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Country report

Gender equality

Turkey

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Country report

Gender equality

How are EU rules transposed into national law?

Turkey

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Directorate-General for Justice and Consumers

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1. Introduction

1.1 Basic structure of the national legal system

Turkey is a unitary state following the system of Roman Law. It has a parliamentary system.[1] Parliament (the Turkish Grand National Assembly) is the legislature. It enacts the laws. The Constitution is the fundamental law. Laws and regulations cannot contradict the Constitution. If there is an urgent need for a particular law, in order to avoid the lengthy enactment procedures, the Council of Ministers (the government) may prepare a statutory decree and submit it to Parliament for its approval. Parliament may adopt, amend or reject the statutory decree. By-laws are implementing regulations issued in the light of the laws and statutory decrees by the Prime Minister's Office, the ministries and public corporate bodies. The government may issue circulars to clarify particular issues. As for the highest courts, there are the Constitutional Court, the Council of State, the High Military Courts[2] and the Court of Appeals.

The Ministry of Family and Social Policies, established in 2011, is a government ministry responsible for the status of women, family affairs and the social services.[3] Before 2011, the portfolio of women and family affairs was executed by a state minister in the cabinet. The ministry features the following branches:

- Status of Women (*Kadının Statüsü*)
- Family and Public Services (*Aile ve Toplum Hizmetleri*)
- Children's Services (*Çocuk Hizmetleri*)
- Disabled and Elderly Services (*Engelli ve Yaşlı Hizmetleri*)
- Social Aids (*Sosyal Yardımlar*)
- Services for Casualty Relatives and Veterans (*Şehit Yakınları ve Gazi Hizmetleri*)

The government has the competence to execute the legislation with the support/assistance of the relevant ministries and public bodies.

1.2 List of main legislation transposing and implementing Directives

- Constitution (*Anayasa*), Law No. 2709, Official Gazette 9 November 1982;
- Law of Obligations (*Borçlar Kanunu*), Law No. 6098, Official Gazette 4 February 2011;
- Statutory Decree on Establishment and Duties of the Ministry of Family and Social Affairs (*Aile ve Sosyal Politikalar Bakanlığının Teşkilat ve Görevleri Hakkında Kanun Hükmünde Kararname*), Official Gazette 8 June 2011;
- Labour Law (*İş Kanunu*), Law No. 4857, Official Gazette 10 June 2003;
- Civil Servants Law (Devlet Memurları Kanunu), Law No. 657, Official Gazette 23 July 1965;
- Law on Occupational Health and Safety (*İş Sağlığı ve Güvenliği Kanunu*), Law No. 6331, Official Gazette 30 June 2012;
- Social Insurances and General Health Insurance Law (*Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*), Law No. 5510, Official Gazette 16 June 2006;
- Criminal Code (*Türk Ceza Kanunu*), Law No. 5237, Official Gazette 12 October 2004;

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1 Law no. 6771 amending the Turkish Constitution (Official Gazette 11 February 2017, No. 29976) concerns the presidential system. This Law was adopted through a referendum held on 16 April 2017. The presidential system (Executive presidency) would start when the President assumes office following the election of the President and the Parliament on 3 November 2019 but Parliament decided on early elections (Official Gazette, 20 April 2018, No. 30397bis). The early elections took place on 24 June 2018 and the Presidential system started in July 2018.

2 Law no. 6771 amending the Turkish Constitution (Official Gazette 11 February 2017, No. 29976) abolished the military courts except for the disciplinary courts. Abolishment became effective with the adoption of the Law through a referendum held on 16 April 2017.

3 Statutory Decree on Establishment and Duties of the Ministry of Family and Social Affairs *(Aile ve Sosyal Politikalar Bakanlığının Teşkilat ve Görevleri Hakkında Kanun Hükmünde Kararname),* Decree No. 633, Official Gazette, 8 June 2011, No. 27958.

- The Law on the Ombudsman Institution (*Kamu Denetçiliği Kanunu*), Law No. 6328, Official Gazette 29.06.2012;
- The Law on the Protection of the Family and the Prevention of Violence Against Women (*Ailenin Korunması ve Kadına Karşı Şiddetin Önlenmesine Dair Kanun*), Law No. 6284, Official Gazette 20 March 2012;
- The Law on the Human Rights and Equality Institution *(Türkiye İnsan Hakları ve Eşitlik Kurumu Kanunu),* Law No. 6701, Official Gazette, 20 April 2016;
- Statutory Decree on the Establishment and Duties of the Ministry of Family and Social Affairs *(Aile ve Sosyal Politikalar Bakanlığının Teşkilat ve Görevleri Hakkında Kanun Hükmünde Kararname),* Decree No. 633, Official Gazette, 8 June 2011;
- By-Law on the Implementation of the Law on the Protection of the Family and the Prevention of Violence Against Women (*6284 Sayılı Ailenin Korunması ve Kadına Karşı Şiddetin Önlenmesine Dair Kanuna Ilişkin Uygulama Yönetmeliği*), Official Gazette 18 January 2013;
- By-Law on the Establishment and Functioning of Guest Houses (*Kadın Konukevlerinin Açılması ve Işletilmesi Hakkında Yönetmelik*), Official Gazette 5 January 2013;
- By–Law on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries (*Gebe veya Emziren Kadınların Çalıştırılma Şartlarıyla Emzirme Odaları ve Çocuk Bakım Yurtlarına Dair Yönetmelik*), Official Gazette 16 August 2013;
- By-Law on the Birth Allowance (*Doğum Yardımı Yönetmeliği*), Official Gazette 23 May 2015;
- By-Law on Centres for Prevention and Surveillance of Violence (*Şiddet Önleme ve İzleme Merkezleri Hakkında Yönetmelik*), Official Gazette 17 March 2016;
- By-Law on the Treatment of and Obligations Imposed on Those Sentenced for Crimes Against Sexual Inviolability *(Cinsel Dokunulmazlığa Karşı Suçlardan Hükümlü Olanlara Uygulanacak Tedavi ve Diğer Yükümlülükler Hakkında Yönetmelik),* Official Gazette 26 July 2016;
- By-Law on Part-Time Work Following Maternity Leave or Unpaid Leave (*Analık İzni veya Ücretsiz İzin Sonrası Yapılacak Kısmi Süreli Çalışmalar Hakkında Yönetmelik*), Official Gazette 8 November 2016;
- The Prime Ministry circular on the deterrence of mobbing in public bodies and institutions and private workplaces (*İşyerlerinde Psikolojik Tacizin* [Mobbing] *Önlenmesi Başbakanlık Genelgesi*), Official Gazette 19 March 2011;
- State Personnel Department Public Personnel Circular, Serial no. 2 (*Kamu Personeli Genel Tebliği, Seri no: 2*), Official Gazette 15 April 2011;
- Capital Markets Board Communiqué no. 57 amending the former Communiqué on the Determination and Application of Corporate Government Principles (*Kurumsal Yönetim İlkelerinin Belirlenmesine ve Uygulanmasına İlişkin Tebliğde Değişiklik Yapılmasına Dair SPK Tebliği*), Official Gazette 11 February 2012.

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes. Article 10 of the Constitution[4] reads: '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. The State shall have the obligation to ensure that this equality exists in practice (Addendum, 2004).[5] Precautions taken with this goal cannot be considered as violations of the principle of equality (Addendum, 2010)'.[6]

2.1.2 Does the Constitution contain other Articles pertaining to equality between men and women?

Yes (indirectly). With an amendment to Article 90 of the Constitution in 2004,[7] ratified international agreements on fundamental rights and freedoms have been granted priority over national laws. This means, for example, that the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), or the Istanbul Convention, will be directly applicable.

2.1.3 Can the Article(s) mentioned in the two previous questions be invoked in horizontal relations (between private parties)?

Yes.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes. Article 5 of the Labour Law was the most extensive provision on the prohibition of discrimination. This Article regulated the principle of equal treatment, prohibiting discrimination on the basis of race, sex, language, religion and sect (religious denomination), political opinion, philosophical belief, colour, disability or any such considerations. A Draft Law on the Human Rights and Equality Institution of Turkey was submitted to Parliament by the Government on 28 January 2016. The Law[8] was adopted by Parliament on 6 April 2016 and became effective with its publication in the Official Gazette on 20 April 2016. In drafting the Law on Human Rights and Equality Institution of Turkey, Paris principles were closely followed and the Law prioritizes cooperation and collaboration with the NGOs, universities, occupational organizations, and other public bodies with similar tasks (Art. 9/1n, 14/4, 22/1-2).

Turkey needed a special body promoting equality, assisting victims of discrimination, monitoring and reporting on discrimination issues, and addressing systemic discrimination. The Human Rights and Equality Institution of Turkey established by the Law on Human Rights and Equality Institution of Turkey will operate in relation to the specified grounds of discrimination. Characteristics protected by the Law on Human Rights and Equality Institution of Turkey are sex, racial or ethnic origin, religion or belief, sect, disability, age, philosophical and political belief, colour, language, wealth, birth, marital status and health conditions. It is hoped that the Institution will be an effective body in promoting equality

4 Law No. 2709, Official Gazette 9 November 1982, No. 17863.
5 Law No. 5170, Official Gazette 22 May 2004, No. 25469.
6 Law No. 5982, Official Gazette 13 May 2010, No. 27580. This law was approved through a referendum held on 12 September 2010.
7 Law No. 5170, Official Gazette, 22 May 2004, No. 25469.
8 *Türkiye İnsan Hakları ve Eşitlik Kurumu Kanunu,* Law No. 6701, Official Gazette 20 April 2016, No. 29690.

and curbing discrimination. The Board will also build on the experience of its predecessor, the Human Rights Institution. It is likely that the claimants may find recourse to this body easier, simpler, more efficient and faster when compared to judicial proceedings. Also, claims that cannot be made issues of judicial proceedings may easily be brought to this newly established body.

The Law on Human Rights and Equality Institution of Turkey defines direct discrimination, indirect discrimination, harassment, mobbing, multiple discrimination, segregation, instruction to discriminate and implementation of such an instruction, reasonable accommodation in line with the EU acquis, mainly the Recast Directive 2006/54/EC. Discrimination includes segregation, direct discrimination, indirect discrimination, harassment, mobbing, multiple discrimination, instruction to discriminate, not affording reasonable accommodation and wrongful treatment of those who have initiated proceedings against discrimination, those who have been engaged in these proceedings and their representatives.

Until the enactment of the Law on Human Rights and Equality Institution of Turkey, anti-discrimination cases were mainly addressed through the complaints-led model, requiring the victim to identify a discriminatory act and bring a complaint to a court. The complaints-led model focuses on a determination of fault and punishing discriminatory conduct. This model applies mainly to complaints arising from labour contract terminations, where employees seek to be awarded compensation from the employer. Apart from labour contract disputes, the other area of concentration was (domestic) violence. Many other forms of discrimination were infrequently addressed under the old legal system. Significant gaps and shortcomings of the old Turkish anti-discrimination law have been improved by the Law on Human Rights and Equality Institution of Turkey. Besides the complaints-led model, there is enhancement of affirmative duties to promote equality with a focus on systemic discrimination. The state, the relevant ministries, public bodies, courts, the Human Rights and Equality Institution, ombudsmen, employers, associations, foundations, trade unions, employers' associations, political parties, public professional organisations and NGOs have the legal burden of supporting the enforcement of anti-discrimination law.

3. Implementation of central concepts

3.1 Sex/gender/transgender

3.1.1 Are the terms gender/sex defined in your national legislation?

No.

3.1.2 Is discrimination due to gender reassignment explicitly prohibited in your national legislation?

No. Characteristics protected by the TFEU are sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. Apart from sexual orientation, these grounds are specified in Law No. 6701 on the Human Rights and Equality Institution (Article 3/2). The grounds which are expanded are philosophical and political belief, colour, language, property, maternity, sect, marital status and health conditions. This is an exhaustive list that cannot be extended by the judiciary but only through legislation. This does not mean that the courts have no role. Sex is protected but not sexual orientation, gender reassignment or transsexuality. These groups are only marginally outside the delineated boundaries and the courts can easily recharacterize sex in order to bring these groups within the scope of protection, such as the leading decisions of the European Court of Justice applying the prohibition of sex discrimination to discrimination arising from the gender reassignment of a person or transsexuality.

Discrimination due to gender reassignment is also not explicitly prohibited in Article 5 of the Labour Law. This article, unlike the corresponding article in the Law on the Human Rights and Equality Institution, is non-exhaustive and gender reassignment will be deemed to be included in the prohibition of sex discrimination by the courts. All leading decisions of the European Court of Justice including those on sex discrimination and gender reassignment are translated into Turkish and published on the website of the Ministry of Justice. Such decisions are discussed in the doctrine as well as at conferences and in panels, seminars and in-service training to ensure that Turkish law and judicial decisions are compatible with EU law. Moreover, recourse can be had to the Constitutional Court and against its decisions to the ECtHR on the basis of a violation of gender equality.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. The concept of direct discrimination is used in the Labour Law and the Law on the Disabled. Under Article 5 of the Labour Law, the principle of equal treatment with regard to sex means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference to sex or pregnancy as regards the conclusion, content, implementation, and termination of labour contracts. Occupational activities for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor are excluded. In an employment relationship, excluding selection, gender discrimination is a reason to justify a claim for wrongful treatment or unlawful dismissal.

A person who discriminates as a result of hatred stemming from differences in language, race, nationality, sex, disability, political thought, belief or other considerations and accordingly hinders the employment of a particular person, or the sale, transfer or lease of any object to a person, or prevents someone from using a public service, will be punished by between one and three years' imprisonment (Criminal Law, Article 122).

Law No. 6518[9] amending the Law on the Disabled[10] defines direct and indirect discrimination with regard to the disabled (Article 3 as amended by Law No. 6518). Direct discrimination occurs when a disabled person, in the exercise of rights and freedoms, is treated less favourably on grounds of disability than a comparable person. This definition given in Article 3 of the Law on the Disabled as amended by Law No. 6518 complies with the EU definition but a general definition of direct/indirect sex discrimination is lacking in Article 5 of the Labour Law. Notably, it speaks of dual discrimination; if the disabled individual is female she may be considered to suffer from discrimination on the grounds of both sex and disability (Article 4h). It does not speak of dual discrimination if the disabled person is male.

Law No. 6701 on the Human Rights and Equality Institution defines direct discrimination, indirect discrimination, harassment, mobbing, multiple discrimination, segregation, an instruction to discriminate and the implementation of such an instruction, and reasonable accommodation (Art. 2) in line with the EU acquis, mainly the Recast Directive 2006/54/EC. Direct sex discrimination is explicitly prohibited in this new Law (Art. 2/1d, j; 3/2; 4/1ç). Direct discrimination occurs where a natural or legal person is treated less favourably on one or more of the grounds of discrimination in benefiting from rights and freedoms than another is, has been or would be treated in a comparable situation (Art. 2/1d). This definition includes all grounds of discrimination specified in the Law including sex.

3.2.2 Are pregnancy and maternity discrimination explicitly prohibited in legislation as forms of direct sex discrimination?

Yes. Under Article 5 of the Labour Law, the principle of equal treatment with regard to sex means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference to sex or pregnancy as regards the conclusion, content, implementation, and termination of labour contracts. Article 18 of the Labour Law determines that sex, marital status, pregnancy, maternity, and family responsibilities do not constitute valid reasons for contract termination. These provisions comply with Article 2(2) (c) of Directive 2006/54.

The newly adopted Law on the Human Rights and Equality Institution cites sex and maternity among the protected characteristics (Art. 3/2). In its Article 6 on employment it is stated that in the public and private sectors, discrimination is prohibited in relation to conditions for access to employment, access to practical work experience, obtaining information about the workplace or work, selection criteria and recruitment conditions, employment and working conditions, and in the termination of employment (Art. 6/1). Apart from this general statement it is also specified that the employer or his representative cannot deny an application on the grounds of pregnancy, maternity and childcare (Art. 6/3).

3.2.3 Are there specific difficulties in your country in applying the concept of direct sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant

No.

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes. Indirect sex discrimination is explicitly prohibited but not defined in the Labour Law. Under Article 5 of the Labour Law, the principle of equal treatment with regard to sex means that there shall be no discrimination whatsoever on grounds of sex, either directly

[9] Official Gazette 19 February 2014, No. 28918.
[10] Law No. 5378, Official Gazette 7 July 2005, No. 25868.

or indirectly, by reference to sex or pregnancy as regards the conclusion, content, implementation, and termination of labour contracts.

Law No. 6701 on the Human Rights and Equality Institution defines indirect discrimination (Art. 2/1e) and explicitly prohibits it (Art. 4/1d). Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put a natural or legal person at a particular disadvantage compared with other persons in benefiting from rights and freedoms and that this cannot be objectively justified. This definition includes all grounds of discrimination specified in the Law including sex.

3.3.2 Is statistical evidence used in your country in order to establish a presumption of indirect sex discrimination? Please provide some examples of cases, if available.

No.

3.3.3 Is in your view the objective justification test applied correctly by national courts? Please provide some examples of cases, if available.

No available data with regard to the published court decisions.

3.3.4 Are there specific difficulties in your country in applying the concept of indirect sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

Although there is no available data the author does not think that the concept is clear for the courts/practitioners because it is a newly introduced concept.

3.4 Multiple discrimination and intersectional discrimination

3.4.1 Is multiple discrimination – i.e. discrimination based on two or more grounds simultaneously – and/or intersectional discrimination – i.e. discrimination resulting from the interaction of grounds of discrimination which interact to produce a new and different type of discrimination - explicitly addressed in national legislation?

Yes. Multiple discrimination was only addressed in the Law on the Disabled with an amendment made in Article 4 by Law No. 6518[11] in 2014, which stipulated that attempts would be made to prevent disabled females from suffering dual discrimination. Now, multiple discrimination is fully addressed in the Law on the Human Rights and Equality Institution. Multiple discrimination is a type of discrimination (Art. 4/1c) that occurs where discriminatory treatment is associated with more than one ground of discrimination (Art. 2/1ç).

3.4.2 Is there any case law that addresses multiple discrimination and/or intersectional discrimination (where gender is one of the grounds at stake)?

No, but not all court decisions are published.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Yes. Article 10 of the Constitution now has an addendum[12] allowing for positive action: Precautions taken with this goal (achieving equality through positive action) cannot be considered as violations of the principle of equality.

[11] Official Gazette 19 February 2014, No. 28918.
[12] Law No. No. 5982, Official Gazette 13 May 2010, No. 27580. This law was approved through a referendum held on 12 September 2010.

Positive action is indirectly defined. Positive action amounts to measures for the attainment of gender equality. Article 10 of the Constitution confirms that measures taken to achieve substantive equality are not deemed to contradict the principle of equality, thus potentially providing for an increased use of temporary special measures. This complies with the EU definition found in Article 157 TFEU (4).

Law No. 6701 on the Human Rights and Equality Institution states that positive action measures to improve gender balance cannot be deemed discriminatory (Art. 7/f).

Positive action is also addressed in the Law on the Protection of the Family and the Prevention of Violence Against Women.[13] Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered to be discrimination under the terms of the Law on the Protection of the Family and the Prevention of Violence Against Women (Art. 1/2ç) that draws on the Istanbul Treaty.

3.5.2 Are there specific difficulties in your country in relation to positive action? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

No.

3.5.3 Has your country adopted measures that aim to improve the gender balance in company boards?

Yes. Communiqué No. 57 issued by the Capital Markets Board (SPK)[14] envisaged a quota for the number of women on boards. Having at least one female member in the five-member executive committees has become a general principle for companies listed on the Istanbul Stock Exchange. The application of this principle is based on a 'comply or explain' approach: If a company does not comply with this principle, its reasons for not complying will be made public in its 'Report of compliance with the corporate governance principles.'

There is no quota envisaged for the supervisory boards of companies.

3.5.4 Has your country adopted other positive action measures to improve the gender balance in some fields, e.g. in political candidate lists or political bodies? If so, please describe these measures.

There are positive action measures to increase women's employment and to keep women in employment upon having children through facilitating the reconciliation of work, private, and family life. Law No. 6663 amending Tax Law and Some Other Laws[15] that became effective on 10 February 2016 brought new measures to increase the employment rate of women and to further realize the reconciliation of work, private, and family life (please see the following sections of the present report: 5.2.1; 5.2.2; 5.3.1; 5.8.1; 5.9.1). The Law is an example to the twofold challenge faced by policy-makers: encouraging women's participation in the labour force yet not reducing fertility rates. It is a comprehensive package of measures with which working women will be in a stronger position to maintain their employment after having children.

In Turkey, there are no statutory gender quotas for national and local elections but soft voluntary party quotas. The total number of representatives (MPs) in Turkey is 550. The

[13] *Ailenin Korunması ve Kadına Karşı Şiddetin Önlenmesine Dair Kanun*, Law No. 6284, Official Gazette 20 March 2012, No. 28239.
[14] Official Gazette 11 February 2012, No. 28201.
[15] *Gelir Vergisi Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun,* Official Gazette 10 February 2016, No. 29620.

number of female representatives is 81 following the general election of 1 November 2015. The percentage (14.73 %) of female representatives is too low.[16]

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes. Law No. 6701 on the Human Rights and Equality Institution defines harassment in line with Article 2/1c of Directive 2006/54/EC (Art. 2/1j) and mobbing (Art. 2/1g) and explicitly prohibits them (Art. 4/1g).

Sexual harassment is a crime under Article 105 of the Criminal Law but mobbing has not been specified as a crime. If harassment is deemed to fall within the scope of sexual harassment, then it will be punishable under the Criminal Law.

3.6.2 Please specify the scope of the prohibition on harassment (e.g. does it cover employment and access to goods and services; is it broader?).

Yes, it may amount to a crime penalized by the Criminal Law if it is considered to fall within the scope of sexual harassment, see the answer above.

According to the Law on the Human Rights and Equality Institution, the prohibition on harassment covers not only employment and self-employment but also access to goods and services (Art. 5-6).

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes. The Law on the Human Rights and Equality Institution explicitly prohibits harassment. Harassment including its psychological and sexual forms is unwanted intimidation and hostile, degrading, humiliating or offensive conduct with the purpose or effect of violating the dignity of a person (Art. 2/1j) and is explicitly prohibited (Art. 4/1g).

Sexual harassment is not a general term covering all types of harassment of a sexual nature in the Criminal Law.[17] The general term is crimes against sexual inviolability, and sexual harassment is one of the crimes falling under this term.

Sexual harassment and workplace sexual harassment are legally recognized and outlawed in Turkey. The concept of sexual harassment is used in labour and criminal laws but has not been defined therein. Where a legal concept is not defined by law, it is up to the judiciary to interpret and clarify the legal concept. The Criminal Law regulates four types of crimes under the title 'Crimes against sexual inviolability:' Sexual assault, sexual exploitation of children, sexual intercourse with an under-aged person, and sexual harassment. Sexual harassment has not been defined in the Article itself (Article 105) but in the explanations appended to the Article. According to this definition, sexual harassment occurs when acts of a sexual nature sexually disturb the victim thereby violating the moral decency but not the physical inviolability of the victim. In other words, this behaviour may be verbal (remarks about one's figure/looks, crude sexual jokes, verbal sexual advances/offers, unwanted messages or emails) or non-verbal (staring, whistling, indecent exposure) but not physical. Acts involving physical contact, such as patting, kissing, fondling, hugging, grabbing, and rape constitute types of sexual assault. There has been an application to the Constitutional Court claiming that Article 105/1 of the Criminal Law on sexual harassment was unconstitutional based on the fact that sexual harassment has not been defined therein and it therefore remained an ambiguous concept and that this contradicted the constitutional principle of the legality of crimes and penalties. The Constitutional Court rejected the claim stating that on the basis of other crimes specified

[16] Available at: https://www.tbmm.gov.tr/develop/owa/milletvekillerimiz_sd.dagilim, accessed 7 May 2016.
[17] *Türk Ceza Kanunu*, Law No. 5237, Official Gazette 12 October 2004, No. 25611.

under the title 'Crimes against sexual inviolability' and the reasons appended to Article 105, sexual harassment has to be understood as any disturbing behaviour with a sexual aim/overtone that does not amount to a sexual assault or sexual exploitation.[18] In sexual harassment, the perpetrator and the victim may be of different sexes or the same sex, single or married.

The only reference to workplace sexual harassment in the Labour Law is that it is regulated as a ground for instant contract termination (summary termination; termination for a just cause). Workplace sexual harassment is specified in Articles 24/II and 25/II of the Labour Law as a ground for instant termination under the title 'immoral behaviour/conduct by the employer/worker or similar behaviour,' where 'similar behaviour' implies that the listing is non-exhaustive and that 'harassment' may be interpreted as behaviour similar to 'offensive behaviour' or 'sexual harassment.' Turkey extended its provisions on sexual harassment to the contexts of access to employment, vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience and promotion with the Law on the Human Rights and Equality Institution (Art. 6).

Previously, moral harassment (mobbing) was not an asserted claim in labour relations but in recent years it has become an increasingly frequent workplace violence complaint, although it has not been described as a crime in the Criminal Law. The Prime Ministry issued a circular on the deterrence of mobbing in public bodies and institutions and private workplaces.[19] This circular defines mobbing as deliberate and systematic behaviour during which an employee is humiliated, degraded, socially excluded, intimidated, has his or her personality and dignity violated and is subjected to (hostile) ill-treatment.

Under Article 417 entitled 'Protection of the worker's personality' of the new Obligations Code that became effective on 1 July 2012, employers are to take the necessary measures to prevent sexual harassment in the workplace and to prevent further damage for those who have already been victims of sexual harassment.[20] The employer has to 'provide an environment compatible with morals' in his workplace. This is beyond encouraging employers to take preventative action. Directive 2006/54 does not legally require individual employers to take preventative action; it merely 'encourages' such activities on the part of employers.

3.6.4 Please specify the scope of the prohibition on sexual harassment (e.g. does it cover employment and access to goods and services; is it broader?).

It may amount to a crime under the Criminal Law. See 3.6.3.

According to the Law on the Human Rights and Equality Institution, the prohibition on types of harassment covers not only employment but also access to goods and services (Art. 5).

3.6.5 Does national legislation specify that harassment and sexual harassment as well as any less favourable treatment based on the person's rejection of or submission to such conduct amounts to discrimination (see Article 2(2)(a) of Directive 2006/54)?

Yes. According to the Law on the Human Rights and Equality Institution, the segregation (exclusion) of a person based on one of the protected characteristics constitutes discrimination (Arts. 2/1a; 4/1a).

[18] Constitutional Court 25 February 2010, Case No. 2008/55, Decision No. 2010/41 (Official Gazette 22 June 2010, No. 27619).
[19] Official Gazette 19 March 2011, No. 27879.
[20] Official Gazette 4 February 2011, No. 27836.

3.7 Instruction to discriminate

3.7.1 Is an instruction to discriminate explicitly prohibited in national legislation?

Yes. Under Article 70 of the Constitution, every Turkish citizen has the right to enter the public service. No criteria other than qualifications for the office concerned shall be taken into consideration for recruitment in the public service. Under Article 5 of the Labour Law, the principle of equal treatment with regard to sex means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference to sex or pregnancy as regards the conclusion, content, implementation, and termination of labour contracts. According to Article 122 of the Criminal Law on discrimination, a person who discriminates as a result of hatred stemming from differences in language, race, nationality, sex, disability, political thought, belief or other considerations and accordingly hinders the employment of a particular person, or the sale, transfer or lease of any object to a person, or prevents someone from using a public service, will be punished by between one and three years' imprisonment.

The 2004 Prime Ministry circular on Acting in Accordance with the Principle of Equality in Employee Recruitment[21] states that unless there is a genuine and determining occupational requirement, job notices by public bodies and organisations cannot specify the sex of applicants. ISKUR, the Turkish Employment Office, issued a notice in April 2006 outlawing discriminatory job advertisements. Requests, including statements or specifications in job notices or advertisements, concerning preferences and limitations constituting discrimination shall not be put into effect by public and private employment offices. This to some extent prevents an employer from instructing its recruitment office to discriminate in job vacancy requirements.

An instruction to discriminate is defined (Art. 2/1b) and this instruction to discriminate as well as its application are explicitly prohibited (Art. 4/1b) by the Law on the Human Rights and Equality Institution.

3.7.2 Are there specific difficulties in your country in relation to the concept of instruction to discriminate? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

No.

3.8 Other forms of discrimination

Are any other forms of discrimination prohibited in national law, such as discrimination by association or assumed discrimination?

Yes. Law No. 6701 on the Human Rights and Equality Institution specifies protected characteristics (Article 3/2): sex, racial or ethnic origin, religion or belief, sect, disability, age, sexual orientation, philosophical and political belief, colour, language, property, maternity, marital status and health conditions. This is an exhaustive list that cannot be extended by the judiciary but only through legislation. Assumed discrimination is defined as a particular type of discrimination in the Law (Art. 2/1m; 4/1ğ).

Measures of interest relating to gender issues in the democratisation package introduced on 30 September 2013 included the removal of legal barriers for women with headscarves wanting to take up public posts, the intention to penalise hate crimes (bias-motivated crimes), and the intention to criminalise illegal force and intervention in personal lifestyles. With an amendment made in October 2013 to the By-law on the Garments of Public

[21] *Personel Temininde Eşitlik İlkesine Uygun Hareket Edilmesi ile İlgili 2004/7 Sayılı Başbakanlık Genelgesi 2004/7*, Official Gazette 22 January 2004, No. 25354.

Personnel, women with headscarves may now hold public office.[22] Law No. 6529 was enacted in March 2014 to further realise the principles prescribed in the democratisation package.[23]

Law No. 6529, amending Article 115 of the Criminal Law, criminalises unlawful or forceful interventions in personal lifestyle choices arising from a person's ideas, beliefs or convictions. Such acts will be punishable by imprisonment of between one year and three years. The same rule is to be applied to the preventions either by force or by another illegal act, of the use of freedom to announce religious beliefs, opinions and convictions (Article 14). Although the Article is neutral, it especially protects women with headscarves who face such comments.

Hate crimes have a bias motive and therefore represent a distinct category of hostility. Legal regulations providing punishment for hate crimes were not included in the Criminal Law and this situation created a loophole for offenders who went unpunished or who were found guilty of another type of crime, such as assault, threats, violence, physical assault, damaging property or belongings, vandalism, or harassment. Article 15 of Law No. 6529 amends Article 122 of the Criminal Law. According to the amended Article, a person who discriminates as a result of hatred stemming from differences in language, race, nationality, sex, disability, political thought, belief or other considerations and accordingly hinders the employment of a particular person, or the sale, transfer or lease of any object to a person, or prevents someone from using a public service, will be punished by between one and three years' imprisonment. For the time being, hate crimes do not include provisions for those targeted because of their sexual orientation or ethnic identity.

[22] Official Gazette, 8 October 2013, No. 28789.

[23] *Temel Hak ve Hürriyetlerin Geliştirilmesi Amacıyla Çeşitli Kanunlarda Değişiklik Yapılmasına Dair Kanun,* Law No. 6529, Official Gazette, 13 March 2014, No. 28940.

4. Equal pay and equal treatment at work (Article 157 TFEU and Recast Directive 2006/54)

4.1 Equal pay

4.1.1 Is the principle of equal pay for equal work or work of equal value implemented in national legislation?

Yes. The principle of equal pay is reflected in Article 5 of the Labour Law. The principle of 'equal pay for equal work or work of equal value' and that the application of certain protective measures on the basis of sex shall not justify the payment of a lower wage are openly expressed in the Article. But the Turkish law does not indicate how work can be assessed to be of equal value.

4.1.2 Is the concept of pay defined in national legislation?

Yes. The national concept of remuneration is broad. 'Pay' includes a basic wage that has to be paid in cash and that cannot be lower than the minimum wage and fringe benefits, in cash or in kind (Article 32, Labour Law). The basic wage is the amount paid in cash to the worker by the employer or third persons. Payment by third persons indicate percentage wages. The definition complies with the definition of Article 157(2) TFEU.

4.1.3 Does national law explicitly implement Article 4 of Recast Directive 2006/54 (prohibition of direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration)?

Yes. According to Article 5 of the Labour Law, there are no exclusions from the equal pay principle based, for example, on the size of a company, on reasons linked to the health and safety of workers, on national security, on religion, or on benefits under statutory social security schemes or on a particular category of worker (vulnerable/atypical/ precarious work contracts; 'quasi-subordinate' workers). Job classification systems have to adopt the same criteria to determine wage levels for men and women.

4.1.4 Is a comparator required in national law as regards equal pay?

No.

4.1.5 Does national law lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions?

No legal criteria for establishing the 'equal value' of the work performed are provided in the article. This issue is left to the collective agreements or job classification systems. Workers performing the same/similar jobs may be grouped together so that they will receive the same/similar wages. There is no study focusing on collective agreements with regard to the principle of equal pay/value.

4.1.6 Does national (case) law address wage transparency in any way?

No.

4.1.7 Is the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency applied in your country? If so, how?

Salaries paid to civil servants and all retirees are completely transparent. Public servants and other public employees have the right to conclude collective agreements. The parties may apply to the Public Servants Arbitration Board if a disagreement arises during the

process of a collective agreement. The decisions of the Public Servants Arbitration Board shall be final and have the force of a collective agreement (Paragraph added to Art. 53 of the Turkish Constitution[24] in 2010 by Act No. 5982).[25]

In the private sector, there are wage differentials in the informal sector. In the formal sector, collective agreements are transparent. Any interested person can reach collective agreements. In the formal sector in undertakings without collective agreements there may be wage gaps but not on the basis of sex. Individual wages are transparent under Article 8 of the Labour Law. The article does not use the term 'transparency' but states that the employers are under the legal obligation of providing their workers with their terms of employment in writing. A worker may easily check and compare his individual labour contract with other workers' contracts. Individual labour contracts must contain at least the following information or give a reference to the relevant law:

- Parties to the labour contract,
- Place of work,
- Title, grade, category of work or a job description/brief specification of tasks,
- Start date,
- Expected duration of the job,
- Paid holidays,
- Length of normal working day or working week,
- Basic wage, wage supplements, frequency of payment,
- Conditions of work,
- Terms of unilateral termination.

Although there are no studies on the issue whether the same wage is paid to those performing the same/similar jobs in the same establishment, this is what the author thinks based on the facts that an equal wage is a long-established and socially accepted value and that there are no applications to the courts on such a basis.

In a study dated 2011, using the 2006 Household Labour Force Survey of the TUIK (Turkish Statistical Institute), it was shown that when it comes to the prime working age (25-54 years), among male and female wage earners in urban Turkey the observed wage gap is rather narrow. Measured in terms of geometric means of monthly wages, the gap between the two demographic groups is found to be 8 % in favour of men. With this ratio, Turkey would be classified among countries with a low gender wage gap. The study has concluded and shown that the highly selective nature of women wage workers is the main reason for the narrow pay gap.[26] Working women are not randomly selected in the labour market; female workers earning a wage have above average observed and unobserved skills. This is an interesting feature of the Turkish labour market. While there is more or less an equal distribution of male labour in different sectors/jobs, the female labour supply increases due to expansion in education resulting in a female composition shift towards a more educated workforce.

4.1.8 Which justifications for pay differences are allowed in legislation and/or case law?

Article 5 of the Labour Law does not prohibit the payment of wages at lower rates to one sex for equal work when the wage differential is based on a justifiable ground such as seniority or the quantity or quality of production. If there is no justifiable ground, there may be an application to the courts by the female workers or the trade union representing them.

[24] Law No. 2709, Official Gazette, 9 November 1982, No. 17863.
[25] Official Gazette, 13 May 2010, No. 25780.
[26] Süral, N., Dayıoğlu, M, (2011), 'Recent Evidence on the Gender Wage Gap in Turkey' *Liber amicorum for Prof. Dr. Sarper Süzek, Ankara University Law Faculty Journal,* Beta Basım, Istanbul, pp. 691-713.

4.1.9 Are there specific difficulties related to the application of the principle of equal pay for equal work and work of equal value in practice? For example in case of out-sourcing?

No.

4.2 Access to work and working conditions

4.2.1 Is the personal scope in relation to access to employment, vocational training, working conditions etc. defined in national law (see Article 14 of Directive 2006/54)?

Yes.

Under Article 70 of the Constitution, every Turkish citizen has the right to enter the public service. No criteria other than qualifications for the office concerned shall be taken into consideration for recruitment in the public service. There is also a 2004 Prime Ministry circular on Acting in Accordance with the Principle of Equality in Employee Recruitment[27] stating that unless there is a genuine and determining occupational requirement, job notices by public bodies and organisations cannot specify the sex of applicants.

It used to be the case that women wearing headscarves could not take up public posts. The democratization package introduced on 30 September 2013 spoke of the removal of legal barriers for women with headscarves to take up public posts, the intention to increase penalties for hate crimes, and the intention to criminalise illegal force and intervention in personal lifestyles. Accordingly, the By-law on the Garments of Public Personnel[28] was amended[29] and women with headscarves may now hold public office.

Under Article 5 of the Labour Law, the principle of equal treatment with regard to sex means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference to sex or pregnancy as regards the conclusion, content, implementation, and termination of labour contracts. The newly adopted Law on the Human Rights and Equality Institution cites sex and maternity among the protected characteristics (Art. 3/2). In its Article 6 on employment it is stated that in the public and private sectors, discrimination is prohibited in relation to conditions for access to employment, access to practical work experience, obtaining information about the workplace or work, selection criteria and recruitment conditions, employment and working conditions, and in the termination of employment (Art. 6/1). Apart from this general statement it is also specified that the employer or his representative cannot deny an application on the grounds of pregnancy, maternity and childcare (Art. 6/3).

According to Article 122 of the Criminal Law on discrimination, a person who discriminates as a result of hatred stemming from differences in language, race, nationality, sex, disability, political thought, belief or other considerations and accordingly hinders the employment of a particular person, or the sale, transfer or lease of any object to a person, or prevents someone from using a public service, will be punished by between one and three years' imprisonment.

ISKUR, the Turkish Employment Office, issued a notice in April 2006 outlawing discriminatory job advertisements. Requests, including statements or specifications in job notices or advertisements, concerning preferences and limitations constituting discrimination shall not be put into effect by public and private employment offices.

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[27] *Personel Temininde Eşitlik İlkesine Uygun Hareket Edilmesi ile İlgili 2004/7 Sayılı Başbakanlık Genelgesi 2004/7*, Official Gazette 22 January 2004, No. 25354.

[28] *Kamu Kurum ve Kuruluşlarında Çalışan Personelin Kılık ve Kıyafetine Dair Yönetmelik*, Official Gazette, 25 October 1982, No. 17849.

[29] Official Gazette, 8 October 2013, No. 28789.

A worker is defined in Article 2 of the Labour Law: A worker is one who is employed under a labour contract. This definition implies subordination. The three essential elements inherent in a labour contract are work, a wage, and subordination. This definition of a 'worker' reflects the relevant case law of the CJEU in the sense that all types of atypical workers are included. There are public sector and private sector workers. The same law, the Labour Law, applies alike to all workers. A 'worker' does not cover the self-employed and civil servants. Workers fall within the scope of labour law whereas civil servants are covered by the administrative law.

The fundamental and permanent functions required by the public services that the State and public corporate bodies are assigned to perform, in accordance with principles of general administration are to be carried out by civil servants (Constitution, Art. 128). Unlike workers, civil servants are not covered by the Labour Law but by the Civil Servants Law.

Sometimes same rules (e.g. length of maternity leave) apply to workers and civil servants. Where this is not so (e.g. length of nursing periods), then the rules specific to workers and to civil servants are specified in this text.

4.2.2 Is the material scope in relation to (access to) employment defined in national law (see Article 14(1) of the Recast Directive 2006/54)?

Yes. In the course of a labour relationship, discrimination on the basis of race, sex, language, religion and religious denomination, political opinion, philosophical belief, colour, disability or any such considerations is strictly prohibited (Article 5, Labour Law). Here, the Article speaks of an 'existing labour relationship' but not access to employment, vocational training, promotion, and working conditions; and in access to all types and to all levels of vocational guidance, vocational retraining, including practical work experience. The exception is sex discrimination: The principle of equal treatment with regard to sex means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference to sex or pregnancy as regards the conclusion, content, implementation, and termination of labour contracts. Occupational activities for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor are excluded. Here, the article prohibits sex discrimination in access to employment but does not prohibit sex discrimination with regard to vocational training, promotion, and working conditions; and in access to all types and to all levels of vocational guidance, vocational retraining, including practical work experience. Therefore, Article 5 was more limited than the scope of Article 14(1) of Recast Directive 2006/54. But now the Law on the Human Rights and Equality Institution lays down and extends the principle of equal treatment to access to employment, vocational training, promotion, and working conditions; and to access to all types and to all levels of vocational guidance, vocational retraining, including practical work experience (Art. 6/1).

4.2.3 Has the exception on occupational activities been implemented into national law (see Article 14(2) of Recast Directive 2006/54)?

Yes. The principle of equal treatment with regard to sex means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference to sex or pregnancy as regards the conclusion, content, implementation, and termination of labour contracts. Occupational activities for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor are excluded (Article 5, Labour Law).

There is no available information on an assessment of the occupational activities referred to in Article 14(2) of Recast Directive 2006/54.

4.2.4 Has the exception on protection for women, in particular as regards pregnancy and maternity, been implemented in national law (see Article 28(1) of Recast Directive 2006/54)?

Yes.

4.2.5 Are there particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc.?

No.

5. Pregnancy, maternity, and leave related to work-life balance (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18)

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

Yes. The rules on pregnancy and childbirth in the Labour Law and the By–Law (implementing regulation) on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries,[30] draw almost completely on EU directives including the withdrawn European Parliament legislative resolution of 20 October 2010[31] on the Proposal[32] for a Directive of the European Parliament and of the Council of 3 October 2008 amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding.

The definitions which are provided for a 'pregnant worker', a 'worker who has recently given birth,' and a 'breastfeeding worker' are almost the same as in Directive 92/85/EEC (By-law, Article 4). A 'pregnant worker' is a worker who informs her employer of her pregnancy with a medical report obtained from any health institution (Article 4/1a).

5.1.2 Are the protective measures mentioned in the Articles 4-7 of Directive 92/85 implemented in national law?

Yes. By–Law on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries provides for provisional measures to protect pregnant workers and workers who have recently given birth or are breastfeeding against risks, and prohibits their exposure to certain chemical, physical and biological agents (Annexes). These agents are defined in the By-law on Health and Safety Measures for Works with Chemicals[33] that draws on Directives 1998/24/EC, 1991/322/EEC, 2000/39/EC, 2006/15/EC, and 2009/161/EU.

As regards night work, Article 6 of Directive 92/85/EEC uses the term that workers 'are not obliged to perform night work.' As regards workers, the By–law on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries is different as regards the period after birth (Article 8): Workers are not obliged to perform night work starting from the period of informing the employer up to the birth. In a period of one year following the birth, the worker cannot perform night work. After a one-year period has elapsed, the worker cannot perform night work for the additional period so specified in a medical report.

Conditions for women civil servants are different (Civil Servants Law, Article 101 as amended by Law Nos 6111[34] and 6495):[35] Starting from the 24th week of pregnancy up until the birth and during the 2-year period following the birth the civil servant cannot be assigned to night work. This will also be so for the first 24 weeks of pregnancy if required in a medical report.

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30 *Gebe veya Emziren Kadınların Çalıştırılma Şartlarıyla Emzirme Odaları ve Cocuk Bakım Yurtlarına Dair Yönetmelik*, Official Gazette, 16 August 2013, No. 28737.

31 European Parliament legislative resolution (P7_TA(2010)0373) on the proposal for a directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, Date: 20 October 2010, Strasbourg, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0373+0+DOC+XML+V0//EN#BKMD-19.

32 COM (2008) 637 final.

33 *Kimyasal Maddelerle Çalışmalarda Sağlık ve Güvenlik Önlemleri Hakkında Yönetmelik,* Official Gazette 12 August 2013, No. 28733.

34 Official Gazette 25 February 2011, No. 27857bis.

35 Official Gazette 2 August 2013, No. 28726.

There is a complete prohibition for specified periods and this is inconsistent with Article 6 of Directive 92/85/EEC.

5.1.3 Is dismissal prohibited in national law from the beginning of the pregnancy until the end of the maternity leave (see Article 10(1) of Directive 92/85)?

Yes.

For workers: The Labour Law restricts the right of an employer to dismiss a pregnant worker. Between the employer and the worker there may be a fixed-term or an open-ended labour contract.

Employment under a fixed-term labour contract: A fixed-term labour contract cannot be terminated before the expiry of a specified period unless there is a just cause, clearly indicated in Article 25 of the Labour Law, leading to an immediate dismissal. The reasons for an immediate dismissal (just causes) are the same for fixed-term and open-ended contracts. Immediate dismissal may occur for specified serious offences known as gross misconduct (zero tolerance offences). Needless to say, pregnancy does not constitute a just cause. Family responsibilities, pregnancy and confinement are cited among the reasons that cannot constitute a valid ground for dismissal (Labour Law, Article 18). However, excessive absenteeism for health reasons is a just cause for dismissal. The employer is entitled to terminate the fixed-term or open-ended labour contract for excessive absenteeism. If a woman worker who fails to report to work for reasons of health for more than six weeks beyond the prescribed period of notice (two to eight weeks according to the length of employment) following her confinement leave of 16 weeks (16 weeks + 2-8 weeks + 6 weeks = [beyond] 24 to 30 weeks of absenteeism), she can be dismissed for excessive absenteeism (Article 25/1).

In fixed-term and open-ended labour contracts, the labour contract is deemed to have been suspended during maternity leave. Suspension means that the rights and obligations such as the performance of work and the payment of wages by the parties to a labour contract are temporarily stopped/halted. Industrial action, the worker's illness, pregnancy and absenteeism due to force majeure are examples of cases where a labour contract is suspended. During a period of suspension, a worker cannot be dismissed unless there is a reason for immediate dismissal. Therefore, dismissal for any reason during the period of maternity leave is legally not permissible. It is not possible for the pregnant worker to become redundant during maternity leave unless there is a reason for immediate dismissal. An exception shall be the automatic expiry of the prescribed period coinciding with the leave in case of a fixed-term labour contract.

Employment under an open-ended labour contract: Workers employed under open-ended labour contracts either enjoy regular job security or increased (enhanced) job security. Workers with increased job security enjoy greater protection against dismissal on notice. A worker who has been working under an open-ended labour contract for more than six months at a workplace where at least 30 (50 in agriculture) workers are employed benefits from increased job security if he/she is not in the position of an employer's representative managing the whole business or workplace with authority regarding recruitment and dismissal. Where the employer owns more than one workplace in the same industry, the total number of workers shall be considered (Article 18). The 30-worker threshold is to avoid imposing administrative, financial and legal constraints in a way which would hinder the creation and development of small and medium-sized businesses (SMEs). This applies to workers in general.

In the course of employment, pregnancy and maternity do not constitute valid reasons for contract termination. If a woman worker employed under an open-ended labour contract is dismissed due to her pregnancy, the types of pay (compensation) will differ based on whether she is a worker with regular or with increased job security. Where a worker with

regular job security is dismissed due to her pregnancy, this will be deemed an 'abusive dismissal' entitling the worker to severance pay and the so-called 'bad-faith pay', equalling three times the amount of pay corresponding to the worker's period of notice. The employer has to present the termination in writing but there is no legal obligation for him/her to specify the reason for the dismissal clearly and precisely (Article 17).

Where a worker with increased job security is dismissed, the employer has the legal obligation to specify the reason for the dismissal clearly and precisely (Article 18). The worker has to be provided with an opportunity to defend himself/herself when the allegations are related to his/her capacity or conduct (Article 19). Where no reason is specified or the reason specified is not valid, the worker can apply for mediation to protect his/her rights and to be reinstated (Article 20). If no settlement is reached, then a court action can be pursued. If the court orders a reinstatement but the employer does not reinstate him/her, as is usual due to the fear of retaliation, the worker shall be entitled to severance pay and 'job security pay.' The minimum amount of job security pay corresponds to four months of the worker's basic wages and the maximum is eight months of the worker's basic wages.

With the amendments to the Labour Law by the new Labour Courts Law,[36] recourse to mediation before adjudication became compulsory in requests for reinstatement and compensation by the worker. The effective date of these rules on mediation is 1 January 2018.

For civil servants: In Turkey, (female) civil servants enjoy comprehensive job security under the Civil Servants Law (Articles 94-98).

5.1.4 In cases of dismissal from the beginning of pregnancy until the end of maternity leave, is the employer obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85)?

Yes, for workers with enhanced job security.

The employer is obliged to specify the grounds for dismissal clearly and precisely when dismissing a worker with increased job security, but he is not under such an obligation when dismissing a worker with regular job security (Labour Law, Articles 17-18). But, where the worker with regular job security applies to the court against dismissal, his rights will be determined after the real ground of dismissal is proved by either of the parties before the court. This is because the employer is not under a legal obligation to specify the reason for the dismissal when dismissing a worker with regular job security. Also, the reason may be specified by the employer but challenged by the worker.

5.2 Maternity leave

5.2.1 How long (in days or weeks) is maternity leave? Please specify the relevant legislation and Article(s).

Maternity leave is the same (16 weeks) for female workers and female civil servants (Labour Law, Article 74; Civil Servants Law, Article 104/A). Two additional weeks are to be added to the ante-natal period if there is multiple pregnancy.

There is also additional maternity leave. For female workers: The worker, if she so requests, has to be granted unpaid leave for up to six months following the post-natal period. The two periods, compulsory and additional, run consecutively, so as to provide an entitlement to 16 weeks (18 weeks in the case of a multiple pregnancy) plus 6 months of leave. There can be no gap between the two periods (Labour Law, Article 74). Maternity

[36] Articles 3/1, 11, *İş Mahkemeleri Kanunu,* Official Gazette 25 October 2017, No. 30221.

leave is considered as having been worked in the calculation of the annual leave (Labour Law, Article 55/b).

For female civil servants: Additional unpaid maternity leave upon request used to be one year for female civil servants. In February 2011, with an amendment made in Article 108/B of the Civil Servants Law by Law No. 6111[37] this one-year period was extended to two years. The civil servant, if she so requests, has to be granted unpaid leave for up to two years following the post-natal period. Promotions are to continue for women civil servants during unpaid maternity leave: A civil servant is entitled to an 'upgrade (one degree)' (also meaning an increase in salary) following each year of service (a horizontal upgrade, *'kademe ilerlemesi')* and following three years of service (a vertical upgrade, *'derece ilerlemesi'*). A civil servant on her unpaid maternity leave (two years) will have these entitlements (Law No. 657, Article 36/C/8; Additional Art. 42, as amended by Law No. 6663[38] in February 2016).

5.2.2 Is there an obligatory period of maternity leave before and/or after birth?

Yes. The total period of maternity leave is compulsory (Labour Law, Article 74; Civil Servants Law, Article 104/A). Unpaid additional leave is voluntary. The eight-week ante-natal resting period may be reduced to three weeks at the request of the worker and the approval of a doctor, and the unused period is added to the eight-week post-natal resting period. If childbirth occurs before the due date (early delivery), the unused ante-natal portion of the leave is added to the post-natal portion of the leave.

The Civil Servants Law concerns the death of the civil servant mother during maternity leave. Where this occurs, the civil servant father, if he so requests, may use the leave granted to the mother (Article 104/A). The worker father did not have such a right unless so provided in the individual/collective labour agreement. But Law No. 6663 has made it available for the worker father (Law No. 4857, Art. 74/1 as amended by Law No. 6663 in February 2016).

An employer who requires a woman worker to work during compulsory maternity leave period is punishable by a fine of approximately EUR 506 (TL 1 619) (this was the amount of the fine in 2017) (Labour Law, Articles 74 and 104).

There is also breastfeeding leave after birth. For female civil servants the time allowed for breastfeeding is three hours a day for a period of six months following the termination of maternity leave and 1½ hours a day for the second six-month period (Civil Servants Law, Article 104/D as amended by Law No. 6111).[39] In practice, nursing civil servants preferred to add up these hours and to take one full day off per week. But the compilation of nursing periods was prohibited as this is against the rationale of having daily nursing periods (Article A/II/e State Personnel Department Public Personnel Circular, Serial no. 2). The daily nursing period is 1½ hours during weekdays for women workers until the child is one year old (Labour Law, Article 74).

5.2.3 Is there a legal provision insuring that the employment rights relating to the employment contract are ensured in the cases referred to in Articles 5, 6 and 7 of Directive 92/85?

Yes. The rules on ante-natal rights and requirements are found mainly in the By–law on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries. Pregnant workers are entitled to time off, without any loss of pay, in order to attend ante-natal examinations, if such medical examinations have to take place during

[37] Official Gazette 25 February 2011, No. 27857 bis.
[38] The Law amending Income Tax Law and Some Other Laws *(Gelir Vergisi Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun),* Official Gazette 10 February 2016, No. 29620.
[39] Official Gazette 25 February 2011, No. 27857 bis.

working hours (Article 12). If the pregnant/recently given birth/breastfeeding worker's physician asks for a position that is less strenuous or hazardous, the employer has to transfer her to another position if there is one or if he can provide one without being unduly burdened, without a reduction in wages. If such a transfer is not possible, then the worker shall be granted leave without pay upon request for a period necessary for the safety and health of the worker (Article 8). Also, a pregnant worker, a worker who has recently given birth or a breastfeeding worker cannot perform work beyond 7½ hours a day (Article 10).

Rules on night work are found in the By–law on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries (Article 8) and in the Civil Servants Law (Article 101). As regards night work, Article 6 of Directive 92/85/EEC uses the term that workers 'are not obliged to perform night work.' As regards workers, the By–law on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries is different as regards the period after birth (Article 8): Workers are not obliged to perform night work starting from the period of informing the employer up to the birth. In a period of one year following the birth, the worker cannot perform night work. After the one-year period has elapsed, the worker cannot perform night work for the additional period so specified in a medical report. The conditions for female civil servants are different (Civil Servants Law, Article 101 as amended by Law Nos 6111[40] and 6495):[41] Starting from the 24th week of pregnancy up until the birth and during a two-year period following the birth the civil servant cannot be assigned night work. This will also be so for the first 24 weeks of pregnancy if required in a medical report.

5.2.4 Is there a legal provision that ensures the employment rights relating to the employment contract (including pay or an adequate allowance) during the pregnancy and maternity leave?

Yes. In relation to pregnancy and giving birth, there are maternity medical benefits (benefits in kind) and benefits in cash. Maternity medical benefits cover medical examinations, medication, in-vitro fertilisation, and hospitalisation designed to cover care for the insured woman or the uninsured wife of the male worker. The maternity allowance is a short-term incapacity benefit designed to compensate for a worker's loss of earnings due to pregnancy and giving birth. Unless there is a provision to the contrary in the individual contract or a collective labour agreement, there will be no pay by the employer during maternity leave; the worker will be paid a maternity allowance equalling sick pay by the social security organisation (Law No. 5510,[42] Article 18). To qualify for this maternity allowance, a female worker has to have made the relevant contributions for at least 90 days in a period of one year before the birth. A female civil servant will continue being paid her normal remuneration during maternity leave (Law No. 5510, Article 18).

5.2.5 Is pay or an allowance during the pregnancy and maternity leave at the same level as sick leave or is it higher?

Pay is at the same level as sick leave for female workers but it is higher for female civil servants (normal remuneration) (Law No. 5510, Article 18). There is no specified ceiling in national law.

Also, with Article 16 of Law No. 6637,[43] to start from 15 May 2015, whether working or not, there will be a birth allowance of EUR 80 (TL 300) for the first child, EUR 105 (TL 400) for the second child, and EUR 158 (TL 600) for the third child. If the mother has Turkish nationality, then whether she is married to a Turk or a foreigner, she will be the one to

[40] Official Gazette 25 February 2011, No. 27857bis.
[41] Official Gazette 2 August 2013, No. 28726.
[42] Social Insurances and General Health Insurance Law (*Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*), Official Gazette 16 June 2006, No. 26200.
[43] *Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun,* Official Gazette 7 April 2015, No. 29319.

receive the allowance. If the mother is a foreign national, then the allowance will be given to the father of Turkish nationality. Both or one of the spouses must have Turkish nationality to benefit from this allowance. The implementing regulation, the By-law on Birth Allowance,[44] became effective on 23 May 2015. There will be no allowance for births before 15 May 2015 but the number of births and adoptions before 15 May 2015 will be considered to determine the amount of the birth allowance. Where this allowance is paid to a public employee, then no other birth allowance will be paid. To this end, Law No. 6637 deleted the provisions on the birth allowance in the Civil Servants Law and the Turkish Military Personnel Law. Applications will be made to provincial directorates of the Ministry of Family and Social Affairs in person or through the internet and for Turkish citizens abroad to the consulates.

5.2.6 Are statutory maternity benefits supplemented by some employers up to the normal remuneration?

Yes for female workers. This may be true only for female workers as opposed to female civil servants.[45] As a general rule, workers are paid in return for work. But the employer and the worker might have agreed on a fixed monthly amount regardless of periods of absenteeism. If a female worker receives such a fixed wage, then the amount paid by the social security organisation is to be transferred to the employer by the worker (Labour Law, Articles 48, 49/4). This is also the case for the sickness allowance.

5.2.7 Are there conditions for eligibility for benefits applicable in national legislation (see Article 11(4) of Directive 92/85)?

Yes for female workers. To qualify for this maternity allowance, a female worker has to have made the relevant contributions for at least 90 days in a period of one year before the birth (Law No. 5510, Article 18).

5.2.8 In national law, is there a provision that guarantees the right of a woman to return after maternity leave to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and to benefit from any improvement in working conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54)?

Yes. The Labour Law restricts the right of an employer to dismiss a pregnant worker (Articles 17-21). In fixed-term and open-ended labour contracts, the labour contract is deemed to have been suspended during maternity leave. Therefore, dismissal for any reason during the period of maternity leave is legally impermissible. According to Article 22 of the Labour Law, it is not possible for the employer to make a substantial change in working conditions without the worker's consent.

For civil servants: In Turkey, (female) civil servants enjoy (incredibly) comprehensive job security under the Civil Servants Law (Articles 94-98).

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes.

[44] Official Gazette 23 May 2015, No. 29364.

[45] Workers are those employed under labour contracts in the private sector as well as in the public sector. Civil servants are public officials employed under administrative contracts in the public sector to carry out public posts. For example, in a Ministry, an undersecretary or directors are civil servants but those who do not perform public duties such as those employed for cleaning services are workers. See also p. 21 of this report.

For civil servants: Adoption leave was first introduced in 2011 for civil servants by Law No. 6111. Following an amendment made in Article 108/B of the Civil Servants Law by Law No. 6111,[46] if a child under the age of three is adopted, the adoptive parents will be granted, upon request, unpaid adoption leave of up to 24 months. If both spouses are civil servants, then these periods may be used to coincide with each other or consecutively in a manner not to exceed 24 months altogether. Now, with Law No. 6663,[47] this unpaid leave of 24 months is to follow paid leave of eight weeks (the same as post-natal leave) (Law No. 657, Article 108/C as amended in February 2016).

For workers:[48] The issue of adoption leave was left to the individual/collective labour contracts until April 2015. With Law No. 6645[49] amending the Labour Law, three days' paid leave are to be granted to workers upon adoption. If a child under the age of three is adopted, there will be paid leave of eight weeks (the same as postnatal leave) for the adoptive worker parent(s). After this paid leave has elapsed, unpaid leave of six months may follow (Law No. 4857, Article 74/2, 6 as amended by Law No. 6663[50] in February 2016).

5.3.2 Does national legislation provide for protection against dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave (see Article 16 of Directive 2006/54)?

Yes. For workers: Family responsibilities, pregnancy and confinement are cited among reasons that cannot constitute a valid ground for dismissal (Labour Law, Article 18). This is a non-exhaustive provision and adoption will be considered as falling under this provision if a worker who uses his/her adoption leave is dismissed on this ground.

For civil servants: Adoption is not a ground for dismissing a civil servant. Civil servants enjoy comprehensive job security under the Civil Servants Law (Articles 94-98).

5.4 Parental leave[51]

5.4.1 Has Directive 2010/18 been explicitly implemented in your country?

No. There is no leave entitled 'parental leave.' There is no legislation and/or national collective agreement, or case law which specifically speak of parental leave within the understanding of Directive 2010/18. There are family-related forms of leave or leave that may be used for family/parental issues and they are quite generous and exceed Directive 2010/18 when compared with the parental leave. Information on existing types of family-related leave or leave that may be used as parental leave is provided under 5.6. There is no legal hindrance to having enhanced leave through individual/collective agreements but agreements generally focus on monetary issues, i.e. wages, wage supplements, etc., and state that this is a matter for laws which are applied in other issues.

Generally speaking, types of leave for civil servants are more generous than those for workers. The reason for this is not to deter private sector employers from employing women workers.

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46 Official Gazette 25 February 2011, No. 27857 bis.

47 The Law amending Income Tax Law and Some Other Laws *(Gelir Vergisi Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun),* Official Gazette 10 February 2016, No. 29620.

48 Workers are those employed under labour contracts in the private sector as well as in the public sector. Civil servants are public officials employed under administrative contracts in the public sector to carry out public posts. For example, in a Ministry, an undersecretary or directors are civil servants but those who do not perform public duties such as those employed for cleaning services are workers.

49 Official Gazette 23 April 2015, No. 29335.

50 The Law amending Income Tax Law and Some Other Laws *Gelir Vergisi Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun),* Official Gazette 10 February 2016, No. 29620.

51 Due to the fact that there is no entitled 'parental leave' in Turkey, sub questions 5.4.2 to 5.4.7 and 5.4.9 to 5.4.20 have been removed as they are not applicable.

5.4.8 Did the Government take measures to address the specific needs of adoptive parents (see Clause 4 of Directive 2010/18)?

Yes. For workers: Family responsibilities, pregnancy and confinement are cited among reasons that cannot constitute a valid ground for dismissal (Labour Law, Article 18). This is a non-exhaustive provision and adoption will be considered as falling under this provision if a worker who uses his/her adoption leave is dismissed on this ground.

For civil servants: Adoption is not a ground for dismissing a civil servant. Civil servants enjoy comprehensive job security under the Civil Servants Law (Articles 94-98).

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

Yes. For a civil servant father: Male civil servants were granted paid paternity leave of three days upon the birth of their child. Law No. 6111[52] amended Article 104/B of the Civil Servants Law in February 2011 and extended it to ten days. Moreover, it introduced unpaid paternity leave for 24 months for male civil servants, upon request. Paternity leave starts immediately after the child's birth for the (civil servant) husband. Where both additional maternity leave and paternity leave are to be taken, these forms of leave may be used so as to coincide with each other or consecutively. In such a case, the total cannot exceed 24 months per child.[53]

For a worker father: Paid or unpaid paternity leave for male workers was left to individual and collective labour agreements until April 2015. With Law No. 6645[54] amending the Labour Law, five days' paid paternity leave is to be granted to workers upon birth (Labour Law, additional Article 2).

5.5.2 Does national legislation provide for protection against dismissal of workers who take paternity leave and/or specify their rights after the end of paternity leave (see Article 16 of Directive 2006/54)?

Yes. For workers: Family responsibilities, pregnancy and confinement are cited among the reasons that cannot constitute a valid ground for dismissal (Labour Law, Article 18). This is a non-exhaustive provision and paternity leave will be considered as falling under this provision if a worker who uses his paternity leave is dismissed on this ground.

For civil servants: Paternity leave is not a ground for dismissing a civil servant. Civil servants enjoy comprehensive job security under the Civil Servants Law (Articles 94-98).

5.6 Time off/care leave

5.6.1 Does national legislation entitle workers to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident (see Clause 7 of Directive 2010/18)?

Yes.

For civil servants:
Sickness and patient-companionship leave: A 'sickness and patient-companionship leave' (*hastalık ve refakat izni*) is three months paid care leave to be granted upon a medical report to the civil servant parent after a serious accident or sickness requiring long

[52] Official Gazette 25 February 2011, No. 27857 bis.
[53] Article A/III/d State Personnel Department Public Personnel Circular, Serial no. 2, Official Gazette 15 April 2011, No. 27906.
[54] Official Gazette 23 April 2015, No. 29335.

treatment necessitating companionship for a child, parent, spouse or sibling. The leave may be extended for the same duration (Article 105/7 as amended by Law No. 6111[55] Civil Servants Law). If the situation continues, then upon the submission of a medical report specifying this, the civil servant parent will be granted unpaid leave for up to 18 months (Article 108/A Civil Servants Law). There is no age limit for the child.

Leave to provide parenting for a disabled child or a child with a permanent sickness: A newly introduced leave is for the civil servant parent of a disabled child or a child with a permanent sickness. Article 7 of Law No. 6525[56] amending Article 104/E of the Civil Servants Law in February 2014 envisaged paid leave of up to ten days for the civil servant mother or father in the case of the sickness of a child with at least 70 % disability (if the child is married then if the child's spouse is also at least 70 % disabled) or a child with a continuous sickness. This leave can be used wholly or partially during a period of one year (piecemeal). There is no age limit for the child.

Leave upon the marriage or death of the child: Under Article 104/B of the Civil Servants Law a civil servant parent will be entitled to seven days' paid leave upon the marriage or death of the child. There is no age limit for the child. Seven days' paid leave also exists upon the death of the spouse, or his/her spouse's parent(s) or sibling(s).

Excusable leave: The so-called 'excusable leave' (leave for a valid reason/good cause) (*mazeret izni*) is a ten-day paid leave to which a second ten-day paid leave may be added in a period of one year. The second ten-day period will be considered as part of the annual leave (Civil Servants Law, Article 104/C, E as amended by Law No. 6111).[57]

Sabbatical leave: An unpaid sabbatical leave of one year to be used as one continuous period or in two parts is granted to civil servants who have completed five (previously ten) years of service. The sabbatical leave can only be taken once throughout the entire period of service (Civil Servants Law, Article 108/E as amended by Law No. 6111).[58] No specific reason needs to be provided to use this leave. For example, if a child suffers from a serious illness, this sabbatical leave may be taken by the parent and used as 'care leave.'

For workers in the public sector: Additional Article 1 added to Law No. 5620[59] in February 2011 is on leave for permanent workers employed in the public sector. Permanent workers employed in the public sector are entitled to an unpaid 'sickness and patient companionship leave' of six months plus an additional six months. Workers permanently employed in the public sector are also entitled to an unpaid 'sabbatical leave' of six months upon the completion of ten years of employment. This sabbatical leave can only be taken once throughout the entire period of employment. These forms of leave may be taken for family-related reasons. No specific reason needs to be given to use this leave. For example, if the child suffers from a serious illness, this sabbatical leave may be taken by the parent and used as 'care leave.' Besides these specifically designed forms of leave, permanent workers employed in the public sector fall within the scope of the Labour Law and therefore enjoy the leave prescribed in the law, and individual/collective labour agreements.

For workers:
Leave for providing parenting to a disabled child or a child with a permanent sickness: With Law No. 6645[60] amending the Labour Law in April 2015, paid leave of up to ten days is available for the worker mother or father in case of the treatment of a child with at least

[55] Official Gazette 25 February 2011, No. 27857 bis.
[56] Official Gazette 27 February 2014, No. 28926.
[57] Official Gazette 25 February 2011, No. 27857 bis.
[58] Official Gazette 25 February 2011, No. 27857 bis.
[59] *Kamuda Geçici İş Pozisyonlarında Çalışanların Sürekli İşçi Kadrolarına veya Sözleşmeli Personel Statüsüne Geçirilmeleri, Geçici İşçi Çalıştırılması ile Bazı Kanunlarda Değişiklik Yapılması Hakkında Kanun*, Official Gazette 21 April 2007, No. 26500.
[60] Official Gazette 23 April 2015, No. 29335.

70 % disability or a child with a continuous sickness (Additional Article 2/2). This leave can be used wholly or partially during a period of one year. There is no age limit for the child.

Leave upon the death of the child / spouse / parent / sibling: With Law No. 6645 amending the Labour Law in April 2015, there will be three days paid leave upon the death of the child / spouse / parent / sibling (Additional Article 2/1).

Easing of the entitlement to retirement for parental reasons: A woman worker/civil servant/self-employed person with a disabled child in need of constant care will be entitled to early retirement: For the period following 1 October 2008, 1/4th of the premium-paid days will be added to the total premium paid days under Article 28 of the Social Insurances and General Health Insurance Law. It is the Social Security Organisation Health Board[61] that determines the child's condition on the basis of the relevant by-law.[62] See 7.4.

Also, where a worker/civil servant/self-employed person resigns due to pregnancy or having given birth, she may, if she chooses, pay contributions for a maximum period of two years during which she remains unemployed (Social Insurances and General Health Insurance Law, Article 41). This two-year period starts at the time of the birth and the working woman may benefit from this provision for three separate births (360 days X 6 years = 2 160 days). A working woman fully benefiting from this provision will retire six years earlier. See 7.4.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

There are no legal rules on surrogacy. If parental leave is denied and the case comes before the courts, it will be for the court to decide.

5.8 Leave sharing arrangements

5.8.1 Does national law provide a legal right to share (part of) maternity leave?

No. Maternity leave and additional maternity leave are limited to women. They cannot be used by the fathers nor be transferred to fathers. Where both additional maternity leave and paternity leave are to be taken, these may be used so as to coincide with each other or consecutively. In such a case the total cannot exceed 24 months per child (Article A/III/d State Personnel Department Public Personnel Circular, Serial no. 2).

The Civil Servants Law concerns the death of the civil servant mother during maternity leave. Where this occurs, the civil servant father, if he so requests, may use the leave granted to the mother (Article 104/A). With Law No. 6663,[63] the worker father is entitled to the same right (Law No. 4857, Art. 74/1 as amended by Law No. 6663 in February 2016).

5.8.2 Is there a possibility for one parent to transfer part of the parental leave to the other parent?

No. Sickness and patient companionship leave, leave for providing parenting to a disabled child or a child with a permanent sickness, and excusable leave may be used by either (civil servant) parent. Once they decide which parent is to make use of the leave, it is non-transferable. Leave upon the marriage or death of a child is for both (civil servant/worker) parents.

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61 *Sosyal Güvenlik Kurumu Sağlık Kurulu*.

62 Article 15, By-law on Incapacity for Work and Schemes for Invalidity (*Çalışma Gücü ve Meslekte Kazanma Gücü Kaybı Oranı Tespit İşlemleri Yönetmeliği*), Official Gazette 11 October 2008, No. 27021.

63 The Law amending Income Tax Law and Some Other Laws *Gelir Vergisi Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun),* Official Gazette 10 February 2016, No. 29620.

5.9 Flexible working time arrangements

5.9.1 Does national law provide workers with a legal right (temporarily or otherwise) to reduce working time on request?

Yes, only for the pregnant/recently given birth/breastfeeding worker.

Pregnant and breastfeeding workers may under no circumstances be obliged to perform duties for which the assessment has revealed a risk of exposure to the agents and working conditions listed in Annexes I-II (By–law on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries, Articles 6-7).

If the pregnant/recently given birth/breastfeeding worker's physician asks for a position that is less strenuous or hazardous, the employer has to transfer her to another position if there is one or if he can provide one without being unduly burdened, without a reduction in wages. If such a transfer is not possible, then the worker shall be granted leave without pay upon request for the period necessary for the safety and health of the worker (Article 8). Also a pregnant worker, a worker who has recently given birth or a breastfeeding worker cannot perform work beyond 7½ hours a day (Article 10).

If employers refuse to comply with the obligations envisaged in the By–law on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries, there will be a fine of EUR 533-1 065 (between TL 2 025 and 4 050 according to the precariousness of the work and the number of employees) for each non-compliance and for each month of non-compliance in 2017- (Law on Occupational Health and Safety,[64] Articles 26/n and 30).

Starting from February 2016, with amendments made by Law No. 6663[65] and the by-law[66] further elaborating the Law, there is part-time work as an option for civil servant / worker parents:

- Part-time work as an option for female civil servants: A female civil servant may opt for part-time work (half of the statutory working time, which is 40 hours per week) following the end of fully paid maternity leave. This will be in the amount of two months for the first child, four months for the second child, and six months for the third child. The duration of part-time work will be longer in the case of multiple births (specified periods plus one month) or if the child is disabled (12 months). The periods are the same for adoptive parent(s). She will receive her full salary from the public employer as if she worked full time. She may commence her two-year unpaid maternity leave after paid maternity leave, or start after the expiry of the two/four/six month period of part-time work (Law No. 657, Art. 104/F).
- Part-time work as an option for the civil servant mother and/or father: A civil servant woman who has given birth and/or her civil servant husband has the option of working part time until the first day of the month following the compulsory schooling age of the child. Compulsory schooling age starts at the end of September when the child is aged five years. A civil servant who opts for a time reduction of 50 % will be paid half of his/her regular salary (Law No. 656, Additional Art. 43).
- Part-time work as an option for a woman worker: A woman worker may opt for part-time work (half of the statutory working time, which is 45 hours per week) following the end of paid maternity leave. This will be to the amount of 60 days for the first child, 120 days for the second child, and 180 days for the third child. The duration of

[64] *İş Sağlığı ve Güvenliği Kanunu*, Law No. 6331, Official Gazette 30 June 2012, No. 28339.
[65] The Law amending the Income Tax Law and Some Other Laws *(Gelir Vergisi Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun),* Official Gazette 10 February 2016, No. 29620.
[66] By-law on Part-Time Work Following Maternity Leave or Unpaid Leave (*Analık İzni veya Ücretsiz İzin Sonrası Yapılacak Kısmi Süreli Çalışmalar Hakkında Yönetmelik*), Official Gazette 8 November 2016, No. 29882.

part-time work will be longer in the case of multiple births (specified periods plus 30 days) or if the child is disabled (360 days). The periods are the same for adoptive parent(s). If she opts for a time reduction of 50 %, she will receive half of her regular wage from her employer. For the remaining period she will be paid from the Unemployment Fund. The daily amount of this payment (allowance) will be the daily gross minimum wage (Law No. 4447,[67] Art. 53/B/g; Additional Art. 5).

- Part-time work as an option for a woman worker and/or her husband: A woman worker who has given birth and/or her (worker) husband has the option of working part time until the first day of the month following the compulsory schooling age of the child (Article 12). She/he will be paid half of her/his regular wage if she/he opts for a time reduction of 50 %. A request for this option will not constitute a valid reason for an employer to terminate her/his contract. If one of the spouses is not employed, then the other (worker) spouse cannot benefit from this option (Law No. 4857, Art. 13). The employer's approval will be required if the requesting worker is: a) employed in the health sector in particular jobs such as a responsible director, a responsible doctor, a responsible person at a medical laboratory, or in a position requiring permanent employment; b) employed in seasonal or campaign work with a duration of less than one year; c) employed in industrial shift work necessitating indivisibility; or d) if the work performed cannot be divided into workdays due to its nature (By-law on Part-Time Work Following Maternity Leave or Unpaid Leave, Art. 12). These limitations are not imperative (absolutely binding) and the social partners are free to define work in which part-time work is possible through collective agreements (By-Law, Art. 13). A worker who has opted for part-time work may return to full-time work by informing the employer at least one month in advance. This decision cannot be later reversed. If a temporary worker has been employed for the remaining period of this job, the temporary worker's employment ends automatically. A worker using this part-time option may also decide to terminate her employment. In such a case, if there is a temporary worker filling her vacancy, this temporary worker will become a permanent worker (By-Law, Art. 14).

These measures are taken to reconcile work and family obligations, and also to encourage working women to continue working after giving birth.

Turkey is one of the OECD Member States with the most rigid (protective) labour legislation. Temporary work and temporary work agencies were prohibited in Turkey for a long time as a result of the reactions from trade unions. Now, with Law no. 6715 amending the Labour Law and the Turkish Employment Office[68] and the by-law[69] further elaborating the Law, private employment bureaus may serve also as temporary work agencies providing temps for employers with temporary work contracts.

5.9.2 Does national law provide workers with a legal right to adjust working time patterns (temporarily or otherwise) on request?

Yes, only for a pregnant/recently given birth/breastfeeding worker. See 5.9.1. For other workers, this will be an issue for individual bargaining.

Also, there is now part-time work as an option for civil servant / worker parents. (See 5.9.1).

5.9.3 Does national law provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request?

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[67] Unemployment Fund Law *(İşsizlik Sigortası Kanunu),* Law No. 4447, Official Gazette 8 September 1999, No. 23810.

[68] *İş Kanunu ile Türkiye İş Kurumu Kanununda Değişiklik Yapılmasına Dair Kanun,* Official Gazette 20 May 2016, No. 29717.

[69] *Özel İstihdam Büroları Yönetmeliği,* Official Gazette 11 October 2016, No. 29854.

Yes. This is possible if there is mutual consent.

5.9.4 Are there any other legal rights to flexible working arrangements, such as arrangements by which workers can "bank" hours to take time off in the future?

Yes. A worker who engages in overtime (work performed beyond 45 hours per week) may either request wage for overtime work or time off. If the worker requests time off, then he/she will have 1½ hours for each hour of overtime worked as time off. He may use the time-off period during a period of six months coinciding with his working time (Labour Law, Article 41).

Also, in the case of work stoppages for various reasons (e.g. force majeure, excusable leave) compensatory work can be requested by the employer. Compensatory work cannot exceed three hours in a working day provided that the daily maximum hours of work (11 hours) is not exceeded. Compensatory work cannot be carried out on rest days and holidays (Labour Law, Article 64).

6. Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1 Is direct and indirect discrimination on grounds of sex in occupational social security schemes prohibited in national law?

No.

6.2 Is the personal scope of national law relating to occupational social security schemes the same, more restricted or broader than specified in Article 6 of Directive 2006/54? Please explain and refer to relevant case law, if any.

The personal scope of mandatory occupational pension plans for specified categories is more restricted than that of the directive. There are mandatory occupational pension plans for:

1. the Armed Forces (OYAK);
2. the employees of the state-owned coal mining enterprise (*Amele Birliği*);
3. financial sector institutions such as banks, insurance companies, reinsurance companies, the stock exchange, and chambers of commerce.

Operating under the 2001 Private Pension Savings and Investment System Law,[70] there is a personal private pension system which is supplementary to the existing state pension plans. It is based on individual/collective voluntary participation. Any person, be it employed or unemployed, may participate in this system. It is open to all adult (above 18 years of age) participants, who take out contracts with a pension company. They may, in fact, open accounts with more than one pension company. Employers can contribute to the employees' individual accounts. Employer contributions are tax deductible for the employer - up to certain statutory limits. There is no legal obligation for the employer to contribute but if it so desires it may partially/totally undertake the payment of premiums. If it contributes, it is called an undertaking-sponsored plan. The participants are entitled to retirement benefits when they reach the age of 56 and have been saving under the scheme for at least 10 years. The retirement age applies to both genders and is lower than the statutory retirement age that is 58 for women and 60 for men. The completion of ten years is compulsory and therefore if it is not completed, the retirement age will increase. Benefits can take the form of a lump-sum payment, a programmed withdrawal or an annuity.

6.3 Is the material scope of national law relating to occupational social security schemes the same, more restricted or broader than specified in Article 7 of Directive 2006/54? Please explain and refer to relevant case law, if any.

The material scope of mandatory occupational pension plans covers the risks specified in Article 7 of Directive 2006/54. The material scope of the 2001 Private Pension Savings and Investment System Law only covers retirement.

6.4 Has the national law applied the exclusions from the material scope as specified in Article 8 of Directive 2006/54?

Yes. There are no mandatory occupational pension plans for the self-employed.

6.5 Are there laws or case law which would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54?

No.

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[70] *Bireysel Emeklilik Tasarruf ve Yatırım Sistemi Kanunu*, Law No. 4632, Official Gazette 7 April 2001, No. 24366.

6.6 Is sex used as an actuarial factor in occupational social security schemes?

No. Men and women pay the same contributions.

6.7 Are there specific difficulties in your country in relation to occupational social security schemes, for example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

The former 1964 Social Insurance Law excluded institutions in the financial services sector, such as banks, insurance companies, reinsurance companies, the stock exchange, and chambers of commerce, from the state (mandatory) social security system. These institutions set up their own occupational pension plans. There are 17 such funds covering nearly 375 000 people in 2014.[71] They are to be transferred to the state social security system according to provisional Article 20 of the Social Insurances and General Health Insurance Law[72] but this transfer has continuously been postponed. The deficits in these occupational pension plans and the resulting hardships encountered in privatizations and/or sales necessitate the transfer but the financial burden to be imposed upon the state social security system is the major reason for its postponement. The Law amending the Occupational Health and Safety Law and Some Other Laws and Statutory Decrees of April 2015[73] provided the authority for determining this transfer date to the Council of Ministers.

[71] *Banka Emekli Sandıklarının SGK'ya Devrine Sonsuz Erteleme* (Postponement of the transfer of bank funds to the Social Security Organization), http://www.muhasebetr.com/ulusalbasin/haber_oku.php?haber_id=17061.

[72] *Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*, Law No. 5510, Official Gazette 16 June 2006, No. 26200.

[73] *İş Sağlığı ve Güvenliği Kanunu ile Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun*, Law No. 6645, Official Gazette 23 April 2015, No. 29335.

7. Statutory schemes of social security (Directive 79/7)

7.1 Is the principle of equal treatment for men and women in matters of social security implemented in national legislation?

No.

7.2 Is the personal scope of national law relating to statutory social security schemes the same, more restricted or broader than specified in Article 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

The personal scope is broader. Minors (those under 18), if parents are not covered by a social security scheme, benefit from protection against sickness. All university students are provided with health care by their universities. Apprentices, trainees, prison inmates performing work, village heads, heads of a town district, licensed prostitutes, union executives, artists, performers, and authors are also covered.

Any adult not permanently/temporarily covered by the state security scheme may make use of voluntary insurance. By paying contributions they may be entitled to retirement and protection against sickness.

7.3 Is the material scope of national law relating to statutory social security schemes the same, more restricted or broader than specified in Article 3 par. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

The same as in section 7.2.

7.4 Has national law applied the exclusions from the material scope as specified in Article 7 of Directive 79/7? Please explain (specifying to what extent the exclusions apply) and refer to relevant case law, if any.

The pensionable age is different, 58 for women and 60 for men and this will be so up to and including the year 2035. With a (very slow) progressive implementation starting from 2036 the retirement ages will be equalized at 65 in 2048 (Law no. 5510, Art. 28).

There is preferential treatment for female children: the female child benefits from the survivors' benefits lifelong on condition that she is single or divorced, or widowed and not covered by any statutory social security scheme. This is incompatible with Directive 79/7. A male child is considered a dependant and benefits from the survivors' benefits until he reaches 18 years of age. This age limit is increased to 20 if he is undertaking secondary education and to 25 if he is a student in tertiary education. If he is disabled to an extent which makes it impossible for him to work, there is no age limit.

Incentives such as increased or lowered social security contributions (premiums) are applied for employers to promote the employment of youth and women. Some examples from the social security legislation are: During a period of unpaid maternity leave, neither the worker nor the employer will be expected to contribute. The worker may, if she chooses, pay contributions for the statutory (compulsory) maternity leave but the employer will not have a duty to contribute. If the worker pays contributions for the statutory maternity leave period, this period counts as a pensionable service. Also, where a woman worker, a woman civil servant, or self-employed woman gives birth to a child after giving up work, she may, if she chooses, pay contributions for at most the two-year period during which she remains unemployed. This period starts on the date of the birth and the working woman may benefit from this provision for three separate births (Law No. 5510, Article 41) meaning that a working woman fully benefiting from this provision will retire six years earlier. See 5.6.1 Also, if a working woman is the mother of a disabled child

in need of constant care, she will be entitled to early retirement (Law No. 5510, Article 28). See 5.6.1 This is only for mothers. It is hoped that as a result of such measures working mothers will not lose the hope of becoming entitled to old-age benefits and will therefore be encouraged not to stop working or to re-enter work following a break.

7.5 Is sex used as an actuarial factor in statutory social security schemes?

No.

7.6 Are there specific difficulties in your country in relation to implementing Directive 79/7? For example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

No.

8. Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 Has Directive 2010/41/EU been explicitly implemented in national law?

No. The Social Insurances and General Health Insurance Law[74] regulates social security for workers, civil servants and the self-employed.

8.2 What is the personal scope related to self-employment in national legislation? Has your national law defined self-employed or self-employment? Please discuss relevant legislation and national case law (see Article 2 Directive 2010/41/EU)

The term 'self-employed' is used in Turkey but not the term 'self-employed worker.' A self-employed person may be a shoe repairer, a carpenter, a farmer, an architect, a lawyer, a notary public, or a doctor. Those who run small businesses are covered by the Law on Tradesmen and Small Artisans' Professional Organisations.[75] Those with larger businesses (merchants) and legal entities (business companies) are covered by the Commercial Law[76] but this does not result in a difference in treatment. All self-employed persons including those who are self-employed in agriculture are covered by the Social Insurances and General Health Law (Law No. 5510). The term 'self-employed person' is not defined but the conclusion drawn from Article 4 of Law No. 5510 specifying the coverage of the self-employed is that they are mainly those who are not employed under labour contracts but pursue gainful activities on their own account. Partners in a business, village heads and heads of the smallest districts in towns (muhtar), the voluntarily insured (those who are 18 years old and over, and not covered by a state security scheme may be voluntarily insured by paying contributions in order to benefit from social security rights before joining the workforce in any way), jockeys and their trainers constitute the somewhat 'grey zone' between employment, self-employment and unemployment. These people, however, are grouped together with the 'real' self-employed with the idea of enjoying the same social security rights and benefits.

8.3 Related to the personal scope, please specify whether all self-employed workers are considered part of the same category and whether national legislation recognises life partners.

Those self-employed in agriculture (self-employed farmers) are covered by the Social Insurances and General Health Law (Law No. 5510). Agricultural workers are covered by the Obligations Law[77] if the number of agricultural workers employed is 50 or less. If the number exceeds 50, then these workers fall within the scope of the Labour Law. Agricultural workers are covered by the Agricultural Workers' Social Insurances Law.[78]

An unpaid 'helping' spouse is not a worker as long as this help does not go beyond 'support for family–related reasons.' If this help is beyond mere support, then there is no legal hindrance to being employed under a labour contract. The Social Insurances and General Health Law recognises officially married spouses but not partners. Like any other unregistered worker (undeclared work; worker not registered with the Social Security Institution), a partner may apply to the courts claiming that his/her work has remained undeclared.

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[74] *Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*, Law No. 5510, Official Gazette 16 June 2006, No. 26200.
[75] *Esnaf ve Sanatkarlar Meslek Kuruluşları Kanunu*, Law No. 5362, Official Gazette 21 June 2005, No. 25852.
[76] *Türk Ticaret Kanunu*, Law No. 6102, Official Gazette 14 February 2011, No. 27846.
[77] *Borçlar Kanunu*, Law No. 6098, Official Gazette 4 February 2011, No. 27836.
[78] *Tarım İşçileri Sosyal Sigortalar Kanunu*, Law No. 2925, Official Gazette 20 October 1983, No. 18197.

8.4 How has national law implemented Article 4 Directive 2010/41/EU? Is the material scope of national law relating to equal treatment in self-employment the same, more restricted or broader than specified in Article 4 Directive 2010/41/EU?

The Social Insurances and General Health Insurance Law covers the self-employed and the employed in an equal manner. This is on a mandatory basis. Apart from this mandatory state social security coverage, all employed, self-employed and unemployed persons may benefit from private insurances on a voluntary basis. Any person (i.e. including spouses and life partners) may apply to a private insurance company and make payments for specified periods for various reasons including an entitlement to a retirement pension.

Law No. 6701 on the Human Rights and Equality Institution specifies the protected characteristics (Article 3/2): sex, racial or ethnic origin, religion or belief, sect, disability, age, sexual orientation, philosophical and political belief, colour, language, property, birth (maternity), marital status and health conditions. Article 6 of this Law regulates employment and self-employment: In the public and private sectors, discrimination is prohibited in relation to conditions for access to employment, access to practical work experience, obtaining information about the workplace or work, selection criteria and recruitment conditions, employment and working conditions, and the termination of employment (Art. 6/1). This includes job notifications, access to all types and to all levels of vocational guidance, vocational training and retraining, promotions, access to all levels of the professional hierarchy, in-service training, social benefits and similar issues (Art. 6/2). The employer or his representative cannot deny an application on the grounds of pregnancy, maternity and childcare (Art. 6/3). Discrimination is prohibited in relation to conditions for access to self-employment, licences, registration or similar issues (Art. 6/4). All types of work and labour contracts, be they covered by the Labour Law or other laws, are subject to the provisions of this article (Art. 6/5).

8.5 Has your State taken advantage of the power to take positive action (see Article 5 Directive 2010/41/EU)? If so, what positive action has your country taken? In your view, how effective has this been?

Vocational training through ISKUR and support for young female entrepreneurs through KOSGEB (the Small and Medium-Sized Enterprises Organisation) have been significantly expanded. Prime Ministry Circular no. 2004/7 of 2004 on Observance of the Principle of Equality in Staff Recruitment and the Prime Ministry Circular of 2010 on Increasing Female Employment and Ensuring Equal Opportunities[79] are critical indicators of the political commitment to achieving gender equality in the labour market. KOSGEB has various entrepreneur support and training programmes[80] prioritizing the support of women entrepreneurs. Applied Entrepreneurship Training schemes can be organized by KOSGEB or other foundations or institutions (universities, ISKUR (the Employment Office), professional organizations, municipalities etc.). Training courses are organised for general and specific (youngsters, women, disadvantaged groups) target groups at no charge for the participants. There are many national and international plans, programmes, and projects which are currently underway. For example, on 20 July 2011, KAGIDER (Women Entrepreneurs of Turkey) and the World Bank launched Turkey's first Gender Certification Programme, also known as the Equal Opportunities Model, for private sector companies. The main objective was to support private sector firms that succeed in promoting gender equality as a business practice. On 22 October 2013, the Ministry of Family and Social Policy, the Swedish International Development Agency (SIDA) and the World Bank became partners in a multi-year effort to develop improved access to affordable and high-quality childcare as part of balancing family and work life, to promote more flexible working arrangements for men and women in the context of the New National Employment

[79] EGELR, No. 2/2010, pp. 112-113.
[80] www.kosgeb.gov.tr, accessed 10 August 2015.

Strategy, to expand female entrepreneurship, to raise awareness throughout society and to support women's cooperatives.

8.6 Does your country have a system for social protection of self-employed workers (see Article 7 (Directive 2010/41/EU)?

Yes. There is a system of social protection excluding life partners. There is a single system of social protection (the Social Insurances and General Health Insurance Law, Art. 4). The state social security scheme is mandatory for all employed and self-employed persons. Sickness, maternity, invalidity, old age, industrial accidents and occupational diseases are all covered. Spouses and children are covered on a mandatory basis when employed or self-employed persons are covered by the state social security scheme. With the death of the insured employed or self-employed person, the spouse and children are covered by survivors' benefits on a mandatory basis.

8.7 Has Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed been implemented in national law?

Yes. Apart from the recognition of life partners, Law No. 5510 (Social Insurances and General Health Law) it is in conformity with Article 8 of the Directive. The self-employed and the employed are treated equally as regards maternity benefits. Article 15 of the Social Insurances and General Health Law applies to self-employed women, women workers and uninsured wives of male workers without making any differentiation. Like women workers and uninsured wives of male workers, the self-employed women will receive full maternity benefits. In relation to pregnancy and giving birth, there are benefits in kind and benefits in cash. Maternity medical benefits cover medical examinations, medication, in-vitro fertilisation, and hospitalisation designed to cover care for the insured woman or the uninsured wife of the male worker. The maternity allowance is a short-term incapacity benefit designed to compensate for a worker's loss of earnings due to pregnancy and giving birth (Law No. 5510, Articles 16-18). The amount of the maternity allowance is equal to sickness pay, i.e. two thirds of a worker's regular daily wage throughout the maternity leave. Maternity leave lasts for 16 weeks, and 18 weeks in the case of multiple pregnancies. State social security coverage is compulsory for employed and self-employed persons. Contributions are made for specified periods for entitlement to maternity benefits, including temporary replacements (temps).

Article 68/5 of Law No. 5510 concerns in-vitro fertilisation. The Social Security Institution previously paid for two trials, and the woman worker, woman civil servant, or self-employed woman would contribute consecutively 30 % and 25 % of the total amount. Law No. 6552[81] increases the number of trials to three, and the woman is only required to contribute 20 % towards the total amount for the third trial. Article 41/1a of Law No. 5510 concerns early retirement possibilities for all working women. If the worker pays contributions (premiums) for the statutory maternity leave period, this period counts as pensionable service. In addition, if a working woman resigns due to pregnancy or after delivery, if she chooses she may pay contributions for at most the two-year period during which she remains unemployed. This period starts with the birth and the worker could benefit from this provision for two separate births. Law No. 6552 increased the number of births to three, meaning that a working woman fully benefiting from this provision will retire six years earlier.

[81] *İş Kanununda ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılması ile Bazı Alacakların Yeniden Yapılandırılmasına Dair Kanun*, Official Gazette 11 September 2014, No. 29116bis.

8.8 Has national law implemented the provisions regarding occupational social security for self-employed persons (see Article 10 of Recast Directive 2006/54)?

No.

8.9 Has national law made use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54? Please describe relevant law and case law.

No.

8.10 Is Article 14(1) (a) of Recast Directive 2006/54 implemented in national law as regards self-employment?

No.

9. Goods and services (Directive 2004/113)

9.1 Does national law prohibit direct and indirect discrimination on grounds of sex in access to goods and services?

Yes. Discrimination takes place in areas outside of the labour market. Article 5 of the Law on the Human Rights and Equality Institution of Turkey (Law No. 6701) on the scope of the prohibition of discrimination transposes Council Directive 2004/113/EC implementing the principle of equal treatment in access to and the supply of goods and services. Public and private bodies will not be allowed to discriminate against citizens who want to obtain information about or access to or use services such as education and training, justice, the police, health, transportation, communication, social security, social services, social aid, sports, accommodation, culture, tourism, and similar services. This provision also applies to access to places and facilities of such services. Those that plan, supply and audit these services have to consider reasonable accommodation for the disabled. In the supply of movables and immovables, public bodies, public professional organisations, natural persons, and private legal entities cannot discriminate in leases, sales, or transfers. Associations, foundations, trade unions, employers' associations, political parties, and professional organisations cannot discriminate in membership acquisition and termination, elections to the organs, membership rights, and participation in and benefiting from activities with the exceptions described in the relevant laws or their internal regulations.

A person who discriminates as a result of hatred stemming from differences in language, race, nationality, sex, disability, political thought, belief or other considerations and accordingly hinders the employment of a particular person, or the sale, transfer or lease of any object to a person, or prevents someone from using a public service, will be punished by between one and three years' imprisonment (Criminal Law, Article 122).

9.2 Is the material scope of national law relating to access to goods and services more restricted or broader than specified in Article 3 of Directive 2004/113? Please explain and refer to relevant case law, if any.

Law No. 6701 on the Human Rights and Equality Institution specifies the protected characteristics (Article 3/2): sex, racial or ethnic origin, religion or belief, sect, disability, age, sexual orientation, philosophical and political belief, colour, language, property, maternity, marital status and health conditions. Article 5 of the Law on the Human Rights and Equality Institution of Turkey on the scope of the prohibition of discrimination transposes Council Directive 2004/113/EC implementing the principle of equal treatment in the access to and supply of goods and services. Discrimination based not only on sex but on all specified grounds is prohibited in the area of the access to and supply of goods and services. The material scope of national law is broader in the sense that discrimination on all grounds is prohibited in the access to and supply of goods and services.

Women wearing headscarves could not attend universities nor take up public posts. The de facto ban in access to university entrance examinations and universities gradually ceased to exist. There was no actual law prohibiting the use of headscarves by female university students, but this was prohibited by a constitutional court decision of a political nature.[82] The ban was eliminated in 2010 after the Higher Education Board (YÖK) sent a circular to universities on the issue. Starting from September 2014, female students in secondary education may wear headscarves in their schools, if they choose to do so.[83] The de jure ban in access to public posts was lifted with amendments made to relevant laws. The democratization package introduced on 30 September 2013 spoke of the removal of legal barriers for women with headscarves to take up public posts, the intention to increase

[82] Decision No. 1991/8 of 9 April 1991, Official Gazette, 31 July 1991.

[83] By-law Amending the By-law on Garments of Students of State Schools (*Milli Eğitim Bakanlığına Bağlı Okul Öğrencilerinin Kılık ve Kıyafetlerine Dair Yönetmelikte Değişiklik Yapılması Hakkında Yönetmelik),* Official Gazette, 27 September 2014, No. 29132.

penalties for hate crimes, and the intention to criminalise illegal force and intervention in personal lifestyles. Accordingly, the By-law on the Garments of Public Personnel[84] was amended[85] and women with headscarves may now hold public office.

According to Article 122 of the Criminal Law as amended by Law No. 6529,[86] a person who discriminates as a result of hatred stemming from differences in language, race, nationality, sex, disability, political thought, belief or considerations and accordingly conditions of employment of a particular person, or the sale, transfer or leasing of a movable or immovable to a person, or hinders one from using of a public service shall be punished by 1-3 years of imprisonment.

9.3 Has national applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education?

Yes for advertising and the media. Article 5 of the Law on the Human Rights and Equality Institution of Turkey (Law No. 6701) on the scope of the prohibition of discrimination includes education and training, and communication but not advertising and the media.

9.4 Have differences in treatment in the provision of the goods and services been justified in national law (see Article 4(5) of Directive 2004/113)? Please provide references to relevant law and case law.

Yes. Justifications for differences in treatment are specified in the Law on the Human Rights and Equality Institution of Turkey (Art. 7) not specifically with regard to the provision of goods and services but with regard to all types of discrimination including the provision of goods and services.

There cannot be a claim for discrimination where (Art. 7):

1. There is a genuine and determining occupational requirement provided that the objective is legitimate and the requirement is proportionate;
2. Sex is a determining factor;
3. The fixing of a minimum or maximum age for requirement in recruitment and in employment provided that the objective is legitimate and the requirement is proportionate;
4. There are special and preventive measures for children and other people;
5. It involves the employment of persons of a particular religion to serve or to provide education or training in religious institutions;
6. There are membership requirements in accordance with the purpose, principles and values laid down in their relevant legislation or internal regulations by associations, foundations, trade unions, employers' associations, political parties and professional organisations;
7. It involves positive action;
8. There are differences of treatment based on nationality governing entry, residence, and legal status.

9.5 Does national law ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113)?

No.

[84] *Kamu Kurum ve Kuruluşlarında Çalışan Personelin Kılık ve Kıyafetine Dair Yönetmelik*, Official Gazette, 25 October 1982, No. 17849.
[85] Official Gazette, 8 October 2013, No. 28789.
[86] Official Gazette, 13 March 2014, No. 28940.

9.6 How has the exception of Article 5(2) of Directive 2004/113 been interpreted in your country? Please report on the implementation of the C-236/09 *Test-Achats* ruling in national legislation.

No because sex is not a factor in the calculation of premiums and benefits.

9.7 Has your country adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113)?

Yes. Discrimination takes place in areas outside of the labour market. Article 5 of the Law on the Human Rights and Equality Institution of Turkey (Law No. 6701) on the scope of the prohibition of discrimination transposes Council Directive 2004/113/EC implementing the principle of equal treatment in access to and the supply of goods and services.

9.8 Are there specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in your country in relation to access to and the supply of goods and services? Please briefly describe relevant case law.

No.

10. Violence against women and domestic violence in relation to the Istanbul Convention

10.1 Has your country ratified the Istanbul Convention?

Yes. Turkey played an important role in drafting the Istanbul Convention as the then Chair of the Committee of Ministers and was the first signatory to the Istanbul Convention. Turkey signed the Convention on 11 May 2011 and ratified it on 14 March 2012.

The Law on the Protection of the Family and the Prevention of Violence Against Women,[87] which makes special reference to the Treaty (Art. 1/2a) and draws on the Treaty, was accepted unanimously in Parliament on 8 March 2012. This Law abrogated the former Law on the Protection of the Family.[88] The scope of the former law was limited to those living in the same household and therefore was not in compliance with the obligations under the Convention.

The specific purpose of the Law on the Protection of the Family and the Prevention of Violence Against Women is the protection of women against all forms of violence, as well as the prevention, prosecution and elimination of violence against women and domestic violence. It covers acts of physical, sexual, psychological or economic violence between members of the family or domestic unit, irrespective of biological or legal family ties. It has gender-neutral language in the sense that it encompasses victims and perpetrators of both sexes.

Two detailed implementing regulations followed the Law: the By-law on the Implementation of the Law on the Protection of the Family and the Prevention of Violence Against Women[89] and the By-law on the Establishment and Functioning of Guesthouses.[90] The Law together with the implementing regulations has a comprehensive approach to the protection of and assistance to all victims of violence against women and domestic violence. There is extensive multi-agency co-operation as part of an integrated approach.

The Law on the Protection of the Family and the Prevention of Violence Against Women introduces tough measures and provides improved protection for victims. Protection is provided against physical and non-physical forms of abuse and there is enhanced support for victims. All women, be they married, divorced, engaged or in a relationship (a dating relationship), who are subjected to violence, are covered. Also protected are children, family members and those being stalked. The Law tries to effectively tackle the problem of endemic violence against women and treats it as serious human rights abuse. Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of the Law (Art. 1/2ç).

Sensitivity and awareness raising among the public has also been envisaged by the Law on the Protection of the Family and the Prevention of Violence Against Women (Article 16): All public and private TV channels and radio stations, be they national, regional or local, are required to air acknowledgement materials prepared by the Ministry of Family and Social Policies for at least 90 minutes per month. Broadcasts have to be between 08:00 a.m. and10:00 p.m. provided that at least the half an hour part is broadcast between 5:00 p.m. and 10:00 p.m. Courses on gender equality and women's human rights are to be included in the curricula of primary and secondary education. According to the Code on the

[87] *Ailenin Korunması ve Kadına Karşı Şiddetin Önlenmesine Dair Kanun*, Law No. 6284, Official Gazette 20 March 2012, No. 28239.
[88] *Ailenin Korunmasına Dair Kanun*, Law No. 4320, Official Gazette 17 January 1998, No. 23233.
[89] *6284 Sayılı Ailenin Korunması ve Kadına Karşı Şiddetin Önlenmesine Dair Kanuna Ilişkin Uygulama Yönetmeliği*, Official Gazette 18 January 2013, No. 28532.
[90] *Kadın Konukevlerinin Açılması ve Işletilmesi Hakkında Yönetmelik*, Official Gazette 5 January 2013, No. 28519.

Establishment and Broadcasting of Radio and Television Stations,[91] radio and television programmes should not in any way promote violence and discrimination against women, children, and the disabled (Art. 4/2u).

The Law on the Protection of the Family and the Prevention of Violence Against Women also considers the situation of working women subjected to violence and envisages special measures such as a change in the workplace (Article 4/1A), a restraint order covering the workplace (Article 5/1C) and/or financial support for childcare facilities (Article 3/1D).

The legislation is almost ideal and may serve as a model for effective legislative protection. For the time being there are no new rules under discussion but it is anticipated that in time and in accordance with practical matters or new understandings, new rules may be introduced. On 25 November 2014, the Turkish Parliament decided to establish a parliamentary commission for an enquiry into the problem of violence against women.[92] The Commission prepared a 700-page comprehensive report on the issue making it public on 8 May 2015.[93] The most problematic area is the degree of violence seen in practice embedded by social norms, culture and understanding.

According to this Report, different perceptions of violence by men and women; gender roles (differences in the socialization phases of men and women); the normalization/undermining of violence; unawareness of types of violence other than physical violence; accusing oneself or other factors such as alcohol or living together with in-laws; beliefs/customs about woman's chastity/honour killings; secrecy or privacy; economic dependence; and societal pressures are among the factors hindering the fight against violence. Therefore, awareness raising is of the utmost importance. Figures outlined in the Report are: In 2014, 119 018 incidents of domestic violence were reported to the police (51 739 in 2010, 62 682 in 2011, 90 177 in 2012, 89 565 in 2013). Of the 163 564 victims, 118 014 were women, 29 410 were men and 16 140 were children. Of the 234 killed in domestic violence in 2014, 133 were women (113 women killed in 2013, 98 in 2012, 91 in 2011 and 94 in 2010), 76 were men and 25 were children. Provisional protection measures were applied to 87 081 people in 2014, of whom 77 288 were women and 9 793 were men.

[91] *Radyo ve Televizyonların Kuruluş ve Yayınları Hakkında Kanun*, Law No. 3984, Official Gazette, 20 April 1994, No. 21911.
[92] Decision No. 1077, Decision date: 25 November 2014, Official Gazette 3 December 2014, No. 29194.
[93] For Part I of the report: https://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss.717-bolum-1.pdf; and for Part II: https://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss717-bolum-2.pdf, accessed 20 August 2015.

11. Enforcement and compliance aspects (horizontal provisions of all directives)

11.1 Victimisation

11.1.1 Are the provisions on victimisation implemented in national legislation and interpreted in case law?

Yes. Article 5 of the Labour Law was the main provision. It was based on EU law but it was inadequate. Turkey needed a comprehensive law on discrimination. Now, a new approach to enforcement is envisaged by the Law on the Human Rights and Equality Institution of Turkey (Law No. 6701). The primary means of enforcing anti-discrimination laws in the employment field has been by means of individual claims to the labour courts. Now, a new approach to enforcement is envisaged by Law No. 6701. The Human Rights and Equality Institution is to investigate discrimination upon a complaint and ex-officio and fine people, and public/private legal entities in case of discrimination and to help and guide victims concerning administrative and legal procedures (Art. 9/g-ğ, 11/b). The Institution has a wider authority than its predecessor, the Human Rights Institution. (See 11.5.1)

11.2 Burden of proof

11.2.1 Does national legislation and/or case law provide for a shift of the burden of proof in sex discrimination cases?

Yes. Under Article 5 of the Labour Law on the prohibition of discrimination at work, in an employment relationship, excluding selection, gender discrimination is a reason to justifiably claim wrongful treatment or termination. If the worker proves *prima facie* that there may be discrimination, it is up to the employer to prove the contrary (Labour Law, Article 5/7). Proving discrimination will suffice and it is not necessary to prove any consequent loss or suffering. This complies with the EU law.

Now also according to the Law on the Human Rights and Equality Institution (Law No. 6701), in individual complaints, the burden of proof shifts to the respondent when there is a prima facie case of discrimination (Art. 21). This rule on the burden of proof cited in Article 5 of the Labour Law with regard to employment issues is laid down in Law No. 6701 as regards the rule on the burden of proof in all discrimination cases including sex discrimination.

11.3 Remedies and Sanctions

A female worker who considers herself to have been discriminated against on the basis of sex during the course of employment or dismissal may pursue her claims and demand pay amounting to four months' basic wages (Labour Law, Article 5/6). This is the so-called 'discrimination pay.' The introduction of a ceiling on the amount of discrimination pay contradicts the *acquis*: the CJEU has ruled that fixing a prior upper limit may preclude effective compensation.

Sanctions in cases of discrimination are imposed by the courts. Access to the courts is ensured for victims of discrimination but interest groups whose aim is to assist victims of discrimination or to combat discrimination do not have access to the courts. The worker concerned can claim particular types of compensation and if he/she has increased job security he/she can request the court to invalidate the termination of the contract and can thereby claim wages. He/she can also demand to be reinstated in his/her job. If not reinstated, he/she can claim pecuniary damages under the system of sanctions in general labour law.

In order to provide for effective, proportionate and dissuasive penalties in cases of breaches of the discrimination prohibition, administrative fines can be imposed by the

Human Rights and Equality Board, the decision-making body of the Human Rights and Equality Institution to be established under the Law on the Human Rights and Equality Institution (Law No. 6701). In the imposition of a fine, the gravity of the violation, the perpetrator's economic status, and multiple discrimination, if any, shall be considered as aggravating factors by the Board. Discriminatory acts will be punishable with fines of between TL 1 000 (EUR 263) and TL 15 000 (EUR 3 947) (Art. 25/1). The Board can convert an administrative fine into a warning. If a warning is issued and there is a recurrence of the violation by the same perpetrator, then the administrative fine to be determined will be increased by 50 % (Art. 25/4). Recourse to the competent court challenging the administrative fine is possible (Art. 25/6). If the Board determines that the discriminatory act/action involves a crime, it will report this crime (Art. 18/5).

11.3.1 What types of remedies and sanctions (e.g. compensation, reinstatement, criminal sanctions, administrative fines etc.) exist in your country for breaches of EU gender equality law? Please specify the applicable legislation.

There are civil courts (including commercial and labour courts as specialized courts) and criminal courts falling under the jurisdiction of the general courts. The high court is the Court of Cassation. There is administrative jurisdiction. In this type of jurisdiction, there are administrative courts and, as the higher court, the Council of State. Administrative, civil and criminal laws are applicable. The main laws which are relevant to gender equality are the Labour Law, the Social Insurances and General Health Insurance Law, the Criminal Law, and the Civil Servants Law. These laws have to be considered to find out whether national laws are in compliance with the EU gender equality law. Criminal sanctions are provided by the Criminal Law. Sexual assault, sexual exploitation of children, sexual intercourse with an under-aged person, and sexual harassment are crimes for which criminal sanctions are provided. Similarly, a person who discriminates as a result of hatred stemming from differences in language, race, nationality, sex, disability, political thought, belief or other considerations and accordingly hinders the employment of a particular person, or the sale, transfer or lease of any object to a person, or prevents someone from using a public service, will be faced with punishment. Violations of provisions relevant to gender equality in the Labour Law, Social Insurances and General Health Insurance Law, and Civil Servants Law may end with the termination of a contract and/or compensation.

For remedies and sanctions under the newly adopted Law on the Human Rights and Equality Institution (Law No. 6701), see 11.3 and 11.5.1.

11.3.2 In your opinion, do the remedies and sanctions meet the standards of being effective, proportionate and dissuasive? Please explain, if possible referring to relevant legislation or case law.

Generally speaking, the rules are effective and continuously updated in the light of EU law and international standards. But in practice lawsuits take a long time, sometimes to the extent that a 'delay in justice is no justice.'

For an assessment of the penalties to be imposed in cases of breaches of the discrimination prohibition by the Human Rights and Equality Board, the decision-making body of the Institution to be established under the newly adopted Law on the Human Rights and Equality Institution (Law No. 6701), see above and 11.5.1.

11.4 Access to courts

The courts serve as the key enforcement mechanism. Sanctions in cases of discrimination are applied by the courts. The worker concerned can claim particular types of compensation, he/she can request the court to invalidate a contract termination and be reinstated. If not reinstated, he/she can claim pecuniary damages under the system of sanctions in general labour law.

11.4.1 In your opinion, is the access to courts safeguarded for alleged victims of sex discrimination? Please explain and discuss particular difficulties and barriers victims of sex discrimination have encountered. Refer to relevant legislation and case law.

Difficulties do not arise from the legislation or case law. Most cases of sex discrimination take place in isolation and in verbal form. Therefore, victims of sex discrimination thinking that they cannot prove the case may end up not making a complaint.

Domestic violence against women, men, children, and the elderly is also a hidden phenomenon. Break-ups and divorces do not mean the termination of an abusive relationship or physical safety; many women continue to suffer physical and sexual violence from former husbands/partners.

11.4.2 In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities? Please explain and refer to relevant legislation and case law.

The Ministry of Family and Social Affairs has the right to become involved (i.e. it has legal standing), if it deems this to be necessary, in all types of lawsuits against actual/threats of violence against women, children or family members (Law on the Protection of the Family and the Prevention of Violence Against Women, Art. 20/2). There are bureaucratic entities, especially ŞÖNİMs (centres for the prevention/surveillance of violence and the provision of support/guidance), which are competent to provide independent assistance to the victims of sexual harassment in pursuing their complaints.

Interest groups or other legal entities cannot represent victims before the courts. Class actions are not possible, meaning that associations, organizations, or other legal entities deemed to have a legitimate interest cannot engage in the judicial procedure either on behalf or in support of the complainant.

According to the Law on the Human Rights and Equality Institution of Turkey (Law No. 6701), it is possible for the Human Rights and Equality Board, the decision-making body of the Human Rights and Equality Institution, to invite those concerned (interested parties) to the Board meeting to benefit from their views/considerations (Art. 12/9).

11.4.3 What kind of legal aid is available for alleged victims of gender discrimination?

No charges/costs/expenses can be demanded from victims of violence in cases of recourse to the courts or public bodies/institutions or the execution of decisions (Law on the Protection of the Family and the Prevention of Violence Against Women, Art. 20/1). Also, there may be provisional financial assistance: If the court deems it necessary, for the envisaged provisional period victims of violence will be paid the net daily amount of the minimum wage for each day (Art. 17/1). If the victim of violence is not covered by general health insurance, s/he will be covered without any means test (Art. 19/1). Until 1 April 2017, there was a means test and consequently varying amounts of contributions in accordance with income for those not covered by the general health system. Any person above 18 (all those under 18 years of age are automatically covered by the general health system) not covered by the general health system could apply for a means test and if it was found that their income was less than the amount specified by the law (1/3 of the minimum wage), the State would pay the health premiums for that person. Law no. 6824[94] amending the Social Insurances and General Health Insurance Law simplified this procedure. Any person above 18 and not covered by the general health system will now pay the same amount of general health insurance contribution which is 3 % (this may be

[94] Arts. 14-15, 20, *Bazı Alacakların Yeniden Yapılandırılması ile Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun,* Law no. 6824, Official Gazette 8 March 2017, No. 30001.

increased up to 12 % by the Council of Ministers) of the gross minimum wage. The monthly amount of the general health insurance contribution was TL 53 (EUR 15) in 2017. A means test continues to exist, but only for those who claim an income less than 1/3 of the minimum wage; in this case it will be the State that will pay the health premiums for that person.

The Ministry of Family and Social Policies has established a hotline – ALO 183 – that can be called twenty four hours a day. Some 32 people man this hotline. The deaf and dumb may also benefit from a visual application of this service (0 553 560 41 44); they may also send a free sms to be called back by personnel who are versed in sign language. Calls in Kurdish and Arabic are responded to by personnel who can speak these languages. This centre directs the callers to the nearest services providing legal aid and socio-psychological assistance, support centres, shelters and ŞÖNİMs. ŞÖNİMs[95] are competent to provide independent assistance to the victims of sexual harassment in pursuing their complaints.

Provincial bar associations have various commissions and the most common commissions are those on gender equality offering legal assistance to victims.

Under the Law on the Human Rights and Equality Institution of Turkey (Law No. 6701), natural persons and legal entities can file complaints of discrimination to the Human Rights and Equality Institution. Applications can be made directly to the Institution or through governors in towns and sub-governors in sub-towns. Applications are free of charge (Art. 17/1). The Institution is to investigate discrimination upon complaint and ex-officio and fine persons and public/private legal entities in case of discrimination and to help and guide victims concerning administrative and legal procedures (Art. 9/g-ğ, 11/b). The decisions of the Board are to specify the legal means/procedures for the parties to challenge its decisions (Art. 12/10). Upon a request by judicial or public bodies, the Institution is to reveal its considerations on issues within its competence (Art. 11/1b).

11.5 Equality body

11.5.1 Does your country have an equality body that seeks to implement the requirements of EU gender equality law?

Yes. The democratization package of 30 September 2013 included confirmation of the establishment of an anti-discrimination and equality body. A Draft Law on the Human Rights and Equality Institution of Turkey was submitted to Parliament by the Government on 28 January 2016. The Law *(Türkiye İnsan Hakları ve Eşitlik Kurumu Kanunu)* was adopted by Parliament on 6 April 2016 and became effective with its publication in the Official Gazette on 20 April 2016. As specified in the General Reasons part of the Law, the Paris Principles were closely followed in the drafting process. The Law envisages close cooperation and collaboration with NGOs (Art. 9/1n, 14/4, 22/1-2).

The primary means of enforcing anti-discrimination laws in the employment field has been by means of individual claims to the labour courts. Now, a new approach to enforcement is envisaged by the Law on the Human Rights and Equality Institution of Turkey (Law No. 6701). The Human Rights and Equality Institution is to investigate discrimination upon complaint and ex-officio and fine persons and public/private legal entities in case of discrimination and to help and guide victims concerning administrative and legal procedures (Art. 9/g-ğ, 11/b). The Institution has a wider authority than its predecessor, the Human Rights Institution.

[95] ŞÖNİMs *(Şiddet Önleme ve İzleme Merkezleri)* are centres for preventing and surveillance of violence. They are attached to the Ministry of Family and Social Policies and are established in city centres. Working on a 24/7 basis, they provide psychological, social and economic guidance, legal aid and counselling, as well as guidance and health services to the victims of violence (Implementing Regulation on ŞÖNİMs, Official Gazette 17 March 2016, No. 29656).

The Human Rights and Equality Institution is tasked with three functions (Art. 1):

1. Protection and enhancement of human rights;
2. To ensure the right to equal treatment and to prevent discrimination in using rights and freedoms; and,
3. To serve as a national prevention mechanism within the framework of OPCAT[96] (Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, a Treaty that supplements the 1984 United Nations Convention Against Torture).

Law No. 6701 on the Human Rights and Equality Institution specifies the protected characteristics: sex, racial or ethnic origin, religion or belief, sex, disability, age, sexual orientation, philosophical and political belief, colour, language, property, maternity, marital status and health conditions.

There cannot be a claim of discrimination where (Art. 7):

1. There is a genuine and determining occupational requirement provided that the objective is legitimate and the requirement is proportionate;
2. Sex is a determining factor;
3. It involves the fixing of a minimum or maximum age for requirement in recruitment and in employment provided that the objective is legitimate and the requirement is proportionate;
4. There are special measures and preventive measures for children and other people;
5. It involves the employment of people of a particular religion to serve or to provide education or training in religious institutions;
6. There are membership requirements in accordance with the purpose, principles and values laid down in their relevant legislation or internal regulations by associations, foundations, trade unions, employers' associations, political parties and professional organisations;
7. It involves positive action;
8. There are differences in treatment based on nationality governing entry, residence, and legal status.

The Human Rights and Equality Board, the decision-making body of the Institution, convenes upon a call by its President (Art. 12/1). The Board convenes with at least seven members with at least six votes in the same direction. There cannot be votes of abstention (Art. 12/3). It is possible for the Board to establish commissions of three members for each of its functions (Art. 12/4). The Board can also establish five-member chamber to discuss and arrive at decisions on complaint applications.

Natural persons and legal entities can file complaints of discrimination. Applications can be made directly to the Human Rights and Equality Institution or through governors in towns and sub-governors in sub-towns. Applications are free of charge (Art. 17/1). Applicants have to apply firstly to the perpetrator for correction. If the application is rejected or not responded to within a period of 30 days, then they can apply to the Institution. The Institution can accept a claim of discrimination without requiring this first step only if there is the possibility of the emergence of damages that are impossible or very difficult to compensate (Art. 17/2). Applications to the Institution suspend the terms of litigation and prescription (Art. 17/3). To initiate an ex-officio investigation the approval of the victim or the victim's representative has to be sought in cases where the victim can personally be determined (known) (Art. 17/5). In individual applications, the identities of children, of people under guardianship or protection, and of victims with such a request will be kept confidential (Art. 17/6).

[96] This is not a new function. The (former) Human Rights Institution was entrusted with this function by means a governmental decree of 9 December 2013 (Official Gazette, 28 January 2014, No. 28896). The Human Rights and Equality Institution will build on this experience.

The Institution will settle complaints within three months following the receipt of an application or following a decision to initiate an ex-officio investigation. This period can be extended by at most three months by the President of the Institution (Art. 18/1). The party claimed to have discriminated will be asked to submit, in written form, his/her testimony. Upon request, the parties can be called upon to make oral explanations separately before the Board (Art. 18/2). In individual complaints, the burden of proof shifts to the respondent when there is a prima facie case of discrimination (Art. 21). This rule on the burden of proof is laid down in Article 5 of the Labour Law with regard to employment issues. It is also laid down in Law No. 6701 as regards the rule on the burden of proof in all discrimination cases.

On its own initiative or upon request, the Board can first guide the victim and the perpetrator towards a settlement and, if this fails, it will arrive at a decision based upon the testimony of the parties and the accounts of witnesses. A settlement can include the termination of the practice claimed to be discriminatory, solutions leading to the termination of such a practice, or the payment of a certain amount in compensation. Declarations, explanations and statements made during the settlement process cannot be used as evidence in legal proceedings (Art. 18/3). If the Board determines that the discriminatory act/action involves a crime, it will report this crime (Art. 18/5).

In order to provide for effective, proportionate and dissuasive penalties in cases of breaches of the discrimination prohibition, administrative fines can be imposed by the Board. In the imposition of a fine, the gravity of the violation, the perpetrator's economic status, and multiple discrimination, if any, shall be considered as aggravating factors. The discriminatory acts will be punishable with fines of between TL 1 000 (EUR 310) and TL 15 000 (EUR 4 650) (Art. 25/1). The Board can convert the administrative fine into a warning. If a warning is issued and there is a recurrence of the violation by the same perpetrator, then the administrative fine to be determined will be increased by 50 % (Art. 25/4). Recourse to the competent court challenging the administrative fine is possible (Art. 25/6).

There is also an Ombudsman Institution[97] established to examine, investigate and submit recommendations on all sorts of acts and actions, as well as attitudes and behaviours by the administration within the framework of an understanding of human rights-based justice and legality and conformity with the principles of fairness, taking good governance principles into account with the purpose of creating an independent and efficient complaint mechanism in the functioning of the public services. The Institution is linked to the parliamentary speaker's office. The Institution has a Chief Ombudsperson and five Ombudspersons elected by the Turkish Parliament, a secretary general and staff, and a separate budget. One of the Ombudspersons is tasked with complaint applications by women and children's rights. Ombudspersons inquire into the issue and try to have parties reach an amicable solution. If this is not so, then there will be a judicial settlement. A judge trying such a case will consider the ombudsperson's (non-binding) report.

Complaint petitions may be delivered by hand to the Institution or the offices established by the Institution in places which are deemed necessary as well as via mail, electronic mail or fax. Complaints may also be lodged through the electronic system developed by the Institution. In addition, the complaints may be lodged by hand or via mail through governorates in provinces and district governorates in districts. Governorates and district governorates shall send the complaints and their annexes, if applicable, to the Institution after having recorded a date and a number within three working days at the latest. For complaints regarding human rights, fundamental rights and freedoms, women's rights, children's rights, and general issues of interest to the general public, proving a 'violation of interests' shall not be necessary.

[97] The Law on the Ombudsman Institution (*Kamu Denetçiliği Kanunu*), Law No. 6328, Official Gazette 29.06.2012, No. 28338 (in English on the official website). Regulation on Procedures and Principles Concerning the Implementation of the Law on the Ombudsman Institution, Official Gazette 28.03.2013, No. 28601 (in English on the official website).

Official website of the Institution: http://www.kamudenetciligi.gov.tr.

11.6 Social partners

11.6.1 What kind of role do the social partners in your country play in ensuring compliance with and enforcement of gender equality law? Are there any legislative provisions in this respect?

Article 26 of the Unions (the term unions denotes trade unions and employers' associations) and Collective Labour Agreements Law[98] is on union activities. Unions are obliged to observe the principle of equality and prohibitions of discrimination among its members in their enjoyment of its activities. Unions shall consider gender equality in their activities (Article 26/3). So far, there has been no case law on this issue.

Sound social dialogue between the social partners may foster the principle of equal treatment. Legally speaking, the social partners working on a possible initiative may add to awareness raising and a harassment-free workplace. The social partners may adopt preventive actions, including information, education, and the raising the awareness among employees about different forms of workplace harassment and the help that is available for victims. The partners may lay down effective workplace complaint procedures for resolving sexual harassment complaints. They may create the post of a 'confidential counsellor' or assign such a task to a respected senior employee. However, in Turkey the trade unions confine themselves to wage bargaining, expecting other matters to be dealt with by the government and the employers. There are some collective labour agreements establishing a system of disciplinary sanctions but these rules fall far short of fostering equal treatment.

11.7 Collective agreements

11.7.1 To what extent does your country have collective agreements that are used as means to implement EU gender equality law? Please indicate the legal status of collective agreements in your country (binding/non-binding, usually declared to be generally applicable or not).

Once concluded, a collective agreement is binding for its specified duration. The social partners do not play a significant role as regards gender equality in the labour market and the role of collective agreements in the development of equality issues has never been really relevant. Collective agreements usually concern monetary issues by making reference to the legislation on non-economic matters. Collective bargaining is, in essence, wage bargaining. Monetary issues are mentioned in detail in the collective agreement and for the remaining issues, for example, rest periods, annual leave, night work, and means and grounds of contract termination, it is generally stated that the legal provisions shall apply.

[98] Law No. 6356, Official Gazette 7 November 2012, No. 28460.

12. Overall assessment

In Turkey as regards gender equality there were two important gaps:

1. The lack of a separate specific law on non-discrimination;
2. The lack of an equality body.

One substantial law establishing an equality board and identifying protected characteristics instead of separate pieces of equality legislation would serve better. Turkey needed an organisation promoting equality, assisting victims of discrimination, and monitoring and reporting on discrimination issues. The adoption of the Law on the Human Rights and Equality Institution is an important recent development. This is an anti-discrimination law comprising 30 articles. The Law became effective with its publication in the Official Gazette on 20 April 2016. The main shortcomings of Article 5 of the Labour Law, when viewed under the EU *acquis*, have been addressed by the Law on the Human Rights and Equality Institution. It is hoped that the Institution will be an effective body in promoting equality and curbing discrimination. The Board can impose administrative fines in cases of breaches. With this law, protection against discrimination is strengthened in Turkey.

There is an indisputable impact of EU law on the development of Turkish labour law. Turkey is highly responsive to change and it has shown initiative in the adaptation process by developing new legal rules and innovative policies. But the promotion of gender equality has to be a key task for all countries, thus not merely a matter of compliance with EU law. This is a priority for Turkey and there have been great achievements especially in the last decade. In the view of the expert, Turkey proactively takes due account of the gender equality objective when drawing up and implementing legal rules, policies and activities. Internationally, Turkey played an important role in the drafting of the Istanbul Convention as the then Chair of the Committee of Ministers of the Council of Europe. Turkey became the first country to ratify the Istanbul Convention and the first country to adopt a new law in compliance with the Convention. With the initiation of the Turkish G20 Presidency, the G20 members agreed on the establishment of the W20 at the Izmir Sherpa Meeting on 26-27 March 2015. With the aim of promoting women's leadership in business and the public sector and women's entrepreneurship the W20 will work to further advance and follow up on the commitments of the G20 Leaders. The official launching event took place in Ankara on 6 September 2015 for Women-20 (W20) as a fully-fledged G20 engagement group under the Turkish G20 Presidency.[99]

[99] w20turkey.org/; http://www.globalpolicyjournal.com/sites/default/files/inline/files/Moody - Engagement or obligation, The G20's commitment to gender equality.pdf; w20turkey.org/event/october-16-17-w20-summit/, accessed 26 October 2015. For further developments see: http://w20argentina.com/en/el-w20-presento-su-agenda-de-trabajo-ante-los-sherpas-del-g20/, accessed 4 September 2018.

Annexes

Bibliography

Süral, N. (July 2018), 'Turkey,' *Comparative Perspectives on the Enforcement and Effectiveness of Antidiscrimination Law – Challenges and Innovative Tools*, Mercat-Bruns, M., Oppenheimer D., Sartorius, C. eds., Springer publication, pp.475-491.

Süral, N., Kılıçoğlu, M. (2011), 'Prohibiting Sexual Harassment in the Workplace in Turkey' *Middle Eastern Studies*, Vol. 47, No. 4, pp. 655-662.

Süral, N. (2014), 'An Assessment of the Pregnancy and Maternity-related Provisions of the Labour Legislation' *Liber amicorum* for Prof. Dr. Berin Ergin, *Istanbul University Law Faculty Journal,* Vol. LXXII, No. 2, pp. 441-456.

Süral, N., Dayıoğlu, M. (2011), 'Recent Evidence on the Gender Wage Gap in Turkey' *Liber amicorum for Prof. Dr. Sarper Süzek, Ankara University Law Faculty Journal,* Beta Basım, Istanbul, pp. 691-713.

Süral, N. (2015), 'Türkiye'de Kadın İstihdamı: Hukuki Düzenlemeler ve Sosyal Politikalar' (Women's Employment in Turkey: Regulations and Social Policies) *TISK Akademi,* Vol. 10, No. 19, pp. 6-43.

Süral, N. (2013), 'Şirketlere Kadın Kotası (mı?) (Women's Quota in Companies?) *Sicil,* No. 30, pp. 193-200.

Bozkurt, E., 'Gender Equality and Turkey's 2023 Goals,' Turkish Policy Quarterly,' Vol. 12, No. 2, available at: http://turkishpolicy.com/Files/ArticlePDF/gender-equality-and-turkeys-2023-goals-summer-2013-en.pdf.

Elveren, A.Y. (2013), A critical analysis of the pension system in Turkey from a gender equality perspective, Women's Studies International Forum. Vol. 41, Part 1, available at: http://dx.doi.org/10.1016/j.wsif.2013.04.003.

Inan, F., Aşık, G. (2014), 'Making Economies Work for Women: Female Labour Force Participation in Turkey', available at: http://www.tepav.org.tr/upload/files/1436539353-9.Making_Economies_Work_for_Women__Female_Labour_Force_Participation_in_Turkey.pdf.

Ertürk, Y. (2006), 'Intersections between culture and violence against women,' A/ HRC/4/34, Report of the Special Rapporteur on violence against women, its causes and consequences, Implementation of General Assembly Resolution 60/251 of 15 March 2006 titled 'Human Rights Council.'

Fraker, A., Özdemir, D. (2011), 'Female Labour Force Participation, How Does Turkey Compare?, available at: http://www.tepav.org.tr/upload/files/1299676803-7.Female_Labor_Force_Participation_How_Does_Turkey_Compare.pdf.

Müftüler-Bac, M. (2012), "Gender Equality in Turkey", Prepared for the European Parliament. Directorate General for Internal Policies, January, PE 462.428, available at: http://research.sabanciuniv.edu/18894/1/20120207ATT37506EN.pdf
and
http://www.europarl.europa.eu/document/activities/cont/201202/20120207ATT37506/20120207ATT37506EN.pdf.

The Ministry of Family and Social Policies (2015), 'Women's Participation in Labour Force and Women's Employment in Turkey', available at:

http://kadininstatusu.aile.gov.tr/data/542a8e86369dc31550b3ac33/KSGM%20%C4%B0%C5%9EG%C3%9CC%C3%9C%2020%20may%C4%B1s.pdf.

World Bank (2009). 'Female Labour Force Participation in Turkey: Trends, Determinants and Policy Framework' World Bank Report No: 48508-TR, available at: http://siteresources.worldbank.org/TURKEYEXTN/Resources/361711-1268839345767/Female_LFP-en.pdf.

World Bank (2012). 'Towards Gender Equality in Turkey: a summary assessment', available at: http://kasaum.ankara.edu.tr/files/2013/02/World-Bank-Turkey_Gender_Note-2012.pdf.

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