



**SCREENING CHAPTER 19
SOCIAL POLICY AND EMPLOYMENT**

**AGENDA ITEM: EQUAL OPPORTUNITIES
SECOND SESSION**

**Country Session: The Republic of TURKEY
22 March 2006**



**IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT
FOR MEN AND WOMEN
IN OCCUPATIONAL SOCIAL SECURITY SCHEMES
(96/97/EC)**



OCCUPATIONAL SOCIAL SECURITY SCHEME

There is no occupational social security scheme regulated at national level.

There are two mandatory second pillar type schemes for the armed forces (OYAK) and for the employees of the state-owned coal mining enterprise (TTK). These schemes operate under separate legislation, and combine defined benefit and defined contribution elements.

On the other hand, there are 17 funds which replace statutory social security scheme as defined by the Directive, providing the personnel of Banks, Insurance and Reinsurance Companies, Chambers of Commerce and Industry and Commodity Exchanges, with benefits that replace benefits provided by the Social Insurance Law.

There is no discrimination based on sex in benefiting from these schemes, except for the retirement age.



**THE BURDEN OF PROOF IN CASES OF
DISCRIMINATION BASED ON SEX
(97/80/EC)**



RELEVANT LEGISLATION

- Labour Law
- Law on Labour Courts
- Law on Civil Servants
- Law on Administrative Jurisdiction



BURDEN OF PROOF

WORKERS

LABOUR LAW - No discrimination based on language, race, sex, political thought, philosophical belief, religion, sect or similar grounds can be made in the employment relationship (*related to Directive 76/207/EEC*).

The employer cannot treat differently (directly or indirectly) to a worker in concluding the employment contract, establishing the conditions thereof, implementation and termination thereof (*related to Directive 76/207/EEC*) due to sex or pregnancy (*related to Directive 92/85/EEC*), except for biological reasons or working requirements.

A lower wage cannot be decided for an equal or equivalent job on grounds of sex (*related to Directive 75/117/EEC*).



BURDEN OF PROOF

(cont.)

Implementation of special protective measures due to the sex of the worker does not justify the application of a lower wage (*related to Directive 75/117/EEC*).

Without prejudice to Article 20 of the Labour Law, the worker is obliged to prove that the employer has infringed the equal treatment principle. When the worker demonstrates a convincing probability of the existence of an infringement, the employer becomes obliged to prove that no such infringement exists (Art. 5/7).

(Article 20: The employer is obliged to prove that the termination of the employment contract is based on a valid reason, i.e. there is no discriminatory dismissal.)



BURDEN OF PROOF

CIVIL SERVANTS

LAW ON CIVIL SERVANTS - on civil servants' right to complain or bring action against administrative acts and proceedings that are applied to them by their institutions (Art. 21).

LAW ON ADMINISTRATIVE JURISDICTION - In case of bringing an action in administrative courts, reasons and proof should be submitted to the court by the plaintiff (Art. 3/b).

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).



**PRINCIPLE OF EQUAL TREATMENT AS REGARDS
ACCESS TO EMPLOYMENT, VOCATIONAL TRAINING AND
PROMOTION, AND WORKING CONDITIONS
(76/207/EEC)**



RELEVANT LEGISLATION

- Constitution
- Labour Law
- Law on Social Insurance
- Law on Social Insurance For Agricultural Employees
- Law on Civil Servants
- Law on Vocational Training
- By-law on the Working Conditions of Female Workers at Night Shifts



PRINCIPLE OF EQUAL TREATMENT

CONSTITUTION

- Everyone has the freedom to work and conclude contracts in the field of his/her choice. Establishment of private enterprises is free. (Art. 48).
- Everyone has the right and duty to work (Art. 49).
- Every Turkish citizen 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 (Art 70).
- Everyone has the right to have social security. The State shall take necessary measures and establish necessary institutions to this end (Art. 60).



PRINCIPLE OF EQUAL TREATMENT

LABOUR LAW

- No discrimination based on language, race, sex, political thought, philosophical belief, religion, sect and similar grounds can be made in the employment relationship. (Art. 5/1).
- 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 and implementation and termination thereof on ground of pregnancy, except for biological reasons or work requirements. (Art. 5/3).

LAW ON SOCIAL INSURANCE

- All employed persons shall automatically become insured with the initiation of employment relationship (Art. 6).



PRINCIPLE OF EQUAL TREATMENT

LAW ON SOCIAL INSURANCE FOR AGRICULTURAL EMPLOYEES

All agricultural employees working under an employment contract can be insured upon their request (Art.2).

LAW ON VOCATIONAL TRAINING

The Law contains general provisions on access to employment, promotion, training and working conditions as well as social security, regardless of sex.

LAW ON CIVIL SERVANTS

There are general and specific requirements (such as entrance exams) for recruitment of civil servants. These requirements are same for men and women, except the Nursing Law, which requires being a woman.

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).



PROVISIONS AS REGARDS PROTECTION OF WOMEN

CONSTITUTION

No one shall be required to perform work unsuited to his age, sex, and capacity. Minors, **women** and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions (Art. 50).

LABOUR LAW

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 and implementation and termination thereof on ground of **pregnancy**, except for biological reasons or work requirements. (Art. 5/3).

It is prohibited to employ men below the age of eighteen and **women at any age** in underground or underwater positions such as mine galleries, cabling, sewerage and tunnel construction (Art. 72).



PROVISIONS AS REGARDS PROTECTION OF WOMEN (cont.)

BY-LAW FOR HARD AND DANGEROUS WORK

The By-law defines the works in which women cannot be asked to work.

BY-LAW ON THE WORKING CONDITIONS OF FEMALE WORKERS AT NIGHT SHIFTS

The By-Law prohibits;

- working of women more than 7 ½ hours at night shifts,
- working of women during pregnancy and for six months after birth, at night shifts.



PROTECTION AGAINST DISMISSAL

Equal treatment principle is respected through special provisions taken place in various laws (same provisions referred to in respect of equal pay principle).



**PRINCIPLE OF EQUAL
TREATMENT FOR MEN AND WOMEN AS REGARDS
ACCESS TO EMPLOYMENT, VOCATIONAL TRAINING
AND PROMOTION, AND WORKING CONDITIONS**

(2002/73/EC)



RELEVANT LEGISLATION

- Labour Law
- Law on Civil Servants
- Penal Code
- Law on Trade Unions
- Law on Trade Union for Civil Servants



DEFINITIONS

SEXUAL HARASSMENT

Although there are no specific definitions for direct and indirect discrimination, harassment and sexual harassment are in the scope of the Labour Law:

- According to Article 24 of Labour Law, the employee may lawfully terminate the contract without notification, if the employer sexually harasses him/her.
- According to Article 25 of Labour Law, the employer may lawfully terminate the contract without notification, if the employee sexually harasses another employee.



DEFINITIONS

SEXUAL HARASSMENT (cont.)

Penal Code contains provisions regarding sexual assault:

Where a person is abused sexually, the perpetrator shall be sentenced to imprisonment for a term of three months to two years or imposed a fine.

In cases where these acts are committed by abusing the influential position gained through hierarchy, service providing, provision of training or education, interfamily relations or by taking advantage of working in the same place, the penalty above shall be increased by half. If the victim has been forced to quit his/her job, school or leave his/her family, the penalty cannot be less than one year (Art. 105).



DEFINITIONS

DISCRIMINATION

Penal Code contains provisions regarding discrimination:

A person who, by practicing discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect and other reasons;

- a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,
- b) withholds foodstuffs or refuses to provide a service supplied to the public,
- c) prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or judicial fine (Art. 122)



PROTECTIVE MEASURES RELATED WITH PREGNANCY

LAW ON CIVIL SERVANTS

All rights related to the position including salary of civil servants are protected during **pregnancy**, illness, marriage, death leaves and leaves for the other cases defined in the Law (Art 104, 105).

LABOUR LAW

The employer cannot treat differently (directly or indirectly) a worker in concluding the employment contract, establishing the conditions thereof and implementation and termination thereof on ground of **pregnancy**, except for biological reasons or work requirements. (Art. 5/3).



CONDITIONS OF MEMBERSHIP OF UNIONS

LAW ON TRADE UNIONS

Any person who is a worker within the meaning of this Law and is over 16 years of age may join a trade union.

Any employer within the meaning of this Law may join an employers' union.

LAW ON TRADE UNIONS FOR CIVIL SERVANTS

Everyone is free to join trade unions.

Those who cannot be members of trade unions (regardless of sex) are listed in Art.15 of the Law.



ROLE OF LEGAL ENTITIES

LAW ON TRADE UNIONS

Trade unions may represent their members before court. (Art.32/3).

LAW ON TRADE UNION FOR THE CIVIL SERVANTS

Trade unions and confederations may represent their members before court (Art.19/f).

LAW ON ADMINISTRATIVE JURISDICTION

Associations may bring action concerning the **general** benefits of the association.



EQUALITY BODY

Although there is no equality body in Turkey as defined in the Directive, there are two institutions performing certain duties defined therein.

- General Directorate for the Status of Women (responsible for improving the status of women through various activities, including coordination and monitoring at national level)
- Prime Ministry Human Rights Presidency (responsible for monitoring the implementation of the legislation related with human rights, examining the human rights violation claims and assessing the research results at provincial and national level).
- Ministry of Labour and Social Security (responsible for examining issues related with unequal treatment).



**THE PRINCIPLE OF EQUAL TREATMENT
BETWEEN MEN AND WOMEN IN THE ACCESS TO
AND SUPPLY OF GOODS AND SERVICES
(2004/113/EC)**



ACCESS TO SERVICES AND GOODS

PENAL CODE

A person who, by practicing discrimination on grounds of language, race, colour, **gender**, disability, political ideas, philosophical beliefs, religion, sect and other reasons;

- a) prevents the sale or transfer of personal **property or real estate** or the performance or enjoyment of a **service** or who makes the employment of a person contingent on one of the circumstances listed above,
- b) withholds foodstuffs or refuses to provide a **service** supplied to the public,
- c) prevents a person from carrying out an ordinary **economic activity**,

shall be sentenced to imprisonment for a term of six months to one year or judicial fine (Art. 122)



PRIVATE PENSION SCHEME

In the private pension system, there is no mortality factor since the system is a fully funded defined contribution system, without any guarantees. There is no discrimination of sex within the system. (e.g. retirement in the system is 56 for both men and women.)

LIFE INSURANCE

Life insurers use different mortality tables based on sex in their products, taking into account different mortality tables for men and women.



PROJECTS ON EQUAL OPPORTUNITIES



MINISTRY OF LABOUR AND SOCIAL SECURITY

Memorandum of Understanding was signed between the European Community and Turkey on Turkey's participation in the Gender Equality Community Programme in 2003.

COMPLETED PROJECTS

- Seminar on the Gender Equality in EU and its reflections in Turkey (Within the Gender Equality Community Programme-2005).
- Seminar on Equality Bodies (Within TAIEX, 2005)

ONGOING PROJECT

- Strengthening Gender Equality in Employment (Bilateral cooperation protocol with Dutch Ministry of Social Affairs and Employment-2005).



GENERAL DIRECTORATE ON THE STATUS OF WOMEN

COMPLETED PROJECTS

- The National Program for the Enhancement of Women's Integration in Development (1993-2002),
- Project for Development of Employment of Women (1993- 2000),
- Women Entrepreneurship Project (1997),
- UN Third Country Programme - Advocacy Sub Programme (2001-2005).

PROJECTS THAT WILL BE STARTED

1. Promoting Gender Equality Project (October 2006)
 - Strengthening the institutional capacity of the General Directorate
 - Promoting the implementation of gender equality issues,
 - Preparing Draft Model on Equality Body in accordance with the EU *Acquis*,
 - Preparing the National Action Plan and applying Communication Strategy Plan for gender equality,
 - Strengthening the documentation centre and web site.
2. UNFPA Turkey Fourth Country Programme.



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