Component 1

Aligning Turkish Legislation with the EU Gender Equality Acquis

Activity 1.2

Elaboration of a report including recommendations and amendment proposals

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Part 2

Civil Servants' Law, No.657
Trade Unions Law for the Public Servants, No.4688
By-law on Recruitment

This project is co-founded by the European Union and the Republic of Turkey

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Preliminary Remarks

General Remarks on Legal Protection and Gender Equality in Turkey

Firstly, it has to be stressed that Civil Servants Law only applies to Civil Servants according to Art. 4 type A Law Nr. 657. The other types such as workers, contracted staff and temporary staff are not covered under Law No. 657 (see also Art. 128 of the Turkish Constitution). It seems that there is a Decision of the Councils of Ministers which lays down the rules applicable to the other types of staff . So it would be very interesting to have access to that Decision which is relevant for many people working in the state sector for further analysis of gender equality issues.

Public servants are governed by an administrative regime which means that for claiming their rights public servants can choose whether to file an appeal with the higher administrative authority itself according to Art. 3 By-Law on Applications and Claims of the Civil Servants, Gazette 12/01/1983, Nr. 17926, or whether to immediately lodge an appeal with the competent administrative tribunal.

It has to be underlined that studying jurisprudence of administrative courtswould be indispensable for understanding the practical relevance and use of many regulations in the field of gender equality. Furthermore we didn't have access to many laws and by-laws which would have been essential in this field.

Concerning the Turkish Courts' competence in the area of alleged discrimination against a civil servant on grounds of sex, the Turkish Council of State would be competent to give ruling. Yet it seems that in the last 15 years there has not been any case dealing with this aspect in proceedings before the Turkish Council of State. Therefore it seems that there could be a structural problem which creates a situation where woman who have been discriminated against don't dare to file complaints with the competent courts.

One general concern lies within the fact that many provisions are laid down in By-laws which (as it was explained to us) don't have to pass Danistay before being published and that (according to our short insight in just one By-law on Civil Servants Recruitment) would be worth undergoing a discussion in the light of gender equality. These By-laws

(as issued by administrative organs) are subject to relatively easy changes and judicial control of the respect of legal and constitutional provisions in these By-laws (especially with regard to gender equality aspects) might be difficult to obtain in practice. So if these rules at least were not laid down in By-laws ("yönetmelikler") but in regulations (tüzük), Danistay would have to give advise on these regulations (tüzük) before publishing. This could be a step to ensure further effectiveness and effective implementation of legal provisions on gender equality and could help preventing that such provisions, laid down in laws, are eventually misunderstood by administrative bodies and not well implemented by "yönetmelikler".

During the consultation on September 13, 2011 SPP Colleagues pointed out that further proceedings before Danistay would create more paperwork. Certainly, this is true for any measure which foresees additional jurisdictional control. On the other hand Turkish legislation, generally, for certain types of regulations (tüzük) lays down the necessity to pass Danistay before publishing. So, presuming that Danistay's control is meant to provide additional jurisdictional control and protection, using "tüzük" instead of "yönetmelikler" to establish rules in the field of Civil Servants Law might be a way to help preventing "yönetmelikler" to become an open door for administrative acts which might not necessarily be in line with gender equality needs and aspects.

In order to avoid that a single person who alleges that he/she has been discriminated against has to file a request against possibly unlawful provisions in a By Law, there might be the possibility for Women Rights (or other) Organizations to detect such provisions in By Laws and to file a request for annullment of these provisions with the Turkish Council of State. It can't be said whether the "interest" of a Women Rights Organization would be accepted by the Council of State, but there are cases pending where similiar questions regarding the "interest" of an organization to file a request with the Council of State arose. It might be useful tu study the Council of State's jurisprudence in this field and to keep an eye on further developments.

Moreover, according to Art. 17 par. 2 Directive 2006/54/CE Member States shall ensure that associations, organizations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the

provisions of the directive are complied with, may engage, either on behalf or in support of the complainant, with his/her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive. Art. 17 par. 2 Directive 2006/54/CE does not foresee group action in a formal sense and does not provide for a direct and independent possibility for associations, organizations or other legal entities in the sense of Art. 17 to file a request for annulment as mentioned above, but Art. 17 could be relevant for getting such legal entities involved in legal proceedings related to gender equality issues. This could be a very useful and supportive way for giving legal provisions on gender equality the space for turning into reality.

Analyzing the possibilities for individuals to file appeals against unlawful "yönetmelikler" and verifying individuals' effective protection by Courts against application of unlawful administrative acts such as By-laws and regulations would be important.

Concerning aspects of legal protection as laid down in Dir 2006/54/CE it has to be stressed that disciplinary measures cannot be understood as compensation and reparation or penalties, within the meaning of Art.18 and 25 Dir 2006/54/EC. Furthermore the proceedings concerning disciplinary measures, within the meaning of Chapter 7 Law Nr. 657, might have to undergo a detailed analysis with regard to essential guarantees of procedurals rights (independent tribunal, same access to documents for all parties, right to appeal, gender balanced composition of disciplinary authorities, etc.)

Generally, the possibility to interpret national law in line with EU law (like national laws can be interpreted in line and in the light of national constitutional law) should be taken into account. It could be sometimes a good way to resolve problems concerning the interpretation of national law.

Civil Servants Law No. 657

The present report is based on the Civil Servants Law N. 657 as amended by the Omnibus Law.

Firstly, it has to be pointed out that only civil servants according to Art. 4 type A ("Public servants") are subject to the Law No 657. The staff category B (contracted

personnel) is subject to special "Principles related with employment of Contracted Personnel". For staff category C (personnel employed on a temporary basis) special Decisions of the Council of Ministers are issued which are related mainly to general procedures, principles and salaries. Comments on these two staff categories and these related principles and decisions cannot (yet) be made as the source for the above principles and the source for one of the multiple related Decisions of the Council of Ministers" has been handed out in August 2011 (after the deadline for the report) and still seems to be available only in Turkish.

There are still a lot of questions and remarks left.

e.g. where to find provisions concerning

- Compensation and reparation/Penalties, Art. 18 and 25 Dir. 2006/54/EC?
- Burden of proof, Art. 19 Dir. 2006/54/EC?
- Equality Bodies, Art. 20 Dir. 2006/54/EC?
- Dialogue with non-governmental organizations, Art. 22 Dir. 2006/54/EC?
- Victimization, Art. 24 Dir. 2006/54/EC?
- Prevention of discrimination, Art. 26 Dir. 2006/54/EC?
- Gender mainstreaming, Art. 29 Dir. 2006/54/EC?
- Dissemination of information, Art. 30 Dir. 2006/54/EC?
- Defence of rights, Art. 12 Dir. 92/85/EEC?
- Maintenance of employment rights, Art. 11 Dir. 92/85/EEC?
- Time off for ante-natal examinations, Art. 9 Dir. 92/85/EEC?
- Prohibition of dismissal, Art. 10 Dir. 92/85/EEC?

On November 24th 2011 (deadline for the report September 2011) we received the following comment to our questionnaire of November 26th 2010:

"**Compensation and reparation/Penalties:** Code of Obligations no. 6098, Article 58, Penal Code No. 5237 Article 122 m.

1- **Dialogue with non-governmental organizations**: Law no. 4668. Art. 19/f
2- **Victimization:** Constitution Art. 125 (Means of appeal is available for all kinds of actions and processes of the Administration)
3- **Prevention of discrimination:** Penal Code No. 5237, Art. 122
4- **Defence of rights:** Constitution Art. 125 m, Law no. 657 Art. 21 m., Bylaw on Complaints and Claims of State Servants
5- **Maintenance of employment rights:** Law no. 657, Art. m. 18 (Security Right)
6- **Prohibition of dismissal:** Law no. 657 Art. 18 (Security Right)".

Most of the cited sources are not available in English. It is therefore not possible to comment on these provisions.

Art 18 law n° 657 does not exactly correspond to Art. 10 and 11 Dir 92/85/EEC as it does not foresee any specific protection.

Art 122 Turkish Penal Code does not foresee compensation for the person who has been discriminated against, but it is a provision foreseeing a sentence of imprisonment for the person who has discriminated. It is a penalty in the sense of Art. 25 Dir 2006/54/EC. It seems that Art. 122 just takes into account cases of "acceptance to employment", but cases of discrimination can also occur in other circumstances (promotion, participation in training programs, unequal treatment concerning working conditions, etc.) which don't seem to be covered by Art. 122. Turkish Penal Code. These situations seem to be covered by disciplinary measures according to Art. 125 Law n° 657 which could be considered as a penalty (not as a compensation) in the sense of Art. 25 Dir 2006/54/EC, but as Art 25 Dir 2006/54/EC calls for effective, proportionate and dissuasive penalties the deferment of step advancement as foreseen by Art. 125 Law n° 657 might not fulfil all the conditions set out by Art. 25 Dir 2006/54/EC.

Article 58 of the Code of Obligations is a general provision foreseeing compensation but it does not explicitly grant (or at least it is difficult to tell whether it grants) non fault-based compensation of material and moral damages in cases of discrimination, like for example the Austrian law on Equal Treatment in the Field of Federal Public Employment which explicitly establishes for various situations in which discrimination took place (e.g. non-promotion because of discrimination, non-participation in training programs because of discrimination, not having been assumed for a job because of discrimination, etc.) non fault-based indemnities for moral and material damages. Furthermore it does not seem that the Turkish Code of Obligations states a liability of the employer.

I. Art. 7 Par.

Public servants shall not become affiliated to political parties, or conduct themselves in any manner aimed at providing advantage or disadvantage for any political party, person or group; they shall not discriminate on the basis of language, race, sex, political ideology, philosophical belief, religion or religious doctrine; they shall not under any

circumstances make any declarations and pursue a course of action with political and ideological aims or participate in such actions.

Dir. 2006/54:

Art. 2

Definitions

1. For the purposes of this Directive, the following definitions shall apply:

(a) "direct discrimination": where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;

(b) "indirect discrimination": where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;

(c) "harassment": where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

(d) "sexual harassment": where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

(e) "pay": the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/her employment from his/her employer;

(f) "occupational social security schemes": schemes not governed by Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [16] whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings, area of economic activity, occupational sector or group of sectors with benefits intended to supplement the benefits provided by statutory social security

schemes or to replace them, whether membership of such schemes is compulsory or optional.

2. For the purposes of this Directive, discrimination includes:

(a) harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct;

(b) instruction to discriminate against persons on grounds of sex;

(c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.

Explanation:

In the Law Nr. 657 the term “discrimination” is sometimes used, but there is no explicit definition of the term “discrimination” and no distinction between direct and indirect discrimination. There are now provisions containing definitions available in Section 2 of the law proposal on anti-discrimination and equality in draft. This list does not seem to be complete, as a definition for e.g. “pay” and “occupational social security schemes” is still missing in the draft law. Besides the wording of Section 2 is not the same as the directive’s wording. As until now there is no definition of “discrimination” in Turkish legislation there are also problems occurring concerning the term “discriminating” used in Art. 125 D lit. i) (disciplinary penalties/deferment of step advancement).

Recommendation:

It would be advisable to adopt the wording of Art. 2 of Dir. 2006/54/EC as it stands either in the Civil Servants Law No 657 or in an Anti-Discrimination Law covering several areas. By adopting an Anti-Discrimination Law one should keep in mind that some provisions in other laws (e.g. Law Nr. 657) have to be adapted or annulled.

II. Art. 10 Par. II

Superiors shall treat the public servants in their charge equally and fairly. They shall use the authority of their superior position within the principles described in laws, regulations and statutes.

TFEU

Article 8

(ex Article 3(2) TEC) (1)

In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

Article 153 of the Treaty on the Functioning of the European Union (the "TFEU") enables the Union to support and complement the activities of the Member States, inter alia in the field of equality between men and women with regard to labour market opportunities and treatment at work.

Dir. 2006/54/EC

Art. 2

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(b) "indirect discrimination": where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;

(c) "harassment": where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

(d) "sexual harassment": where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

(e) "pay": the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/her employment from his/her employer;

(f) "occupational social security schemes": schemes not governed by Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [16] whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings, area of economic activity, occupational sector or group of sectors with benefits intended to supplement the benefits provided by statutory social security schemes or to replace them, whether membership of such schemes is compulsory or optional.

2. For the purposes of this Directive, discrimination includes:

(a) harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct;

(b) instruction to discriminate against persons on grounds of sex;

(c) any less favorable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.

Art. 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

Art. 4

Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

Art. 14

Prohibition of discrimination

1. There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty;

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

2. Member States may provide, as regards access to employment including the training leading thereto, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate.

Dir. 2000/78/EC

Article 2

Concept of discrimination

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others

Turkish Constitution as amended by the Referendum of 12/09/2010

Art. 10

MADDE 10.– Herkes, dil, ırk, renk, cinsiyet, siyasi düşünce, felsefi inanç, din, mezhep ve benzeri sebeplerle ayırım gözetilmeksizin kanun önünde eşittir.

(Ek fıkra: 7/5/2004-5170/1 md.) Kadınlar ve erkekler eşit haklara sahiptir. Devlet, bu eşitliğin yaşama geçmesini sağlamakla yükümlüdür. (Ek cümle: 7/5/2010-5982/1 md.) Bu maksatla alınacak tedbirler eşitlik ilkesine aykırı olarak yorumlanamaz.

(Ek fıkra: 7/5/2010-5982/1 md.) Çocuklar, yaşlılar, özürlüler, harp ve vazife şehitlerinin dul ve yetimleri ile malul ve gaziler için alınacak tedbirler eşitlik ilkesine aykırı sayılmaz.

Hiçbir kişiye, aileye, zümreye veya sınıfa imtiyaz tanınamaz.

Devlet organları ve idare makamları bütün işlemlerinde (…)* kanun önünde eşitlik ilkesine uygun olarak hareket etmek zorundadırlar.

Explanation:

There is no definition of “discrimination” until now in Turkish legislation.

There could be room for positive action (Art. 3 Dir. 2006/54/EC, see also Art. 10 of the Turkish Constitution as amended by the Referendum of 12/09/2010). It would be interesting to know whether there is any relevant jurisprudence of Turkish Courts. Superiors pave the rail for promotion. Therefore, they should be gender sensitive and aware of the gender equality strategy including providing specific advantages in favor of the underrepresented sex. The underrepresented sex can be supported by positive measures. Administration should play a role model in gender equality policies committing its staff by law to the gender mainstreaming strategy.

Recommendation:

Maybe it would seem advisable to refer in Art. 10 to Art. 7 Civil servants law, if "equally and fairly" should mean "not to discriminate" or to adopt a similar provision as laid down in Art. 2, par. 1, Dir. 2000/78/EC for "equal treatment". Concerning the possibility of interpreting national law in the light of EU provisions see also "General remarks". In addition positive measures for the underrepresented sex could be possible.

Maybe one sentence following the example of Art. 8 TFEU could be added to Art. 10 par II Civil servants law:

"...statutes, shall eliminate inequalities and promote equality between women and men."

III. Art. 36 X A Point 2

Public servants holding the title of M.Sc. engineers, engineers, M.Sc. architects, architects, having completed four years of higher education, and those assigned in educational services, graduates of the Men's Technical Higher School of Teaching, the Men's Technical School of Teaching and the State Higher School of Applied Arts, shall be recruited at the grade and step obtained by adding one grade to their entrance grade and step.

Dir. 2006/54/EC

Art. 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

Art. 4

Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

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(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty;

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

2. Member States may provide, as regards access to employment including the training leading thereto, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate.

Explanation:

We asked whether this was a closed list and whether this list was justified by objective reasons. We also wondered if there was no access for women to these schools.

SPP colleagues answered that there were no Men's Technical Higher School of Teaching and no Men's Technical School of Teaching in Turkey at the moment. Instead, there were Technical Education Faculties in universities where both female and male students had the right to study.

We were told that 15 years ago there were such schools in Turkey and women were allowed to attend these schools, but that even today the percentage of women attending these schools is less than 5 %.

As technical education is relevant for recruitment and payment within the public administration, a huge gender imbalance in the field of technical education leaves a lot of room for positive action in whereas ways.

We were told that there are plans to abolish the classification into categories (decrees and grades; Title II). SPP colleagues pointed out that grade and step differences did not have much effect on salary.

Nevertheless the indicated levels of education will still be a condition for being recruited as a civil servant and if obviously some of the required educational fields are dominated by one sex, there is an important need for positive measures in order to reach gender balance in public administration.

Recommendation:

If there is no Men's Technical Higher School of Teaching and no Men's Technical School of Teaching in Turkey at the moment, maybe amending the Civil Servants Law would be a good occasion to amend also the wording of this provision.

IV. Art. 36 X A Point 7 b

Staff currently employed in the Department of Religious Affairs and those to be reassigned and who have memorised the Koran, where this is determined with a regulation issued by the Department of Religious Affairs, shall receive one extra step advancement. (The advancement of grade and step granted for the master's degree cannot be applied cumulatively with the advancement referred to in this paragraph.)

Dir. 2000/78/EC

Recital

(11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation.

Article 1

Purpose

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2

Concept of discrimination

For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

Article 19

Report

1. Member States shall communicate to the Commission, by 2 December 2005 at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations. In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

TFEU

Article 8

In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

Explanation:

We asked whether objective reasons could justify the fact that dignitaries of just one religion can become public servants in Turkey.

SPP colleagues told us that 66 % of civil servants are male and 34 % female. It would be interesting to know more about distribution of posts, ranking and pay gap. We tried to discuss positive action for women (quota) and gender mainstreaming in this context: it seems that questions related to point IV are a very sensitive issue.

SPP colleagues told us that all the staff who have memorized the Koran working at the Presidency of Religious Affairs are given one extra step advancement without any sexual discrimination.

We were told that there are plans to abolish the classification into categories (decrees and grades; Title II). SPP colleagues pointed out that grade and step differences do not have much effect on salary.

No Recommendation because of the sensitiveness of the topic.

V. Art. 46

Ministries and other public organisations and institutions (except the Office of Undersecretary of the National Intelligence Organisation) shall determine the number, category and grades of the vacant posts where staff needs to be appointed and notify the State Personnel Department.

Dir. 2006/54/EC

Art. 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

Explanation:

As there is right now a very low participation of women in the labor market, Turkey would probably have problems to reach the 75 % target. Besides by focusing on elder

people (55 to 64 years) also enhancement of female employment participation would be necessary.

Recommendation:

Distribution of posts should be gender balanced (at least 40 % of each sex should be represented) which could be a positive action according to Art. 3 Dir. 2006/54/EC (see also Art. 10 of the Turkish Constitution as amended by the Referendum of 12/09/2010) in order to reach the target of 75% employment rate (EU Strategy 2020). Public administration should serve as a role model.

In the light of these considerations gender balanced distribution of posts could be introduced into Article 46. A quota of at least 40% of each sex would be advisable, e.g. as follows:

"Par 2: Ministries and other public organisations and institutions (except the Office of Undersecretary of the National Intelligence Organisation) commit themselves to creating a gender balance. The aim in the medium term is to reach at least 40 % of members of one sex in every category and grade."

Best practice:

German Law on Promotion of Women, Frauenfördergesetz, (FrFG), as amendend on May 27 1997:

„§ 4, Stellenbesetzung

(2) Stellt die Einstellungsbehörde fest, daß eine Bewerberin und ein Bewerber für die auszuübende Tätigkeit nach Eignung, Befähigung und fachlicher Leistung gleichwertig qualifiziert sind, ist die Bewerberin einzustellen, wenn der Anteil der Frauen in der Funktion, in der Vergütungs- oder Besoldungsgruppe geringer ist als der der Männer. Dies gilt nicht, wenn in der Person eines Mitbewerbers liegende Gründe vorliegen, die auch unter Beachtung der Verpflichtung zur Förderung der tatsächlichen Gleichstellung von Frauen und Männern überwiegen."

ECJ of 11 November 1997, Marschall, C-409/95, accepted the following quota (North-Rhine-Westfalia):

Where, in the sector of the authority responsible for promotion, there are fewer women than men in the particular higher grade post in the career bracket, women are to be given priority for promotion in the event of equal suitability, competence and professional performance, unless reasons specific to an individual [male] candidate tilt the balance in his favour.

VI. Art. 50

Persons to be recruited to State public services and duties as public servants shall be required to take and pass the public servant recruitment examinations.

The method and principles for the said examinations, the service and duties with no requirement for examinations and the principles relating to the latter shall be determined in the form of general regulations by the State Personnel Department.

Dir. 2000/78/EC

Art. 5

Reasonable accommodation for disabled persons

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

Art. 7

Positive action

1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.

2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.

Explanation:

The rules seem to be discriminatory (no positive action, Art. 7 Dir. 2000/78/EC; no reasonable accommodation for disabled persons, Art. 5 Dir. 2000/78/EC).

Recommendation:

Persons with disabilities should be able to participate in every examination (not only in those held by institutions with available quotas).

VIIa. Art. 53

Obligation to recruit disabled personnel

The institutions and organizations shall employ 3% disabled staff in the total of their posts employed in accordance with the present Law. The number of the total full posts of the institution (excluding administrations abroad) shall be taken into account in the calculation of the 3% ratio.

Examinations for the disabled are organized on the dates other than those designated for the examinations organized for the staff to be recruited as public servants for the first time, at central level with preparation of exam questions and provision of their accessibility on the basis of disability groups and educational status provided that there shall be vacancies in disability quotas.

The responsibility to follow up and supervise the observance of the requirement to recruit disabled personnel and to assign disabled persons as public servants shall lie with the State Personnel Presidency. Public institutions and organizations with vacancies for the disabled must notify their demands to recruit the disabled for the following year to the State Personnel Presidency before the end of October each year. State Personnel Presidency may provide recruitment for the disabled quotas upon notifications by the concerned institutions and organizations or may have such provided.

Terms and conditions for recruitment of the disabled as public servants, organization of central examination and assignments, assignments by lots with the consideration of educational status and disability groups, the auxiliary tools and equipment to be provided by their institutions for the execution of the tasks by the disabled, procedures and principles concerning notification of statistical data related with employment of disabled personnel by public institutions and organizations as well as other related issues are regulated under the regulations to be issued by State Personnel Presidency with the consideration of the opinions of Disabled Administration Presidency.

Note: This article provides for central recruitment of disabled public servants for the public. Prior to the amendment, the recruitment of the disabled was made with organizational examinations and central system is stipulated due to the failure in recruitment of the disabled at the desired level and in order to eliminate the difficulties arising from the practices.

Dir. 2000/78/EC

Article 1

Purpose

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2

Concept of discrimination

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take

appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

Article 3

Scope

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals and pay;

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

Article 5

Reasonable accommodation for disabled persons

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a

person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

Article 9

Defence of rights

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

Article 10

Burden of proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has

been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Paragraph 1 shall not apply to criminal procedures.

4. Paragraphs 1, 2 and 3 shall also apply to any legal proceedings commenced in accordance with Article 9(2).

5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

Article 11

Victimisation

Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

Article 12

Dissemination of information

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force in this field, are brought to the attention of the persons concerned by all appropriate means, for example at the workplace, throughout their territory.

Explanation:

There may be doubts whether this measure (central recruitment of disabled civil servants) will be sufficient and appropriate for reaching the target level of recruitment. See also explanation and remark concerning Art. 50 and Art. 10 of the By-Law on Recruitment.

Furthermore, it cannot be said whether there are in Turkish legislation provisions according to Art. 9 to 12 Dir 2000/78/EC (defense of rights, burden of proof, victimization and dissemination of information).

Recommendation:

It seems worth verifying whether Turkish legislation provides for measures within the meaning of the above mentioned provisions of EU law. If such provisions can't be found in Turkish laws, in the perspective of Dir. 2000/78/CE it would be suitable to adopt such provisions.

VIII. Art. 60

Persons that possess the general qualifications referred to in Article 48 may be appointed to exceptional positions.

The special provisions in the laws of the relevant institutions shall continue to apply.

That notwithstanding, the qualifications required for state artists shall be defined with regulations. Appointment to the Office of the Legal Advisor of the Foreign Minister shall require very good knowledge of a foreign language as well as compliance with the other requirements referred to in the relevant special law.

Explanation/Recommendation:

With regard to an accession to the EU very good knowledge of foreign languages is indispensable in all administrative bodies, not only in the Foreign Ministry. This would also be advisable with regard to the provisions laid down in Art. 77 ff. which are very positive measures, even if it seems unclear how selection for participation in some of these measures according to Art. 80 should work. Checking the By Law in the light of gender balance would be interesting.

IX. Chapter 2 (Art. 64 ff.)

Provisions with respect to step advancement:

Article 64 – The provisions for step advancement for public servants shall be: …

Dir. 2006/54/EC

Art. 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

Explanation:

Maternity/Paternity and parental leave are not taken into account for step advancement, whereas it seems that maternity/paternity and parental leave are taken into account for pension rights. SPP colleagues told us that in Social Security Law such a provision concerning pension rights could be found. It would be interesting to check this provision in Social Security Law.

The period of national military service is taken into account for step advancement (see Art. 83, par 2, Law Nr. 657) whereas periods of maternity/paternity and parental leave are not.

Recommendation:

Maternity/Paternity and parental leave should be taken into account (at least in some way) for the advancement as positive action.

Best practice:

German Law on Promotion of Women, Frauenfördergesetz, (FrFG), as amended on May 27 1997:

"§ 4, Stellenbesetzung

(1) Bewerberinnen, die nach den Bewerbungsunterlagen über die in der Stellenausschreibung geforderten Qualifikationen einschließlich der erforderlichen Berufserfahrung verfügen, sind grundsätzlich zu einem Vorstellungsgespräch einzuladen.

(2) Stellt die Einstellungsbehörde fest, daß eine Bewerberin und ein Bewerber für die auszuübende Tätigkeit nach Eignung, Befähigung und fachlicher Leistung gleichwertig qualifiziert sind, ist die Bewerberin einzustellen, wenn der Anteil der Frauen in der Funktion, in der Vergütungs- oder Besoldungsgruppe geringer ist als der der Männer. Dies gilt nicht, wenn in der Person eines Mitbewerbers liegende Gründe vorliegen, die auch unter Beachtung der Verpflichtung zur Förderung der tatsächlichen Gleichstellung von Frauen und Männern überwiegen.

(3) Wegen einer bestehenden oder gewünschten Schwangerschaft darf niemand von einer Stellenbesetzung ausgeschlossen werden.

(4**)** Für die Beurteilung der Eignung, Leistung und Befähigung sind Fähigkeiten und Erfahrungen aus der familiären oder sozialen Arbeit zu berücksichtigen, soweit ihnen für die zu übertragenden Aufgaben Bedeutung zukommt. Dies gilt auch, wenn Familienarbeit neben der Erwerbsarbeit geleistet wurde. Sozial und familiär bedingte Ausfallzeiten dürfen sich nicht nachteilig auswirken."

X. Art. 72

Appointments in institutions in the form of a change of workplace shall be made according to a fair and balanced system, having regard to the requirements and specifications of the services and among regions that shall be defined in province groups with respect to similarity and proximity of economic, social, cultural and access conditions in Turkey.

In reinstatements or appointments in the form of a change of place the spouse of the appointed member of staff who is also a public servant shall also be appointed to the same place if he/she so wishes in order to protect family unity, with the necessary coordination between the institutions and within the framework of Articles 74 and 76. In cases where the institution of the spouse does not exist in the new place of appointment or where it exists but has no available post suitable for his/her qualifications, the spouse may be granted a period of leave at their request, limited to the appointment period of the member of staff at the new place of work and subject to the following conditions:

Staff on such leave shall be entitled to remuneration paid over the net amount, after the legal deductions, of their salaries (including the basic and seniority salaries) plus additional index, bonuses and compensations at a rate calculated as follows:

- 60% where the spouse is appointed to the provinces included in the State-of-Emergency regions or to the neighbouring provinces,
- 50% where the spouse is appointed to top-priority development areas,
- 25% where the spouse is appointed to second-priority development areas by their institutions from the savings made in their staffing budgets.

Spouses of staff appointed to other regions shall be deemed to be on unpaid leave.

The posts of the staff referred to above shall be maintained for the duration of the period of appointment of their spouses. That notwithstanding, the said period shall in no way exceed four years within the overall period of service. All of their rights and responsibilities including those relating to step advancement and pension shall continue unchanged. However for the assessment of the said period of unpaid leave in the calculation of retirement pension, the employee's and institution’s contributions must be paid by such staff into the Turkish Pension Fund on a monthly basis.

The places where public servants may not be appointed to the related duties in such places, the length of service, the required number of steps for appointment to specific duties of institutions and the appointment principles relating to a change of place, shall be determined with regulations by the State Personnel Department. Institutions shall prepare staff and appointment plans in accordance with the opinion of the State Personnel Department based on the said regulation for the staff to be appointed.

Dir. 2006/54/EC

Art. 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

Council of Europe Convention on preventing and combating violence against women and domestic violence

Article 4 – Fundamental rights, equality and non-discrimination

1 Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.

2 Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:

– embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;
– prohibiting discrimination against women, including through the use of sanctions, where appropriate;
– abolishing laws and practices which discriminate against women.

3 The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

4 Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.

Article 5 – State obligations and due diligence

1 Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.

2 Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

Article 6 – Gender-sensitive policies

Parties shall undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women.

Chapter III – Prevention

Article 12 – General obligations

1 Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

2 Parties shall take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person.

3 Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.

4 Parties shall take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention.

5 Parties shall ensure that culture, custom, religion, tradition or so-called "honour" shall not be considered as justification for any acts of violence covered by the scope of this Convention.

6 Parties shall take the necessary measures to promote programmes and activities for the empowerment of women.

Explanation:

First of all Art. 72 seems to be a very positive measure helping to ensure reconciliation of work and family life.

Durung our consultation on Tuesday, September 13, 2011, participants discussed situations of (as it seems) a certain frequency when civil servants women are subject to domestic violence, threatened by their husbands, etc. It seems that in these cases in order to have the immediate right to be transferred to another city the woman would need a document issued by the prosecutor stating that she is in danger in the city where she lives at the moment. Participants told us that there are situations where the prosecutor refuses to deliver the necessary document arguing that he is only competent to protect the woman in the city of his competence but not in another city (where the woman wants to go to).

Recommendation:
As there are already very generous provisions in the Civil Servants' Law granting to civil servants the possibility to follow their family in cases where one of the spouses is appointed to another region/city, it seems that Chapter 3 of the Civil Servants' Law would be a good place to insert an explicit provision granting the right to a female civil servant (when she feels that she is in danger) to ask (in a confidential way) to be transferred to another city.
Participants pointed out that it would be important to grant a confidential procedure in order to prevent that the husband/husband's family get to know the place where the woman will be transferred to. This measure could help women in a very precarious situation to leave their hometown without losing their job and without losing the possibility to earn the money they need to live and to feed their children, etc. Anyhow, generally, transferring the woman does not resolve the problem of domestic violence. Turkish Law and Society must find another solution to such situations where basic human rights of female citizens are in danger and neglected. Normally, it should not be the victim who has to leave the place, but the aggressor.
EU –law and the ECHR oblige national States to protect their citizens in such situations in an efficient way and sending away the victim, generally, is not the solution to the problem (see also Council of Europe Convention on preventing and combating violence against women and domestic violence signed in Istanbul, on May 11 2011 and the judgement of the ECHR of September 9th 2009, Opuz v. Turkey, Application n° 33401/02).
The Decision No 293/2000/EC of the European Parliament and of the Council of 24 January 2000 adopting a programme of Community action (the Daphne programme) (2000 to 2003) on preventive measures to fight violence against children, young persons and women and the Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide provide further regulation in this field.
Violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women. The structural nature of violence against women is a form of gender-based violence which is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.
The Turkish legislator therefore should adopt measures within the penal code (but maybe also in other laws) which prevent such situations or which foresee drastic measures as e.g, sentences of imprisonment for the aggressor.
In Austria in cases of domestic violence of the husband, ex-husband, etc. the woman may ask in a first step the police to issue a decree not allowing the aggressor to return to the house/flat and not to come closer to the victim than a certain distance (e.g. 100 m). This decree/measure can be adopted by police very quickly and is meant to be an immediate measure (see Article 38 of the Austrian Security Police Act – "Sicherheitspolizeigesetz"). Afterwards, according to Article 382b and 382e of the Austrian Judicial Enforcement Act ("Exekutionsordung"), the judge may give a ruling stating that the husband, ex-husband, boyfriend, ex-boyfriend (whoever threatens the woman or used violence against her) has not the right anymore to go to her house, may not come closer to her than a certain distance [e.g. 100 m] in the street or in public places. If the man does not comply with this judgement, he can be taken to jail.

Example of Best Practice:

Article 38 of the Austrian Security Police Act – "Sicherheitspolizeigesetz":

Wegweisung und Betretungsverbot bei Gewalt in Wohnungen

§ 38a. (1) Ist auf Grund bestimmter Tatsachen, insbesondere wegen eines vorangegangenen gefährlichen Angriffs, anzunehmen, es stehe ein gefährlicher Angriff auf Leben, Gesundheit oder Freiheit bevor, so sind die Organe des öffentlichen Sicherheitsdienstes ermächtigt, einen Menschen, von dem die Gefahr ausgeht, aus einer Wohnung, in der ein Gefährdeter wohnt, und deren unmittelbarer Umgebung wegzuweisen. Sie haben ihm zur Kenntnis zu bringen, auf welchen räumlichen Bereich sich die Wegweisung bezieht; dieser Bereich ist nach Maßgabe der Erfordernisse eines wirkungsvollen vorbeugenden Schutzes zu bestimmen.

(2) Unter den Voraussetzungen des Abs. 1 sind die Organe des öffentlichen Sicherheitsdienstes ermächtigt, einem Menschen das Betreten eines nach Abs. 1 festzulegenden Bereiches zu untersagen; die Ausübung von Zwangsgewalt zur Durchsetzung dieses Betretungsverbotes ist jedoch unzulässig. Bei einem Verbot, in die eigene Wohnung zurückzukehren, ist besonders darauf Bedacht zu nehmen, daß dieser Eingriff in das Privatleben des Betroffenen die Verhältnismäßigkeit (§ 29) wahrt. Die Organe des öffentlichen Sicherheitsdienstes sind ermächtigt, dem Betroffenen alle in seiner Gewahrsame befindlichen Schlüssel zur Wohnung abzunehmen; sie sind verpflichtet, ihm Gelegenheit zu geben, dringend benötigte Gegenstände des persönlichen Bedarfs mitzunehmen und sich darüber zu informieren, welche Möglichkeiten er hat, unterzukommen. Sofern sich die Notwendigkeit ergibt, daß der Betroffene die Wohnung, deren Betreten ihm untersagt ist, aufsucht, darf er dies nur in Gegenwart eines Organs des öffentlichen Sicherheitsdienstes tun.

(3) Im Falle eines Betretungsverbotes sind die Organe des öffentlichen Sicherheitsdienstes verpflichtet, vom Betroffenen die Bekanntgabe einer Abgabestelle für Zwecke der Zustellung der Aufhebung des Betretungsverbotes oder einer einstweiligen Verfügung nach §§ 382b und 382e EO zu verlangen. Unterläßt er dies, kann die Zustellung solcher Schriftstücke so lange durch Hinterlegung ohne vorausgehenden Zustellversuch erfolgen, bis eine Bekanntgabe erfolgt; darauf ist der Betroffene hinzuweisen.

(4) Die Organe des öffentlichen Sicherheitsdienstes sind weiters verpflichtet, den Gefährdeten von der Möglichkeit einer einstweiligen Verfügung nach §§ 382b und 382e EO und von geeigneten Opferschutzeinrichtungen (§ 25 Abs. 3) zu informieren.

(5) Bei der Dokumentation der Anordnung eines Betretungsverbotes ist nicht bloß auf die für das Einschreiten maßgeblichen Umstände, sondern auch auf jene Bedacht zu nehmen, die für ein Verfahren nach §§ 382b und 382e EO von Bedeutung sein können.

(6) Die Anordnung eines Betretungsverbotes ist der Sicherheitsbehörde unverzüglich bekanntzugeben und von dieser binnen 48 Stunden zu überprüfen. Hiezu kann die Sicherheitsbehörde alle Einrichtungen und Stellen beiziehen, die zur Feststellung des maßgeblichen Sachverhaltes beitragen können. Die Bezirksverwaltungsbehörde als Sicherheitsbehörde kann überdies die im öffentlichen Sanitätsdienst stehenden Ärzte heranziehen. Stellt die Sicherheitsbehörde fest, daß die Voraussetzungen für die Anordnung des Betretungsverbotes nicht bestehen, so hat sie dieses dem Betroffenen gegenüber unverzüglich aufzuheben; der Gefährdete ist unverzüglich darüber zu informieren, daß das Betretungsverbot aufgehoben werde; die Aufhebung des Betretungsverbotes sowie die Information des Gefährdeten haben nach Möglichkeit mündlich oder telefonisch durch ein Organ des öffentlichen Sicherheitsdienstes oder schriftlich durch persönliche Übergabe zu erfolgen. Die nach Abs. 2 abgenommenen Schlüssel sind mit Aufhebung des Betretungsverbotes dem Betroffenen auszufolgen, im Falle eines Antrages auf Erlassung einer einstweiligen Verfügung nach §§ 382b und 382e EO bei Gericht zu erlegen.

(7) Die Einhaltung eines Betretungsverbotes ist zumindest einmal während der ersten drei Tage seiner Geltung durch Organe des öffentlichen Sicherheitsdienstes zu überprüfen. Das Betretungsverbot endet zwei Wochen nach seiner Anordnung; es endet im Falle eines binnen dieser Frist eingebrachten Antrages auf Erlassung einer einstweiligen Verfügung nach §§ 382b und 382e EO mit der Zustellung der Entscheidung des Gerichts an den Antragsgegner, spätestens jedoch vier Wochen nach Anordnung des Betretungsverbotes. Von der Einbringung eines Antrages auf Erlassung einer einstweiligen Verfügung nach §§ 382b und 382e EO hat das Gericht die Sicherheitsbehörde unverzüglich in Kenntnis zu setzen.

Article 382b and 382e Judicial Enforcement Act ("Exekutionsordung"):

Schutz vor Gewalt in Wohnungen

§ 382b. (1) Das Gericht hat einer Person, die einer anderen Person durch einen körperlichen Angriff, eine Drohung mit einem solchen oder ein die psychische Gesundheit erheblich beeinträchtigendes Verhalten das weitere Zusammenleben unzumutbar macht, auf deren Antrag

1. das Verlassen der Wohnung und deren unmittelbarer Umgebung aufzutragen und
2. die Rückkehr in die Wohnung und deren unmittelbare Umgebung zu verbieten,

wenn die Wohnung der Befriedigung des dringenden Wohnbedürfnisses des Antragstellers dient.

(2) Bei einstweiligen Verfügungen nach Abs. 1 ist keine Frist zur Einbringung der Klage (§ 391 Abs. 2) zu bestimmen, wenn die einstweilige Verfügung für längstens sechs Monate getroffen wird.

(3) Verfahren in der Hauptsache im Sinne des § 391 Abs. 2 können Verfahren auf Scheidung, Aufhebung oder Nichtigerklärung der Ehe, Verfahren über die Aufteilung des ehelichen Gebrauchsvermögens und der ehelichen Ersparnisse und Verfahren zur Klärung der Benützungsberechtigung an der Wohnung sein.

Allgemeiner Schutz vor Gewalt

§ 382e. (1) Das Gericht hat einer Person, die einer anderen Person durch einen körperlichen Angriff, eine Drohung mit einem solchen oder ein die psychische Gesundheit erheblich beeinträchtigendes Verhalten das weitere Zusammentreffen unzumutbar macht, auf deren Antrag

1. den Aufenthalt an bestimmt zu bezeichnenden Orten zu verbieten und
2. aufzutragen, das Zusammentreffen sowie die Kontaktaufnahme mit dem Antragsteller zu vermeiden,

soweit dem nicht schwerwiegende Interessen des Antragsgegners zuwiderlaufen.

(2) Bei einstweiligen Verfügungen nach Abs. 1 ist keine Frist zur Einbringung der Klage (§ 391 Abs. 2) zu bestimmen, wenn die einstweilige Verfügung für längstens ein Jahr getroffen wird. Gleiches gilt für eine Verlängerung der einstweiligen Verfügung nach Zuwiderhandeln durch den Antragsgegner.

(3) Wird eine einstweilige Verfügung nach Abs. 1 gemeinsam mit einer einstweiligen Verfügung nach § 382b Abs. 1 erlassen, so gelten § 382b Abs. 3 und § 382c Abs. 4 sinngemäß.

(4) Das Gericht kann mit dem Vollzug von einstweiligen Verfügungen nach Abs. 1 die Sicherheitsbehörden betrauen. § 382d Abs. 4 ist sinngemäß anzuwenden. Im Übrigen sind einstweilige Verfügungen nach Abs. 1 nach den Bestimmungen des Dritten Abschnitts im Ersten Teil zu vollziehen."

XI. Art. 83 Par. 2

The period of national military service shall be granted as step advancement in the acquired grade prior to their leave for national military service. The step advancement granted in the grade of the post they occupied prior to their leave for national military service shall also be taken into account. Where the sum of the step advancements prior to national military service and the period in national military service exceeds three years, the staff concerned shall be granted step advancement in the next grade advancement for the years exceeding this three-year period.

Dir. 2006/54/EC

Art. 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

Explanation/Recommendation:

This provision could be a role model for maternity/paternity/parental leave where periods are not taken in to account for step advancement.

XII. Art. 99

Hours of work:

The normal working week for public servants shall be in general 40 hours.

Dir. 97/81/EC

Clause 1: Purpose

The purpose of this Framework Agreement is:

(a) to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work;

(b) to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organization of working time in a manner which takes into account the needs of employers and workers.

...

Clause 5

Par 3

As far as possible, employers should give consideration to:

(a) requests by workers to transfer from full-time to part-time work that becomes available in the establishment;

(b) requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise;

(c) the provision of timely information on the availability of part-time and full-time positions in the establishment in order to facilitate transfers from full-time to part-time or vice versa;

(d) measures to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions, and where appropriate, to facilitate access by part-time workers to vocational training to enhance career opportunities and occupational mobility;

(e) the provision of appropriate information to existing bodies representing workers about part-time working in the enterprise.

Explanation:

This provision and the following provisions do not take into account Dir 97/81/EC with the purpose to facilitate the development of part-time work on a voluntary basis (see also Art. 11 Dir 92/85/EEC in the version of the Commission proposal COM/2008/0637 final).

Part-time work could be an important issue for parents in order to facilitate reconciliation of work and family life. There are no part-time provisions in the Civil Servants Law.

Also tele-work could help to facilitate reconciliation of work and family life.

There are no specific provisions on flexible work in Turkish legislation but it seems that within the framework of Art. 100 works on application of various flexible employment models are currently being continued (comment received on November 24th 2011).

Recommendation:

Parents should be entitled to reduced weekly working hours. A special provision should be introduced as it has been for disabled persons (Art. 100 Civil Servants Law).

A second paragraph could be added to Art. 99 as follows:

“Fathers and mothers are entitled to reduce the weekly working hours. Reduced working hours have to be granted according to the civil servant’s request, if there are no objections due to the public service duties.”

Introducing provisions concerning the possibility of tele-work under certain circumstances would be helpful.

Example of best practice:

Austria:

For part-time work see:

Article 50b Austrian Federal Law on Civil Servants, BDG, www.ris.bka.gv.at:

“Herabsetzung der regelmäßigen Wochendienstzeit zur Betreuung eines Kindes

§ 50b. (1) Die regelmäßige Wochendienstzeit des Beamten ist auf seinen Antrag zur Betreuung

1. eines eigenen Kindes,
2. eines Wahl- oder Pflegekindes oder
3. eines sonstigen Kindes, für dessen Unterhalt der Beamte und (oder) sein Ehegatte überwiegend aufkommen,

bis auf die Hälfte des für eine Vollbeschäftigung vorgesehenen Ausmaßes herabzusetzen. § 50a Abs. 2 und 4 ist anzuwenden.

(2) Die Herabsetzung wird für die Dauer eines Jahres oder eines Vielfachen eines Jahres oder bis zum Schuleintritt des Kindes wirksam. Sie endet spätestens mit dem Schuleintritt des Kindes.

(3) Eine solche Herabsetzung ist nur zulässig, wenn

1. das Kind dem Haushalt des Beamten angehört und noch nicht schulpflichtig ist und
2. der Beamte das Kind überwiegend selbst betreuen will.

(4) Der Beamte hat den Antrag auf Herabsetzung der regelmäßigen Wochendienstzeit spätestens zwei Monate vor dem gewollten Wirksamkeitsbeginn zu stellen.

(5) Abweichend von Abs. 1 und 2 ist dem Beamten für die vom ihm beantragte Dauer, während der er Anspruch auf Kinderbetreuungsgeld hat, eine Herabsetzung der regelmäßigen Wochendienstzeit auch unter die Hälfte des für eine Vollbeschäftigung vorgesehenen Ausmaßes zu gewähren.
(6) Abweichend von Abs. 2 und 3 ist eine Herabsetzung der regelmäßigen Wochendienstzeit zur Pflege oder Betreuung eines im gemeinsamen Haushalt lebenden behinderten Kindes, für das erhöhte Familienbeihilfe im Sinne des § 8 Abs. 4 des Familienlastenausgleichsgesetzes 1967, BGBl. Nr. 376, bezogen wird, auch nach dem Schuleintritt des Kindes oder über den Schuleintritt des Kindes hinaus zu gewähren. Der gemeinsame Haushalt nach Abs. 3 Z 1 besteht weiter, wenn sich das behinderte Kind nur zeitweilig wegen Heilbehandlung außerhalb der Hausgemeinschaft aufhält.“

In Italy civil servants are entitled to part-time work under certain conditions (see Decreto legislativo n° 917, 30 November 1999).

Also in France part-time work in public administration is foreseen (Décret n°2002-1072 du 7 août 2002 relatif au temps partiel annualisé dans la fonction publique de l'Etat; http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000227765).

« Article 1

Il est institué un service à temps partiel annualisé des fonctionnaires de l'Etat, de ses agents non titulaires et de ses personnels ouvriers. Il est régi par les dispositions respectivement des articles 37 à 40 de la loi du 11 janvier 1984 susvisée, et des articles 3 et 3 bis du décret du 20 juillet 1982 susvisé, celles des articles 34 à 40 du décret du 17 janvier 1986 susvisé, celles du décret du 13 février 1984 susvisé, ainsi que par les dispositions du présent décret.

La durée du service à temps partiel que les agents peuvent être autorisés à accomplir est fixée par référence à la durée annuelle du service que les agents exerçant à temps plein les mêmes fonctions doivent effectuer en application des dispositions de l'article 1er ou de l'article 7 du décret du 25 août 2000 susvisé.

Article 2

L'autorisation d'assurer un service à temps partiel annuel est accordée pour une période d'un an, renouvelable deux fois par tacite reconduction. A l'issue d'une période de trois ans, le renouvellement de l'autorisation de travail à temps partiel doit faire l'objet d'une demande et d'une décision expresses.

La période d'un an court à compter de l'autorisation.

Pour les personnels exerçant leurs fonctions dans les écoles et les établissements d'enseignement, l'autorisation est donnée pour l'année scolaire.

Pour ces personnels ainsi que pour les personnels ouvriers de l'Etat exerçant les fonctions d'instructeur, la demande d'autorisation d'assurer un service à temps partiel annuel doit être présentée avant le 31 mars précédant l'ouverture de l'année scolaire.

L'autorisation définit les conditions d'exercice du service sur l'année en indiquant l'alternance des périodes travaillées et non travaillées, ainsi que la répartition des horaires de travail à l'intérieur des périodes travaillées.

La modification des conditions d'exercice du service à temps partiel annuel peut intervenir à titre exceptionnel, sous réserve du respect d'un délai d'un mois, soit à la demande de l'agent pour des motifs graves le plaçant dans l'incapacité d'exercer ses fonctions selon les modalités définies par l'autorisation, soit à l'initiative de l'administration, si les nécessités du service le justifient, après consultation de l'agent intéressé. En cas de litige, la commission administrative paritaire compétente peut être saisie.

Article 3

Les agents perçoivent mensuellement une rémunération brute égale au douzième de leur rémunération annuelle brute. Celle-ci est fonction du rapport entre la durée annuelle du service effectuée et de la durée résultant des obligations annuelles de service fixées en application des dispositions de l'article 1er ou de l'article 7 du décret du 25 août 2000 susvisé pour les agents exerçant à temps plein les mêmes fonctions.

Les agents pour lesquels il est constaté, au terme de la période d'autorisation, qu'ils n'ont pas accompli l'intégralité des obligations de service auxquelles ils étaient astreints font l'objet d'une procédure de retenue sur traitement ou, à défaut, de reversement pour trop-perçu de rémunération."

For tele-work see:

Article 36a Austrian Federal Law on Civil Servants, BDG, and Article 5c Austrian Federal Law on Contracted Staff working for Public Administration VBG, www.ris.bka.gv.at.

„Telearbeit

§ 36a. (1) Soweit nicht dienstliche oder sonstige öffentliche Interessen entgegenstehen, kann einem Beamten mit seiner Zustimmung angeordnet werden, regelmäßig bestimmte dienstliche Aufgaben in seiner Wohnung oder einer von ihm selbst gewählten, nicht zu seiner Dienststelle gehörigen Örtlichkeit unter Einsatz der dafür erforderlichen Informations- und Kommunikationstechnik zu verrichten (Telearbeit), wenn

1. sich der Beamte hinsichtlich Arbeitserfolg, Einsatzbereitschaft und der Fähigkeit zum selbständigen Arbeiten bewährt hat,
2. die Erreichung des vom Beamten zu erwartenden Arbeitserfolges durch ergebnisorientierte Kontrollen festgestellt werden kann und

3. der Beamte sich verpflichtet, die für die Wahrung der Datensicherheit, Amtsverschwiegenheit und anderer Geheimhaltungspflichten erforderlichen Vorkehrungen zu treffen.

(2) In der Anordnung nach Abs. 1 sind insbesondere zu regeln:

1. Art, Umfang und Qualität der in Form von Telearbeit zu erledigenden dienstlichen Aufgaben,

2. die dienstlichen Abläufe und die Formen der Kommunikation zwischen Vorgesetzten und Mitarbeitern der Dienststelle und dem Telearbeit verrichtenden Beamten,

3. die Zeiten, in denen der Telearbeit verrichtende Beamte sich dienstlich erreichbar zu halten hat und

4. die Anlassfälle und Zeiten, in denen der Telearbeit verrichtende Beamte verpflichtet ist, an der Dienststelle anwesend zu sein.

(3) Telearbeit kann höchstens für die Dauer eines Jahres angeordnet werden. Verlängerungen um jeweils höchstens ein Jahr sind zulässig.

(4) Die Anordnung von Telearbeit ist zu widerrufen, wenn

1. eine der Voraussetzungen nach Abs. 1 entfällt,

2. der Beamte einer sich aus Abs. 1 Z 3 oder Abs. 2 Z 2 bis 4 ergebenden Verpflichtung wiederholt nicht nachkommt,

3. der Beamte wiederholt den in der regelmäßigen Wochendienstzeit zu erwartenden Arbeitserfolg nicht erbringt oder

4. der Beamte seine Zustimmung zur Telearbeit zurückzieht.

(5) Vom Bund sind dem Beamten die zur Verrichtung von Telearbeit erforderliche technische Ausstattung sowie die dafür notwendigen Arbeitsmittel zur Verfügung zu stellen.“

Also in Italy civil servants are entitled to tele-work (see Art. 4, Law June 16 1998, n° 191, “Legge Bassanini ter”):

“Art. 4. Telelavoro

- Allo scopo di razionalizzare l'organizzazione del lavoro e di realizzare economie di gestione attraverso l'impiego flessibile delle risorse umane, le amministrazioni pubbliche di cui all'articolo 1, comma 2, del decreto legislativo 3 febbraio 1993, n. 29, possono avvalersi di forme di lavoro a distanza. A tal fine, possono installare, nell'ambito delle proprie disponibilità di bilancio, apparecchiature informatiche e collegamenti telefonici e telematici necessari e possono autorizzare i propri dipendenti ad effettuare, a parità di salario, la prestazione lavorativa in luogo diverso dalla sede di lavoro, previa determinazione delle modalità per la verifica dell'adempimento della prestazione lavorativa.”

XIIa. Art. 100

Identification of daily working hours:

Article 100: Starting and finishing hours of daily work and the time of the lunch break for the disabled personnel may be identified by high level executives at the centre and civilian authorities at the provinces with the consideration of the disability status, requirements of the service, climate and transportation conditions.

NOTE: This article provides for flexible working hours for the disabled.

Dir. 2000/78/CE

Article 7

Positive action

1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.

2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.

Explanation:

Art. 100 Civil Servants Law N. 657 implements a measure of positive action within the meaning of Art. 7 Dir 2000/78/CE, which is very positive.

XIIb. Art. 101

Working hours and procedures of the public servants employed in services delivered on 24 hour basis are regulated by their organizations.

However, women public servants cannot be assigned for night duties and shifts prior to twenty-fourth week of pregnancy in the event of such being specified in medical report

and after the twenty-fourth week of the pregnancy in any case and for one year following the birth. Disabled public servants cannot be assigned for night duties and shifts unless such is requested by the public servant.

Note: This article stipulates that night duties and night shift tasks cannot be delegated to the women public servants during their pregnancy and to the disabled personnel.

Dir. 92/85/EEC

Article 2

Definitions

For the purposes of this Directive:

(a) pregnant worker shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice;

Article 7

Night work

1. Member States shall take the necessary measures to ensure that workers referred to in Article 2 are not obliged to perform night work during their pregnancy and for a period following childbirth which shall be determined by the national authority competent for safety and health, subject to submission, in accordance with the procedures laid down by the Member States, of a medical certificate stating that this is necessary for the safety or health of the worker concerned.

2. The measures referred to in paragraph 1 must entail the possibility, in accordance with national legislation and/or national practice, of:

(a) transfer to daytime work; or

(b) leave from work or extension of maternity leave where such a transfer is not technically and/or objectively feasible or cannot reasonably by required on duly substantiated grounds.

Explanation:

Art. 101 is in line with Art. 7 Dir 92/85/EEC as far as public servants during pregnancy and one year after having given birth cannot be assigned for night duties and shifts. Nevertheless, Art. 2 Dir 92/85/EEC stipulates that for the purposes of this directive pregnant worker shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice. Art. 101 guarantees particular protection prior to twenty-fourth week of pregnancy only in the event of such being specified in medical report, whereas according to Art. 2 Dir 92/85/EEC it is only required that the pregnant worker informs her employer of her condition.

Recommendation:

Actually, it would seem advisable to adopt the wording concerning the circumstances/conditions (information of the employer) required for the prohibition of night work.

XIII. Art. 104 A Par. I

Civil servants shall be given paid maternity leave for a total period of sixteen weeks, eight weeks before confinement and eight weeks after the birth is granted to the woman worker. In case of multiple pregnancy, an extra two week period is added to the prenatal maternity leave of eight weeks paid maternity leave.

However, woman worker evidencing with a physician's report that her medical condition is suitable for employment up to eight weeks before the expected due date may work in her establishment up to three weeks before the birth upon her own request. In such cases, actual period of employment based on the said report issued prior to birth are added to postpartum maternal leave. The parts of prenatal maternal leave which cannot be used due to premature birth are added to postpartum maternal leave. In the event of death of mother during birth or during postpartum maternal leave, the period foreseen for mother is granted as a leave for the public servant father upon his request.

Dir. 92/85/EEC

Art. 8

Maternity leave

Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of a least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice.

The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice.

Article 9

Time off for ante-natal examinations

Member States shall take the necessary measures to ensure that pregnant workers within the meaning of Article 2 (a) are entitled to, in accordance with national legislation and/or practice, time off, without loss of pay, in order to attend ante-natal examinations, if such examinations have to take place during working hours.

Article 10

Prohibition of dismissal

In order to guarantee workers, within the meaning of Article 2, the exercise of their health and safety protection rights as recognized under this Article, it shall be provided that:

1. Member States shall take the necessary measures to prohibit the dismissal of workers, within the meaning of Article 2, during the period from the beginning of their pregnancy to the end of the maternity leave referred to in Article 8 (1), save in exceptional cases not connected with their condition which are permitted under national legislation and/or

practice and, where applicable, provided that the competent authority has given its consent;

2. if a worker, within the meaning of Article 2, is dismissed during the period referred to in point 1, the employer must cite duly substantiated grounds for her dismissal in writing;

3. Member States shall take the necessary measures to protect workers, within the meaning of Article 2, from consequences of dismissal which is unlawful by virtue of point 1.

Article 12

Defence of rights

Member States shall introduce into their national legal systems such measures as are necessary to enable all workers who should themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process (and/or, in accordance with national laws and/or practices) by recourse to other competent authorities.

COM/2008/0637 final

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.

Article 8

Maternity leave

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least 18 weeks allocated before and/or after confinement.

2. The maternity leave stipulated in paragraph 1 shall include compulsory leave of at least six weeks after childbirth. The Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to choose freely the time at which the non-compulsory portion of the maternity leave is taken, before or after childbirth.

3. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date and the actual date of childbirth, without the remaining portion of leave being reduced.

4. Member States shall take the necessary measures to ensure that additional leave is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities and multiple births. The duration of the additional leave should be proportionate and allow the special needs of the mother and the child/children to be accommodated.

5. Member States shall ensure that any period of sick leave due to illness or complications arising out of pregnancy occurring four weeks or more before confinement does not impact on the duration of maternity leave.

Article 10

Prohibition of dismissal

In order to guarantee that workers within the meaning of Article 2 can exercise their health and safety protection rights as recognised under this Article:

1. The Member States shall take the necessary measures to prohibit the dismissal and all preparations for a dismissal of workers within the meaning of Article 2 during the period from the beginning of their pregnancy to the end of the maternity leave provided for in Article 8(1), save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.

2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 the employer must cite duly substantiated grounds for her dismissal in writing.

If the dismissal occurs within six months following the end of maternity leave as provided for in Article 8(1), the employer must cite duly substantiated grounds for her dismissal in writing at the request of the worker concerned.

3. The Member States shall take the necessary measures to protect workers within the meaning of Article 2 from the consequences of dismissal which is unlawful by virtue of points 1 and 2.

4. Less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Article 8 shall constitute discrimination within the meaning of Directive 2002/73/EC, as recast by Directive 2006/54/EC."

3. Article 11 is amended as follows:

(a) The following point 1a is inserted:

"1a. workers, within the meaning of Article 2, who are excluded from work by their employer who considers them not fit for work without medical indication supplied by the worker, shall, until the beginning of the maternity leave in the sense of Article 8(2), receive a payment equivalent to their full salary."

(b) In point 2, the following point (c) is added:

"(c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence;"

(c) Point 3 is replaced by the following:

"3. the allowance referred to in point 2(b) shall be deemed adequate if it guarantees income equivalent to the last monthly salary or an average monthly salary, subject to any ceiling laid down under national legislation. Such a ceiling may not be lower than the allowance received by workers within the meaning of Article 2 in the event of a break in activity on grounds connected with the worker's state of health. The Member States may lay down the period over which this average monthly salary is calculated."

(d) The following point 5 is added:

"5. Member States shall take the measures necessary to ensure that workers, within the meaning of Article 2, may, during maternity leave or when returning from maternity leave, as provided for in Article 8, request changes to their working hours and patterns, and that employers shall be obliged to consider such requests, taking employers' and workers' needs into account."

4. The following Article 12a is inserted:

"Article 12a

Burden of proof

1. Member States shall take such measures as are necessary in accordance with their national judicial systems to ensure that when persons who consider that their rights under this Directive have been breached establish, before a court or other competent authority, facts from which it may be presumed that there has been such a breach, it shall be for the respondent to prove that there has been no breach of the Directive."

Dir. 2006/54/EC

Article 15

Return from maternity leave

A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which 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.

Explanation:

According to Art. 104 A two more weeks of maternity leave are granted than stated in Article 8 par 1 directive 92/85/EEC (14 weeks).

Thus, according to the Commission proposal civil servants should be entitled to a continuous period of maternity leave of at least 18 weeks allocated before and/or after confinement.

As laid down in the Commission proposal maternity leave shall include compulsory leave of at least six weeks after childbirth. According to Dir 92/85/EEC a compulsory leave of at least two weeks before or after confinement has to be granted.

Art. 104 Civil Servants Law seems to be in line with Dir. 92/85/EEC, in so far as the woman worker may work only up to three weeks before the birth, which seems to mean that these three weeks are compulsory. Still, the Commission's proposal would foresee at least six weeks of compulsory leave after childbirth. Besides, the provision stipulating that woman worker evidencing with a physician's report that her medical condition is suitable for employment up to eight weeks before the expected due date may work in her establishment up to three weeks before the birth upon her own request seems contradictory. Maybe it was meant to be "three weeks" instead of "eight weeks".

The guarantees laid down in Art. 8, par. 4, in the version of the Commission proposal which would foresee additional leave in the case of children hospitalized at birth and in case of children with disabilities are missing in Art. 104.

In addition, Art. 8, par. 5, in the version of the Commission proposal would provide that any period of sick leave due to illness or complications arising out of pregnancy occurring four weeks or more before confinement does not impact on the duration of maternity leave. There is no such explicit regulation in Art. 104.

According to Art. 104 the mother (up to three weeks before birth) is free to choose whether to take a longer or shorter leave before or after birth (flexibility according to Article 8 par 1 directive 92/85/EEC).

Provisions on return from maternity leave (Art. 15 Dir. 2006/54/EC) are missing.

Also provisions according to Art. 9, 10 and 12 Dir 92/85/EEC (time off for ante-natal examinations, prohibition of dismissal and defence of rights; burden of proof as laid down in the Commission Proposal) could not be found. It might be that provisions on prohibition of dismissal are not necessary as civil servants anyhow cannot be dismissed by means of ordinary procedure, but only following the procedure on disciplinary measures (Art. 125 E Civil Servants Law). Anyhow, disciplinary procedures during the periods mentioned under Art.10 Dir 92/85/EEC have to provide the same guarantees for the civil servant as laid down in Art. 10, par 2, Dir. 92/85/EEC.

During the consultation on September 13, 2011 SPP colleagues underlined that, if women have to go to ante-natal examinations, this would be equal to a situation where a civil servant has to go to hospital and therefore has to be entitled to paid leave on grounds of illness. This seems to be a very positive practice but Art. 9 Dir 92/85/EEC would call for a special regulation laying explicitly down the woman's right to go to such examinations. Furthermore, if, when going to ante-natal examinations the woman is deemed to be ill and on leave on grounds of sickness, this period of time will be taken into account for the calculation of the days that she entitled to use for paid leave on grounds of sickness (Art. 105 Civil Servants Law) .

Recommendation:

It would be advisable to adopt as far as possible the wording of the directive and to evidence that there is a compulsory period of maternity leave (of six weeks after the birth according to Commission proposal or 2 weeks before or after confinement according to the directive 92/85/EEC).

Furthermore, when taking into account probable developments of EU legislation, it would be worth considering the implementation of the Commission proposal.

Provisions on return from maternity leave (Art. 15 Dir. 2006/54/EC) should be introduced into the Civil servants law.

Provisions according to Art. 9, 10 and 12 Dir 92/85/EEC (time off for ante-natal examinations, prohibition of dismissal and defence of rights; see also Commission proposal and burden of proof) could not be found and, in so far as necessary, should be implemented.

Art. 104 B

Paternity leave of ten days is granted to public servants upon their request in case of their spouses giving birth while a leave of seven days is granted to the public servant in the event of his marriage or his child's marriage or in case of death of his spouse or child, parents and siblings of himself or his spouse upon his request.

Dir. 2006/54/EC

Art. 16

Paternity and adoption leave

This Directive is without prejudice to the right of Member States to recognize distinct rights to paternity and/or adoption leave. Those Member States which recognize such rights shall take the necessary measures to protect working men and women against dismissal due to exercising those rights and ensure that, at the end of such leave, they are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favorable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence.

Explanation:

Paternity leave is very positive (Art. 16 Dir. 2006/54/EC) and in line with the opinion of the EU Parliament.

SPP colleagues explained that unmarried fathers are not entitled to use the leave for the birth of their children, as this situation would be very strange to Turkish culture.

Paternity leave is not compulsory, but if it is granted to married fathers, it should be granted to unmarried fathers, too.

Recommendation:

All fathers should benefit from this right. The necessary measures to protect working men and women against dismissal due to exercising those rights and to ensure that, at the end of such leave, they are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favorable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence, should be adopted.

Proposal for a new (amended) Article 104 B:

"Due to the birth of his child, male civil servant may be granted X days leave upon request."

Art. 104 C

Excluding the cases stipulated in clause (A) and (B), a leave of ten days can be granted cumulatively or partially within one year to the public servants due to their excuses by the superior authorized for assignment in the center, governor in the province, district governor in the district and diplomatic mission chief abroad with the consent of superior of public servant's unit. When needed, casual leave of additional ten days can be granted

by means of following the same procedure excluding the teachers. In such cases, this leave granted for second time is deducted from annual leave.

Explanation:

It seems that cases of illness of children and care for parents are covered.

SPP colleagues answered that those examples are covered.

Generally, this is a positive measure in order to guarantee reconciliation of family and working life.

Recommendation/Examples:

In Austria the parent in whose house the child is living is entitled to take paid leave in order to take care of his child in case of the child's illness (maximum 2 weeks); in addition two weeks annual leave can be used without consent of employer (Art. 76 Austrian Federal Law on Public Servants; BDG; www.ris.bka.gv.at).

„Pflegefreistellung

§ 76. (1) Der Beamte hat - unbeschadet des § 74 - Anspruch auf Pflegefreistellung, wenn er aus einem der folgenden Gründe nachweislich an der Dienstleistung verhindert ist:

1. wegen der notwendigen Pflege eines im gemeinsamen Haushalt lebenden erkrankten oder verunglückten nahen Angehörigen oder Kindes der Person, mit der der Beamte in Lebensgemeinschaft lebt oder

2. wegen der notwendigen Betreuung seines Kindes, Wahl- oder Pflegekindes, Stiefkindes oder des Kindes der Person, mit der der Beamte in Lebensgemeinschaft lebt, wenn die Person, die das Kind ständig betreut hat, aus den Gründen des § 15d Abs. 2 Z 1 bis 4 MSchG für diese Pflege ausfällt.

(2) Als nahe Angehörige sind der Ehegatte und Personen anzusehen, die mit dem Beamten in gerader Linie verwandt sind, ferner Geschwister, Stief-, Wahl- und Pflegekinder sowie die Person, mit der der Beamte in Lebensgemeinschaft lebt.

(3) Die Pflegefreistellung nach Abs. 1 darf im Kalenderjahr das Ausmaß der regelmäßigen Wochendienstzeit des Beamten nach § 48 Abs. 2 oder 6 oder nach den §§ 50a bis 50c nicht übersteigen.

(4) Darüber hinaus besteht - unbeschadet des § 74 - Anspruch auf Pflegefreistellung bis zum Höchstausmaß einer weiteren Woche der im Abs. 3 angeführten Dienstzeit im Kalenderjahr, wenn der Beamte

1. den Anspruch auf Pflegefreistellung nach Abs. 1 verbraucht hat und
2. wegen der notwendigen Pflege seines im gemeinsamen Haushalt lebenden erkrankten Kindes (einschließlich Wahl-, Pflege- oder Stiefkindes oder Kindes der Person, mit der der Beamte in Lebensgemeinschaft lebt), das das zwölfte Lebensjahr noch nicht überschritten hat, an der Dienstleistung neuerlich verhindert ist.

(5) Die Pflegefreistellung kann tageweise oder stundenweise in Anspruch genommen werden. Verrichtet der Beamte jedoch Schicht- oder Wechseldienst oder unregelmäßigen Dienst, ist die Pflegefreistellung in vollen Stunden zu verbrauchen.

(6) Ändert sich das Ausmaß der dienstplanmäßigen Wochendienstzeit des Beamten während des Kalenderjahres, so ist die in diesem Kalenderjahr bereits verbrauchte Zeit der Pflegefreistellung in dem Ausmaß umzurechnen, das der Änderung des Ausmaßes der dienstplanmäßigen Wochendienstzeit entspricht. Bruchteile von Stunden sind hiebei auf volle Stunden aufzurunden.

(7) Fallen in ein Kalenderjahr Zeiten einer Pflegefreistellung in einem dem öffentlich-rechtlichen Dienstverhältnis unmittelbar vorangegangenen vertraglichen Dienstverhältnis zum Bund, so ist die im vertraglichen Dienstverhältnis zum Bund bereits verbrauchte Zeit der Pflegefreistellung auf den im öffentlich-rechtlichen Dienstverhältnis bestehenden Anspruch auf Pflegefreistellung anzurechnen. Hat sich das Ausmaß der auf eine Woche entfallenden dienstplanmäßigen Dienstzeit geändert, ist dabei auch Abs. 6 anzuwenden.

(8) Ist der Anspruch auf Pflegefreistellung erschöpft, kann zu einem in Abs. 4 genannten Zweck noch nicht verbrauchter Erholungsurlaub ohne vorherige kalendermäßige Festlegung nach § 68 angetreten werden.

(9) Die Dauer einer Urlaubsunterbrechung gemäß § 71 Abs. 6 ist auf das nach den Abs. 3 und 4 jeweils in Betracht kommende Ausmaß anzurechnen.“

In France in case of illness of the child (under a certain age) the civil servant is entitled to 12 days of leave on special ground.

In Italy there are similar provisions for civil servants granting paid and unpaid leave on special ground in case of illness of children under a certain age (Art. 15 CCNL, June 8 2000).

Art. 104 D

Breastfeeding leave is granted to female public servants to enable breastfeeding of their children as three days (hours?)per day for the initial six months after the completion of postpartum maternity leave and as one and a half hour per day for the second six months. The preference of the female public servant will be considered as a basis for on which hours and how many times a day the breastfeeding leave will be used.

Dir. 2006/54/EC

ECJ, 30th September 2010, Pedro Manuel Roca Álvarez v Sesa Start España ETT SA, C-104/2009

Recital 39

The ECJ pointed out that Article 2(1), (3) and (4) and Article 5 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, must be interpreted as precluding a national measure such as the one at issue in the main proceedings, which provides that female workers who are mothers and whose status is that of an employed person are entitled, in various ways, to take leave during the first nine months following the child's birth, whereas male workers who are fathers with that same status are not entitled to the same leave unless the child's mother is also an employed person.

Explanation:

Fathers should be covered too (see ruling of the ECJ C-104/2009).

Recommendation:

Proposal for a new (amended) Article 104 D:

“After the maternity leave, fathers or mothers should be given feeding leave X hours a day. Civil servants have the right to decide at what times and in how many instalments they will use the feeding leave.”

Art. 104 E

Financial rights and social aids are reserved during annual leaves and leaves of excuse.

Dir. 92/85/EC

Art. 11

Employment rights

In order to guarantee workers within the meaning of Article 2 the exercise of their health and safety protection rights as recognized in this Article, it shall be provided that:

1. in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and/or national practice;

2. in the case referred to in Article 8, the following must be ensured:

(a) the rights connected with the employment contract of workers within the meaning of Article 2, other than those referred to in point (b) below;

(b) maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2;

3. the allowance referred to in point 2 (b) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation;

4. Member States may make entitlement to pay or the allowance referred to in points 1 and 2 (b) conditional upon the worker concerned fulfilling the conditions of eligibility for such benefits laid down under national legislation.

These conditions may under no circumstances provide for periods of previous employment in excess of 12 months immediately prior to the presumed date of confinement.

Explanation:

We asked for the meaning of this provision in detail, which rights were referred to and whether this applied to maternity leave. Furthermore we wanted to know whether pension rights, health insurance, step/grade advancement, salary and calculation of the duration of sick leave were covered too?

SPP colleagues answered that civil servants have the same rights during all leaves on special grounds.

We were told by Social Security Institution that fatherhood leave is taken into account for Social Security and Pension Rights, whereas periods of maternity leave are not. Art. 18 C Law 5510 does not foresee this. We asked where this was laid down – maybe in Law Nr. 5434, but we didn't receive any answer to this specific question. On the other hand SPP colleagues told us, that periods of maternity are taken into account for Social Security and Pension Rights (see also Article 64 Civil Servants Law).

At the end of our mission in Ankara on 26th November 2010 SPP colleagues answered that during leave on special grounds the civil servants are entitled to have the same salary, leave, step and grade advancement, health insurance and social security and other rights. This seems to be the case according to Art. 104 as amended by the Omnibus Law.

Art. 11 in the version of the Commission proposal would stipulate that workers have the right to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which

they would have been entitled during their absence; Member States shall take the measures necessary to ensure that workers may, during maternity leave or when returning from maternity leave, as provided for in Article 8, request changes to their working hours and patterns, and that employers shall be obliged to consider such requests, taking employers' and workers' needs into account.

The possibility of changing working hours for example would be an important step in order to guarantee reconciliation of working and family life. It does not seem to be covered by “financial rights and social aids”.

Recommendation:

As we were not able to clarify the Turkish legal situation concerning these aspects, it is difficult to point out possible aspects and potential of improvement. If all rights according to the above mentioned provisions are covered and conserved, in fact there would be no need to change Art. 104 E. Anyhow, in order to prevent misunderstandings it would help to adopt the directive’s wording as it stands.

XIV. Art. 105 Last Par.

In the event of experience of serious accident or an illness that require long term treatment by the parents, spouse and children, siblings of the public servant who are considered as dependants of the public servant or who shall be under life - threatening situation in case of the lack of the companion of the public servant, the public servant shall be entitled with a leave up to three months with the monthly salaries and personnel rights reserved provided that such shall be evidenced with health commission report. This period may be extended once by an additional identical period subject to the same conditions.

Dir. 2006/54/EC

Art. 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

Explanation/Recommendation:

This is a positive measure appropriate to facilitate reconciliation of family and working life. Nevertheless, for reduced periods of time e.g. for 2/3 weeks - as in some EU Members States - civil servants should be entitled to take supplementary paid leave in case of (simple) illness (e.g. fever, etc.) of their children up to a certain age. It could be foreseen that civil servants have to provide medical certificates which prove the fact that their children are ill, can't attend school/kindergarten or others and need their mother's/father's care.

In Austria the parent in whose house the child is living is entitled to take paid leave in order to take care of his child in case of illness (maximum 2 weeks); after two weeks annual leave can be used without consent of employer (Art. 76 Austrian Federal Law on Public Servants; BDG; www.ris.bka.gv.at).

XV. Art. 108

- The public servant giving birth is entitled with an unpaid leave up to twenty-four months as of the end of the postpartum maternity leave granted as per article 104 while the public servant whose spouse gives birth is entitled with an unpaid leave up to twenty-four months as of the date of birth upon their request.
- Public servants who adopt a child younger than three years old together with the spouse or individually and public servant spouses whose non-public servant spouses adopt individually can be granted with an unpaid leave up to twenty-four months as of the definite consent date of the parents of the child or consent date of the probate administration. If both of the spouses adopting the child are public servants, the spouses may be entitled with the said leave period upon their request in two consecutive periods provided that such shall not be longer than twenty four months.

Dir. 2010/18/EU

Article 1

This Directive puts into effect the revised Framework Agreement on parental leave concluded on 18 June 2009 by the European cross-industry social partner organisations (BUSINESSEUROPE, UEAPME, CEEP and ETUC), as set out in the Annex.

...

ANNEX

FRAMEWORK AGREEMENT ON PARENTAL LEAVE (REVISED)

18 June 2009

Clause 2: Parental leave

1. This agreement entitles men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child to take care of that child until a given age up to eight years to be defined by Member States and/or social partners.

2. The leave shall be granted for at least a period of four months and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis. The modalities of application of the non-transferable period shall be set down at national level through legislation and/or collective agreements taking into account existing leave arrangements in the Member States.

Clause 4: Adoption

1. Member States and/or social partners shall assess the need for additional measures to address the specific needs of adoptive parents.

Clause 5: Employment rights and non-discrimination

1. At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.

2. Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements and/or practice, shall apply.

3. Member States and/or social partners shall define the status of the employment contract or employment relationship for the period of parental leave.

4. In order to ensure that workers can exercise their right to parental leave, Member States and/or social partners shall take the necessary measures to protect workers against less favorable treatment or dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements and/or practice.

5. All matters regarding social security in relation to this agreement are for consideration and determination by Member States and/or social partners according to national law and/or collective agreements, taking into account the importance of the continuity of the entitlements to social security cover under the different schemes, in particular health care.

All matters regarding income in relation to this agreement are for consideration and determination by Member States and/or social partners according to national law, collective agreements and/or practice, taking into account the role of income – among other factors – in the take-up of parental leave.

Clause 6: Return to work

1. In order to promote better reconciliation, Member States and/or social partners shall take the necessary measures to ensure that workers, when returning from parental leave, may request changes to their working hours and/or patterns for a set period of time. Employers shall consider and respond to such requests, taking into account both employers' and workers' needs.

The modalities of this paragraph shall be determined in accordance with national law, collective agreements and/or practice.

2. In order to facilitate the return to work following parental leave, workers and employers are encouraged to maintain contact during the period of leave and may make arrangements for any appropriate reintegration measures, to be decided between the parties concerned, taking into account national law, collective agreements and/or practice.

Explanation:

It seems that the mother and father can take parental leave at the same time. This would be very positive, but not very realistic as neither the mother nor the father during this period would be entitled to receive salary or an equivalent.

We wondered whether it was appropriate that parental leave is unpaid whereas a three children family policy seems to be on the agenda and whereas for example Article 76 Civil Servants Law foresees a very family friendly and costly regulation.

In addition, it would be very important (in order to achieve a realistic possibility of parents to make use of these provisions) that the post is maintained for the parent on leave (Clause 5 of Dir 2010/18/EU) and that the other guaranties regarding "return to work" as laid down in the Directive.

We asked whether pension rights were maintained (see parallel Art. 108 F).

The Dir 2010/18/EU entitles men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child until a given age up to eight years to be defined by Member States and/or social partners. During our consultation on September 13 and 14, 2011 the question was put forward whether the Dir 2010/18/EU wouldn`t call for a flexible regulation which would entitle parents up to the 8th birthday of their child to freely choose when they use their right to demand parental leave. The Dir 2010/18/EU neither stipulates that Member States are obliged to foresee parental leave until the child's 8th birthday nor that the parents shall be given the right to choose a certain period of parental leave till their child has reached the age of eight years. The

Directive doesn't define the exact age of the child up to which parents shall have the right to choose when to consume parental leave but the Directive explicitly calls upon the Member States to define this age themselves ("until a given age up to eight years"). Therefore concerning this aspect the Civil Servants Law which grants 24 months of parental leave to both, mother and father, is in line with EU-law as of today.

Recommendation:

Best practice German: BEEG (http://www.gesetze-im-internet.de/beeg/index.html).

In Austria after periods of maternity leave civil servants (female and male) have got the possibility to take unpaid parental leave, but Social Security provides for payment of either a (smaller) amount not depending on the civil servants previous salary for a longer period or during a shorter period (e.g. 12 months) for the payment of an amount which is equivalent to the previous salary.

This is a very important aspect of assuring the possibility of the parent who is actually bringing up the child and who takes care of it, to have the financial and material possibility/autonomy to assure his/her and the child's living.

Is there any room in the field of Civil Servants Law for positive action going further than current provisions? Health insurance? Step/Grade advancement? Calculation of benefits, periods of annual leave? Maintenance of rights?

The fact that provisions on parental leave in case of adoption have been adopted by the Omnibus Law is very positive and in line with Clause 4, Dir 2010/18.

Art. 108 D

Public servants who have been sent abroad for educational purposes with scholarship or under budget means including those providing special scholarships and who have been granted with unpaid leave in order to benefit from such scholarship or assigned within the country or abroad for permanent tasks or assigned abroad on a temporary basis for a minimum of six months and those subject to other personnel laws and public servant spouses of students sent abroad by public institutions and public servant spouses of those granted with the leave as per article 77 may be entitled with unpaid leave during their assignment or education period.

Explanation:

This is a very positive measure as it allows families to stay and move together in cases of appointments in other cities or countries. For this reason this provision can contribute to conciliate work and family life.

Art. 108 F

Public servants who leave service for military service shall be deemed to be on unpaid leave in the course of the military service and their posts shall be maintained.

Dir. 2006/54/EC

Art. 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

Explanation:

These are very positive measures in order to permit reconciliation of work and family life.

Recommendation:

Art 108 E stipulates that the post of civil servants who leave service for military service shall be maintained. This could be stipulated for the periods of paid and unpaid periods of maternity and parental leave, too.

XVI. Art. 123 Award

Those showing outstanding zeal and performance in comparison to their co-workers in their institutions may be given an award, provided that the award does not exceed one salary within a given financial year and two salaries in the case of the public servants falling into the category of security services and the public servants assigned to the customhouses within the Office of the Undersecretary of Customs, following the consent of the relevant Minister or the Minister in charge. Where appropriate, they may be granted one more salary, on a proposal from the Minister and with the approval of the Prime Minister.

Pursuant to this Article, the number of staff to be awarded shall not exceed one percent of the total number of free posts at the beginning of the year, and two percent of free posts allocated to the Office of the Undersecretary of Customs and the category of training and education services and the category of security services.

Recommendation:

What about a gender balance provision?

XVII. Art. 125 Disciplinary Measures

(See Also General Remarks Above)

In general, the question arises whether and how civil servants can lodge an appeal with a tribunal against disciplinary measures as granted by Article 6 ECHR. Disciplinary authorities (composition?) are not a tribunal (see also Art 135 which does not allow appeals against all disciplinary measures and also Art 129 par 2 which does not entitle the civil servant to have access to all documents – principle of equality of the parties, Art. 6 ECHR; Art. 131 par 2 - ECHR).

Provisions of special laws would be interesting to check (Art. 125 E second last par).

Disciplinary measures are no compensation for the person who has been discriminated against.

SPP colleagues told us that provision regarding compensation could be found in the Law on the Turkish Council of State. There are no such provisions in the Law on the Turkish Council of State.

In Article 58 of the Code of Obligations it is stated, **"Those who have suffered a loss as a result of damage to personal rights may claim an amount of money as intangible compensation for the intangible losses suffered". This might be a provision foreseeing compensation but it does not explicitly grant compensation in cases of discrimination.**

XVIII. Art. 125 D i)

The disciplinary penalties, actions and cases carrying such penalties are set out below:

D- Deferment of step advancement: to halt the step advancement in the current step of the staff one to three years, according to the gravity of the action.

Actions and cases generating the penalty of deferment of step advancement shall be:

discriminating on the basis of language, race, sex, political ideology, philosophy, religion or belief in the performance of duties, conducting oneself in a manner aimed at acting in someone's favour or to someone's detriment.

Dir. 2006/54/CE

Art. 17

Defense of rights

1. Member States shall ensure that, after possible recourse to other competent authorities including where they deem it appropriate conciliation procedures, judicial procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his/her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equal treatment.

Art. 18

Compensation or reparation

Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered. Such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his/her job application into consideration.

Art. 19

Burden of proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

4. Paragraphs 1, 2 and 3 shall also apply to:

(a) the situations covered by Article 141 of the Treaty and, insofar as discrimination based on sex is concerned, by Directives 92/85/EEC and 96/34/EC;

(b) any civil or administrative procedure concerning the public or private sector which provides for means of redress under national law pursuant to the measures referred to in (a) with the exception of out-of-court procedures of a voluntary nature or provided for in national law.

5. This Article shall not apply to criminal procedures, unless otherwise provided by the Member States.

Explanation:

Persons who have been discriminated against must be able to defend their rights and to be granted compensation or reparation. The burden of proof in legal proceeding must be regulated according to EU law for the benefit of the person who has been discriminated against.

There is no provision foreseeing compensation or reparation for the person who has been discriminated against (see Art. 18 Dir. 2006/54/EC).There are only disciplinary measures for the person who has discriminated.

Besides, provisions foreseeing respect of burden of proof for the person who has been discriminated against according to Article 19 Dir 2006/54/CE could not be found.

There is now a provision in the law proposal on anti-discrimination and equality in draft (Art. 10 of the proposal) containing measures for burden of proof which is not necessarily in line with Art. 19 of the Dir. 2006/54/EC.

Provisions guaranteeing the defense of rights for the person who has been discriminated against according to Art. 17 Dir. 2006/54/EC and provisions concerning the access to Court for the person who has discriminated and against whom a disciplinary measure has been taken are missing. Art. 135 does not seem to guarantee access to Court (higher authority is not an independent tribunal).

SPP colleagues pointed out that the officials who have been exposed to discrimination regarding damages would have the right to sue for pecuniary and non-pecuniary damages.

We could not find such provisions neither in the law proposal on anti-discrimination nor in the current Turkish legislation.

Recommendation:

It would be advisable to adopt the measures missing (see above –explanation; compensation and reparation, defense of right and burden of proof) either in the anti-discrimination law or in the Civil Servants Law and it would be advisable to adopt the wording of the EU directive as it stands.

XIX. Title V, Financial Provisions (Art. 146)

Public servants falling under the first paragraph of Article 1 of the present Law shall be subject to the present Law as regards salary, remuneration, allowance, emoluments of all kinds and the form and conditions pertaining thereto; the public servants falling into the second paragraph of the said Article shall be subject to the provisions of their special Law.

Public servants shall not be paid more than defined hereunder and shall not receive any further benefits in return for the duties assigned by laws, regulations and statutes or by order of their superiors (excluding those who are to be actively assigned to youth and sport services).

That notwithstanding, the provisions of the other laws concerning legal counsel fees for lawyers and the others who pursue legal proceedings for institutions subject to budgetary annexes, special provincial administrations and municipalities and the associations

established by special provincial administrations shall continue to apply in accordance with Article 2 of the Law dated 2.1.61 no.6, paragraph 1 and 2 of the additional clause 5 of the Law dated 7.6.26, No.904, added by the Law dated 30.1.57, No. 6893, Article 162 of the Law dated 19.7.72, No. 1615, the amended Article 14 of the Law dated 13.1.43, No. 4358 and the Law dated 2.2.29, No. 1389. (Amended sentence: 20.3.97 Article 8 of Decree Law 570) Insofar, as the annual amount of legal counsel fee does not exceed twelve times the monthly gross amount, calculated by multiplying the index of 6000 by the coefficient applied to the salaries of public servants. The remaining amount after a distribution on such basis shall be accumulated in a central account and shall be distributed among the other lawyers equally, in accordance with a regulation to be prepared by the Ministry of Finance, providing that it does not exceed the amount set out above.

The gross level of salaries, basic salaries, seniority salaries, bonuses and compensation to be paid in accordance with the present Law shall not be less than the monthly minimum salary defined for workers in the same duty location in accordance with Labour Law. Where it is less, the difference shall be paid to the public servants as compensation, irrespective of the other rights of the public servant.

Explanation:

This is not a clear system. The lack of a clear system contains the risk of indirect discrimination. It would be very interesting to know whether there is a gender pay gap in Turkish public administration. This question should be analyzed on the ground of statistic data. In the EU Member States there are still remarkable gender pay gaps e.g. in Germany (more than the European average). There are activities on the way to close these gaps and even legislative measures are discussed. For the moment there is no European legislation in this field.

XX. Art. 152

Bonuses shall be paid in the following forms:

- Difficult-work bonus, paid to those whose work is difficult with regard to the nature of the job and working conditions,

- Work risk bonus, paid to those whose work is dangerous for health and life,
- Financial responsibility bonus to accountants who are responsible for submitting accounts to the Court of Auditors and to treasurers and other staff who have responsibility for deficits,
- Bonus paid to staff who are difficult to find, retain in position or employ in certain places.

Dir. 92/85/EEC

Recital

Whereas pregnant workers and workers who are breastfeeding must not engage in activities which have been assessed as revealing a risk of exposure, jeopardizing safety and health, to certain particularly dangerous agents or working conditions;

Whereas provision should be made for pregnant workers, workers who have recently given birth or workers who are breastfeeding not to be required to work at night where such provision is necessary from the point of view of their safety and health;

Art. 6

Cases in which exposure is prohibited

In addition to the general provisions concerning the protection of workers, in particular those relating to the limit values for occupational exposure:

1. pregnant workers within the meaning of Article 2 (a) may under no circumstances be obliged to perform duties for which the assessment has revealed a risk of exposure, which would jeopardize safety or health, to the agents and working conditions listed in Annex II, Section A;

2. workers who are breastfeeding, within the meaning of Article 2 (c), may under no circumstances be obliged to perform duties for which the assessment has revealed a risk of exposure, which would jeopardize safety or health, to the agents and working conditions listed in Annex II, Section B.

Article 7

Night work

1. Member States shall take the necessary measures to ensure that workers referred to in Article 2 are not obliged to perform night work during their pregnancy and for a period following childbirth which shall be determined by the national authority competent for safety and health, subject to submission, in accordance with the procedures laid down by the Member States, of a medical certificate stating that this is necessary for the safety or health of the worker concerned.

2. The measures referred to in paragraph 1 must entail the possibility, in accordance with national legislation and/or national practice, of:

(a) transfer to daytime work; or

(b) leave from work or extension of maternity leave where such a transfer is not technically and/or objectively feasible or cannot reasonably by required on duly substantiated grounds.

Explanation:

It is not clear what is meant by the terms “dangerous work” and “difficult work” within the meaning of the Civil Servants Law.

The same question arises with regard to compensations.

Recommendation:

It would be advisable to define these terms by taking into the consideration the wording of Art. 6 and 7 Dir. 92/85/CEE.

XXI. Art. 152 C

RELIGIOUS SERVICES COMPENSATION

- 140% for assistant provincial muftis, district muftis and those graduates of higher education relating to their profession and appointed to the posts of “preacher”,

- of those in the posts of the category of religious services:
- 55% for the graduates of higher educational establishments,
- 53% for the graduates of the secondary schools of religious education,
- 49% for the others;

Dir. 2000/78/EC

Recital

(11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation.

Explanation:

See point IV.

XXII. Art. 164

Salaries for public servants should be paid in advance, contracted staff at the end of the month.

Explanation:

We asked whether this was also the case for civil servants on maternity leave (see Art. 104).

SPP colleagues pointed out that during maternity leave salary is regularly paid.

XXIII. Art. 191

Day nurseries or social facilities may be established for the staff as and when the need arises.

The procedure and principles relating to the establishment and operation of these shall be defined with regulations to be prepared jointly by the State Personnel Department and the Ministry of Finance.

Dir. 2006/54/EC

Art. 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

Explanation:

This is a positive measure which could be reinforced in order to implement the Barcelona targets (33 % childcare up to 3 years and 90 % childcare until school entry).

See also preschool education Law Nr. 5393, Art. 14.

This is an important provision because preschool childcare is absolutely indispensable for parents to work (EU-Strategy 75 % employment rate)

State should function as a role model.

Recommendation:

If there are no public institutions providing preschool education and childcare, it would be very helpful (in order to allow women to participate in working life) to foresee state

allowances, tax reductions or other measures promoting preschool education and childcare.

XXIV. Art. 202

Married public servants shall be entitled to the family allowance.

The said allowance shall be granted over the amount calculated by multiplying the index of 1500 in the case of spouses not in gainful employment and who do not receive a pension from any social security institution and 250 in the case of each child, by the salary coefficient (one folds increase for each child under age group of 0-6 including 72th month). Where a family allowance of a similar nature in respect of children is granted to the spouse by virtue of a work contract or collective bargaining is less than that granted to staff, solely the difference shall be paid. The Council of Ministers shall be authorised to increase the index numbers above up to a maximum of three times the said amount.

The above provisions shall apply to the children of widowed staff.

In the event of divorce or separation, the court shall also decide to whom and at what rate the said allowance is to be granted.

The said allowance shall also be granted in the case of dependent step-children of staff.

Dir. 2006/54/EC

Article 4

Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

Explanation:

We pointed out the following questions:

Is family allowance foreseen only for married couples? It seems to be so.

Is child allowance also only foreseen for married couples? It seems to be so.

Why is family allowance restricted to non working spouse? Could this be an incentive for women to stay at home? (This is not a positive action.)

What about one parent family?

On the whole, one could get the impression that under current legislation the image of women is that they, somehow, either depend on their parents/fathers (see e.g. pension schemes for unmarried daughters whose fathers died) or on their husbands.

Recommendation:

It would be advisable to adopt a regulation (at least for child allowance) which is not based on the fact whether the couple is married or not. Furthermore, in the light of promoting women's possibilities to participate in working life it seems at least not helpful to provide premium payments (in form of family and child allowances) for women who don't work whereas women participating in the labour market are not entitled to receive such payments. The allowances should be paid no matter if the spouse is working and receiving salary or not.

XXV. Art. 203 Par. 2 (Family Allowance) and Art. 207 Par. 2 (Birth Allowance)

The family allowance shall be paid together with the monthly salary.

Where both husband and wife are public servants, the said allowance shall be granted to the husband only.

Family allowances shall be paid as being exempt from all taxes and deductions and may not be attached for the purpose of settling debts.

Dir. 2006/54/EC

Article 4

Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

Explanation:

We asked why allowances were paid to husband/to father, if both spouses were civil servants.

Concerning the birth allowance we wondered what "father" meant (husband?).

SPP answered: "Yes. The reason behind the birth allowance is to prevent double payment. Only one of them is entitled to get paid."

Recommendation:

We would propose splitting the allowances, if both spouses are civil servants.

XXVI. Art. 206 Point 2

The family allowance in respect of a child shall not be granted in the case of children who: ...

2. have reached the age of 25,

(The allowance shall continue to be granted for unmarried daughters at the age of 25, and indefinitely for those who provide evidence that they are unable to work with medical certificates from official health boards.)

Dir. 2006/54/EC

Article 4

Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

Explanation:

We asked why sons did not receive this allowance and if there was an objective justification for this provision.

SPP colleagues answered: “This is cultural and it is easy to find out a job for a man both in the public and the private sector.”

We were told that there should be a ruling of the Turkish Constitutional Court on a similar provision in the Social Security Law 5510, but we were not able to find any further details concerning this ruling (which would be nevertheless very interesting). There is a similar provision in the Social Security Law (Art. 34, par 1, Social Security Law – survival benefits) which leads to similar questions and arguments.

Recommendation:

It would be advisable not to differentiate between sons and daughters. Either the allowance is granted to both, sons and daughters under the same conditions, or it should not be granted at all.

Besides, this provision gives very much the impression that unmarried women are not taken into account as citizens who are able to assume responsibility for their own life (the

allowances are not paid to the daughters, but to their fathers; this should be changed for children of full age). In general it would be necessary, in order to align Turkish legislation with gender equality EU law (but as it seems also with Art. 10 of Turkish Constitution), not to differentiate between married and unmarried daughters.

XXVII. Art. 221 and 222

Article 221 – For the purpose of training staff for assignment to certain categories, institutions may;

- provide professional education and training within their organisations,
- sponsor the education or specialisation programmes in educational institutions in Turkey,
- sponsor the education or specialisation programmes in educational institutions abroad.

Selection Procedure:

Art. 222 – Staff to be educated by their institutions in Turkey or abroad shall be selected via competitive tests.

Dir. 2006/54/EC

Art. 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

Explanation:

We wondered whether access to training was gender balanced.

Recommendation:

On the background of the experiences positive action (eventually gender specified courses?) might be useful.

XXVIII. Art. 226 (see also Law n° 6111 and Law n° 4688)

Advisory boards:

Advisory boards shall be established to provide the benefit of their opinions on matters pertaining to the administration of the public staff.

Such boards shall be established in two types:

The Higher Advisory Board

Institutional Advisory Boards

The Higher Advisory Board shall be established as a centralised body to present advisory opinions on general matters pertaining to the administration of public staff.

Institutional Advisory Boards shall be established within each institution to present advisory opinions on general matters pertaining to the administration of public staff.

The said boards shall consist of equal numbers of administrative representatives and staff representatives.

Commission Decision 2000/407

Article 2

The Commission commits itself to creating a gender balance in expert groups and committees established by it. The aim in the medium term is to reach at least 40 % of members of one sex in each expert group and committee.

For expert groups and committees already in existence, the Commission will aim to redress the gender balance upon each replacement of a member and when the term of a member of an expert group or committee comes to an end.

Explanation:

We submitted to SPP colleagues the proposal that advisory boards should be gender balanced. SPP colleagues answered that as the Advisory Boards involved had lost their functions, this article was no more valid. Instead, Public Personnel Advisory Board had been established in order to develop the dialog between public officials' trade unions and the State and in order to encourage the employees to participate in administration. The Public Personnel Advisory Board however has not been established with Law No. 657 but with the "Public Personnel Advisory Board Directive" based on Article 19 of Law No. 4688 on Trade Unions for the Public Servants.

Recommendation:

The new Public Personnel Advisory board should be gender balanced. At least 40 % of one sex should be represented (example: Art. 2 Commission Decision 2000/407). The last paragraph already indicates the equal representation of administrative and staff representatives. Another quota could be added.

XXIX. Additional Art. 12

The Ministry of Finance and the State Personnel Department shall carry out analyses on the organisation and method, on posts and any other necessary analyses on the institutions falling under the said laws and all the other institutions financed through the State budget, for the implementation of the present Law and the other laws on personnel. Requests for posts and allowances shall be based on long-term plans and programmes.

The posts of State budget specialists shall be given to the Ministry of Finance and the posts of State personnel specialists given to the State Personnel Department in accordance with the General Law on Posts in order to perform the said duties.

State budget specialists and State personnel specialists shall be authorised to make all the analyses in the institutions concerning requests for posts and allowances and to examine all related documents.

Other matters and the details of work methods shall be defined by means of regulations relating to duties and work.

Dir. 2006/54/CE

Article 29

Gender mainstreaming

Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.

Article 30

Dissemination of information

Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all suitable means and, where appropriate, at the workplace.

Recommendation:

Analysis should be gender mainstreamed/differentiated. Information according to Art. 30 Dir. 2006/54/CE should be disseminated.

Trade Unions Law for the Public Servants, Law No: 4688

I. Art. 19

Powers and activities of trade unions and confederations

Trade Unions and Confederations of Public Servants are authorized to participate in collective bargaining, to conclude collective bargaining and become parties, in the name of their members, within the limits of the provisions of this Law.

Trade unions and confederations, in the direction of their establishment objectives, can be occupied with the below activities:

a) To send representatives to the administrative boards among their members to express opinion, in general on the improvement of the rights and duties, conditions of working, responsibilities, work security and conditions of health of the public servants and to follow the implementation of the agreement texts on which agreed at the end of the collective bargaining;

b) To send representatives to various boards where representation of the public personnel is stipulated by the legislation of state personnel;

c) To carry out productivity studies, to prepare reports on their results, to make proposals and carry out joint studies with the employer on this subject;

d) To make organizations for courses, seminars and social meetings, carry out scientific studies and make publications for the progress of occupational proficiencies of the members and solution of their problems and development of the unionist activities;

e) To carry out studies and make suggestions to be submitted to the relevant establishments and competent authorities in subjects related with the common economic and social rights and benefits of the members and in subjects related with the personnel law;

f) To represent the members and their heirs or to have them represented before all levels of the administrative and judicial organs, to file suits, or to become a party in such suits in the disputes to emerge between the members and the administration, in the following of the common rights and benefits of the members, or in case legal assistance is required;

g) To establish and administer training and health facilities, recreation facilities, sport fields and similar facilities, libraries, nursery schools, kindergartens and rest homes, credit unions for the benefit of the members and their families and to help establishment of cooperatives for the members, provided that not to make any donations, and to give

credits to these cooperatives, provided that not exceeding more than ten percent of its cash assets;

h) In case of natural disasters such as fire, flood and earthquake, to establish dwellings, health and education facilities in the disaster regions and without seeking for membership, provided that not exceeding more than ten percent of its cash assets, and to make cash and in kind aids to public establishments and institutions for this purpose.

Dir. 2006/54/CE

Article 21

Social dialogue

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including, for example, through the monitoring of practices in the workplace, in access to employment, vocational training and promotion, as well as through the monitoring of collective agreements, codes of conduct, research or exchange of experience and good practice.

2. Where consistent with national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to promote equality between men and women, and flexible working arrangements, with the aim of facilitating the reconciliation of work and private life, and to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 1 which fall within the scope of collective bargaining. These agreements shall respect the provisions of this Directive and the relevant national implementing measures.

Explanation/Recommendation:

There is no equivalent activity foreseen. This should be changed.

II. Art. 8

Compulsory organs of trade union branches, trade unions and confederations are general assembly, board of directors, supervisory board and disciplinary board.

Trade unions and confederations can establish other organs, provided that they do not assign duties, powers and liabilities of the compulsory organs.

COM DEC 2000/40

Art. 2:

The Commission commits itself to creating a gender balance in expert groups and committees established by it. The aim in the medium term is to reach at least 40 % of members of one sex in each expert group and committee.

For expert groups and committees already in existence, the Commission will aim to redress the gender balance upon each replacement of a member and when the term of a member of an expert group or committee comes to an end.

Explanation:

The Strategy for equality between women and men represents the Commission's work program on gender equality for the period 2010-2015. It follows the dual approach of specific initiatives and the integration of equality between women and men into all EU policies and activities ("gender mainstreaming") which has become the hallmark of the EU's work to promote gender equality.

Some encouraging recent trends include the increased number of women on the labor market and their progress in securing better education and training. However, gender gaps remain in many areas and in the labor market women are still overrepresented in lower paid sectors and under-represented in decision-making positions.

A similar situation might to be found in Turkey.

Building on the Roadmap for equality between women and men 2006-2010, as well as the European Pact for Gender Equality, the mentioned Strategy spells out actions under five priority areas defined in the Women’s Charter, and one area addressing cross-cutting issues

Recommendation:

Art. 2 of the Commission’s Decision should serve as a role model.

By-law on Recruitment

Preliminary remarks:

The examination of this By Law-drew our attention to the fact that maybe also in other By-Laws there could be provisions which could be worth being analyzed.

In addition the terminology used in the English translations is not uniform (regulation, notification, communiqué, by law, announcement).

Furthermore Danistay is not competent for giving advise on by-laws before publishing.

It seems that by lodging an appeal with a court civil servants can invoke "yönetmelikler" (By law) and other regulations with the same effect (also with regard to possibilities of appeal?).

We didn't get any reliable information concerning the possibilities/ways to bring up the question of illegality of provisions contained in yönetmelikler/other regulations before Courts? It would be very useful to study the competences of civil courts, administrative courts, Danistay and of the Constitutional Court.

Besides, yönetmelikler are subject to very quick changes, so the fact that many important provisions are regulated by yönetmelikler also means that important provisions relating to gender equality might be subject to quick changes, too.

I) Art. 10

Central examination

For the disabled and ex-convicts in the scope of the central examination there is no minimum passing score, sitting for the examination is sufficient to apply for demands.

Explanation/Recommendation:

Disabled and ex-convicts do not have to reach a minimum passing score? Why? It seems that this is discriminatory. Persons with disabilities seem not be considered as being able to work in higher positions. Gender mainstreaming has also to be taken into account.

II) Art. 11

In the demand communication the following rules have to be observed:

…

b) Age restriction have to allow for the evaluation of more applicants in respect of the target group instead of limiting submissions.

Dir. 2000/78/CE

Article 6

Justification of differences of treatment on grounds of age

1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labor market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for

employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.

Explanation/Recommendation:

Age should not be a criteria for evaluation, if there is no objective justification. Gender mainstreaming has to be taken into account.

General Recommendation:

Maybe it would be useful to introduce a provision inviting explicitly the underrepresented sex for examinations.