - Social Security (Minimum Standards) Convention,
- C111 - Discrimination (Employment and Occupation) Convention,
- C115 - Radiation Protection Convention,
- C122 - Employment Policy Convention,
- C127 - Maximum Weight Convention.



## CONVENTIONS OF COUNCIL OF EUROPE

- European Convention for the Protection of Human Rights and Fundamental Freedoms
- European Social Charter (1961)



## MAIN INSTITUTIONS DEALING WITH GENDER EQUALITY

- General Directorate for the Status of Women,
- General Directorate for the Family and Social Research,
- Prime Ministry Human Rights Presidency,
- Ministry of Labour and Social Security.
- General Directorate for Social Services and Child Protection

In addition to these institutions, there are over 200 NGOs dealing with gender equality in Turkey.



## GENERAL DIRECTORATE FOR THE STATUS OF WOMEN

National and international developments, such as United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Sixth Five Year Development Plan made it necessary to establish a unit in order to make and carry out policies to ensure gender equality in all spheres of social life.

The General Directorate was established in 1990.





# GENERAL DIRECTORATE FOR THE STATUS OF WOMEN (cont.)

## Main activities:

- Legislation related activities,
- Coordination,
- Awareness raising,
- International relations,
- Projects.



# GENERAL DIRECTORATE FOR THE STATUS OF WOMEN (cont.)

## Main responsibilities:

- Protecting and improving women's rights;
- Strengthening the status of women in social, economic and political life;
- Providing equal enjoyment of all rights and opportunities.



# PRINCIPLE OF EQUAL PAY FOR MEN AND WOMEN (75/117/EEC)



## RELEVANT LEGISLATION

- Constitution,
- Labour Law,
- Maritime Labour Law,
- Press Labour Law,
- Civil Servants Law,
- By-law on Minimum Wage.



## WAGE RELATED ARTICLES

### CONSTITUTION

Wages shall be paid in return for work. The State shall take necessary measures to ensure that workers earn a fair wage commensurate with the work they perform and that they enjoy other social benefits. In determining the minimum wage, the living conditions of the workers and the economic situation of the country shall be taken into account (Art. 55).

### LABOUR LAW AND MARITIME LABOUR LAW

Wage is the amount provided and paid in cash to a person by the employer or third persons in return for work performed (Labour Law Art. 32/1; Maritime Labour Law Art. 29).

### CIVIL SERVANTS LAW

Salary is the amount paid to civil servants based on their wage scale for their services (Art. 147).



## EQUAL PAY PRINCIPLE

### LABOUR LAW

A lower wage cannot be decided for an equal or equivalent job on the ground of sex (Art. 5/4).

Implementation of special protective provisions due to the sex of the worker does not justify the application of a lower wage (Art. 5/5).

### BY-LAW ON MINIMUM WAGE

In determining the minimum wage, no discrimination can be made on grounds of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations (Art. 5).

### CIVIL SERVANTS LAW

The salaries of the civil servants are determined irrespective of their sex (Art. 43).



## MEASURES ENSURING EQUAL PAY

### LABOUR LAW

A lower wage cannot be decided for an equal or equivalent job on the grounds of sex (Art. 5/4).

### LAW ON COLLECTIVE AGREEMENTS, STRIKES AND LOCK-OUTS

No stipulation shall be put into collective labour agreements that is contrary to any binding provisions of laws or secondary legislation (Art. 5).



## MEASURES ENSURING EQUAL PAY (cont.)

### LABOUR LAW

In case of failing to comply with principles and obligations set forth in Article 5 (principle of equal treatment, including the principle of equal pay), employers or employer representatives are fined currently for 50 YTL (35 Euro) for each worker (Art. 99/a).

In case of contradiction to principle of equal treatment in the business relation or termination, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage (Art. 5/6).





## JUDICIAL AND ADMINISTRATIVE REMEDIES

### CONSTITUTION

Article 74 on the right of petition.

### LAW ON PETITION RIGHTS

Article 7 on investigation upon petition and informing petitioner about the result of the investigation.

### LAW ON ORGANIZATION AND FUNCTIONS OF MoLSS

Article 15 on the functions of Labour Inspection Board.

### LABOUR LAW

Article 91 on the State's role in monitoring and controlling the implementation of relevant legislation in work life.



**(cont.)**

### **LAW ON LABOUR COURTS**

Article 1 and 10 on the functions of labour courts and procedures to be followed.

### **LAW ON ADMINISTRATIVE JURISDICTION**

Administrative courts conduct *ex officio* all kinds of investigations related to the case before them. The courts can demand all necessary documents and information from the parties and relevant institutions (Art. 20).

### **CIVIL SERVANTS LAW**

Article 21 on civil servants' right to complain or bring action against administrative acts and proceedings that are applied to them by their institutions.

### **LAW ON SOCIAL INSURANCE INSTITUTION**

Article 9 on the functions of Insurance Inspection Board.



## PROTECTION AGAINST DISMISSAL

### WORKERS NOT COVERED BY JOB SECURITY SYSTEM

#### LABOUR LAW

In case of violation of the principle of equal treatment in the employment relationship or termination thereof, the worker can demand the rights that he/she has been deprived of and an appropriate indemnity equivalent up to four months' wage (Art. 5/6).

The worker is paid an indemnity equal to three times of the notification period, if the employment contract of him/her is terminated through misuse of the right of termination (Art. 17/5).



## PROTECTION AGAINST DISMISSAL (cont.)

### WORKERS COVERED BY JOB SECURITY SYSTEM

#### LABOUR LAW

Particularly, the following issues do not constitute a valid reason for termination of the contract:

- Application to administrative or judicial authorities against the employer with a view to seeking the rights arising out of laws or the contract (Art. 18/c).
- Race, colour, sex, marital status, family obligations, pregnancy, birth, religion, political opinion and similar reasons (Art.18/d).



## PROTECTION AGAINST DISMISSAL (cont.)

In case the employer does not assert a valid reason or the court or special arbitrator decides that the asserted reason is not valid and the termination is decided to be ineffective, the employer is obliged to re-employ the worker within one month or to pay an indemnity equal to minimum four and maximum eight months' wage to the worker (Art. 21/1).

In case of violation of the principle of equal treatment in the employment relationship or termination thereof, the worker can demand the rights that he/she has been deprived of and an appropriate indemnity equivalent up to four months' wage (Art. 5/6).



# STATUTORY SOCIAL SECURITY (79/7/EEC)



## RELEVANT LEGISLATION

- Law on Social Insurance (for workers),
- Law on Social Insurance (for workers at agricultural sector)
- Law on Social Insurance for Craftsmen, Artisans and Other Self-employed
- Law on Social Insurance (for self-employed at agricultural sector)
- Law on Civil Servants
- Law on Pension Fund (for civil servants)
- Law on Unemployment Insurance (for the unemployed)



## SOCIAL INSURANCE LAW (for workers)

“Insured persons” are defined as workers who have been employed by one or more employers based on an employment contract.

Workers are protected against the risks below for which social insurance benefits are provided:

- work accidents
- occupational diseases
- sickness
- maternity
- invalidity
- old-age
- death





**(cont.)**

- All provisions on scope, access to schemes, obligation to contribute, calculation of contributions and benefits are the same for men and women, except retirement age.

- According to Art. 60 of the Law,

In order to be entitled to an old-age pension,

a) 7000 days and the age of 58 for women and the age of 60 for men must be completed; or

b) 4500 days and an insurance period of 25 years and the age of 58 for women or the age of 60 for men must be completed.

- The insurance inspectors have the inspection, control and supervision powers in respect of implementation of the Social Insurance Law (Art.130).



## SOCIAL INSURANCE LAW (for agricultural workers)

Workers employed for an indefinite period with a contract in agricultural sector are under the coverage of this Law.

Risks shall be provided for;

- work accidents (health care and permanent incapacity payment)
- occupational diseases (health care and permanent incapacity payment)
- health care
- old age
- death

All provisions on scope, access to schemes, obligation to contribute, calculation of contributions and benefits are the same for men and women, except retirement age, which is 58 for women and 60 for men.

Draft Law on Social Insurance and General Health Insurance envisages the risks for new comers: sickness, maternity, temporary incapacity payment for work accidents and occupational diseases.



## **SOCIAL INSURANCE LAW (for craftsmen, artisans and other self-employed)**

- “Insured persons” are defined as craftsmen, artisans and self-employed not registered to social insurance institutions and those who are not working for someone with an employment contract.
- The risks covered are: invalidity, old-age, death and health care.
- All provisions on scope, access to schemes, obligation to contribute, calculation of contributions and benefits are the same for men and women, except retirement age, which is 58 for women and 60 for men.

Draft Law on Social Insurance and General Health Insurance envisages the risks: work accidents, occupational diseases, sickness and maternity.



## **SOCIAL INSURANCE LAW (for self-employed at agricultural sector)**

“Insured persons” are defined as those who are not registered to social insurance institutions and those who are not working for someone with an employment contract and working in the agricultural sector as defined in the Law.

Risks covered:

- invalidity
- old age
- death
- health care

All provisions on scope, access to schemes, obligation to contribute, calculation of contributions and benefits are the same for men and women, except retirement age, which is 58 for women and 60 for men.

Draft Law on Social Insurance and General Health Insurance envisages the risks: work accidents, occupational diseases, sickness and maternity.



## LAW ON CIVIL SERVANTS AND LAW ON PENSION FUND FOR CIVIL SERVANTS

- Old-age, death, invalidity, health care and maternity risks of civil servants are covered.
- All provisions on scope, access to schemes, obligation to contribute, calculation of contributions and benefits are the same for men and women, except retirement age, which is 58 for women and 60 for men, and 25 years of insurance period must be completed.
- All civil servants have the right to complain or bring action against administrative acts and proceedings that are applied to them by their institutions.



## LAW ON UNEMPLOYMENT INSURANCE

- Unemployment insurance is mandatory.
- The Law applies to:
  - those specified in the Law on Social Insurance,
  - those who are subject to the funds described in the same law,
  - foreign workers working under an employment contract (subject to reciprocity).



## LAW ON UNEMPLOYMENT INSURANCE (cont.)

- The insured unemployed shall be provided with the following payments and services;
  - Unemployment benefit,
  - Premiums of disease and maternity insurance,
  - Finding a new job,
  - Training for gaining and/or improving skills.
- All provisions on scope, access to scheme, contributions, calculation of unemployment insurance benefits and services provided are the same for men and women.
- Inspectors and insurance inspectors have the inspection, control and supervision powers in respect of implementation of the Law.



## JUDICIAL REMEDIES FOR STATUTORY SOCIAL SECURITY SCHEMES

Disputes stemming from the implementation of these Laws are solved in labour courts or courts assigned to hear the case.





**PRINCIPLE OF EQUAL TREATMENT BETWEEN MEN AND WOMEN  
ENGAGED IN AN ACTIVITY, INCLUDING AGRICULTURE, IN  
A SELF-EMPLOYED CAPACITY, AND ON THE PROTECTION OF  
SELF-EMPLOYED WOMEN DURING PREGNANCY AND MOTHERHOOD  
(86/613/EEC)**



## RELEVANT LEGISLATION

- Social Insurance Law (for craftsmen, artisans and other self-employed)
- Social Insurance Law (for self-employed at agricultural sector)



# **SOCIAL INSURANCE LAW ON CRAFTSMEN, ARTISANS AND OTHER SELF-EMPLOYED**

## **INSURED PERSONS**

“Insured persons” are defined as craftsmen, artisans and self-employed not registered to social insurance institutions and those who are not working for someone with an employment contract.

Draft Law on Social Insurance and General Health Insurance defines statutory insured person for self-employed having income tax exemption as those, whose average monthly income is at least minimum insurable earning.

## **SELF-EMPLOYED WORKERS' SPOUSES**

Those who are not registered with the social insurance institutions, housewives and foreign nationals residing in Turkey can be insured upon their request (Art. 79).



## EQUAL TREATMENT IN THE ESTABLISHMENT OF A COMPANY BY SPOUSES

### LAW ON BUSINESS LICENCE AND OPENING A BUSINESS

There is no difference between the establishment of a company by spouses or unmarried persons (Art. 5).



## **SOCIAL INSURANCE LAW ON CRAFTSMEN, ARTISANS AND OTHER SELF-EMPLOYED**

### **BENEFITS**

The Law provides benefits for the following risks:

- invalidity
- old age
- death
- health care

Benefits as regards pregnancy and motherhood are not provided for insured persons within the framework of the Law.

Draft Law on Social Insurance and General Health Insurance envisages the risks: work accidents, occupational diseases, sickness and maternity.

### **JUDICIAL REMEDIES**

Disputes stemming from the implementation of the Law are solved in labour courts or courts assigned to hear the case.



## **SOCIAL INSURANCE LAW FOR SELF-EMPLOYED AT AGRICULTURAL SECTOR**

### **INSURED PERSONS**

“Insured persons” are defined as those who are not registered to social insurance institutions and those who are not working for someone with an employment contract and working in the agricultural sector as defined in the Law.

Draft Law on Social Insurance and General Health Insurance defines statutory insured person in agricultural sector for self-employed as those, whose average monthly income is at least minimum insurable earning.

### **SELF-EMPLOYED WORKERS' SPOUSES**

Those who are not registered with the social insurance institutions, housewives and foreign nationals residing in Turkey can be insured upon their request (Art. 79).



## **SOCIAL INSURANCE LAW FOR SELF-EMPLOYED AT AGRICULTURAL SECTOR**

### **BENEFITS**

The Law provides benefits for the following risks:

- invalidity
- old age
- death
- health

Benefits as regards pregnancy and motherhood are not provided for insured persons within the framework of the Law.

Draft Law on Social Insurance and General Health Insurance envisages the risks: work accidents, occupational diseases, sickness and maternity.

### **JUDICIAL REMEDIES**

Disputes stemming from the implementation of the Law are solved in labour courts or courts assigned to hear the case.



**TO IMPROVE SAFETY AND HEALTH AT WORK OF  
PREGNANT WORKERS AND WORKERS WHO HAVE  
RECENTLY GIVEN BIRTH OR ARE BREASTFEEDING  
(92/85/EEC)**





## RELEVANT LEGISLATION

- Labour Law,
- Law on Social Insurance,
- Law on Civil Servants,
- By-law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes,
- By-law on the Working Conditions of Female Workers at Night Shifts.



## DEFINITIONS

According to the By-law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes:

### **PREGNANT WORKER**

Who is pregnant and has informed her employer about her situation with a medical report issued by a health institute.

### **WORKER GIVEN BIRTH NEWLY**

Who gave birth newly and has informed her employer about her situation.

### **BREASTFEEDING WORKER**

Who is breastfeeding her child between 0-1 year and has informed her employer about her situation.



## Guidelines Annexed to the By-law:

- Annex I – Table indicating the works and work sites in which pregnant workers, workers newly gave birth and breastfeeding workers cannot definitely work, and important risk factors involved,
- Annex II - Definitions on chemical agents,
- Annex III – Health Surveillance Forms for the pregnant workers.



## GENERAL AND SPECIAL MEASURES

Concerning the dangerous effects of chemical, physical and biological agents and industrial processes which are considered as dangerous for the security and health of the pregnant workers, workers newly gave birth and breastfeeding workers, general and special measures to be taken are described in the By-law.

## INFORMING

By-law provides that the worker will inform her employer about the periods of the pregnancy and breastfeeding, and the employer will assess the situation of the worker in line with Annex I, II, III.



## ACTIONS FOLLOWING THE ASSESSMENT

In terms of working conditions during pregnancy and breast feeding of the worker, the By-law envisages the following measures;

- employing the pregnant worker in a more suitable position,
- adjusting working conditions and/or working hours



## PROHIBITION OF WORKING

If the health report shows that there is no obstacles to work and one of the situations listed in Annex I of the By-law (e.g. Exposure to chemical agents, carcinogens, mutagens, toxic and allergic substances) does not exist, breastfeeding worker is allowed to work.



## NIGHT WORK

It is prohibited to employ the pregnant, breastfeeding and newly gave birth worker at night during the periods laid down in the By-law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes and the By-law on the Working Conditions of Female Workers at Night Shifts.



## MATERNITY LEAVE

- Female workers are granted a paid leave of sixteen weeks in total (eight weeks before and eight weeks after birth) and may not be asked to work in this period according to the Labour Law, the By-law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes and Law on Civil Servants.
- An unpaid maternity leave of twelve months is given to civil servants and six months to workers upon their request after paid maternity leave periods.
- Sanctions are envisaged in the Labour Law for the employers and their representatives who ask the pregnant worker to work or do not allow unpaid leave.





## **PERIODIC CHECKS BEFORE BIRTH**

Paid leave for periodic checks during pregnancy is provided in the Labour Law and the By-law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes.

Sanctions for employers and employer representatives who do not comply with this provision are foreseen by the Labour Law.

## **PROTECTION AGAINST DISMISSAL**

Provisions referred to in respect of equal pay principle are also applicable in this context.



## RIGHT OF RECRUITMENT

According to the provisions of the Labour Law on the equal treatment principle; the employer cannot treat differently (directly or indirectly) a worker in:

- concluding the employment contract,
- establishing the conditions thereof,
- implementation and termination thereof

on ground of pregnancy, except for biological reasons or work requirements.



## BENEFITS

The Law on Social Insurance defines;

- the benefits which shall be provided in the case of maternity for the insured woman or the uninsured wife of the insured man
- the conditions for entitlement to maternity benefits in kind or to nursing allowance, or to a lump sum payment for pregnancy and confinement
- temporary incapacity allowance

## JUDICIAL REMEDIES

Disputes stemming from the implementation of the Law are solved in labour courts or courts assigned to hear the case.



**THE FRAMEWORK AGREEMENT  
ON PARENTAL LEAVE  
(96/34/EC)**



## DRAFT LAW ON AMENDMENTS TO CIVIL SERVANTS LAW AND LABOUR LAW

Draft Law, which is on the agenda of the Parliament, has been prepared with the cooperation of public institutions, social partners and NGOs.

Draft Law envisages;

- post-natal rest period of eight weeks;
- six months unpaid parental leave right for mother and father (for workers)
- at most 12 months unpaid parental leave right, which may be taken in two consecutive periods for mother or father (for civil servants).



## DRAFT LAW ON PARENTAL LEAVE (cont.)

- In the case of adopting a child up to 3 years of age, same conditions shall apply for women and men.
- Employment contracts cannot be terminated due to benefiting from paid or unpaid leaves for birth or adoption of a child.
- At the end of parental leave, workers have the right to return to the same, equivalent or similar job.
- Two days of unpaid leave due to sickness and accidents (in written form).



**THANK YOU FOR YOUR ATTENTION**