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**CRITICAL OVERVIEW OF THE EUROPEAN UNION GENDER  
EQUALITY POLICIES AND THEIR IMPLICATIONS FOR TURKEY**

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**CRITICAL OVERVIEW OF THE EUROPEAN UNION GENDER  
EQUALITY POLICIES AND THEIR IMPLICATIONS FOR TURKEY**

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Approval of the Graduate School of Social Sciences

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## **ABSTRACT**

### **CRITICAL OVERVIEW OF THE EUROPEAN UNION GENDER EQUALITY POLICIES and THEIR IMPLICATIONS FOR TURKEY**

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Since the 1990's, interest in the European Union (EU) gender equality policies has increased among feminist scholars and activists. In this context, studies focusing on equal pay for work of equal value, equal treatment in education, and access to employment, among others have been undertaken and different dimensions of the EU gender equality policies have been a subject of much debate.

This thesis is an effort to critically review the potential of these policies vis-à-vis their capacity to bring about gender equality in the EU Member States and examine their implications for Turkey as a candidate country. The fundamental argument that underlines this thesis is that the EU gender equality regime, which is mainly concerned with equality in the work place, falls short of effectively responding to the complexities of gender inequality within diverse women's experiences and socio-economic settings.

In Turkey, women's organizations have used the EU accession process to demand major legislative reforms. As a result, it can be said that 'equality before law' is now more or less achieved in Turkey. However, in practice, gender inequality is a pervasive problem in all spheres of life. In the area of employment serious gender

pay gaps exist and unemployment rate of Turkish women is on the rise. Women also face discrimination in other areas of concern such as in access to education and political participation and they encounter multiple forms of violence in both public and private spheres of life.

In view of the diversities of women's experiences both in member as well as candidate countries of the EU, the thesis concludes that if the EU is to be a viable project in truly bringing about gender equality it needs to move beyond economics to include social goals within its core policies as well.

Keywords: EU Gender Equality Policies, Gender Equality in Turkey, Turkey's Accession Process, Diversity, Activism

## ÖZ

### AVRUPA BİRLİĞİ CİNSİYET EŞİTLİĞİ POLİTİKALARINA VE TÜRKİYE İÇİN DOĞURGULARINA ELEŞTİREL BİR BAKIŞ

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1990’lardan bu yana, Avrupa Birliği’nin (AB) toplumsal cinsiyet eşitliği rejimi ve politikalarına olan ilgi, feminist araştırmacı ve aktivistler arasında artış göstermiştir. Bu bağlamda, eşit (eşdeğerde) işe eşit ücret, eğitimde eşit muamele ve istihdam olanakları odaklı araştırmalar yürütülmüş ve bu politikalarının farklı yönleri üzerinde çok tartışılan konular haline gelmiştir.

Bu tez, AB toplumsal cinsiyet eşitliği politikalarının üye ülkelerde toplumsal cinsiyet eşitliğini sağlama potansiyeline ve aday ülke statüsündeki Türkiye için doğurgularına eleştirel bir bakış çabasıdır. Bu tezin temel argümanı ise toplumsal cinsiyet eşitliğini ağırlıklı olarak çalışma yaşamında ele alan AB politikalarının, kadınların deneyimleri ve sosyo- ekonomik ortamlardaki farklılıklar temelinde cinsiyet eşitsizliğinin karmaşık yapısına cevap vermede yetersiz kalmasıdır.

Türkiye’de kadın örgütleri, yasal alandaki reform talepleri için, Türkiye’nin AB’ye katılım sürecinden yararlanmışlardır. Sonuç olarak, Türkiye’de cinsiyet ayrımcılığının yasal mevzuat açısından birçok alanda bertaraf edildiği ve kanun karşısında eşitliğin hemen hemen sağlandığı görülmekle birlikte, birçok alanda uygulamada karşılaşılan cinsiyet eşitsizlikleri yaygın bir problem olarak varlıklarını

sürdürmektedirler. İstihdam alanında cinsiyet açısından ciddi bir ücret uçurumu bulunmakta ve Türk kadınlarının işsizlik oranı her geçen gün artmaktadır. Kadınlar ayrıca 'eđitim' ve 'politik katılım' gibi alanlarda eşitsizlikle karşılaşmakta ve kamusal ve özel yaşamda şiddetin çeşitli türlerine maruz kalmaktadırlar.

Bu tezle ortaya konulan sonuç ise AB'nin üye ve aday ülkelerdeki kadın deneyimlerindeki farklılıklar karşısında, toplumsal cinsiyet eşitliğinin sağlanması için ekonomik hedeflerin yanı sıra sosyal boyutu da ana politikalarına dahil etme zorunda oluşudur.

Anahtar Kelimeler: Avrupa Birliđi Toplumsal Cinsiyet Eşitliđi Politikaları, Türkiye'de Toplumsal Cinsiyet Eşitliđi, Türkiye'nin AB'ye Giriş Süreci, Çeşitlilik, Aktivizm



*To My Father and My Uncle, Who Became a Father After My Father Passed  
Away ...*

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## LIST OF ABBREVIATIONS

	the Convention on Elimination of All Forms of Discrimination
CEDAW	Against Women
CEEP	the European Centre of Public Enterprises
CSW	Commission on the Status of Women
GDSPW	General Directorate on the Status and Problems of Women
EC	European Commission
ECJ	European Court of Justice
ECOSOC	Economic and Social Council
EEC	European Economic Community
EES	European Employment Strategy
EP	European Parliament
ETUC	European Trade Unions Confederation
EU	European Union
EU15	15 Member States of the European Union
EU25	25 Member States of the European Union
EWL	European Women's Lobby
GM	Gender Mainstreaming
KSSGM	Kadının Sorunları Genel Müdürlüğü
IGO	Inter-Governmental Organization
IKV	İktisadi Kalkınma Vakfı
ILO	International Labour Organization
IR	International Relations
NGO	Non-Governmental Organization
PfA	Platform for Action
SIS	State Institute of Statistics
UN	United Nations
UNDP	United Nations Development Programme
UNICE	the Union of Industries of European Community
UNIFEM	United Nations Development Fund for Women

WID	Women in Development
WHR	Women's Human Rights
WWHR	Women for Women's Human Rights

## **CHAPTER I**

### **INTRODUCTION**

The research problem of this thesis is to examine the extent to which the European Union (EU) gender equality regime and its policies have impacted the achievement of gender equality in the Member States and the implication of these policies for gender equality in Turkey. The fundamental argument that underlies this thesis is that the EU gender equality regime and its policies are deficient particularly in responding to the complexities of gender inequality within diverse women's experiences and socio-economic settings.

Equality between women and men is a fundamental principle of democratic societies. Although the meaning of equality, more specifically gender equality, does not have a common definition, the principle is firmly established in the Universal Declaration for Human Rights, which proclaims that "All human beings are born free and equal in dignity and rights..." (Article 1), "Everyone is entitled to all the rights and freedoms without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status..." (Article 2), and "All are equal before the law and are entitled without any discrimination to equal protection of the law..." (Article 7).

The Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW), adopted by the UN General Assembly in 1979, provides a comprehensive

definition for 'gender discrimination' which underlines gender equality in Article 1.<sup>1</sup> The Beijing Platform for Action (PfA) (1995), on the other hand, emphasizes that "women share common concerns with other women that can be addressed only by working together and in partnership with men towards the common goal of gender equality around the world" (paragraph 3). Despite the fact that these and other international instruments reflect consensus on the importance of gender equality, severe inequalities still exist all over the world. Those universal principles agreed to by the international community have not been universally realized in practice yet.

The 'gender' concept is employed to underline the socially constructed roles ascribed to males and females, which are learned, change over time and vary widely within and between cultures. "The premise that gender is the social organization of presumed sexual differences and that it defines the roles and identities associated with femininity and masculinity and their entitlements provides..." a common starting point for feminist discourse (Ertürk 2004: 9). Ertürk emphasizes that gender identities evolve within a social, cultural, economic and political context, and the diverse roles and identities associated with being a woman and man are interconnected. Gender construction contains an unequal power relationship with male domination and female subordination in most spheres of life. Within a patriarchal context, both sexes are ascribed with structurally and ideologically different positions (or statuses) with unequal access to power and assets in favour of men (Ertürk 2004: 9). Therefore, gender equality cannot be achieved without considering power relations in the society.

Gender equality requires equal enjoyment by women and men of socially valued goods, opportunities, resources and rewards. It does not mean that men and women become the same, but that their opportunities and life chances are equal. In short gender equality means that 'women and men enjoy the same rights' (Nunziato 1994: 2). In this regard,

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<sup>1</sup> Article I: For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

the initiatives for gender equality must have both qualitative as well as quantitative dimensions. The qualitative aspect implies that the knowledge, experiences and values of both women and men are given equal weight in directing all policy and programs. The quantitative aspect implies an equal representation of women and men in all sectors of society, such as education, work, recreation, and decision making. While the Beijing Platform for Action (PfA) is the main policy instrument providing guidelines for the achievement of gender equality, it does not tell us what shape that equality should take.

Particularly with the creation of the UN 60 years ago, systematic gender equality instruments have been developed culminating in what has become international and regional gender equality regimes (Ertürk 2005; Kardam 2005). Among these, the international regime can be defined as “a set of explicit rules that states agree to and that are embodied in treaties and other documents, such as platforms of action” (Kardam 2002: 412). The Commission on the Status of Women (CSW) is the main intergovernmental body mandated to develop policy guidelines and propose specific instruments for adoption by the General Assembly with the intent of promoting women’s advancement. From the United Nations several gender equality instruments have emerged, including: the UN World Women’s Conferences; CEDAW (1979) and Its Optional Protocol (2000) (monitored by the Committee for the Elimination of Discrimination against Women; the Vienna Declaration And Programme of Action (1993), which recognized the equal status and human rights of women, the Declaration on the Elimination of Violence against Women (1993); and the Beijing Platform for Action (1995). In addition, specialized agencies of the UN, such as the International Labour Organization (ILO)<sup>2</sup> also have conventions and arrangements regarding gender equality.

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<sup>2</sup> The ILO's mandate on gender equality is to promote equality between all women and men in the world of work. This mandate is grounded in International Labour Conventions of particular relevance to gender equality - especially the four key equality Conventions. These are the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Equal Remuneration Convention, 1951 (No. 100), Workers with Family Responsibilities Convention, 1981 (No. 156) and the Maternity Protection Convention, 2000 (No. 183) (<http://www.ilo.org/publi/english/gender.htm>).



At the regional level, the European Union (EU), the Inter- American Commission, and the Organization of African States have various gender equality regimes to combat gender inequality and gender based discrimination.

### **The European Union Gender Equality Regime**

The EU has a long-standing commitment to promoting gender equality, which goes back to the Treaty of Rome in 1957.<sup>3</sup> The Community's legal framework ensures that women and men are equal before the law. Moreover, equal treatment legislation is also an integral part of the *acquis communautaire*, which has to be adopted by the Member States as well as candidate countries for EU membership. During the 1970s, the EU launched a series of comprehensive measures and legislation in the field of gender equality. The EU has made significant impact on gender equality with its binding legal directives on equal treatment in employment, and for immediate realization of all these legislative developments different programs have been introduced (İktisadi Kalkınma Vakfı- İKV 2003: 1). Finally, a 'gender mainstreaming' approach was adopted in 1996 by the European Commission (Commission Communication of 21 February 1996) for "Incorporating equal opportunities for women and men into all Community policies and activities".<sup>4</sup>

Although the development of an equality regime at the EU level has benefited many women, it has serious limitations. Besides these limitations, which are based on the gender equality regime itself as accepted by the European Union, a comprehensive assessment of the implications and impact of the regime is lacking. However, there is sufficient evidence to show that despite the considerable progress made regarding the situation of women since the Treaty of Rome, as a consequence both of the legislation and its implementation, in practice, women and men do not enjoy equal rights. The

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<sup>3</sup> The Treaties of Rome set up the European Economic Community (EEC) and the European Atomic Energy community (Euratom) in 1957 (Fontaine 2003: 7).

<sup>4</sup> [http://europa.eu.int/comm/employment\\_social/equ\\_opp/strategy\\_en.html](http://europa.eu.int/comm/employment_social/equ_opp/strategy_en.html)

persistence of under-representation in decision-making and widespread violence against women in the countries of the EU shows that there are still structural gender inequalities.<sup>5</sup> In this regard, the EU gender equality regime and its policies need to be viewed from a more critical perspective inspired by feminist theory. First of all, the EU gender regime focuses narrowly on women as participants in the workplace, which ignores the most fundamental aspects of women's inequality in the European Society (Rees 1998; Hoskyns 1996 in Pollack and Burton 2000: 1), such as under-representation in politics, education, and the high rate of violence against women.

As a longstanding debate, feminist scholars and activists have been discussing the serious shortcomings of policy based on the concept of an equality of 'sameness', which fails to acknowledge the diversities embodied in the category of women (Lovenduski 1997; Pillinger 1992; Sohrab 1996 in Cichowski 1999: 233). Women are seen as a homogeneous category defined as "white, middle or upper class, working women" or "women in paid employment" (Hoskyns 1996: 9). Such a conceptualization excludes other groups, such as blacks, ethnic minorities, immigrants, and unpaid working women. The European Union gender equality regime on women has been largely defined in terms of equality laws which do not go beyond 'formal equality', and do little to change the underlying structures that cause the subordination of women in the first place. Recently, analysts have emphasized the importance of understanding the different types or dimensions of equality such as 'equal opportunity', 'compensatory- positive action', 'equality of outcomes', and 'sameness versus difference and the special needs of women'.

Teresa Rees refers to three approaches in analyzing the EU gender equality policies; "equal treatment, positive action, and gender mainstreaming". According to Rees, "equal treatment implies that no individual should have fewer human rights or opportunities than any other, which can be seen from the European Community context with the adoption of the famous Article 119 of Rome Treaty on equal pay for men and women, and the

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<sup>5</sup> [http://europa.eu.int/comm/employment\\_social/equ\\_opp/strategy/com2000\\_335\\_en.pdf](http://europa.eu.int/comm/employment_social/equ_opp/strategy/com2000_335_en.pdf)

adoption of a series of Directives on equal pay and equal treatment in the workplace. On the other hand, 'positive action', which can be defined as the shift of emphasis from equality of access to creating conditions more likely to result in equality of outcome" (Rees 1998:34), requires the creation of a specific organizational unit (such as the Equal Opportunities Unit in the Commission) and specific programs for women at the EU level.

Finally, the 'gender mainstreaming' approach, which was adopted in 1997 by the Economic and Social Council (ECOSOC) of the United Nations as the overall strategy for promoting and strengthening gender equality, calls for the systematic incorporation of gender issues throughout all governmental institutions and policies. The EU had already adopted this strategy a year earlier, but the existing picture is far from what was intended and this strategy has not been fully realized within the EU yet.

Pollack and Hafner- Burton determine the problematic areas of the EU gender equality approach at three levels as follows (2000: 430):

*The supranational level of the Commission bureaucracy, in which the majority of the Commission Delegations have little or no experience in adopting a gender perspective; The intergovernmental level of the Council, where any proposed policies must garner a qualified majority, or even a unanimous vote among the member governments; The member state level, at which both binding and non-binding EU provisions are implemented according to the 'gender order' of each respective member state.*

The most comprehensive critique of the EU gender equality regime comes from Sylvia Walby (2003: 2). According to her, the EU has made some impact on the project of gender equality with its binding legal Directives on equal treatment in employment, but still it has significant limitations for abolishing 'gender inequalities' within its member states. She categorizes the existing limitations as follows:

- 1) The EU and its actions are limited by its primary concern with standard employment, while women are often employed in non-standard forms, such as part-time and temporary employment, and thus many women do not benefit from its regulations.

- 2) Equal treatment laws take the male as the yardstick without tackling the deep-rooted causes of inequality. The EU fails to recognize the different needs of those women whose employment patterns are affected by their caring obligations. The differences between men and women are ignored as well as the different needs and demands of different women.
- 3) Implementation of EU equality Directives and other policies is uneven, as a result of national difference in a variety of institutions.
- 4) The EU ignores some of the key areas of gender inequality, and it does not intervene in those areas, particularly 'violence against women'. However, the EU has extended its economically based legal pre-eminence into a wide range of non-economic issues recently. But still, new arrangements do not answer those excluded key areas.
- 5) The EU gender equality legislation is supported by only 'soft' rather than hard law interventions. Directives take place at the Union's 'secondary law category, which is weaker than 'primary law'. Despite that, some of the Community Treaties give place to 'gender equality' such as the Amsterdam Treaty (1997), and one of the latest documents, the Union's Constitutional Law, namely the European Convention, mentions 'gender equality' in a significantly narrow sense. The Constitution Law sees 'gender equality' as an objective rather than as one of its higher order 'values' (Walby 2003: 2).

In addition, the European Women's Lobby -EWL- (2004) emphasizes that gender perspective in the European economic and social policies is lacking. Gender is not taken into account in macro level European policies. EWL highlights the need for coherent macro-economic policy and gender mainstreaming. In addition, EWL draws attention to the absence of European policies in some areas exists (2004: 9):

*Despite a strong commitment to gender equality and strong Treaty provision, the European Union has failed to take measures in some very important domains such as women in decision-making and the fight against violence against women. In relation to the representation of women in the institutions of the EU, while figures are slowly improving, decision-makers have refused to take any binding measure to improve the situation. There were examples of a very low representation of women in important European nominated bodies during the reporting period. Moreover, while some positive actions were taken in relation to violence against women, these lack the necessary vision and clear political commitment to address and eradicate male violence against women in the long term. A European legislative framework is absolutely and urgently needed in this area.*

EWL states that the European legislation covers certain areas, however, these areas need to be expanded and women's rights and gender equality dimensions need to be ensured by proper implementation strategies (2004: 9):

*Policies in relation to human rights very often fail to protect women's rights as recognized by both European and international texts, such as the right to health or right not to be subjected to violence. In the same way, some texts exist in relation to protection of gender equality in the content of media, but they are not implemented properly. The same goes for the existing European legislation on equal pay in employment.*

In addition, according to the EWL, national governments often interpret the EU *acquis communautaire* in the field of gender equality too narrowly, as they are adopting legal provisions to comply with the Directives in this field, while lacking an over-all vision or commitment towards equality between women and men (2003: 7). Also, gender equality is defined under the 'Employment and Social Policy' section of the EU *acquis communautaire* as an item for which implementation is mainly left to national states, thus leaving an open space for different interpretation of the members.

### **Turkey's Candidacy to the EU**

As of 1987, Turkey is a candidate country for full membership in the EU. This candidacy was recognized officially by the Helsinki European Council in December, 1999. Turkey was accepted as a candidate state, on the basis of the same criteria that applied to other candidate states. On 16-17 December 2004 of the European Council Summit, it was agreed that Turkey's accession negotiations would begin October 3, 2005, which started on that date. This momentum is significantly crucial for women in Turkey, because gender equality, which is defined under the title of 'Employment and Social Policy' of the EU *acquis communautaire*, has become an important criteria for full membership as much as the other areas of concern. Therefore, this accession and the enlargement process need to be analyzed from a gender perspective with full awareness of the deficiencies of

the EU gender equality regime in order to better understand the possible consequences of this process for women in Turkey.

Like the other candidate countries, Turkey needs to adopt and implement the EU laws, policies and legislation, called the *acquis communautaire* before joining the EU. The EU legislation (primary law) and the Directives (secondary law) in the field of gender equality is part of this process. This also applies to the EU Gender Equality Legislation, which can be summarized as Treaty Provisions on Gender Equality, EU Directives on Gender Equality, European Council Decisions and finally Non-Legislative EU Policies in the field of Gender Equality. The second requirement is the implementation of the EU gender equality legislation.

In Turkey, the process of adopting and reforming laws, which are in line with EU gender equality law, has been of great importance in strengthening legislative provisions at the national level, but while even the legislation remains inadequate, implementation appears more problematic. There are numerous areas of concern such as a lack of an integrated approach to violence against women, including trafficking, sexual exploitation and domestic violence, the low level of women's participation in politics and decision-making, suppressed sexual and reproductive rights, non-recognition of diversity and vulnerability, male dominant culture in society, and the lack of civil dialogue.

The history of the EU gender equality legislation goes back to the Treaty of Rome, 1957, which in Article 119 stipulates that "Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work". In 1975, through the Council Directive, the Member States became mandated to the principle of equal pay for men and women (75/117/EEC). Finally, in 1997 with the Treaty of Amsterdam, Article 119 became Article 141 calling on "each Member State to ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied." Despite the fact that, within this context, many measures have been taken, important gender pay gaps remain, on average 16% at the EU level, ranging from below 10% in Italy and Portugal to

more than 20% in Germany, the Netherlands and the United Kingdom.<sup>6</sup> At the same time, according to the EWL (2003: 7) research, in the European Union, at least 1 in 5 women experience violence at the hands of their intimate male partner and 95% of all acts of violence against women take place within the home. These figures reveal that gender equality has neither been realized within the working life, which is the basis of the EU gender equality policies, nor in the area of violence against women, which is not addressed in the laws in a systematic way. Further recommendations and studies are needed to expand the scope of EU gender equality provisions and to bridge the gap between legislation and implementation. But, because the gender equality legislation and implementation are problematic, the solution cannot be reduced only to filling the gap between legislation and implementation, both the legislation and the implementation processes need to be revised.

The accession process of Turkey will contribute to improving women's status in the society by harmonization to the *acquis communautaire*, and through its implementation, at least the women's situation will be improved in the working life, where the EU gender equality regime focuses. But for this to happen, first of all the Union's relevant legislation needs to be understood with its deficiencies. In addition, the differential impact of patriarchal values and structures, economic difficulties and regional inequalities on the society, need to be considered. Furthermore, currently there is no integrated approach to the different areas of concern and their solutions in Turkey. Although Turkey has undergone significant legislative reforms in the past decade, women and men do not enjoy equal rights in practice. The EU is not a 'magic wand' that can immediately and effortlessly solve the deep rooted problems in terms of equality between women and men. International norms and rules are not immediately 'translated' into domestic political culture. While international standards are effective for stimulating change, actual change depends on the dynamics of state and civil society relationships.

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<sup>6</sup> [http://europa.eu.int/comm/employment\\_social/employment\\_analysis/gender\\_index\\_en.htm](http://europa.eu.int/comm/employment_social/employment_analysis/gender_index_en.htm)

Gender equality has not been a priority agenda for the consecutive Turkish governments within the accession process. The real drive for this process has come from the women's movement. New legislation cannot bring gender equality without a pro-active civil society that pushes the implementation on the ground. For making ideals a reality, and for achieving equality in all spheres of life, the active participation of women in influencing policy formulation and implementation is needed. Without a doubt, reflection of women's different expectations and needs in this process is crucial for its success.

### **Objectives of the Thesis**

To return to the beginning, as indicated, this thesis aims to examine the extent to which the European Union gender equality regime has impacted on the achievement of gender equality in Member States and what their implications are for Turkey. In light of the deficiencies of the EU gender equality regime and its policies, briefly identified above, this thesis argues that the EU gender equality regime and its policies are unable to respond to the complexities of gender inequality within diverse social settings. In this regard, it is further argued that, the EU gender equality regime is inadequate for the realization of gender equality in terms of its scope and implementation, both in the Member States as well as in Turkey as a candidate country.

With regard to Turkey, it is argued that while even the economic dimension, namely the equality Directives, cannot be sufficiently translated into Turkish legislation, other significant gender inequality areas, such as education, violence against women, and politics are left in a vacuum vis-à-vis EU gender framework. Therefore, even with Turkey's full membership to the EU, without a strong political will and the cooperation with civil society, these problems cannot be overcome. Additionally, the information in this field needs to be shared with the public and particularly those who will be effected by the EU gender policies.

Despite the existing deficiencies of the EU gender equality regime, while full membership of Turkey to the EU can potentially be a positive phenomenon for women do we really know what will be the actual consequences of this membership in terms of



gender equality? What kind of policies, directives or regulations do we have to adopt, how they will affect our lives?

In this context, several secondary questions need to be raised,: ‘What kind of mechanism and policies are we talking about, and what are the areas of concern of the system?’, ‘What historical development has been experienced, and what are the ongoing processes within the gender equality agenda of the Union?’; ‘Does the mechanism encompass all European Women, or only the ‘white women in paid employment’?’; ‘Even with its incomplete or from some aspects inefficient structure, how does Turkey relate to the gender equality regime of the EU?’; ‘Can the EU gender equality regime and its policies achieve equality between men and women within the member states, and do they promise equality for Turkey as a candidate country?.’ This thesis aims to answer these questions with a particular focus on the case of Turkey as a candidate country for full membership to the EU.

Accordingly, the thesis examines the European Union gender equality regime with a special focus on the Council equality directives in order to see to what extent they are able to achieve gender equality in Member States. In doing so, it is expected that the deficiencies of these policies will be identified. In addition, their implications for the status of women in Turkey will be analyzed. The study carries importance because, since the recognition of Turkey as a candidate country at the Helsinki European Council in 1999, clear, objective and comprehensive information about Turkey’s relationship with the EU and the benefits and challenges of the accession process and eventual membership from a gender perspective has not been comprehensively examined by academics and policy makers alike. A volume of research has been done on various issues regarding the accession process, but ‘gender equality’ has always been one of the neglected issues for both the various Turkish governments, as well as for the European Union. Therefore, this thesis is a modest effort, with a feminist starting point, to lay the ground for further work towards an objective and critical assessment in this area.

Thus, there are mainly two objectives of this study:

- To examine the effectiveness and scope of the EU gender equality regime, particularly the equality directives and its impact in practice.
- To analyze the implications of the EU gender equality regime and its policies for Turkey with a special focus on the Council Directives regarding equality between women and men, and to determine to what extent Turkey complies with the EU standards in the field of gender equality, the level of commitment to equal opportunities in terms of political will, legal reform and social policy, and commitment to raising socio- economic standards as well as the potential of the EU gender equality regime in contributing to the achievement of gender equality in this country.

Within this context, the importance of the role of civil society for the domestic application of the international gender regimes in general will also be discussed.

### **Theoretical Underpinnings of the Thesis**

This thesis is based on inter-disciplinary research, drawing from the theoretical debates in social sciences and gender studies as well as international relations.

This study is politically motivated to challenge gender inequalities within the EU structure and Turkey. As such, the research can be defined as a feminist research by focusing on ‘gender inequalities’ and seeing ‘women’s oppression’ as a consequence of unequal power relations embedded in patriarchal social, political, and economic practices and seeing ‘women’s agency’ as a critical force for change. Within the thesis, different feminist theories<sup>7</sup> will be discussed and utilized.

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<sup>7</sup> ...feminist theory is a recognition of the overt and covert forms of misogyny in which discourses participate, mainly recognizing what makes these discourses patriarchal in terms of their absence, gaps, lacunae, around the question of women and the feminine, understanding how these silences function to structure and make patriarchal discourses possible. By its very existence, the theory, which demonstrates that patriarchal discourses are not neutral, universal or unquestionable models, but they are the effects of the specific political positions occupied by men (Gross 1986: 198).

The thesis claims that in order to abolish gender inequalities, women's economic independence and their political participation are not enough. Intervention for change must also recognize the dynamics of the historically rooted patriarchal asymmetries between women and men. In this regard, the thesis benefits from 'radical feminism'. In addition, the existing differences between women and men including differences among women appear as another significant dimension for the struggle against gender inequalities. Thus, in view of the post-modern feminism's 'diversity' approach, the oversight of the differences among women can be seen as one of the most significant deficiencies of the EU gender equality regime.

The European Union's estimated population for 2005 is about 460<sup>8</sup> million people; more than half are women. Thus, it is impossible to see them as only one category, which comes from 25 different countries, in other words, from different economic, social, cultural, and political structures as well as different patriarchal practices. In addition, not all of them are working, middle class, white women. With Turkey's full membership, approximately 36 million women will join the European women. In light of this diversity, the theoretical perspective of the thesis also aims to form a bridge between the 1980s' post-modern multi-culturist theories and their focus on the differences between women in terms of race, class, ethnicity, and sexual differences.

On the other hand, the research will explore the relationship between Turkey and the EU within the context of the gender equality regime, more specifically, equality policy. Therefore, it is necessary to look at the international relations theories in order to understand both the nature of the EU as a supranational and regional actor as well as the dynamics of the dialogue between this entity and the individual member states, including candidate states. Furthermore, the thesis aims to understand the impact of international policies and their effectiveness for changing gender inequalities at the national level.

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<sup>8</sup> <http://www.internetworldstats.com/europa.htm>

In this regard, it can be said that specialists in the international relations field have avoided thinking of men and women as embodied and socially constituted subject categories. Feminist and social theory can expand the boundaries of our understandings to see the effect of international policies on social change.

According to Christine Sylvester (1992: 10), the international relations (IR) discipline ignores 'women' in three ways: "by subsuming them in the 'more relevant' categories of statesmen, decision makers, soldiers, refugees, prisoners of war, earthquake victims, and publics; by too readily accepting into scientific analyses the common social assumption that women are located inside the separate sphere of domestic life, where they engage in activities that have nothing to do with the usual activities IR chronicles and theorizes war, crisis decision making, regime formation, trade and so on; and by retreating to abstractions (the state) that mask a masculine identity (as competitive, rational, egoistic, power-seeking)". In general, the international relations discipline analyzes states' behaviours by using the models employed by economics and the natural sciences within the international system. While analyzing the state and the other international actors' political dynamics and behaviours, the effected actors are generally ignored by this discipline. It is generally ignored that these actors and their policies have an impact on societies. Sociological theory can build a bridge between those policies and their impact on societies while feminist theory can focus more on women's lives. It is not wrong to say that in the international relations discipline, women are secondary and devitalized in comparison with other important issues such as foreign policy, security, and in the case of the EU, economy. In other words, the international relations discipline can be defined as a masculine gendered discipline. By being aware of these facts, this thesis explores different views regarding the relevant areas of concern, particularly the view of women's NGOs' and the impact of the 'international women's movement' rather than focusing solely on the above-mentioned main international actors.

In order to understand the European Union gender regime, three major theoretical approaches of international relations (realist, liberal and radical) need to be visited with a

feminist perspective with its focus on interdependence, international regimes, and global governance dimensions.

From the 1970s onward, it is difficult to see the field of IR as the field of solely security issues. Global economic relations have needed to be controlled and resolved through common solutions. The literature on 'interdependence' concerned itself with how states could agree on the norms and rules of a global liberal economy and build and maintain regimes. But, during this term the economy gained priority over security as being silent on gender issues. Despite this, states were no longer the main actors in the field and the established international regimes and global actors also excluded 'gender' at the first stage. However, the emergence of non-governmental organizations and the international women's movement managed to create a sphere of negotiation within states with the goal of finding common solutions. It was a kind of obligation for states to maintain their legitimacy by including human welfare.

With these facts in mind, one of the aims of this thesis is to give priority to women, their needs and expectations. While the international relations discipline tries to define and explain the behaviour of states and supranational structures like the European Union, this thesis tries to cross-examine the impact of policies within states and societies, specifically, within the EU member states.

Women's needs, expectations and lives take part at the centre of the thesis. Taking their experiences as the indicators, the European Union gender equality regime, particularly equality directives, will be examined. In order to fully evaluate the effectiveness of the European Union gender equality policy to change unequal power relations, the feminist perspective is needed.

### ***The Methodological Orientation of the Thesis***

The research method of the study can be described as a critical feminist review of literature and other secondary materials including relevant documents. Publications on

the European Union gender equality policy such as books, journals, articles, reports, governmental documents as well as studies of women's NGOs or relevant institutions have been analyzed. The same method has been followed for the materials on Turkey. I have also participated in the activities of three different national women's NGOs in Ankara and observed their strategies for achieving gender equality in Turkey. In addition, I have attended some of the European Women's Lobby's seminars as well as its. On the other hand, being an intern at the General Secretariat of European Union Affairs and the Delegation of the European Commission to Turkey has provided me with the opportunity to see the governmental perspective on 'gender issues' within the context of EU- Turkey dialogue. The research provides not only information about the EU policies and Turkey, but also by considering women's experience and expectations, it places women at the centre of the analysis. As such, the thesis is not only a review of documents, but it also takes a personal, political and engaging stance. Therefore, the research is not solely about women but it is primarily for women.

According to Haig (1997), feminist research is based on the assumption that the world is socially constructed, rejecting the value-free nature of research. Therefore, feminist methodological orientation should actively seek to remove the power imbalance between research and subject. In addition, political motivation and the aim for changing social inequality are important by taking women's experience as standing-points (Harding, 1987: 9).

On the other hand, Wardsworth (2001: 23) defines the criteria for feminist research as follows:

- *Understands that all research is essentially value-driven and always results in some kind of new action or practice, and consequently examines its own values and contribution to altering or perpetuating existing situations;*
- *Is 'driven' by the interests of the women whose problematic situation was the reason for the raising of the research questions in the first place;*
- *Involves as many such women as is desirable and feasible in the collaborative design and conduct of the research;*
- *Involves maximum attention to the benefits for the women involved;*

- *Questions, and otherwise disrupts the reproduction and perpetuation of power relationships that subordinate women 'subjects' as objects of someone else's study; and instead embraces as many women as is desirable and feasible as participants in a joint effort;*
- *Respects and values women's experiences and their accounts of them, creating a collective 'culture' for the respectful sharing and examination of all relevant participants' experiences;*
- *Hears and reflects back exactly what is of most concern and interest to women;*
- *Contributes to women being able to identify new or better ways of understanding their situation;*
- *Results in women being able to identify ways to change and improve their lives?*

In light of the above-mentioned character of feminist research, this study can be described as a feminist research, which studies the social conditions of women in a sexist, 'male stream' and patriarchal society. The thesis aims to enlighten people about sexist practices and the gender-blindness of government and community practices, which lead to an equal and discriminating social order (Stanley and Wise, 1983: 12).

According to Tickner, feminist research has a distinctive methodological perspective or framework that challenges the andocentric or masculine biases in the way that knowledge has traditionally been constructed in all the disciplines (Tickner 2003: 5). However, most of the scholars agree that there is no consensus on a feminist perspective on methodology. In other words, feminist researchers believe that feminist research is not one unified research methodology, but includes diverse interpretations. For this research, it is difficult to say that a distinctive method has been adopted, but instead the thesis puts gender at the centre by representing women's perspectives, emphasizing women's experiences and by trying to make women visible within the EU gender equality policy.

In order to demonstrate the inadequacy of the EU gender regime in eliminating gender inequalities in member states as well as in Turkey as one of the candidate countries, I have focused on four main areas, namely; working life, education, political participation, and violence against women. The first three spheres can be seen as the main realms liberals view as key for the realization of gender equality. On the other hand, radical feminists have seen 'violence against women' as one of the most visible practices of patriarchy. That is why the fourth area was determined 'violence against women'. In

order to analyze these areas, first of all the EU gender policies were examined, and their impacts were observed from the member states. Besides the Community's report, the country and NGOs' reports were used for analyses along with the relevant academic articles. In addition, I have tried to move between existing concepts and data as well as between past and present, appearance and essence, legislation and implementation by using dialectic method, i. e. by identifying contradictory forms.

### **The Structure of the Thesis**

In **Chapter II**, some of the important concepts of the study will be discussed. The historical development of 'equality', particularly 'gender equality' and the different approaches, categorizations and treatments of gender equality will be addressed. On the other hand, for a better understanding of the EU gender equality regime and its driving forces, which have both affected and been affected by the member states' policies, gender equality regimes will be analyzed. Besides the shifting of the gender equality policies and approaches, the relevant global political and economic changes will be visited. Also, the interplay between national and international gender equality regimes will be analyzed to understand the dynamics of the European Union and the Member States' gender equality regime interplay.

In **Chapter III**, the European Union gender equality regime and gender policies will be examined in general, and a special focus on the Equality Directives will be made in order to see the existing structure as a whole. The historical development and the current situation will be analyzed. In addition, the implementation and impact of some of these directives, and the EU gender equality policies in the area of 'employment', which has been determined as the key area for gender equality, will be discussed and the three major areas of concern, namely, 'women in education,' 'women in politics', and 'violence against women,' will be examined within this chapter.

In **Chapter V**, the implications of the European Union gender equality regime with a special focus on the Council Directives and their implications in Turkey will be analyzed.



The current state of the Turkish legislation compared to these Directives will be examined. In addition the same three major areas of concern covered in the previous chapter, will be discussed.

*Chapter VI* provides the conclusions of the thesis.

## CHAPTER II

### **THEORETICAL FRAMEWORK OF ‘GENDER EQUALITY’ AND AN EMERGING AGENDA**

The agenda of equality between women and men is relatively a more recent endeavour compared to the long history of the quest for equality in general. It is only since World War II that ‘gender equality’ has been recognized as a part of human rights (Heitlinger 1993: 27). The unresolved issues of gender equality still exist; even different definitions and interpretations of ‘gender equality’ reflect the complexity of this concept. Gender equality is controversial not only for the existing gender regimes but also within the feminist movement itself. Should the ‘gender equality concept’ be understood as equal enumeration for the work women do or equal shares in the labour market; equal opportunities to compete with men or numerical equality in each sphere of life; or equal responsibilities for housework and children or better conditions for women at home? According to Juliet Mitchell, even this ambiguity shows the complexity of gender equality (Mitchel, 1987: 26). While, scholars like Karl Marx and Charles Fourier have argued that the position of women in any given society is an indicator of the level of civilization and progress of democracy (Mitchel 1998: 23), today even in the most developed countries, equality between women and men is not fully realized.

According to Flew, there are four types of equality: ‘equality of entity’, or ‘materialistic equality’, ‘equality of opportunity’, ‘equality of conditions’, and finally ‘equality of outcome’. Flew (1978: 72) indicates the ‘equality of opportunity and conditions’ as the most common version of equality that is mostly observed in the Western democracies. The same major division is also valid for ‘gender equality’. The main division appears

between ‘formal equality of opportunity’ and ‘substantial equality of outcome’ in terms of how we define equality. Besides this conceptual division, the standard against which persons are to be measured (equal, differential or pluralistic treatments), the role of the state and the intervention areas (education and training, the labour market, social security) appear as the other divisions for ‘gender equality’. In addition to these, the form of gender equality brings different models such as assimilation, androgyny, or an equality that is based on sex differences and the special needs of women (Heitlinger 1993: 25).

There are also political differences in terms of gender equality. While Canada, the United States and Great Britain adopt a ‘market-led or liberal’ approach for gender equality, France, Germany, and Belgium prefer ‘social capitalist or conservative’ policies for achieving equality between men and women. Another gender welfare regime is ‘social democratic’, which can be observed in the Scandinavian countries as the most successful example of the realization of gender equality. The international and regional gender regimes, as reflected in the work of the UN and the EU, are also distinguishable with their different standpoints.

In addition to these approaches, within the feminist movement different perspectives and approaches exist among the first, second and third-wave feminisms. As it is mentioned above, the main division appears between liberal and radical feminist thought, namely between ‘formal’ and ‘substantive’ equality, while more recently post-modern feminists emphasize the importance of ‘diversity’ and ‘transformation’ for gender equality.

Several definitions, approaches, and treatments of gender equality exist, but before analyzing ‘gender equality’, there is a need for revisiting the notion of ‘equality’ itself. The principle ‘everyone is created equal’ seems to be one of the important starting-points for most of the modern and democratic societies. But this assumption is also seriously controversial in many aspects.

## 2.1 'EQUALITY' AS A DEMAND OF FEMINIST MOVEMENT

The history of 'equality' can be started from the 17<sup>th</sup> century's revolutionary England as a new society ideology, which continued its rise during the 18<sup>th</sup> century's 'Enlightenment' era, and reached its peak-point with the French Revolution (1789), which was both the start of the representation of the bourgeois of all classes, and also the trigger for the rise of inequalities in society (Mitchel 1998: 31). With feudalism, political power was transferred from the celestial to the earth, in other words God's power started to be represented on earth. With the emergence of capitalism, the second important transformation was realized, as the main production unit, the household, was switched to factory units. These historical developments were the bases of the liberal doctrine (Üşür 1994: 57). In light of these developments, as a consequence of the French Revolution, the 'Declaration of the rights of Man and Citizen' (1789) took the sovereignty from the aristocracy, and gave it to the 'nation' and its citizens. The representatives of the modern political institutions, citizens were individuals equal and free at birth, and mainly 'male' (Üşür 1994: 57). Being aware of this fact, Olympe de Gouges prepared 'Declaration of the Rights of Women' in 1791 right after the Revolution as a reaction and response to the above-mentioned gendered declaration.

This revolution, and the genesis of capitalism as following feudalism could promise only 'minimal equality' for all, and its main principle was 'equality before the law'. This approach also created abstract individuals by ignoring inequalities within society (Mitchel 1998: 29).

The roots of the Western equality concept can be found in the social contract theory. Liberal social contract theory, as formulated by the pioneers of this theory, Thomas Hobbes, John Locke and J. J. Rousseau, sees all men as born equal and free. As Rousseau emphasizes, the only possible way to live together is to submit individuals' wills to a collective one that is created through agreement (the social contract), (Rousseau 1762: 49). From a theoretical standpoint, in the state of nature, all men are alike. All the individuals are seen as abstract and sexless individuals. Therefore, between these abstract

individuals it is impossible to determine differences based on class or sex (Tuija 1990: 90). Therefore, the Western political theory outlines a picture of a neutral individual as being free from any categorization. In reality, this perspective is patriarchal and the founders conceived of 'men' not as human being but as a sex category.

Carole Pateman critiques liberal social contract theory from a feminist perspective with her classic work. Carole Pateman's 1988 book, *The Sexual Contract*, argues that behind Hobbes, Locke, and Rousseau's social contract there is a more fundamental contract concerning men's relationship to women. She mentions social and sexual contracts and the second one refers to a contract that shaped the relations between men and women. It also provides conditions for how the social contract can be operated. For the sexual contract, women become the object of this contract rather than its signer. Pateman (1988: 33) critiques classical social contract theory for separating public and private spheres, and for seeing women only in the private realm, while they have been historically excluded from the public political life. Therefore, she views civil society and its citizens as masculine. According to her essential work, public-private sphere separation prepares ground for the patriarchal construction.

As we can see from above, the history of the modern equality concept is based on fundamental political equality demands, while its new economic structure can only exist with free competition, and inequality of source usage. The appropriate sphere has been determined as a public one, which gives no place to sentimentality and sexual differences, and is historically determined as a male realm where reason and rationality meet (Acuner 1999: 46), as different from a private one. Equality meant formal equality, and 'equality before law' was the main principle despite its unfair starting points for some groups. But without any categorization, if all individuals are equal, how then have women become less equal than the others? The answer can be found in the ruins of the past's patriarchy, which can be defined as the system of male domination and female oppression.

Throughout history, demands for equality have been coming from different disadvantaged groups within society. The earliest attempt by societies to define and achieve 'equality' goes back more than 4,000 years to the Babylonian Code of Hammurabi, which considered the rights and responsibilities of individuals. But, the modern concept of 'equality' can be said to start with pre-World War II documents, such as the English Bill of Rights, the US Constitution and Bill of Rights, and the French Declaration of the Rights of Man and the Citizen, which all focused on civil and political rights. They concentrated on the rights of citizens and the processes for their participation in the political life of their communities.<sup>9</sup>

The Universal Declaration of Human Rights (1948) states that "All human beings are born free and equal in dignity and rights", and "All are equal before the law and are entitled without any discrimination to equal protection of the law.", However, the struggle for 'equality' still continues, including access to fundamental rights to life, liberty, and security as well as a broad range of civil, political, economic, social, and cultural rights. Like the other international documents in the field regarding 'equality', a non-discriminative approach is adopted. The struggle for 'equality' is still continuing among most of the disadvantaged groups including women, half of the world's population.

In order to understand 'gender equality', 'gender' as a category should be visited first. It is not always clear what is meant by 'gender and gender equality.' It is generally understood that gender refers to the social and cultural values attributed to masculinity and femininity as discussed earlier (Ertürk 1997a, Ertürk 2004: 78).

According to Ertürk (2004: 74), gender is the "...social organization of presumed sexual differences and that it defines the roles and identities associated with femininity and masculinity and their entitlements. These identity constructs also involve the material and symbolic realms of life, and establish socially accepted 'female' and 'male' traits and

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<sup>9</sup> <http://www1.umn.edu/humanrts/edumat/hreduseries/tb1b/Section1/tb1-2.htm>

behaviours”, therefore, “gender cannot be taken out of its social, cultural, economic and political dimensions”. Ertürk also highlights the necessity of the recognition of concrete historical moments that shape gender identities with the asymmetrical power system in which femininities and masculinities interconnect in terms of ‘gender’ relations.

The usage of the ‘gender’ concept has become widespread since the Fourth World Conference on Women held in Beijing (1995). However, equality between women and men is an older concept. In order to achieve equality between men and women, the first demands of women gathered around women’s equality and their historical oppression, which can be defined as a kind of weight pressing women down, and complex ideological, political and economic forces which keep women in this place (Phillips 1987:1). These demands were also a reaction to the existing systematic and historical gender inequalities, which are defined by Ertürk (2004: 5) as;

*...the product of cumulated successive historic eras in which men and women have been assigned roles that inherently rest on violence breeding relations, which are then sustained through domination of women by men. Inequality between men and women is thus rooted in a patriarchal gender order, which is continually reproduced in modified forms in human consciousness, language as well as institutionalized structures of social experience.*

Through the development of the feminist movement, different explanations, reasons, historical origins, and standpoints for the existence of an unequal gendered system and women’s subordination have been advanced. Some scholars have claimed that the central reason can be found in sexuality, reproduction or the family, while others have focused on employment or the patriarchal nature of state power. On the other hand, for other scholars, patriarchy has been diffused in culture and language (Bryson 1995: 4). But in general, the existence of gender inequalities and women’s oppression are the common points for all. However, throughout history, different roots and remedies for ‘gender inequalities’ have been espoused. Therefore, different meanings and understandings have appeared in terms of ‘gender equality’.

During the 17<sup>th</sup> century, participation in public life and benefit from social development was seen as important for women (Sancar 1997: 3), since an abstract individual understanding of equality, which excludes women and is for middle class white men, has been historically privileged. Therefore, it was thought that if women participated in public life, the equality of the sexes would be achieved. This fact has brought us the concept of discrimination<sup>10</sup>, as a systematic process within patriarchy.

During the 18<sup>th</sup> century, when women could not vote, they were considered to be at the same level with children and moreover, they were accepted as unsuited for education or political rights (Bryson cited in Eatwell 1994: 193). Many important theorists, who did point out the inequality experienced by women, have contributed to the women's movement since. One of these theorists, Wollstonecraft (1759-97) argued that "women are, like men, rational individuals and that, as such, they should have equal rights" (Bryson cited in Eatwell 1994: 193). She insisted that women could not become real individuals, even as mothers, unless they won the right to participate in economic and political life on an equal basis with men (Bryson cited in Eatwell 1994: 193). The other important founder of liberal feminism was J. Stuart Mill. With his 'On the Subjection of Women (1869)' study, he criticized all aristocratic privileges as well as patriarchy and believed in the importance of educational opportunities and political rights for all (Donovan 1992: 27).

After the 'Industrial Revolution', the rise of capitalism and its new concept of 'equality', women were still mothers and wives. During Aristotle's era, women were "incomplete or deficient men" (Mitchel 1998: 32), and after everybody had gained their 'citizenship', they have become "incomplete or deficient citizens". Therefore, during the 18<sup>th</sup> century, the women's demands focused on participation in public life, especially education and

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<sup>10</sup> The Convention on the Elimination of All Forms of Discrimination (CEDAW), 1979

Article 1: For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.



working life, and with the right of voting to the political sphere for realizing their rights as citizens; but these demands did not go any further. In addition, the women's movement of the 18<sup>th</sup> century ignored the existence of patriarchy and did not try to change traditional sex roles (Sancar 1994: 57). This approach has been criticized sometimes, and feminism is seen as "nothing more than the completion of the liberal or bourgeois revolution, as an extension of liberal principles and rights to women as well as men" (Pateman 1989: 118).

Following the liberal feminists, Marxist and socialist feminists have provided other explanations for women's oppression and gender inequalities in the society. According to them, the reason behind gender inequalities was the outcome of their economic independence on their husbands or their exploitation as cheap labour in a capitalist workforce. Within these feminisms, women have been seen as a sex class in a gendered society. Therefore, gender equality was seen as the equality of different social classes. It could be realized by abolishing the existing economic system. On the other hand, the second wave feminism focuses on pay equity of women, equal access to jobs and education, recognition of women's unpaid labour in the home, and rebalancing of the double workload of family and outside work for women in the paid labour force.<sup>11</sup> Therefore, for the first time, gender equality was considered outside of the public sphere. The inequalities in the private sphere mainly within the family were becoming visible. The third wave feminism was concerned mainly with parental leave and day care for children of working parents, gaining decision-making positions in corporate and governmental high offices, worldwide sustainable development, and a global awareness of feminist causes.<sup>12</sup> Recently, diversity feminists' main concern is the ignorance of the 'other' women by the existing definition of patriarchy, within which women are seen as being all 'the same'. As Bryson states (1995:7), "their main claim is that underlying power relations and organizing principle of society is too simple, and the existing

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<sup>11</sup> <http://www.whydontyouknow.com/feminism.html>

<sup>12</sup> Ibid

definition of patriarchy is based on the experiences of white-middle-class western women”.

As it was stated above, the meaning of ‘gender equality’ has been changing since its emergence. Since the inception of the ‘patriarchy’ concept, the ‘being equal in public life means being the same with men’ understanding has also changed. Following Marxist and socialist feminists, we come across radical feminists who see patriarchy as the main reason for gender inequalities within society.

The feminist concept of patriarchy was first systematically set during the 1970s. With her important book, *Sexual Politics*, Kate Millet argues that the “relationship between the sexes in all known societies has been based on men’s power over women, it is therefore political”. This patriarchal power, she says, goes deeper than the power based on class or race and it is so common and seen as natural (Millet 1985: 25). Millet asserts that “it is maintained by a process of socialization, which begins in the family and is reinforced by education, literature and religion; it also rests upon economic exploration, state power and ultimately, force (particularly sexual violence and rape)”. On the other hand, Bryson (1995: 2) emphasizes the existence of patriarchy within the most intimate relationships. Taking these power relations into consideration, ‘gender inequalities’ should not be seen as random, but as regular and systematic and patriarchy is defined as the name of this unequal power relationship system; in other words, the system of male domination and female oppression<sup>13</sup> or subordination in the family and personal life as well as in the public sphere. It has been seen as the oldest and deepest form of oppression (Bryson 1995: 18).

Throughout history, women were seen primarily as mothers and wives and as the objects of the private realm. The public realm was determined as the sphere for factories, machines, and the male population as the actors of new types of production after the

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<sup>13</sup> Oppression is a kind of weight that presses women down and complex ideological, political and economic forces which keep women in this place, and a tool that of subordination, while, subordination takes this one step further, identifying the agents in the process, according to Phillips (Phillips, 1987:1).

'Industrial Revolution'. After the division of public and domestic/private spheres, the old cliché was repeated one more time; even if the former production system had changed and new power relations had been created, as one of the oldest systems, patriarchy was still there, and as a consequence, the situation of women was the same.

Regarding the public-private division, radical feminists were the pioneers who pointed out the unequal power relations within the private realm. Being a part of public life, or having economic independence from their husbands was not enough to overcome gender inequalities, because of the system of male domination and female suppression. However, recently, increased women's participation in the labour market as a part of public life has made the public-private division unclear. It has been seen that being a part of public life could not solve the existing inequalities, or independence of women from their husbands could not be a solution as the socialist feminists claim, because patriarchal power does not exist only in the public realm, but also within production and reproduction processes, where it is used by men to violate women's sexuality (Ertürk 2004: 11). In addition, patriarchy has different implications on women, because they have different needs, claims and subordination levels, according to the post-modern feminists. They criticize taking both 'male' and 'white, working, middle class, Western women' as the standards.

Regarding 'gender equality', despite their differences, different feminisms have contributed to the development of 'gender equality'. Each of them has pointed out another dimension of 'gender equality' and 'gender inequalities'. However, the 1990s can be seen as the most important period for dissemination of a 'gender equality' concept at the international level by 'international' or in other words 'global' feminism.

International feminism has roots in the early 20th century. By the outbreak of World War I, women in many Western countries had organized transnational organizations to promote different subjects. They came together across national boundaries in order to create an international identity for working together on women's rights. The UN gender equality regime, which will be discussed below, can be seen as the outcome of this movement within feminism. Thus the emergence of an international agenda exemplifies

both the power of global organizing and the opportunities for passing on the struggle from one generation to another.

At the conceptual level, the main confrontation appears between liberal and radical feminist theorists.

### **2.1.1 Liberal Feminism**

The central claim of liberal feminism is that “women are individuals who can reason, therefore they are entitled to full human rights, and therefore they should be free to choose their life and to compete equally with men” (Donovan 1992: 32). Within liberal thought, “the universal claims of equal rights and the assumption of an individualistic rational, self-fulfilling agent that is embodied in the classical liberalism of social contract theories does not seem to fit very well with the existing social differences between men and women” (Meehan and Sevenhuijen 1991: 52).

Liberal feminists, in accord with the anti-discrimination principle, call for gender neutrality in legislation. They claim that ‘gender equality’ can be realized as ‘formal equality’ in other words ‘de jure’ equality. In theory, liberal feminists are against forward-looking (non-remedial) special treatment for women (Nunziato 1994: 3).

For liberal feminism the particular distinction between the public and the private is essential. Public- private division can be summarized by John Locke’s understanding of family as a private realm. John Locke believed that the problems cannot be solved unless the members are not from the same family. These members’ problems can only be solved by the state (McDowell and Pringle 1992: 39). He argued that the family was the institution for only basic needs, such as sexuality and all kinds of aid. Therefore, women have been seen as the representatives of family, and the remaining world belongs to men (McDowell and Pringle 1992: 39- 40).

Liberal feminists’ approach is to encourage women ‘going public’ which means an

individual approach to fighting for power and influence on equal terms with men without changing the existing 'rules of the game'. They do not seek to abolish the economic, social or political system, morality and family values, but instead they have tried to create changes in laws, customs, and values to achieve the goal of equality (Siim in Jones and Jonasdottir 1988: 165). Liberal feminists were looking for participation in the other world from which they were excluded, in order to be 'equal'. Therefore, their understanding of 'equality' was limited with the distinction between public and private. They did not try to change these spheres and their patriarchal characteristics.

Since the mid-18<sup>th</sup> century, liberal feminism has seen participation in public life as the most significant way for women to achieve equality with the 'equality before law' principle, but the different starting-points of women and the existing structural inequalities in society have been ignored. The economically independent wife has been presented as the ideal for all women. Maybe, women have never been completely excluded from public life, but the way they were included was always within patriarchal beliefs. Liberal feminists have accepted that if women participated fully as equals in social life, the society and men could be changed, but like the other feminism(s) have criticized, liberal feminism and its claims could not bring 'gender equality' to our societies. Like Anne Phillips says (1991: 99), "equality between men and women must include a major change in the private sphere, for example, the equalization of the working hours; a shift in the responsibilities; breaking the patterns that divide men and women of inequality between work in the home and work outside. This means that the intervention of state to family and the market, and increasing public expenditure".

We also see periodical differences within liberal thought and its political implementations in terms of 'gender'. For example, while classical liberalism totally excluded women and at the same time affirmed the natural equality and freedom of individuals, 19<sup>th</sup> and 20<sup>th</sup> centuries' 'new liberalism,' in other words 'social and social democratic liberalism,' appeared to be more sensitive about gender inequalities in society.

Briefly, liberal feminism sees women and men as fundamentally equal, and as equally deserving of the opportunity to participate in all spheres of the society. Therefore, the

formula of 'equality' is seen in the removal of barriers for 'equality of opportunity'. The state is seen as the actor that legislates equality by guaranteeing equal rights to men and women, prohibiting discrimination, and promoting equality of opportunity, but without too much intervention to private lives and most importantly to the market. All the measures are designed to ensure that women have the opportunity to fairly compete with men in the economy and in public life. Private life has remained as the ignored area with its patriarchal structure.

As will be mentioned later, the EU gender policy takes part as another implication of liberal thought, and feminism. It is mainly based on 'formal equality' and the principles of 'liberal feminism'.

### **Formal Equality: Equal Opportunity and 'Equal Treatment'**

Formal equality is a principle of equal treatment: "individuals who are alike should be treated alike"<sup>14</sup>.

Meehan and Sevenhuijzen (1991: 54) explain that the conception, which also gives the formulation of the EU's approach to 'gender equality' as such:

*The conception of formal equality means that forms of direct discrimination such as unequal pay for the same job, formal restrictions on women entering the labour market or formal differences between women and men with regard to rights for social security arrangements must be eliminated. A distinction on the base of sex should not be allowed. It is formulated as equal treatment of men and women in access, payment and treatment in the all sphere of pool labour and eliminating inequality in rights between men and women in the system of social security.*

Formal equality assumes that all individuals are the same, and therefore both sexes should have the same rights and duties. However, here the problem starts, because the biological, social and sex specific differences cannot be determined as being the same for

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<sup>14</sup> <http://academic.udayton.edu/gender/02Unit>

all individuals. It is impossible to see all people in the same category (Meehan and Sevenhuijzen 1991: 58).

Regarding the liberal approach's 'sameness' assumption, Longo (2001: 271) asserts:

*...women are, if social arrangements allow them to be, similar to men—instead of the possibility of men being similar to women—women are forced to adopt the strategy of convincing people that they require the same treatment. As long as women are compared to men, but not men to women, the commensurateness of the two terms seems to be hierarchical in the sense that one part of the equation (the position of men) is more highly valued than the other (the position of women). Equality in this sense takes the life of men as its standard. It leaves women no other possibility than to try to participate in a world shaped by men, without changing it. In other words, as long as equality takes the life of men as reference, it means the expectation of sameness through integration on male terms. That would be an assimilationist society in the normative sense.*

As it is seen from above, the 'formal equality' concept and its 'equal treatment' policy are based on the 'sameness' approach that takes root from liberal thought, and also ignores the deeply unequal gendered social reality. The 'equal treatment' approach assumes that formal equality will lead to material equality in the long run, and in this way, women will gain the same rights as men (Longo 2001: 273). This policy can be seen as assimilationist and difference-blind. It does not pay any attention to social difference. Also, it frames gender equality as excluding all forms of discrimination of individuals as members of social groups that are disadvantaged, and it fails to recognize the patterns of discrimination against women as a group who have been historically discriminated against (Longo 2001: 272).

Liberal thought's equal treatment approach tells us to treat women the same as men, which means the comparison of women against men, taking the male perspective as the starting point. Equal treatment rejects seeing women as a separate group. Their biological differences are ignored. The main opposition to this view points out that a legal bias which treats the 'unlike,' that is, males and females with different reproductive roles, the same is unlikely to produce egalitarian results (Heitlinger, 1993: 25). In other words, liberal feminism's interpretation of equality means the call for equal treatment that is

based on 'formal equality'. This approach assumes 'equality' as the goal and also sees legislation as one of the key elements (Parvikko in Meehan and Sevenhuijen, 1991: 48). In liberalism, the first priority is the removal of barriers to equality and once that is done, there is no need for further arrangements, such as special treatment. However, despite the removal of barriers, women could not all reach the same starting point (Longo 2001: 270). As a consequence, liberal feminists' support for equality of opportunity within a free market economic environment has been limited to modifying socialization processes such as joint responsibility for parenting (Gardiner 1997: 5). Equal access and equal treatment of the sexes require elimination of discrimination and promotion of full citizenship of women.

### **2.1.2 Radical Feminist Critique of the Liberal Approach**

The main criticism of liberal feminism is that equal rights cannot by themselves produce gender equality, and there is a need for a broader definition of equal opportunity and a model of equality of outcome, which addresses the issue of unequal starting points. In addition, in order to gain equality, all women should first be perceived as being equal. However, especially women who are not middle class or educated are ignored (Haste 1993: 114).

Many theorists, particular socialist and radical feminists, criticize liberal feminism for not placing enough emphasis on the private realm and placing too much on the public realm. For them, the private realm symbolizes passion and emotions, which are 'too dangerous' to be let loose in the public sphere dominated by rationality (Siim, 1988: 165). Those "dangers are represented by women and therefore women should not be given permission to enter the 'public sphere' ".

In addition, another argument is that gender inequality cannot be corrected simply by prohibiting discrimination against women, and abolishing existing barriers. According to Squires (2003: 27), "socialist feminists argue that women's subordinate position in society is not only the cumulative result of individual acts of discrimination, but is also



linked to the requirements of the capitalist economic system”. This system is designed to maximize profit for owners of capital and has an interest in gender inequality for two reasons. First, the existing system helps business by benefiting from the low wages and minimal benefits given to single female labour. Second, because business also benefits from having women undertake the labour of child care (Squires 2003).

According to socialist feminists, gender equality will not be achieved until the economic exploitation of women is ended. The reforms proposed by socialist feminists call for greater state intervention than that foreseen by liberal feminists.

The socialist feminists call for the raising of the minimum wage and the legislating of better benefits for part-time workers and the imposition of mandatory affirmative action programmes. For this structure, they suggest the creation of publicly-funded day-care programmes, the costs of which will be shared by all members of society (Sassoon 1987: 115). They also mentioned a guaranteed annual income.

Socialist feminists also emphasize that “poor women can afford neither education nor childcare and do not own property, so equal access in itself is meaningless for most women” (Gardiner 1997:5).

While socialist feminists assume that gender equality can only be realized through the abolishment of economic independence of women, the second wave feminism of the 1960s raised the issue of patriarchy. This movement should be analyzed as a part of the 1960s’ movement, and the reaction against earlier unsuccessful liberal policies. On the other hand, third wave feminism has continued their criticisms of the conception of ‘gender equality’ and patriarchy (Gardiner 1997: 6).

While liberal feminism is concerned with the equal participation in and representation of women in society as well as equal access to opportunities for women, radical feminism focuses on violence against women and sexual politics. The most recent division of feminism, ‘post-modern feminism,’ is deconstructing the category ‘woman’ and

emphasizing diversity. Therefore, for this type of feminist approach, to consider differences and diversity-sensitive equality is important.

Despite all of these critiques, in the 1960s and early 1970s, liberal feminism influenced many of the major political programs in the world. Betty Friedan, a liberal feminist, founded the National Organization of Women in 1966, which campaigned for equal rights, equal access to education, to health and welfare, and equal pay for women (Donovan, 1992: 58). This initiative can be seen as just one of the liberal feminist struggles. Therefore, liberal feminism and its particular success should not be ignored even as we are made aware of its deficiencies.

As we can see above, liberal feminism's main concern is equality of opportunity, which is based on principles of non-discrimination, equal treatment and assimilation. It also shows the framework of today's equality policies such as that of the EU gender equality regime. But, the recent controversial issue and also one of the main concerns of this thesis is to see the deficiencies of formal equality by focusing on the EU gender equality policies. Therefore, the most important counterpart or the opposite concept of formal equality, 'substantive equality' should be examined.

### ***Substantive Equality: Equality of Outcome and 'Compensatory Preferential Treatment'***

Substantive equality, or equality of outcomes, is "a model of equality which is focused on the achievement of a given set of circumstances for a particular group or category", which aims to change current gendered social order (Longo 2001: 279).

Substantive equality goes beyond the boundaries of individual acts of discrimination, by advocating 'compensatory' affirmative action (Heitlinger, 1993: 25). With this definition it is more like 'de facto' equality compared to formal equality's de jure character.

While formal equality judges the form of a rule, requiring that it treat women and men on the same terms without special barriers or favours on account of their sex, substantive equality looks to the results or effects of the rule. Formal equality rule often does not produce equal results because of significant differences in the characteristics and circumstances of women and men.<sup>15</sup>

For the substantive equality that is more comprehensive and complicated than formal equality, Heitlinger (1993: 33) states that

*...it reflects on multiple types and sources of difference and various alternatives, variously termed as 'positive action', 'affirmative action' or 'positive(reverse) discrimination such as affirmative action, which offer relative equality of opportunity by redressing past inequalities, to give an equal start to all market competitors for the highly rewarded male-dominated managerial and professional occupations, and to reward female-dominated low-status occupations with better working conditions, higher pay and greater upward mobility*

These treatments are also called as substantive equality's 'preferential treatment' in favour of women by correcting any 'de facto' inequalities (Heitlinger 1993: 31).

Substantive equality appears as a solution to the unequal starting point problem and it challenges the liberal feminist approach. According to Jaggar (1983: 190), the notion of 'affirmative action' refers to "any institutional policy designed to open up fields dominated by white males to any individuals previously excluded from those fields".

In addition, Catharine MacKinnon (1991: 72) calls Jaggar's approach as in favour of 'substantive gender equality', and emphasizes the importance of 'equality of results' rather than equality or similarity of treatment. She criticizes the acceptance of liberal feminists' 'masculine notion of equality' that is embodied in the anti-discrimination principle's 'similarly situated' requirement.

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<sup>15</sup> <http://academic.udayton.edu/gender/03Unit/>

MacKinnon argues (1991: 72-83) that the real barriers to women's substantive equality will not be remedied adequately by the liberal feminists' call for prohibiting legislative classifications by gender.

Substantive equality, and its preferential treatment, are based on a 'difference' approach. Difference means the state of being unlike; duality (Oxford Dictionary). Even with its plain meaning, it is opposite to the liberal doctrine's abstract individualism. In addition to this, it refers to the difference of the male, who supplies the only possible model to us. But even preferential treatment does not change discriminatory patterns, because inclusion should not mean adding women to existing standards. However, there is no agreed formula for the re-definition of the 'gender equality' concept. In addition, from some aspects, preferential treatment has also been criticized for not attacking the reasons for the disadvantage of women. 'Does this approach really change the existing social reality?' remains as a question (Longo 2001: 275).

Briefly, substantive equality's radical understanding of 'equality' identifies women as a separate group, which requires special treatment. This understanding is quite different from the liberal understanding for protecting women. With liberals, we started from gender-neutral understanding, and radicals have brought us to gender-differentiated perspective. There is one more approach, gender-diversity, which also pays attention to the differences among women and to the different needs and expectations of different women.

At this stage, "How do we solve Wollstonecraft's dilemma that either women become (like) men, and so full citizens; or they continue at women's work, which is of no value for citizenship" (Pateman 1989: 97), remains an unanswered question. At the end a controversial question may be asked. As Chris Armstrong emphasizes from Marxist theory, "treating people equally in one respect means treating them unequally in another" (2003: 3). As a consequence, whether treatment is equal or unequal depends on what perspective we are looking from. What will be possessed equally, by whom and according to what principles remain unanswered questions.

### 2.1.3 Is There A Third Way?

When we look at the literature, we see that besides ‘equal treatment’ based on a ‘sameness’ approach, and ‘compensatory preferential treatment’, which is based on a ‘difference’ approach, the existence of the third approach to ‘gender equality’ is also controversial.

Gender mainstreaming is seen as the third way treatment for ‘gender equality’ by some scholars in this field, which is largely based on the ‘differences’ approach and aims to ensure that women and men are taken into consideration in policy and program formulation. More recently with the impact of diversity feminism, ‘differences’ among women have been emphasized, but still the ‘gender equality, equality of whom?’ question remains. Are the existing ‘gender equality’ definitions and strategies adequate for meeting the different demands, needs and expectations of women? Do we need to redefine existing concepts, gender roles or revisit the theoretical explanations? Does gender mainstreaming carry a ‘transformative’ character, which can be seen as the third way of gender equality treatment?

‘Gender Mainstreaming’ is globally accepted as a strategy for promoting gender equality. It can be seen as the third and maybe the most developed treatment or a means to achieve the goal of gender equality. But, it is also possible to see gender mainstreaming as an unclear policy strategy, which makes women more marginal. Under the name of this strategy, each policy or program can include a ‘gender’ dimension; but can this strategy really be seen as the third and transformative way of changing existing gender inequalities in societies? Do we have other alternatives or strategies?

According to Wally (2003: 2), gender mainstreaming is “a new form of gendered political and policy practice and a new gendered strategy for theory development, while as a practice, gender mainstreaming is intended as a way of improving the affectivity of mainline policies by making visible the gendered nature of assumptions, processes and outcomes”. Wally (2003) sees this strategy as the third stage of gender approaches,

following ‘sameness’ and ‘difference’ treatments. She argues that only the gender mainstreaming strategy carries a ‘transformative’ character, which can abolish the existing gender inequalities in both the public and private spheres.

Gender mainstreaming, which was adopted in 1997 by the ECOSOC of the UN as a strategy for change, is defined as follows:

*a process of systematically incorporating gender perspectives into areas of work and assessing the implications for women and men of any planned action, including legislation, policies or programs. It is a strategy for making women’s and men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated (UN 2003: 122).*

Gender mainstreaming should not be just adding woman into an existing activity, but rather, it should go beyond increasing women's participation numerically and bringing in the experience, knowledge, and interests of both women and men (Gases 2004: 2).

For understanding ‘gender mainstreaming’ and its difference from the two other approaches, the following figure from Verloo (2004: 8) supplies a basic framework.

<u>Strategy</u>	<u>Diagnosis</u> What is wrong?	<u>Attribution of causality</u> Who/what is responsible from the problem?	<u>Prognosis</u> What should be done?	<u>Call for action</u> Who should do something?
<b>Equal treatment</b>	Inequality in law, different laws/rights for men and women	Individual responsibilities	Change the laws towards formally equal rights for men and women in law	Legislators
<b>Specific equality policies</b>	Unequal starting position of men and women. Group disadvantage of women. Specific problems of women that are not addressed. Lack of access, skills, or resources of women	Diverse, both at individual level, and at structural level	Design and fund specific projects to address problems of (specific groups of women)	Gender equality agencies, sometimes together with established institutions
<b>Gender-Mainstreaming</b>	Gender bias in regular policies and social institutions resulting in gender equality	Policy makers	(Re)organize policy processes to incorporate a gender equality perspective in all policies	Government/all actors routinely involved in policy making

**Figure 2.1** Division between Gender Equality Approaches

*Source:* Verloo, M. (2004). “Work in Progress”, paper from Conference of the Europeanists in Chicago, March 11- 13, 2004, Panel on “Gender Mainstreaming Europe”.

As we can see above, 'gender mainstreaming' is seen as the third way treatment strategy, but despite its 'transformative' character, it is based on a 'difference' approach.

If we compare this strategy with the previous two approaches, we see that 'equal treatment' is based on the 'sameness' approach while 'preferential treatment' focuses on 'differences.' Although 'gender mainstreaming' promises a transformation of all spheres of the society regarding gender and gender equality, it is also based on a 'difference' approach. That is why it can be seen only as a strategy instead of a third way approach or treatment. Maybe this strategy does not seek only one reason for gender inequalities or only one way of treatment of issues such as women's participation in the public sphere by emphasizing the differences between women and men and highlighting the female power within separated or polarized worlds. In the end, it does not offer a third way, but rather a 'difference' approach.

It has often been argued that traditional equality policies are limited because they require women to perform to the standards set by men if they want to gain equality (Guerrina 2002; Rossilli 1997 in Walby 2003: 8). As Walby (2003: 8) asks, the world is still seeking the answer of this question; 'Can there be an effective route to gender justice in which existing separate gender norms/standards are retained and become equally valued, or is it never really possible to be 'different but equal' because the differences are too entwined with power and resources?'

On the other hand, Woodward (1999: 15) sees 'gender mainstreaming' as a danger instead of a third way. He argues that despite the fact that this strategy was easily accepted by the signatory countries to the Beijing Platform for Action (1995), gender-aware policy makers and feminists seem to be not speaking the same language with power holders. As a consequence, this difference may create different implications in practice. The term of "gender mainstreaming is seen as the first problem by him, and he claims that this common word with an established definition has been appropriated for a specific policy approach, but has not yet been imbued with new meanings for every user" (Woodward 1999: 15). Secondly, he argues that this approach, or for some the policy, has

been accepted only by governments, but it should be adopted by the other sectors within the society such as the private sector. He also gives an example from a conversation, which was held between one of the non-expert bureaucrats from Swedish public bureaucracy and a gender expert. According to this conversation, while the gender expert says “low pay, lack of promotion, lack of sex split statistics, relations of gendered power”, the male administrator was hearing and using the personal examples such as “my wife, my secretary, females who are in his case not discriminated against”. In light of these facts and examples, Woodward highlights the importance of being specific, unified, measurable and authoritative for gender mainstreaming. His answer for the question “is gender mainstreaming innovative or deceptive?” is “a little of both”. He also asserts

*Gender mainstreaming is now being talked about and applied at all levels of government, with widely varying approaches. By agreeing to the terms of the Beijing Platform of Action (UN 1995), governments have taken on an obligation ‘to do something’. It is to be hoped that the goals set by the international forum will lead to more than simply symbolic actions (Woodward 1999: 28).*

Up to now, some standards have been developed such as equal pay for women and men, improved child care services and sharing roles between men and women by parental leave; but none of them promises a real change or real transformation of the society. Therefore, revisiting ‘gender equality’ and the relevant treatments appears to be needed. Despite that the existence of the third way treatment is still controversial, new proposals or alternatives have been brought up as a matter, because the existing two approaches could not bring gender equality yet, and the widespread persistence of inequality between women and men worldwide still exists.

Ertürk states that the growing concern over the role of men is a natural outcome of the existing policies and approaches. She emphasized that during the past few decades, the women’s movement could manage to create an engendered political agenda both at the international and national levels, the challenge now is to deconstruct masculinity in order to struggle with masculine power that is embedded in human consciousness, language, values. This according to her is basically a political agenda, requiring various strategies



for action. Ertürk reminds us that gender is not about a battle of the sexes but rather about changing a system of oppression which is inherent in the patriarchal order (Ertürk 2004: 14).

## **2.2 GENDER EQUALITY REGIMES**

Kardam (2002: 413) identifies ‘regime’ with its formal, behavioural and cognitive dimensions by using Stephen Krasner’s ‘consensus definition’ in which regimes are “implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations”. She also constructs a categorization on Krasner’s categorization as follows

- norms (standards of behaviour defined in terms of rights and obligations)
- rules (specific prescriptions or proscriptions for action)
- decision-making procedures (prevailing practices for making and implementing collective choice)
- principles (beliefs of fact, causation and rectitude)

For the formal dimension of ‘international regime’, Kardam’s definition is “a set of explicit rules that states agree to and that are embodied in treaties and other documents, such as platforms of action”. The rules constitute the legal instruments formalizing and implementing the principles and norms of an international regime, and they can be found in the international arena (Kardam 2002: 412). She emphasizes that, the basic principles of the gender equality regime are the prohibition of discrimination against women and the active promotion of equality between the sexes (Kardam 2002: 15). With this standpoint, we see that in the first acceptance of ‘gender equality’ concept, the main focus was ‘non-discrimination’, and the emphasis was on human rights, and everybody’s equality before law. However, as we will see within this chapter, gender inequalities have required more comprehensive perspectives.

The norms of a regime, on the other hand, “define the rights and obligations of actors by establishing standards to overcome discrimination” (Kardam 2002: 416). Within the EU

structure, these norms can be found in the Treaties, the Council Directives on gender equality, and the European Court of Justice's (ECJ) rulings. In addition, different institutions have been appointed for the realization of dimensions in terms of gender equality.

For the behavioural aspects of the international regime, Kardam claims that only state behaviour demonstrates whether particular injunctions are accepted in a given issue area (2002: 417). In the case of the European gender equality regime, the Member States' implementations appear as significant indicators. However, as the regional and supranational actor, the European Union's decision-making (the Council of Ministers) and executive (The European Commission) bodies' implementation carry importance.

Finally for the cognitive dimension, Kardam (2002: 419) defines international regimes with their 'inter subjective meaning' and 'shared understandings'. In the case of the EU, these shared meanings and values can be found in the reasoning behind the establishment of the EU as well as in the values of the Union. In terms of gender equality, the principle of equal treatment of men and women has been enshrined in the EC Treaties since the establishment of the European Economic Community (EEC) in 1957 and can be seen as the cognitive starting-point of the Union. .

When we look at the general characteristic of the international policy regimes, we come across international agreements, treaties, or conventions that are signed by national-sovereign states. Those international documents are the elements of international law, which is based on the will of national states. As different from national or domestic law, international law does not have any compulsory sanctioning authority (Pazarcı 1996: 8). The monitoring and evaluation system is based on a reporting process and regular submissions or meetings under the coordination of an executive committee or commission. In the case of the EU, we come across the EC's Progress Reports or the Equal Opportunities Unit's *Equality Magazine*, which covers gender equality directives' implementation in the Member States.

In short, by the above-mentioned definition of ‘international regime’ by Kardam, we can define the gender equality regime as a set of norms, values, principles, and policies regarding equality between women and men.

Gender equality regimes in general can be categorized into three groups: ‘national’, ‘regional’ and ‘international’.

### **2.2.1 The National Level**

Equality policies in Western European democracies, at the national level, can be seen in the context of social policies of welfare states. These policies’ history can be started with the adoption of the ‘citizenship’ concept.

The discussion of citizenship with respect to welfare states usually refers to the classic work of T. H. Marshall (1964). Marshall defined citizenship as “consisted of civil, political and social components”. For these components, the civil, political and social rights have been established (Bussemaker 1997: 180). Bussemaker (1997) emphasizes that particularly social rights have always been important for women, who have been historically deprived from all kinds of rights, because those rights aim to struggle with the existing barriers to access to other rights. Those rights are generally granted under the guarantee of the state; however, it is commonly argued that the state is also gendered (Lovenduski 1997: 96).

Besides the gendered character of the state, different political systems have different implementation regarding gender equality. Within this thesis, the side effects of the capitalist liberal policies have been argued and criticized, and the ‘welfare state’ was seen as the compensator of these policies. One of the main purposes of welfare policies is to manage social risks by reducing the affects of market forces on individuals through the redistribution of societal resources. In other words, the welfare state is seen to be responsible for securing some basic rights for its citizens (Gardiner 1997: 2). The

emergence of welfare state policy can be explained with the failure of the ‘invisible hand’ of the free market to ‘trickle down’ the benefits of economic growth.

The interpretations of the welfare state concentrate on market-state relations, and more recently with the emergence of a ‘gender’ perspective, ‘family’ has been added to this structure. Therefore, it can be said that the demand for ‘gender equality’ from welfare policies came later. But, as Gardiner (1997: 3) states, gender equality requires the equal distribution of economic, political and social resources between men and women. For this mission the welfare state is seen as the responsible authority. Therefore, for analyzing ‘gender’ policies, there is a need for looking at welfare state policies.

All welfare states position themselves in relation to the politics of caring and how it should be performed and supported. The interaction between the state, the market and the family has taken varying forms in different societies with different historical and social contexts (Sundström 2002: 1). Therefore, the answer to ‘what makes different the gender regime’ is the level of intervention of the state to market-family relations.

Within welfare state regimes, gender equality policies come under the category of social policy, as it can be observed within the EU.

Among welfare state theories, one of the most well-known is Epsing- Andersen’s typology in *the Three Worlds of Welfare Capitalism* (1990). He views differences among welfare states as follows:

- The way in which state and market and to a certain extent the family interrelate
- The patterns of stratification that go with it
- The quality of social citizenship rights of de-commodification

In the framework of these variations, he distinguishes three types of welfare state regimes: conservative (social-capitalist model), liberal model and social democratic model. In the context of the EU, Walby (2003) re-categorizes these three categories by

adding a 'gender' variable to them as 'market-led', 'welfare-state-led', and 'regulatory-polity-led'.

In light of this categorization, Bussemaker (1997: 17) explains social capitalist states as having a passive or reactive type of social policy. This type of social policy does not see direct state intervention as necessary. The state can only intervene if market forces have harmful effects on the citizens. In other words, state existence is important for protection of the family against the harmful impact of the market. According to this model, the state's relevant responsibility is to guarantee that families can manage their responsibilities by helping them where necessary.

Sainsbury (1999: 79) introduces three more categories for understanding gender regimes, which are the 'male breadwinner regime', 'individual earner-carer regime', and between these two 'separate gender roles regime'. This categorization is illustrated in figure 2.

While Sainsbury uses this categorization, Walby (2003) also re-categorizes Sainsbury's gender regime classification as 'male breadwinner', 'modified/weak male breadwinner', and 'dual earner' with similar perceptions.

Within the EU; Belgium, France, Germany, Italy, and the Netherlands have been categorized as 'social-capitalist' gender regimes. Briefly, this gender regime has a passive social policy, low female labour-market participation, a strong emphasis on cash benefits rather than on services, a strong breadwinner bias in social security to support the traditional family, ambiguously defined policies towards lone mothers, statutory leave schemes that focus primarily on mothers, and notions of subsidiary in childcare services.

<b>Regime Attributes</b>	<b>Male Breadwinner</b>	<b>Separate Gender Roles</b>	<b>Individual Earner-Carer</b>
<b>Ideology</b>	Strict division of labour Husband= earner Wife= carer	Strict division of labour Husband= earner Wife= carer	Shared Tasks Father=earner-carer Mother=earner-carer
<b>Entitlement to social benefits</b>	Unequal among spouses	Differentiated by gender role	Equal
<b>Basis of entitlement</b>	The principle of maintenance	Family responsibilities	Citizenship or residence
<b>Recipient of benefits</b>	Head of household supplements for dependant	Family responsibilities Men as family providers, Women as caregivers	Citizenship or residence
<b>Taxation</b>	Joint taxation, Deductions for dependant	Joint taxation, Deductions for dependants for both spouses	Equal tax relief
<b>Employment and wage policies</b>	Priority to men	Priority to men	Aimed at both sexes
<b>Sphere of care</b>	Primarily private	Primarily private	Strong state involvement
<b>Caring work</b>	Unpaid	Paid component to caregivers in the home	Paid component to caregivers in the home

**Figure 2.2** Three Gender Equality Regimes

*Source:* Sainsbury 1999, table 1, p. 78

On the other hand, we come across the liberal welfare state and its gender regime as having legislation relating to equal employment opportunities and the prohibition of discrimination, but the approaches adopted vary from anti-discrimination through affirmative action to expanding opportunities (O'Connor 1999: 49). Within the Member States of the Union, it is argued that the United Kingdom is one of these liberal welfare states.

Distinctive to the policy of the liberal regime is the primacy of the market and the privacy of the family. This regime requires minimal government intervention in economic and family life. Families and individuals are expected to support and care for themselves (Sainsbury 1999: 256). From a gender perspective, this regime can be defined as a male-breadwinner regime according to Sainsbury's categorization.

Finally, the 'social-democratic' welfare state and its gender regime, which can be mainly observed in the Scandinavian countries, is the most developed and women-friendly type

comparatively with the other two regimes. According to Sainsbury (1999: 26), the gender regime and the social democratic regime have complementary logics. The main difference of the Scandinavian model has been a comprehensive social provision whereby entitlements to benefits and a wide variety of services have been based on citizenship or residence (Sainsbury 1999: 75). In light of the earlier conceptual discussions in this chapter, this regime can be seen as the one which adopts 'equality of outcomes' in comparison to the liberal regime's 'equality of opportunity' understanding. The official goal of gender-equality policies of this regime is the equal presence of women and men in all spheres of society (Sainsbury 1999: 260). With this logic, without having a doubt, this regime can be seen as the most developed one in terms of gender equality, but still even in its Scandinavian applications it could not reach its perfection.

Nancy Fraser (1994, 1997, and 2002) brings a comprehensive explanation to all these systems and their deficiencies, and also supplies an alternative framework or a series of principles for future gender equality policies to adopt in order to abolish the existing inequalities. According to her, welfare states try to reduce the side effects of the capitalist system on the citizens. She finds the existing sexist system of capitalism to be built from the ruins of the industrialization period. This system was based on the 'family wage', which was the payment of the male breadwinner, and unpaid female house workers. Today's welfare state takes the role for changing the unsuitable and unfair 'family wage system' and compensates citizens for the harm done by the market. In addition to the rise of the welfare state, she also mentions the insufficiency of this recent regime in the face of a changing society. In light of the increasing number of single mother headed families, and the increasing poverty among these families, she brings up three equality policy models: the 'universal family subsistence/breadwinner model', the 'caregiver- parity model', and the 'universal caregiver model'. The first one tries to realize gender equality through employment of women. The basic principle of this model is making women employees in the family and full citizens in society. However, this model cannot solve the care issue and the question remains unanswered: how the care issue will be dealt with and by whom? Will this task be given to the state or private sector? The second model aims at equalizing the role of carer and the role of earner. We see this model mostly in the

Western European societies as based on helping women with child caring and the other care tasks. The main aim is not to create the same lifestyles among women and men, but to make the care task paid. For the realization of this model, a series of reforms should be made. With this model, women remain at home, but the care issue is financed by public funds. The last model can be basically seen as the social-democratic model, as it has been already mentioned above.

Nancy Fraser assesses the above-mentioned different models as follows with the figure:

	<b>Universal Breadwinner Model</b>	<b>Caregiver Parity Model</b>	<b>Universal Caregiver Model</b>
<b>To prevent poverty</b>	good	good	good
<b>To prevent exploitation</b>	good	good	good
<b>equality of income</b>	average	inadequate	good
<b>equality of spare time</b>	inadequate	average	good
<b>equality of respect</b>	average	average	good
<b>To prevent women's marginalization</b>	average	inadequate	good
<b>To eliminate patriarchy</b>	inadequate	average	good

**Figure 2.3** Principles for Gender Equality Regimes

*Source: Fraser, N. and Honneth, A. (2003). Redistribution or Recognition? A Political-Philosophical Exchange, J. Golb, J., Ingram, J. and Wilke, C. (Trans.), London: Verso, 2003, p. 336.*

As we can see from all these categories, different names, theorists and practices, three types of gender regimes emerge: market-led/liberal, social-capitalist/conservative/welfare-state-led, and social democratic/regulatory-polity-led gender regimes. Within the European directives, and the other relevant articles of the Community Treaties, we come across the patterns of all these gender equality regimes.

On the other hand, these welfare state regimes, and the methods of analysis they employ, can also be criticized. According to Walby (2001), Epsing-Andersen categorization is inadequate, because it is based on only the relationship between market-family-state triangles, which excludes any other type of power relation. Walby (2001) brings up three more dimensions for better analyses of gender equality policies; violence against women, sexuality, and culture. She explains the need for their existence as;



*Male violence should be added since in practice states do not have a monopoly of violence in a given territory, and it has important consequences on the lives....sexuality should be added since this is both an important domain of gender relations with profound effects on people's personal lives, and also a focus for political struggle, especially in its intersections with fertility and bodily integrity issues, such as rape, abortion and contraception...culture should be added in order to ensure that the analysis is not materially reductionist, in recognition of its role in at least partially constituting the diversity of patterns of gender relations, especially in relation to ethnicity (Walby 2001: 17).*

These further dimensions can be seen as the extension of liberal feminist demands towards radical and post-modern feminisms. Walby also mentions that developments and changes have been examined according to historical and national changes, but the transformation of gender relations and structures are not questioned by any of them (Walby 2001: 9).

### **2.2.2 The International Level**

For understanding the development of the EU gender equality regime and its policies, the interdependent impact of global change, international gender equality mechanisms, and the international women's movement needs to be visited.

Today, many issues became universal problems and thus cannot be seen as territorial problems anymore (Ari 2002: 443). Furthermore, increasing dependency among states has urged cooperation for solving common problems. This process has gained acceleration with global economic and political forces. The gender equality issue is one of these universal problems.

In general, the literature on international relations has been almost silent on gender issues, which has also been ignored by the international relations (IR) discipline. International practices occur in foreign ministries, ministries of defence and related policy bodies, which are mainly male-dominated and we see that women are excluded from responsibilities in matters of security and crisis (Grant and Newland cited in Halliday 1991: 159). According to Grant and Newland (1991), the gender blindness of IR is mainly based on the assumption that the spheres of gender and international relations

are intrinsically separate. This structure reminds us of the separation between public and private spheres. In the case of the IR discipline, the division appears between national and international spheres, in the latter there is no place for women. Even the language of international politics is masculine and homophobic (Grant and Newland cited in Halliday 1991: 159).

The international women's movement has been struggling with the gender blindness of the IR discipline, and their argument is that IR should study the consequences of international processes within societies, and the resulting impact of these internal changes on IR, as well as analyzing the sphere of international processes. In this regard, Grant and Newland (cited in Halliday 1991: 159) determine three dimensions for the emergence of gender issues within the international relations discipline as follows:

- 1) The growth of a feminist current within political and social theory has produced analyses with evident implications for international relations theory;
- 2) The extent to which international policies and processes, far from being gender neutral, in practice play an important role determining women's place in society and in structuring social, political and particularly economic relations between the sexes;
- 3) Despite the subordination that women experience, they have in recent years acquired much greater prominence as international actors.

At the theoretical level, there are three major IR approaches which regard relations between 'gender' and 'international relations': realism, liberalism, and constructivism.

Among these three approaches, the realist approach to IR can be seen as the least hospitable to gender analysis, because, realism sees the state as the major actor of international relations and policy, and gives priority to the issue of power relations between them. In-state dynamics and the outsider actors such as NGOs are neglected by these major actors (Ari 2002: 122), thus within this approach the international law, particularly international human rights law, women's human rights, the relevant mechanisms and the role of the women's movement have been historically ignored. On the other hand, 'idealism' gives importance to international law and the norms that have

been established by international organizations. As we see, the main perspective behind the establishment of the League of Nations of the UN was ‘idealism’. After World War II’s dramatic impact on the European societies, the constitution of the European Union was based on the same ideals. The European Union states determine these ideals as

*The European Union (EU) is a family of democratic European countries, committed to working together for peace and prosperity. It is not a State intended to replace existing states, but it is more than any other international organization. The EU is, in fact, unique. Its Member States have set up common institutions to which they delegate some of their sovereignty so that decisions on specific matters of joint interest can be made democratically at European level. This pooling of sovereignty is also called ‘European integration’.*

*The historical roots of the European Union lie in the Second World War. The idea of European integration was conceived to prevent such killing and destruction from ever happening again. It was first proposed by the French Foreign Minister Robert Schumann in a speech on 9 May 1950. This date, the ‘birthday’ of what is now the EU, is celebrated annually as Europe Day.<sup>16</sup>*

Within the ‘idealist’ approach, especially for increasing the strength of the UN and EU, these organizations have become independent actors which can make decisions for human and women’s rights rather than only considering the benefits to the state.

On the other hand, as it was stated earlier, patriarchy is based on unequal power relations of men and women, and realism can be seen as another type of unequal power relation, which also affects women’s rights, and in general makes the individual invisible. With this perspective, by taking the idealism-realism debate as starting point, I argue that as one of the recent approaches ‘normative international theories and approaches’ are the most appropriate models for improving ‘international relations’ and ‘gender’ dialogue, which focus on the ethical dimension of IR, and analyze ethical patterns of society-nation states-international relations (Dağı 1996: 187). Dağı argues that this approach gives priority to concepts of ‘freedom’, ‘justice’, ‘rights’, and ‘responsibilities’ and within the other IR approaches, it is the closest one to the international human rights principles. With this character, maybe it is the only approach that adequately answers the question ‘States’ Rights or Human Rights?’ on behalf of the latter.

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<sup>16</sup> [http://europa.eu.int/abc/index\\_en.htm](http://europa.eu.int/abc/index_en.htm)

Finally, regarding IR-gender dialogue, we see that ‘constructivism’ questions state interests and identities by asking where they come from in the first place. Interests and identities are determined socially constructed structures<sup>17</sup>. Constructivism also allows for agency, reflective acts of social creation, albeit within structured constraints (Yalvaç 1996: 131-132). As it can be seen from the previous chapter, many feminist scholars define ‘gender’ as a category like race, class and ethnicity like most of the international documents. In other words, ‘gender’ is defined as being socially constructed. Therefore, combining gender with a constructivist perspective can answer how the concept of women’s rights was created, or how the public/private distinction has prevented domestic violence against women from being defined as a violation of human rights. It might further examine how gender identities are shaped, contested and negotiated within different institutions, globally and locally. Or it may analyze how global material changes have become opportunities for the introduction of new definitions and new interpretations for women’s movements as active agents. Therefore, besides the normative international approach, the ‘constructivist’ approach is also an efficient tool for understanding gender-IR relations concerning the European Union’s gender equality approach.

The question of the status of women as a comprehensive international policy issue emerged only in 1935 with the League of Nations and developed into a full fledged regime within the work of the United Nations which followed it (Reanda 1992: 265). With the efforts of the women’s groups at the creation of the UN, the norm of non-discrimination on the basis of sex became firmly grounded in the UN Charter (1945) and the Universal Declaration of Human Rights (1948). In 1946, the Commission on the Status of Women (CSW) was established as a functional commission of the Economic and Social Council (ECOSOC) to prepare recommendations and reports for the advancement of women.

Formal recognition of equal rights for women and men was the first aim of the international community and this resulted in the twin covenants in 1966; the International

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<sup>17</sup> <http://usconsulate-istanbul.org.tr/reppub/muintrel/abskard.htm>

Covenant on Political and Civil Rights (ICPCR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). With these instruments, we see the “shift from good intentions, towards the recognition of equal rights of men and women to the enjoyment of all rights within the UN” (Bussemaker cited in Gardiner 1997: 208).

Ertürk (2005: 93) argues that the gender equality agenda of the UN, particularly as observed in the work of the CSW, evolved in stages, starting with the norm- of non-discrimination (1945-65); integrating women into development (1966-75); the Decade for the Advancement of Women (1976-85); empowerment of women (1986-95); and women’s human rights (1996- present). Each phase is marked by significant gains for women.<sup>18</sup>

By 1960’s it became clear that formal equality is not sufficient to eradicate deep-rooted gender inequalities. Measures were needed to respond to the causes of inequality. Towards this end, in 1967 the Declaration on the Elimination of Discrimination against Women was adopted, which paved the way for the adoption in 1979 of the Convention on the Elimination of All Forms of Discrimination against women (CEDAW), also known as women’s bill of rights. CEDAW is the most significant and comprehensive instrument for women’s rights. The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women. The Convention was strengthened by the Optional Protocol (2000),<sup>19</sup> which allows for individual complaints and an inquiry by the Committee when deemed necessary. As of 18 March 2005, the Convention has been ratified by 180 countries.

Another important normative instrument is the 1993 Declaration on the Elimination of Violence against Women. The Declaration and the Vienna Conference on Human Rights, which preceded it the same year, firmly placed violence against women as a human rights issue. This resulted in eroding the public private dichotomy that had characterized

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<sup>18</sup> See Appendix A, Figure 1 for the specific gains of each period.

<sup>19</sup> See Appendix B, Figure 2 for the current ratification status of the Convention and its Protocol.

international human rights law. The post of Special Rapporteur on violence against women created by the Commission on Human Rights in 1994 has been instrumental in ensuring that the provisions of the Declaration gained visibility by States through the individual complaints mechanism and fact-finding missions that are included in the mandate of the Rapporteur.

The four world conferences on women represent landmark events, each resulting not only with significant polity documents but also leading to systematically expanding the agenda and drawing women from all walks of life into the ownership of the UN gender agenda. In 1975, when women came together for the first time at the First World Conference on Women in Mexico City, extremely intense discussions, and disagreements were witnessed. For the women of the First World, 'equality' had priority within their agenda, while the Second World's women focused on 'peace'. For the women from the Third World, the most important subject was 'development' (Jahan in Acuner 1999: 7). The Mexico City Conference was followed Copenhagen (1980), Nairobi (1985) and finally Beijing (1995). In the process women succeeded in acting together despite the diversities of their realities. These Conferences have greatly contributed to promoting universal human rights of women and to raising awareness about gender equality among the general public.

Especially after the Third World Women Conference in Nairobi (1985), international financial and development institutions/organizations started to pay attention to the demands of the women's movement (Acuner 1999: 9). These conferences also contributed to establishing action plans for achieving gender equality, the most comprehensive being Beijing Platform for Action

According to Pietila (1999: 5), "the extent and significance of women's impact on the international arena was observed by the 1990s through both official channels, lobbying, and determined civic activism across national borders and past national governments- has made it impossible for women's issues to be ignored any longer".

Besides these developments and the impact of the women's movement, economic pressures were also effective on gender equality policies. An effective worldwide economic production and distribution system, including removing barriers for labour market participation was needed for the markets. And as Reinalda (1997: 208) states, non-discrimination and equal opportunities were also needed for the markets. Overall, she attributes the emergence of the UN gender equality agenda to the following(1997: 204):

- *The recognition of international women's organizations and more recently women's networks;*
- *Their official status with or within arrangements*
- *The setting up of advisory and other committees regarding 'women's matters' or of 'women's committees'*
- *Women's participation in staff, specific organs and national delegations;*
- *The official opportunities women have to influence decisions*
- *Coalition politics with other non-governmental organizations*
- *Changing the male character of the arrangements*

The UN continues to provide women with an invaluable platform for dialogue and decision making on issues common women worldwide. These decisions then serve as advocacy tools for women in their effort to bring about change at the national and regional levels.

It can be argued that, despite the successes of the women's movement and the many positive changes, there has been no structural transformation in the patriarchal character of the way official business is conducted at the level of the state as well as in international relations. Ertürk argues that for abolishing the existing gender inequalities, both the national and international level gender agenda needs a four-fold approach: "(i) adoption of a gender perspective in overall policy making; (ii) elimination of all forms of discriminatory provisions and practices from all legislation and institutions; (iii) designing and implementing special programmes for women; (iv) engaging in a dialogue and alliance with like-minded men to sensitize various social segments" (2004: 16).

### **2.2.3 Gender Equality and the Interplay between National-International Policy Making**

Since this thesis's main purpose is to examine to what extent the EU gender equality policies are able to achieve gender equality in member states and its implications in Turkey, analyzing the interplay between regional actors with national members<sup>20</sup> became a necessity.

In order to understand the EU gender policy, we need to look at the member states and their gender equality policies, which have influence on the Union policies.

As a regional and supranational actor, the European Union has been influencing its members' policies. Harmonization, pre-accession process, and integration strategies are the concepts, which explain this connection.

Regarding the 'supranational-national' interplay in terms of implementation, MacRae supports the assumption of the interplay of 'supranational-national' namely, 'the EU-Member States connection. Within the thesis, it is argued that the EU gender equality regime is both a 'supranational' and 'regional' regime, and also it is stated that there is a strong connection and a big impact of the Member States' policies on this regime. On the other hand, MacRae (2005: 4) adds that their interplay changes each other. She defines the EU gender regime as an 'institutional gender regime', or an institutional culture that "embraces a particular understanding of gender relations and perpetuates this in its policy making". Thus, she states that the European regime itself has been re-interpreted with the implementations of the members and as a result those policies do not reflect the values of the EU institutional culture any longer. At the same time, the binding nature of European norms continues to play a role in interpreting national legislation and implementation. As a result, the European institutional culture and the national gender culture are both

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<sup>20</sup> The European Union Member Countries: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, The Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom (<http://www.eurunion.org/states/home.htm>)



relevant to the formation of gender policy in the member states. However, Von Wahl (2003: 5) sees primary difference in the composition of the European gender regime relative to the national gender regime. She argues that “while a domestic gender regime orients itself along the state-market-family triad the European gender regime is centred on a triad of ‘nations, market and supranational forces’ ”.

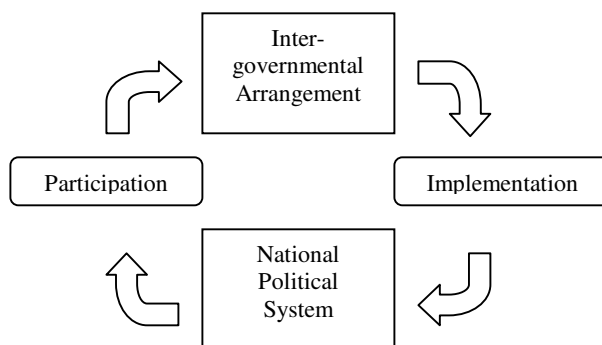
On the other hand, MacRae (2005) claims the EU can influence the national gender policies in a variety of policy stages. Domestic reactions to European policies are based on a number of factors including policy logics, cultural differences and the differential preferences of national actors (Liebert 1999). The question then becomes when and how can the EU alter the domestic policy path?

International organizations and regulations seem to be independent variables detached from national systems but they produce effective means for changing those political and economic systems (Reinalda 1997: 197). The UN international mechanisms, specifically women’s treaties can be seen as one of the examples besides the EU gender equality regime. But, as we could see at the beginning of this chapter, like the state’s gendered and patriarchal character, this organization also carries the same perspective. However, the acceleration that is given by the women’s movement as well as women representatives within these organizations has been contributing to the development of gender equality perspectives and implications. Thus, the only success cannot be seen as the success of these international or supranational organizations.

Also, while the women’s movement and representatives have been changing these international organizations, the inter-play between them and national actors has also been changing, particularly by increasing the impact of international institutions on nations. Today, it is accepted that the international system is made up of more than just nation states, and intergovernmental organizations and transnational non-governmental actors like enterprises or politico-social movements like the women’s movements have power to create an impact. The sovereign states and other actors reach a certain consensus and policy coordination for specific issue areas by agreeing on principles, norms, rules and

decision-making procedures. These forms of cooperation may indeed result in further integration, but it does not mean that states give up their sovereignty or continue to prefer their own strategies (Reinalda 1997: 1999). But they make it clear that international relations are not only a matter of competition between states but of coordination and cooperation as well. In other words, international organizations and regimes are not only to be seen as the product of power relations between national states that act on the basis of easily identifiable national interest, but also as actors with a certain autonomous influence on national states and their policies.

In situations of complex interdependence, international and national arrangements of political decision and policy making may well be inter-linked. Both international and national actors take part at the ‘participation’ and ‘implementation’ processes.



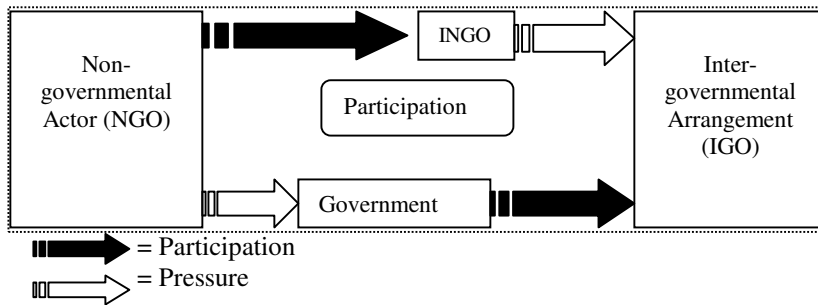

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**Figure 2.4** Participation and Implementation Processes

**Source:** Reinalda, B. (1997). “*Dea ex Machina or the Interplay between National and International Policymaking: A Critical Analysis of Women in the European Union*”, in F. Gardiner (Eds.) *Sex Equality Policy in Western Europe*. London: Routledge, p. 200.

On the other hand, the strength and the efficiency of the international decision-making and implementation depend on the inputs of national actors and the means of intergovernmental arrangements. Therefore, for examining the efficiency of the European Union’s gender policies, we need to look at the national implications and inputs to the mechanism. But, the relation and interaction do not happen only between national and international actors, but transitional actors and participants such as international or

national NGOs such as the EWL with its ore than 4000 women’s NGO members, and the trade unions, specifically the Women Committee of European Trade Unions’ Federation.



**Figure 2.5** IGOs and NGOs Interplay

**Source:** Reinalda, B. (1997). “*Dea ex Machina or the Interplay between National and International Policymaking: A Critical Analysis of Women in the European Union*”, in F. Gardiner (Eds.) *Sex Equality Policy in Western Europe*. London: Routledge, p. 203.

In light of these facts, with the next chapter the current situation of the European Union gender policies and the relevant actors and their roles will be discussed.

## CHAPTER III

### **THE EUROPEAN UNION GENDER EQUALITY REGIME**

#### **3.1 APPROACH TO ‘GENDER EQUALITY’**

The EU is both a regional and a supranational body, and with this characteristic, its powers are unique and complex. The Union is not a conventional national state, or federal system, but a supranational entity. The powers of the EU are based on treaties signed by all member states, which makes the Union more than an intergovernmental body. Like the social contract of the liberalism that is based on the individual’s will, the EU is based on a kind of contractual transfer of the member states’ will. It has a supranational authority and integration procedures in order to create a strong coordination of its common policies among the member states (Walby 2003: 10).

According to Walby (2003: 8), the nature of the powers of the EU has two key dimensions; economic and social. Walby states that “the first, while the EU has power to regulate the economy, its powers over several other domains relevant to gender relations might appear limited, not least by the principle of subsidiarity, which means decisions are to be taken at the local level. On the other hand, social inclusion is important, because social exclusion is seen as not only unjust but as damaging to the social cohesion that is seen as essential for an efficient, productive and globally competitive economy” (Walby 2003: 8). Therefore, besides its economic dimension, the ‘social dimension’ of the EU should be envisaged. The EU values and social progress supported by legislation, guarantees all the EU citizens’ basic rights. Some of these rights are ensured by the treaties or directives, such as the Treaty of Amsterdam or by the human rights

instruments such as the Fundamental Charter of human rights (Fontaine 2003: 26).

Regarding the social dimension, equal opportunities for women and men constitute another important dimension of the European Social Model (Lönnroth 2002: 2). The aim of the European social policy can be determined as correcting the inequalities that occurred because of the market, and to facilitating a decent life quality and standard for all, in the European Society, which is dreamed as active, inclusive and healthy (Fontaine 2003: 26).

Up to now, millions of EU citizens who were unemployed, elderly, disabled, socially excluded, discriminated in the labour market and particularly women have benefited from the European Social Policy. With this policy, people are not left alone with the harmful effects of the market. The EC (2000: 1) states that “because The EU believes in solidarity among its citizens for realization of a stable society, and shared welfare for increasing production and development along with strong competition among firms” (Commission 2000: 1). Thus, gender equality consensus can be seen within both the employment and the social policy of the EU.

While, gender equality regime or policies are included in the above-mentioned European Social Policy, related initiatives appear to be left mainly to the national legislators. In addition, the Council directives and the relevant part of the *acquis communautaire* remain insufficient for abolishing the ‘gender inequalities’. Vleuten (2004: 1) asserts that “all the arrangement of the EU, concerning gender, can be defined as the instruments, which have the aim to further equal rights, equal treatment, and equal opportunities for women and men and to fight discrimination, and they define standards and open up possibilities for women (and men) to abolish discrimination and to claim equal treatment before the court”.

The meaning of ‘gender equality’ for the EU is defined as “a situation in which all individuals can develop their capabilities and can make choices without being constrained by gender stereotypes or restrictive roles; and where different behaviours,

goals and needs of women and men are equally recognized, valued and promoted” (European Commission, 1998). As we can see from this definition, the meaning of ‘equality’ is obviously close to the ‘liberal understanding of equality’. On the other hand, “gender equality means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life... Gender equality is not synonymous with sameness, with establishing men, their life style and conditions as the norm... gender equality means accepting and valuing equally the differences between women and men and the diverse roles they play in society” (Council of Europe, 1998: 7-8).

In general, we can define the EU gender equality regime as all “policies and programs aimed at removing barriers that prevent the full integration of women into the labour market” (Steinberg and Cook cited in 2003: 3). If we look at the directives of the Union, we still see the ‘de jure’ character of equality, which mainly concerns public life, and takes males as the standard. The ‘equal treatment’ for women and men is a fundamental principle of the Community law. This approach requires a single standard of equality for women and men in employment that is based on minimizing gaps, that is, achieving the same level of participation in employment, the same level of unemployment, and the same level of pay. On the other hand within this structure, despite its insufficient state, ‘preferential treatment’ and within social policy ‘gender mainstreaming’ approaches also exist, even if they could not be implemented perfectly.

Gender mainstreaming is defined and adopted by the Council of Europe as “the (re) organization, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels at all stages, by the actors normally involved in policy making” (Council of Europe, 1998: 15). However, the Directives and EU case law are limited to the principle of equal pay for work of equal value; equal treatment as regards employment, protection of pregnant, breastfeeding women and women who recently gave birth, the burden of proof in cases of sex-based discrimination and non-discrimination against part-time workers. And more recently, as an evidence for the transition from ‘equal treatment’ to diversity or ‘preferential treatment’, the Directives on self-employed workers, parental leave, and social security

schemes can be shown. Aside from the directives' limited scope, implementation is a serious problem within Europe. For example, gender pay gap, occupational segregation, glass ceiling for women and under-representation of women in politics as well as high rates of violence against women continue to be widespread in the countries of the Union.

When the European Economic Community (EEC) was established in 1957, its focus was on economic matters, not on women's rights or human rights in general (Defeis 2000). In this regard, Wahl (2003: 3) defines the EU gender equality regimes as an "equal employment regime", which puts women's experience at the centre and focuses on a common necessity for many women, the need to combine care work and paid work, production and reproduction". The only matter is to reconcile the family and working life to eliminate the side effects of gender inequalities for markets.

Today, the EU can be seen as one of the most powerful economic actors in the world with 6% of the world's population, and more than 20% percent of the world's production (EC 2002: 1). This powerful actor in the economic realm could not achieve one of its key targets, which is equality of opportunity for women and men in employment and in the work place.

For the last three decades, women have been participating in education and employment with increasing numbers. However, despite the European liberal assumption of gender equality and its key target, gender equality in the market; various obstacles remain for women that are based on gender discrimination. Unemployment among women compared to men is still high, and most of the working women work at flexible or part-time jobs. In addition, most of the Member States do not have provisions for child-care, and this fact causes a double-burden for women. Also, the majority of long-term unemployed are women and the integration of women in the employment market brings added financial burden to the Member States. Although, the EU's main concern is gender equality in the area of employment, the gender pay gap is also increasing within the EU

countries. According to the latest statistics, gender pay gap was 15%<sup>21</sup> in 2003 and women's per hour work is valued as only 27% percent of male workers (EC 2002: 1). Therefore, despite the EU's great success in the economic realm, the European women face with a disappointment with the progress achieved so far (Rossilli 1999).

Thus, 'formal equality' and 'equal treatment' is not enough to struggle with deep-rooted gender inequalities. As Philips (1995: 115) states "it is not necessary that general equality can supply gender equality in societies". For the realization of gender equality, biological, sociological and material conditions need to be taken into consideration (Acuner 1999: 70).

### **3.2 A HISTORICAL OVERVIEW**

The historical development of the social policies that include 'gender equality' policies can be reviewed in four time periods: 1957-72, 1972-1980, 1980-85, 1986-93, and 1993-Present (Hervey 1998: 13).

During the **1957-72**, which is regarded as the 'new liberalism period', the social policies were neglected with the assumption that the European Economic Community (EEC) based on the free movement of production factors would lead the development in all economic and social sectors without any intervention (KSSGM 2002: 45). At this period, we only come across with the Rome Treaty (1957) Article 119 as well as Article 50 on educational transformation plan, Article 39 on the social dimension of agricultural policy, Article 123 on the European Social Fund, Articles 48-66 on free movement on labour.

The European Council Summit in Paris (1972) was the turning point for the European Social Policies, where it was stated that there was a need for social harmonization and coordination for the completion of the economic integration. This approach marks 1972-**1980** period. During this term, the Council adopted the decision on the 'Social Action

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<sup>21</sup> The European Commission Report on Equality Between Women and Men (2005)



Programme', and as a consequence in 1974, the first 'Social Action Plan' was launched. This plan focused on four areas, namely equal treatment for women and men; harmonization of labour law; common standards for working conditions, and finally international employment and regional policy (KSSGM 2002: 46). The following year, the 'European Regional Development Fund' was established. In addition, this period, witnessed a major success, which is the adoption of Council Directives on equality between men and women such as 'equal pay for equal value of work', and 'equal treatment'.

However, with the impact of global competition that created a pressure on the EEC, the 'deregulation' and 'flexibility' approaches were adopted to take the extra burden off employers and small enterprises (KSSGM 2002: 47). As a result, during the **1980- 1985** period, there are few social legislations, mainly part of 'soft law', were adopted. The main focus of this period was on resolutions, recommendations, and action plans.

During the following - **1986- 1993** - with the Mitterand government in France, which gave a high priority to social issues, and the EC presidency under Jacques Delors, the approach social policy became more powerful (KSSGM 2002: 48).

In 1986, the European Single Act was adopted which emphasizes the European Council's respect for the human rights articles within the European Convention for the Protection of Human Rights and Fundamental Freedoms (1954), and the European Social Charter (1989) and made contribution to the Treaty of Rome (Article 130). Also, the Community Charter of Fundamental Social Rights of Workers was adopted in 1989. The last directive was based on the agreement between the Union of Industries of European Community (UNICE), the European Centre of Public Enterprises (CEEP), European Trade Unions Confederation (ETUC).

The latest time period (**1993- Present**) starts from the Maastricht Treaty (1993), which can be seen as the starting point of the latest era of the European Community social law, and social policies (KSSGM 2002: 49). With this Treaty, as well as the economic union

that was the reason behind the establishment of the EU, the desire for social and political union was emphasized (Ekonomi 1997: 33). Within this treaty, also the Social Policy Agreement takes place which highlights the importance of social dialogue among the social stakeholders (Ulucan 1997: 50).

During this time period we come across the Treaty of Amsterdam (1997), and the other equality directives as significant developments regarding gender equality.

Historically, the visibility of the women's issues was realized by the Treaty of Rome (1957) and its Article 119.<sup>22</sup> For the first time, the French delegation demanded that an equal pay provision be included in the 1957 Treaty of Rome. During this period, France was the only country that possessed equal pay laws, and this provision had been seen as a potential barrier for fair and equal competition by the French employers (Cichowski 2001: 222). During this time, with the exception of France, the equal pay principle was not observed by the Member States. As a consequence of the French delegation's lobbying activities for 'fair competition', Article 119 defining the equal pay principle was finally inserted to the Treaty of Rome. Therefore, to see this article as a consequence of the struggle of the women's movement or desire of member states to give equal pay rights to women would be an unrealistic interpretation. As Hantrais (2000: 13) points out, "women's rights have long been on the European policy agenda, as argued from a desire for equality between the sexes, but as a means of ensuring fair competition between member states". In this regard, Arribas and Carrasco (2003: 22) assert that "the only reason for the inclusion of this principle in the Treaty was the need to ensure the proper functioning of the common Market, not so much a response to concerns about gender

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<sup>22</sup> **Treaty of Rome (1957), Article 119:** Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work. For the purpose of this Article, 'pay' means 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 employment from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
- (b) That pay for work at time rates shall be the same for the same job.

equality”. With this motivation, it was not a surprise that the Article remained only on paper for the member states rather than as an implemented article. None of the member states had paid attention to its domestic policy changes for conforming with this article (Cichowski 2001: 223). As will be elaborated below, this Article allowed the women’s movement to re-shape the European policy to become more women friendly.

In order to facilitate the implementation of Article 119, the EC prepared a ‘Commission Recommendation’, and submitted it to the Council of Ministers, which required a report on the implementation of Article 199 from all the Member States. Following this, the ‘Article 119 Group’ was established as a special commission that consisted of representatives of governments and the Commission, lawyers and statisticians (KSSGM 2002: 75). Finally, as a consequence of ‘intergovernmental resolution’, the political solution was found, which called for the completion of the principle of ‘equal pay’ by 31 December 1964. The Commission reported in 1964 that some improvements had made headway; however, in Belgium, and Netherlands, there was no progress at all.

The fate of the Article changed with activism in conjunction with two events that took place in Belgium. Hoskyns states “along with its importance for developing European sex equality norms, these cases of activism are particularly significant as they paved the way of subsequent inclusion of women activists in the European policy-making process, a process dominated by men at the time and largely closed to direct citizen input” (Hoskyns cited in Cichowski 2001: 223). The rise of women’s political activism in Europe has also strengthened the value of women’s issues in the eye of the Member States’ governments (MacRae 2005: 10).

The first event took place in 1966 at the Herstal arms factory as a strike against unequal pay between men and women workers. In Belgium, the salaries used to be determined by the social sides and with the negotiations at sectorial level. Belgium was not taking measures for the implementation of Article 119, because of this structure. However, in accordance with the Article, a collective work agreement was signed in 1962, which established an eight-degree wage scale for unqualified labourers in the engineering

sector. Women occupied the three bottom degrees, while men could not be allocated under the fourth degree. This discriminatory provision instigated the 1966 strike in Herstal Weapon Factory, which involved approximately 3000 women employees, who were protesting the undervaluation of their work in relation to their male colleagues (Hoskyns 1996; Cichowski 2000). Following this strike, a series of protests in Belgium and other strikes in different factories occurred and trade unions and activist lawyers referred to Article 119 in demanding equality. In the end, the Ministry of Labour became involved, and the single- degree scale and salary increase with equal pay principle were adopted.

The Belgian experience shows that women are able to use international policy for influencing the domestic sphere (Keck and Sikkink 1998). However, in this case, the primary focus on the activity remained at the national level. On the other hand, despite the fact that the Belgian trade unions were the leading actors at the beginning, the movement became a women's movement with the participation of a group of women, and in this way activism of ordinary citizens for changing policies that affected the most was realized (Hoskyns 1996).

Article 119 also fostered another type of activism through litigation. A young Belgian lawyer, Vogel-Polsky and others worked within the ECJ, and tried to expand the scope of the article and provide real situations in which Article 119 was applicable (KSSGM 2002: 77).

Eliane Vogel Polsky published an article at one of the Belgian law journals about the self-executing character of Article 119, according to the European Court of Justice decision on the Lütticke Case,<sup>23</sup> which emphasizes that if the Member States do not obey the requirements of Article 119, individuals can use the petition rights for the international courts (KSSGM 2002: 77). In this way, Polsky encouraged women whose

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<sup>23</sup> For Lütticke Case and the ECJ's decision: Gijlstra, D.J.- Schemers, H.G., - Völker, E.L.M (ed), *Leading Cases on the Law of the European Communities* Europa Institute University of Amsterdam, Kluwer Law and Taxation Publishers, Deventer 1982, p. 196-200.

rights have been violated under this article. Despite her intensive effort, she could not find co-operation ground with the trade unions, but was more successful with the Belgian private sector. In this regard, the Defrenne Case I<sup>24</sup> involving the Belgian State has become a good example for the history of women's movements, which established the direct impact of Article 119. In the subsequent Defrenne cases ( II<sup>25</sup> and III<sup>26</sup>), two Belgian lawyers used a test case against Sabena Airlines. Their challenge was to re-formalize 'pay equalization' in the Belgian collective agreements and to realize domestic recognition of Article 119 (MacRae 2005: 10). These cases have established the direct applicability of European equality provisions and expanded the definition of equal pay.

According to Cichowski (2001: 224), the ECJ has created positive impact on the EU gender equality policies through its decisions throughout the 1970s and 1980s, and contributed to the better implementation of Article 119. She also asserts that "these landmark judicial decisions have formed the basis of a continuous line of jurisprudence, driven primarily by national legal activists that has in effect developed and institutionalized women's policy at the European level". Article 119 opened the door to such an opportunity.

As we can see from the above, the emergence of Article 119 was motivated the need for fair competitive market. None of the member states was willing to change its national legislation in accordance with Article 119. But, as a consequence of the national women's movements and network among different national women's NGOs, Article 119 gained life.

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<sup>24</sup> Case 80/70 Gabrielle Defrenne v Belgian State [1071] ECR 1-445 on the status of social security retirement pensions in relation to equal pay (Defrenne I)

<sup>25</sup> Case 43/75 [1976] ECR 455 Defrenne v Sabena, date of judgement 25 May 1971 (Defrenne II)

<sup>26</sup> [1978] ECR 1365 Defrenne v Société anonyme belge de navigation aérienne Sabena on equal conditions of employment for men and women (Defrenne III): The facts of the case as in cases other

In addition, with the contribution of the ECJ, since 1975 a series of directives have been adopted in order to clarify and develop this basic and limited principle of gender equality. During this process, the EC has also become an active actor for this acceleration of gender equality provisions. Both these institutions have played a major role in promoting de jure equality between men and women. Following the Treaty of Rome Article 119, as a consequence of the ECJ, the EC and women's movement's contributions the first legislative measure adopted by the Council of Ministers in the field of gender equality was the Equal Pay Directive.<sup>27</sup>

Parallel with these judicial achievements such as ECJ's cases, and the equality directives as a part of legislation, the institutionalization for gender equality within the EU also started. In 1981, the Equal Opportunities Unit was established, and in 1984, the EP created the 'Committee on Women's Rights' and the 'Equal Opportunities Unit'.

The work of the Community in the 1980s on gender equality is seen to be more systematic by Arribas and Carrasco (2203: 22). In those years, we also see the adoption of the first Equal Opportunities Programmes (1982- 1985). In addition to the institutional development, the Council of Ministers adopted a series of equality directives.

Although the EU gender equality legislation starts with the Treaty of Rome (1957), the decision making processes were also important regarding gender equality within the EU. Until the 1980s, the European Social Fund and its relevant policies were requiring 'unanimity' of the Council. By the 1980s, this decision-making problem was also solved. In 1986 by the adoption of the Single Act, a better social dialogue was supplied. As its successor, in 1989, the European Social Charter was adopted, which foresees important decisions for workers' health and social security, and the majority of Member States of the European Community signed this Charter (IKV 2003: 6-7).

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<sup>27</sup> Council Directive 75/11/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principles of equal pay for men and women (OJL045, 19/02/1975)

The Maastricht Treaty (1992),<sup>28</sup> which is a turning point for the EU, strengthened the economic dimension of the Union with the establishment of the Economic and Monetary Union. In addition, the Social Protocol was attached to this treaty for the promotion of equal opportunities between women and men in the labour markets. The Social Charter was opened to signature on 3 May 1996 and entered into force in 1999. The revised Charter, which is also an international treaty, has two significant parts relating to gender equality:

- (1) New rights: right to protection against poverty and social exclusion; right to housing; right to protection in cases of termination of employment; right to protection against sexual harassment in the workplace and other forms of harassment; rights of workers with family responsibilities to equal opportunities and equal treatment; rights of workers' representatives in undertakings.*
- (2) Amendments: reinforcement of principle of non-discrimination; improvement of gender equality in all fields covered by the treaty; better protection of maternity and social protection of mothers; better social, legal and economic protection of employed children; better protection of handicapped people. (EC, ETC 163).*

Additionally, the social policies are strengthened by the Amsterdam Treaty (1997), the Lisbon European Council in March 2000 and the Charter of Fundamental Human Rights in 2001.

The Amsterdam Treaty constitutes an important turning-point for gender equality at the EU level, which helped to change the limited vision of the EU social policy (Arribas and Carrasco 2003: 23). The treaty also adopted 'gender mainstreaming' in order to transform

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<sup>28</sup> The relevant articles of the Treaty of Maastricht (1992) with gender equality:

Article 2/1/d: "equality between men and women with regard to labour market opportunities and treatment at work";

Article 6: 1/ Each Member State shall ensure that the principle of equal pay for male and female workers for equal work is applied.

2/ For the purpose of this Article, "pay" means 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 employment, from his employer.

Equal pay without discrimination based on sex means:

(a) That pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement.

(b) That pay for work at time rates shall be the same for the same job.

3/ This Article shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for women to pursue a vocational activity or to prevent or compensate for disadvantages in their professional careers.

general policies to make them gender-sensitive. On the other hand, the conclusions of the Lisbon European Council have created a new framework for the implementation of the European Social Policy. Lönnroth (2002: 2) states that, the Lisbon Strategy provides a combination of economic and social dimensions with its employment policy, social inclusion, and economic policy.

Through these developments, the 1990s marked an important shift in European equality legislation, such as the Pregnant Worker Directive (1992), the Childcare Recommendations (1992), the Working time directive (1993), and the Parental Leave Directive (1996), dealt with gender equality issues (Guerrina 2003: 3).

In employment and social policy, equal opportunities are promoted at the European level through a number of processes and programmes such as: the European Employment Strategy (EES), where gender inequality was combated through measures concerned specifically with promoting gender equality and by mainstreaming gender issues throughout the strategy's other areas of focus (IKV 2003: 11) with the envisagement of equal opportunities for both men and women (Commission 2000: 3); the Social Inclusion process, where the fight against social exclusion and poverty is linked to improving equality for men and women (Walby 2003: 8); the European Social Fund, where the promotion of equal opportunities by improving women's access to the labour market is a specific policy field (Fontaine 2003: 26); the framework programme for equal opportunities which supports the promotion of a better understanding of equal opportunities for women and men and the dissemination of good practice in this area; and, within this framework programme, measures promoting positive action receive financial support (Lönnroth 2002: 6-7).

The current gender equality perspective of the EU still carries the liberal notion. The EU has connected 'equal opportunity' and 'employment' as a consequence of its neo-liberal policy understanding. This policy understanding prefers to see the high rate of female unemployment as a consequence of market error by excluding the existence of 'patriarchy'. Therefore, for the wealth of the EU it is important to increase the rate of



women's participation in the labour market by employing economic policies and strategies. The first task of the EU is to increase the employment opportunities for women. In the EU, the total employment rate for people aged 15-64 was 63.0%, and the employment rate of women was 55.1%. In comparison, the total employment rate in the U.S. and Japan for the same group is 75% percent, while the rate of women's employment in the USA is 67% percent. In 2003, 10.3% of persons aged 15-64 worked part-time in the 25 Member States of the EU (EU25), with the proportion of women (16.5%) working part-time nearly four times higher than for men (4.2%)<sup>29</sup>. In light of these facts, the EU has prepared 'Employment Policy Rules'.

As the fourth basis of the Employment Rules of the European Union, it is accepted that there are social and economic needs for abolishing the discrimination and inequality between women and men as well as the harmful effect on the market because of not using the full productivity capacity of women. Therefore, the member states have been invited to struggle with differences between sex categories, and to reconcile working and family life.

Despite that, the Treaty of Amsterdam aims to include the 'equal opportunity' principle in all policies such as decision-making processes, combating violence against women and promoting women's education. However, we do not come across any of the directives, which take place in the area of employment, and the other areas accepting employment, remains weak.

Within the EU *aquis communautaire*, if we look at the rights for women or the measures for the realization of gender equality, we see that 'equal pay'; 'equal treatment at work (attainment to employment, vocational education, working conditions); 'social rights'; 'rights for working mothers (health and security at working place, night work, maternal leave, permission for pre-delivery health checks, prohibition of discharge/dismissal); are

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<sup>29</sup> [http://epp.eurostat.cec.eu.int/cache/ITY\\_PUBLIC/3-10092004-AP/EN/3-10092004-AP-EN.PDF](http://epp.eurostat.cec.eu.int/cache/ITY_PUBLIC/3-10092004-AP/EN/3-10092004-AP-EN.PDF)

ensured and it shows that the main concern is the gender equality in the area of employment.

### **3.3 THE NORMATIVE FRAMEWORK**

In terms of gender equality, the EU legislation can be divided into two categories: 'primary' and 'secondary law'. In general, Walby (2003: 11) states that "the EU has procedural law concentrated on banning gender discrimination and removing the obstacles to equality; while member states can adopt more radical provisions for equality of women and men". The EU's long lasting gender equality policy starts with the Treaty of Rome (1957)<sup>30</sup> and the jurisprudence of the ECJ, and more recently on a series of Directives on equal treatment for men and women in the workplace.

EU Directives have direct legal effect on EU citizens. Even if a member state has not confirmed its domestic legislation with the Directive, the EU rule is still binding on the courts in that country. In this regard, the EU law has priority. In other words, the member states cannot block the EU provisions in any field, including the rights of women (Walby 2003: 11).

The EU legislation established in the area of gender equality by the equality Directives and the Treaties enforces equal pay for women and men for the same work and work of equal value, equal employment and vocational training, promotion and working conditions, and equal treatment in social security (statutory and occupational schemes). It protects workers in cases of pregnancy and maternity, paternity in member states recognizing such rights, and specific rights of parental leave for fathers and mothers. Protection is ensured against direct and indirect discrimination based on sex, including marital or family status, as well as protection against harassment based on sex and sexual harassment with the new directives, which were adopted after 2000.

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<sup>30</sup> The Treaties of Rome, which set up the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) in 1957.

Victims of discrimination can go to the ECJ and are they are protected by measures against gender discrimination in light of the EU gender equality aquis. With the adoption of the ‘burden of proof’ directive, this obligation is given to the person, who perpetrated the gender discrimination, and the directive requires compensation for the victims.

The EU promotes preventive measures against discrimination by employers, especially in cases of harassment based on sex and sexual harassment. As a consequence, positive actions have also been observed in the EU structure. Moreover, EU legislation establishes a requirement to have bodies for the promotion of equality between women and men in every member state. However, as it has already been illustrated, and will be discussed in further detail, those provisions take place only in the area of employment.

### **3.3.1 Treaties and Constitution**

Although the starting point of the EU gender equality policy legislation was the Treaty of Rome, and in 1992, the Maastricht Treaty, which brought some articles relating to gender equality, the Treaty of Amsterdam can be seen as the milestone.

#### ***3.3.1.1 The Amsterdam Treaty***

The Treaty of Amsterdam (EC Treaty) aims to integrate respect for human rights and fundamental freedoms into the EU legislation. It also strengthens and focuses the European commitment to gender equality and extends the equality principle of Article 141<sup>31</sup> beyond the workplace. As a result, the EU has a general obligation to eliminate

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<sup>31</sup> Article 141 of the EC Treaty:

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this article, "pay" means 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 employment, from his employer.  
Equal pay without discrimination based on sex means:
  - a. that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
  - b. that pays for work at time rates shall be the same for the same job.

inequalities, and to advocate equality between men and women (Defeis 2000: 1). With this treaty, for the first time, equal opportunities for women and men are considered as one of the fundamental aims of the Union. According to Arribas and Carrasco (2003), gender matters had been limited to the area of employment, and were mainly considered as a question of social policy. They claim that this limited concept was changed with the Amsterdam Treaty. However, within this thesis, it is argued that despite this treaty and the other relevant tools (Directives, The Community Programme on Gender Equality); the expanding legislation could not bring an effective implementation for struggling with gender inequalities.

A series of changes were introduced with this treaty especially in the field of social policy. Moreover, Article 141 (Article 119 of the Treaty of Rome) was also subject to amendment in Amsterdam with small changes. The gender equality related articles of the treaty are Article 2, 3, 13, 136, 13 and the most important one, Article 141, requires the adoption of the ‘equal pay for work of equal value’ concept. During the development period of Article 119, we have seen the ECJ’s similar sentences and also the Directive of Equal Pay’s statements. However, the Treaty of Amsterdam supplies a primary law for ensuring gender equality in the EU legislation (Arribas and Carrasco 2003: 23).

Article 141 of the EC Treaty is the most powerful provision of its social chapter. It is the only article that imposes a positive duty on member states, and it has both economic and social dimensions. In addition, Article 11 has been the subject of the EU legislation, which has led to an extensive body of case law. As it can be summarized, “under the

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3. The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

constitutional structure of the EU, any state court or tribunal of a Member State, and even individuals can refer a question to the ECJ for a preliminary ruling” (Defeis 2000: 2)

Another important contribution of the Amsterdam Treaty can be seen as the new article 13, which includes eight specific grounds on which discrimination is prohibited as follows; sex, race or ethnic origin, religion or belief, disability, age or sexual orientation. Article 13 Directives also introduce the new Equal Treatment Directive, which defines the ‘direct’ and ‘indirect’ discrimination (Arribas and Carrasco 2003: 23).

The Treaty’s Article 2 requires realization of equality between women and men with the other Community targets, while Article 3(2) asserts

*...in all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women.*

Article 136 calls Member States to combat exclusions, and Article 137/1/i requires equality between men and women with regard to labour market opportunities and treatment at work.

With these articles, the constitutional insurance of gender equality was realized. However, the question of “whether this treaty exercises will matter- whether it will actually influence policy outcomes in the member states” remains as yet unanswered (Pollack and Hafner cited in EUSA 2002: 1).

### ***3.3.1.2 The Charter of Fundamental Social Rights of Workers (8-9 December 1989)***

Regarding gender equality, the Charter of Fundamental Social Rights of Workers (1989), and the European Social Charter with its revised version in 1996 have some articles,

which are Article 8 (Part I)<sup>32</sup>, Article 4/ 3<sup>33</sup>, Article 8/1, 4, and 5<sup>34</sup>, Article 20<sup>35</sup>, and Article 27<sup>36</sup> that focus on ‘women’s rights’ and gender equality.

### ***3.3.1.3 The Charter of Fundamental Rights of the EU (7-9 December 2000)***

In 2000, in Nice, an EU Charter of Fundamental Rights was proclaimed by the EP, the Council and the EC. Although, the Charter has a political character, it is not binding (Arribas and Carrasco 2003: 24). Today, the Charter’s legal status is still uncertain.

In Chapter 3 of the Charter under the heading ‘Equality’, Articles 21 and 23 refer to the principles of non-discrimination and to equality between men and women respectively. Article 21(1) draws on Article 13 of the EC Treaty, prohibiting any discrimination, on any grounds. Article 23, based on Articles 2, 3(2) and 141(3) of the EC Treaty, establishes that equality between women and men must be ensured in every field,

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<sup>32</sup> Part 1/ Article 8 Employed women, in case of maternity, have the right to a special protection.

<sup>33</sup> Article 4 / 3 The right to a fair remuneration (to recognise the right of men and women workers to equal pay for work of equal value;

<sup>34</sup> Article 8 : The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1 to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;

2 to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

3 to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

<sup>35</sup> Article 20: 1 it is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor’s benefit, may be excluded from the scope of this article.

2 Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this article.

<sup>36</sup>Article 27: It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms “dependent children” and “other members of their immediate family who clearly need their care and support” mean persons defined as such by the national legislation of the Party concerned.

including employment, work and pay, and admits the validity of positive action in favour of the underrepresented sex. Finally, article 33 of the Charter contains the right to reconciliation of professional and family life<sup>37</sup>

### ***3.3.1.4 The European Constitution***

On 29 October 2004 in Rome, Heads of State or Government of 28 European countries signed the Treaty establishing a Constitution for Europe, which was based on an initial draft prepared by the European Convention and finalized and adopted by the Heads of State or Government on 18 June 2004.

The European Constitution is divided into four parts. Part I defines the European Union, its values, its objectives, its powers, its decision-making procedures and its institutions. Part II contains the ‘Charter of Fundamental Rights’. Part III describes the policies and functioning of the European Union. Part IV contains the final provisions, including the procedures for adopting and revising the European Constitution<sup>38</sup>.

It consists of all the existing provisions on equality between women and men (equality between women and men as one of the Union’s objectives in article I-3, gender mainstreaming clause in article III-116, legal base for combating discrimination on other grounds than nationality in article III-124, principle of equal pay for female and male workers in article III-214), and it also provides for a number of improvements.

EWL’s (2005:1) analysis and interpretations on the positive dimensions of the European Constitution, regarding gender equality is as follows:

- *In article I-2, equality is mentioned among the Union’s values, article I-2 mentions equality between women and men as an element characterizing our model of society.*
- *The Charter of Fundamental Rights is integrated in the European Constitution.*

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<sup>37</sup> The rights included in this Article draw on Council Directive 92/85/EEC, and on directive 96/34/EC.

<sup>38</sup> [http://www.unizar.es/euroconstitucion/Treaties/Treaty\\_Const.htm](http://www.unizar.es/euroconstitucion/Treaties/Treaty_Const.htm)

- *The gender-mainstreaming principle, article III-II6, is one of these horizontal articles; it states, 'In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between women and men.'* As gender mainstreaming will apply to all policies of the EU in Part III of the European Constitutional Treaty the scope of gender mainstreaming has thus been extended to cover also Foreign and Security Policy and Justice and Home Affairs.
- *Article III-118 contains a new provision of general application to combat discrimination based on other grounds than nationality.*
- *'Gender mainstreaming' in the field of non-discrimination based on other grounds than nationality. Article III-II8 reads 'In defining and implementing the policies and activities referred to in this Part, the Union shall aim to combat discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation.'*
- *According to article III-124, paragraph 2, it becomes easier to establish basic principles for Union incentive measures to support Member State action in the field of non- discrimination based on other grounds than nationality.*
- *Article III-267 states that common immigration policy European laws or framework laws shall establish measures in particular areas, one area being (article III-267 paragraph 2 d), 'combating trafficking in persons, in particular women and children'. Article III-271 (1) states that European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension and one of these areas of crime is 'trafficking in human beings and sexual exploitation of women and children'.*

Despite all these positive developments, for most women's NGOs within the EU, and according to the resolution of EWL on 21/2/2005 (EWL, Communication Strategy for the European Constitution), it is stated that the most disappointing part of the Constitution is determined as the Article on the Union's Values, because what they have been lobbying for as 'equality between women and men' is not stated in the first sentence as one of the Union's values, rather it is mentioned in the second sentence.

### **3.3.2 The European Union Equality Aquis: The Equality Directives**

The fourteen equality directives that Turkey is required to implement take part within the EU gender equality aquis. Those directives, which are 'laws' adopted at the European level, must be transported into national legislation in the Member States (a national law that contravenes a Directive must be changed).

By the 1960s, we come across the feminist movement in continental Europe. In addition to the acceleration of this movement, with the help of the ECJ's relevant rulings in the gender equality field, the European Union could manage to realize its legislation in the 1970s. From the mid-1970s onwards there have been a series of Directives that spelt out a



series of far reaching legal rules to implement the equal treatment of women and men in employment and employment-related matters (Hantrais 1995: Hoskyns 1996 cited in Walby 2003: 11).

### **Equal pay**

*Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women Official Journal L 045 19.02.75 p.19, Incorporated by OJ L 001 03.01.94 p.484 10.*

As it was stated earlier, because of this, the Rome Treaty Article 119 remained a dead letter for almost 20 years, until 1975 when the Council Directive on ‘work for equal value’ was adopted. This first Directive on equality between women and men expands the principle of equal pay, which was adopted by the Article 119 of the Treaty of Rome (which became Article 141 of the Treaty of Amsterdam). The objective of this directive can be defined as to reinforce the basic laws with standards aimed at facilitating the practical application of the principle of equality to enable the protection of all employees in the Community.

The directive provides that equal pay must be the rule, not only for the same job, but also for work of equal value. EWL (2003: 1) states that “practical effect of this Directive arises from the fact that it requires the Member States to introduce into their internal legislation the measures necessary to enable female workers who believe they have been discriminated against to take legal action to obtain their rights”. The Member States have to introduce this directive into their internal legislation measures.<sup>39</sup>

For achieving, ‘equal pay’ as a result’, the elimination of all sex-based discrimination for the same work or for work to which equal value should be realized (Sloat 2004: 20), thus the EU should remove all the barriers from the collective agreements. However, the determination of ‘work of equal value’ is missing. As EWL (2003: 1) states, the EC has

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<sup>39</sup> <http://www.womenlobby.org/Document.asp?DocID=621&tod=11490>

developed a system of classification, but the comparison of occupations and the meaning of 'work of equal value' has remained as controversial.

Despite that this directive focuses on the first provisions for gender equality as it took place within the Treaty of Rome (1957) in the EU legislation, 'equal pay for equal work of equal value' has not been achieved yet.

### **Equal treatment as regards access to employment**

*The 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 Official Journal L 039 14.02.76 p.40, Derogation in 194N, Incorporated by OJ L 001 03.01.94 p.484.*

This directive aims to ensure equal treatment for men and women in terms of their access to employment, vocational training and career advancement, and working conditions. There should be no discrimination on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts at all levels of the hierarchy.

The Directive calls the Member States for elimination of discrimination on ground of sex in the conditions of vocational guidance, basic and advanced vocational training, and retraining (Sloat 2004: 24). With this directive, for the first time we encounter 'authorized affirmative action' (EWL 2003: 1).

However, as EWL (2003: 2) states, 'equal treatment' concept remains unclear, and in some cases the employer can defend gender-based discrimination due to the nature of the context of the activity.

For the practical results of the Directive, the Member States should ensure the proper compensation for the victim in case of sexual harassment or other incidences of gender discrimination. Therefore, as Sloat (2004: 25) emphasizes, for creating equal conditions

for women and men, the directive does not require ‘affirmative action’ for the Member States.

**Equal treatment with regard to statutory social security schemes**

*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 Official Journal L 006 10.01.79 p.24, Incorporated by OJ L 001 03.01.94 p.484.*

The Directive applies to the working population, including workers whose activity is interrupted (by illness, accident or unemployment), persons seeking employment, retired or invalid workers and self-employed persons. The principle of equal treatment means that “there should be no discrimination on grounds of sex, in particular as concerns: the scope of the schemes and the conditions of access thereto, the obligation to contribute and the calculation of contributions, and the calculation of benefits and the conditions governing the duration and retention of entitlement to benefit” (Sloat 2004: 28).

This Directive introduces the principle of equal treatment in the area of social security, which has been marked by tradition and the traditional image of men as heads of households who are often entitled to higher benefits (EWL 2003: 3).

**Equal treatment with regard to occupational social security schemes**

*Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes Official Journal L 225 12.08.86 p.40, Incorporated by OJ L 001 03.01.94 p.484. Amended by Council Directive 96/97/EC of 20 December 1996. Amended by OJ L 046 17.02.97 p 20.*

A few years after the adoption of Directive 79/7, the Council of Ministers extended the principle of equal treatment to professional social security systems. Professional systems are defined as “those that do not fall within the scope of application of Directive 79/7 created by a collective employment agreement adopted within the framework of a

company, a grouping of companies, a sector or a group of sectors and aimed at complementing the legal scheme or substituting for it” (EWL 2003: 4).

As with the previous directive, this secondary law piece applies to the working population, including self-employed workers, workers whose activity is interrupted (by illness, maternity, accident or involuntary unemployment), persons seeking employment, and retired and disabled workers. It adopts the same benefits for women and men as the Directive 79/7/EEC, however, it includes a provision enabling men and women to benefit from a flexible retirement age system (Sloat 2004: 31).

### **Equal treatment for self-employed and their assisting spouses**

*Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood Official Journal L 359 19.12.86 p.56, Incorporated by OJ L 001 03.01.94 p.484*

As Sloat (2004: 33-34) asserts, this Directive defines “ ‘self-employed workers’ as ‘all persons gainfully pursuing a gainful activity for their own account’, and covers their spouses who are not employees or partners but habitually participate in the worker’s activities, and requires member states to ensure equal treatment in the establishment of a business or other self-employed activity, ensure that the conditions for the formation of a company are not more restrictive for spouses working together than between unmarried persons, allow spouses to join a contributory social security scheme voluntarily if they are not protected under the self-employed workers’ social security scheme, examine under what conditions female self-employed workers and the wives of self-employed workers may have access to national social services during pregnancy or motherhood, and encourage the recognition of spouses’ work”.

In light of EWL’s (2003: 5) interpretation, the directive re-emphasizes the principle of equal treatment in general terms, but does not foresee adequate obligation for the

Member States. For example it does not provide any provision for pregnancy or maternity leave for self-employed workers and their assistants.

**Protection of Pregnant Women, women who have recently given birth and women who are breastfeeding**

*Council Directive 92/85/EEC of 19 October 1992 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) Official Journal L 348 28.11.92 p.1*

The directive takes minimum measures to protect the health and safety of pregnant workers, women workers who have recently given birth, and women who are breastfeeding, by considering them to be a specific risk group. Regarding this directive, the EC has published guidelines “on the assessment of the chemical, physical and biological agents and industrial processes considered dangerous for the health and safety of these workers”, however, rather than a strong gender equality provision, the directive carries a ‘protective’ character (Sloat 2004: 36-37).

The directive requires that women may not be required to work at night during their pregnancy or during a period of time following leave subsequent to the birth of their child, the length of which is specified by legal bodies. In general, pregnant workers are entitled to uninterrupted leave of 14 weeks, which they may take before and/or after the birth in accordance with national legislation.

**Organization of working time**

*Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time Official Journal L 307, 13/12/1993 p. 0018 - 0024, Amended by Directive 2000/34/EC of 22 June 2000 of the European Parliament and of the Council. Amended by OJ L 195 01.08.00 p.41*

The main objective of this directive is the adoption of minimum requirements covering certain aspects of the organization of working time connected with workers' health and safety. The directive defines the terms 'working time', 'rest period', 'night work', 'night worker', and 'shift work'. The amendment adds the terms 'adequate rest', 'mobile worker', and 'offshore work'.

According to the directive, Member States shall take measures to ensure that workers enjoy: the minimum daily rest period of eleven consecutive hours per period of 24 hours; the minimum period of one rest day on average immediately following the daily rest period in every seven-day period; for a daily period of work of more than six hours, a break as defined by the provisions of collective agreements, agreements concluded between social partners or national legislation; not less than four weeks' annual paid holiday, qualification for which shall be determined by reference to national practice/legislation; an average weekly working period of not more than 48 hours, including the overtime for each seven-day period. In addition, normal hours of work for night workers must not exceed an average of eight hours in any 24-hour period.

### **Parental leave**

*Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by Union of Industries of European Community (UNICE), European Centre of Public Enterprises (CEEP) and European Trade Unions Confederation (ETUC), Official Journal L 145, 19/06/1996 p. 0004 - 0009, CONSLEG - 96L0034 - 16/01/1998 - 11 p., Amended by OJ L 010 16.01.98 p.24*

Council Directive 96/34/EC on parental leave, adopted on 3 June 1996, grants a period of leave of a minimum of three months to workers, either men or women, for the birth or adoption of a child (EWL 2003: 8). The directive can be seen as a part of the new dimension within the EU gender equality regime, because for the first time the role of men in reconciling the family and working life was introduced.

The directive establishes minimum requirements in respect of parental leave and unforeseeable absence from work (Sloat 2004: 44). The directive is seeking to reconcile professional and family responsibilities and promote equal opportunities and treatment for women and men, however, still takes place within the area of employment.

The framework agreement on parental leave adopted on 14 December 1995 between the general cross-industry organizations (UNICE, CEEP and the ETUC), and this directive became obligatory for the Member States. If we look at the brief summary of the directive, we see that above-mentioned agreement provides for: “male and female workers to have individual entitlement to parental leave following the birth or adoption of a child, enabling them to take care of the child for at least three months; the conditions of access to and procedures for applying for leave; parental leave to be defined by law and/or collective agreement in the Member States; the Member States and/or social partners to take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave; workers to have the right to return to the same job at the end of parental leave or, if that is not possible, to an equivalent or similar job consistent with their employment contract; the maintenance of rights acquired or in the process of being acquired by the worker on the date on which parental leave starts; and the Member States and/or the social partners to take the necessary measures to allow workers to take time off from work for unforeseeable reasons arising from a family emergency in the event of sickness or accident making the immediate presence of the worker indispensable” (Sloat 2004: 44).

### **Burden of proof in sex discrimination cases**

*Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex Official Journal L 014 20.01.98 p.6, Amended by OJ L 205 22.07.98 p.66*

The directive requires member states to take such measures in accordance with their national judicial systems to ensure that “where the plaintiff establishes, before a court or

other competent authority, facts from which discrimination may be presumed to exist, it is for the defendant to prove that there has been no contravention of the principle of equality” (Sloat 2004: 48).

EWL (2003: 9) states that the general principle according to which the burden of proof falls on the complaining party generally raises insurmountable problems as concerns the proof. In this regard, “the relevant evidence is usually in the employer’s possession and indirect discrimination is difficult to prove”.

The Directive establishes the definition of indirect discrimination for the first time. With the Treaty of Amsterdam, we see that for the first time Article 13 legally approaches the concept of general discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, but according to EWL (2003) this Article doesn’t have direct effect and it should be seen only as a general principle, which invites the EU to enact legislation unanimously. Therefore, it can be said that, with the adoption of this directive besides the general principle for anti-discrimination, the definition of indirect discrimination was also realized.

### **Framework agreement on part-time work**

*Council Directive 97/81/EC of 15 December 1997 concerning the Framework agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex : Framework agreement on part-time work Official Journal L 014 , 20/01/1998 p. 9 - 14*

The Directive implements the framework agreement on part-time work concluded on 6 June 1997 by the general cross-industry organizations (UNICE, CEEP, ETUC), and seeks to eliminate discrimination against part-time workers, improve the quality of part-time work, facilitate the development of part-time work on a voluntary basis, and contribute to the flexible organization of working time in a manner that takes into account the needs of employers and workers.



The Directive states that “part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part-time, nor should a worker’s refusal to transfer from fulltime to part-time work or vice versa constitute in itself a valid reason for dismissal” (Sloat 2004: 51).

### **Anti-discrimination and equal treatment**

*Council Directive prohibiting discrimination in employment on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation (2000/43/EC of 27 November 2000).*

This Directive ensures Article 13 of the Treaty of Amsterdam (1997) and expands the scope of ‘anti-discrimination’ as well as the ‘equal treatment’ vision of the EU.

### **General Framework on Equal Treatment**

*Establishing a general framework for equal treatment in employment and occupation (2000/78/EC) Directive*

This Directive aims to create a framework for equal treatment. However, the main concern is still for the area of employment.

### **Equal treatment: Amendment of the Council Directive 76/207/EEC**

*Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC 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 Official Journal L 269, 05/10/2002 P. 0015 – 0020*

The 2002 amendment to the Equal Treatment Directive, Directive 2002/73/EC, introduces the concepts of harassment related to sex and sexual harassment and states that they are forms of discrimination in violation of the equal treatment principle.

### **Equal treatment for access to and supply of goods and services**

*The Council of Ministers have adopted the latest equality directive, which is Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.*

The purpose of this Directive is to lay down a framework for combating discrimination based on sex in access to and supply of goods and services, with a view to putting into effect in the Member States the principle of equal treatment between men and women. In addition, the Directive defines the following concepts

*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;*

*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;*

*Harassment: where an 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*

*Sexual harassment: where any form of unwanted physical, 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.'*

### **3.3.3. The Council Resolutions, Recommendations and Conclusions**

Because of the limited scope of the thesis, only the dates and names of the resolutions, recommendations and conclusions of the Council will be displayed regarding 'gender equality', which are:

12 July 1982	Council Resolution on the promotion of equal opportunities for women
7 June 1984	Council Resolution on action to combat unemployment amongst women
3 June 1985	Resolution of the Council and of the Minister for Education, meeting within the Council, containing an action programme on equal opportunities for girls and boys in education
24 July 1986	Second Council Resolution on the promotion of equal opportunities for women
16 December 1988	Council Resolution on the reintegration and late integration of women into working life
29 May 1990	Council Resolution on the protection of dignity of women and men at work
22 June 1994	Council Resolution on the promotion of equal opportunities for men and women through action by the EU
6 December 1994	Resolution of the Council and of the representatives of the Governments of the Member States by women in an employment-intensive economic growth strategy within the EU
27 March 1995	Council Resolution on the balanced participation of men and women in decision-making
5 October 1995	Resolution of the Council and of the representatives of the Governments of the Member States, meeting within the Council on the image of women and men portrayed in advertising and the media
2 December 1996	Council Resolution on mainstreaming equal opportunities for men and women into the European Structural Funds
4 December 1997	Council Resolution concerning the report on the state of women's health in the European Community
20 May 1999	Council Resolution on women and science
29 June 2000	Resolution of the Council and of the Ministers for employment and social policy, meeting within the Council on the balanced participation of women and men in family and working life

**Figure 3.1** The Council Resolutions on equality between men and women

**Source:** *Kadının Statüsü ve Sorunları Genel Merkezi (KSSGM/ General Directorate for Status and Problems of Women (2002), "Avrupa Topluluğu'nun Çalışma Yaşamında Kadın- Erkek Eşitliğine Dair Düzenlemeleri ve Türkiye", September, Ankara, p.103*

13 December 1984	Council Recommendation on the promotion of positive action for women (84/635/EEC)
31 March 1992	Council Recommendation on child care (92/241/EEC)
2 December 1996	Council Recommendation on the balanced participation of women and men in the decision-making process

**Figure 3.2** The Council Recommendations on equality between men and women

**Source:** *Kadının Statüsü ve Sorunları Genel Merkezi (KSSGM/ General Directorate for Status and Problems of Women (2002), "Avrupa Topluluğu'nun Çalışma Yaşamında Kadın- Erkek Eşitliğine Dair Düzenlemeleri ve Türkiye", September, Ankara, p.119*

26 May 1987	Council Conclusions on protective legislation for women in the Member States of the European Community
31 May 1990	Conclusions of the Council and the Ministers of Education meeting within the Council on the enhanced treatment of equality of educational opportunity for girls and boys in the initial and in-service training of teachers

**Figure 3.3 The Council Conclusions on equality between men and women**

*Source: Kadının Statüsü ve Sorunları Genel Merkezi (KSSGM/ General Directorate for Status and Problems of Women (2002), “Avrupa Topluluğu’nun Çalışma Yaşamında Kadın- Erkek Eşitliğine Dair Düzenlemeleri ve Türkiye”, September, Ankara, p.119*

### 3.3.4 Special Programmes for ‘Gender Equality’

#### 3.3.4.1 Gender Equality Framework Strategy

The Framework Strategy “sets out the Commission’s ideas towards a strategy on gender equality over the next five years. Its purpose is to establish a framework for action within which all Community activities can contribute to attain the goal of eliminating inequalities and promoting equality between women and men, as set out in Article 3(2) of the Treaty”<sup>40</sup>.

The main objectives can be summarized as follows;

- Promoting Gender Equality in Economic Life (labour market policies)
- Promoting Equal Participation and Representation (parity democracy)
- Promoting Equal Access and Full Enjoyment of social Rights for Women and Men (social protection, health)
- Promoting Gender Equality in Civic Life (human rights, gender related violence, trafficking)
- Promoting Change of Gender Roles and Stereotypes (in education, culture, media)

<sup>40</sup> [http://europa.eu.int/comm/employment\\_social/gender\\_equality/framework/strategy\\_en.html#demo](http://europa.eu.int/comm/employment_social/gender_equality/framework/strategy_en.html#demo)

Finally, the Programme adopts the following tools and mechanism in order to reach the aims that were given above:

- Reinforcing co-operation with the EU national gender equality authorities and co-ordination of the activities
- Reinforcing Commission structures
- Reinforcing co-operation among the Community institutions
- Strengthening partnership
- Ensuring indicators and benchmarks

This Framework Strategy takes place under the direction of the EC. Besides, each Commission Delegation in the Member States is required to produce an annual work programme indicating what actions it intends to undertake towards the above objectives. Meanwhile, both the Commission and the European Women's Lobby have, wherever possible, sought to translate the gender equality principles of the Amsterdam Treaty into a legal framework (EUSA 2002: 2).

In light of this information, particularly regarding the programme's objectives, we see that the European Union targets to expand its boundaries outside the area of employment in terms of gender equality. Regarding this policy, within this chapter, besides the equality directive- related statistics, the current situation of women in politics, violence against women, and women in education will be discussed.

#### **3.3.4.2. Action Programme**

The European Union gender equality policies' 'action programme' can be determined as the gender budgeting part of this regional regime.

This Programme "aims specifically at promoting gender equality, it co-ordinates, supports and finances the implementation of horizontal trans-national activities under the fields of intervention of the Community Framework Strategy on Gender Equality (gender equality in economic and civil life, equal representation, social rights and changes in

gender roles and stereotypes)” (EWL 2004: 23). It is also stated that for the 2001-2005 time period the budget was EUR 50 Million, while the financial framework or the implementation is set at EUR 9 million for the period 2004-2006.

The Programme aims to promote gender equality, in particular by providing assistance and support for the Community Framework Strategy, by coordinating, supporting and financing the implementation of transnational activities under the fields of intervention of the Community framework strategy on gender equality as it was given above. Like the other programmes and grants, the Action Programme is based on Article 3 of the Treaty of Amsterdam, which calls Member States for elimination of inequalities and to promote equality between men and women.

The EU defines<sup>41</sup> the programme’s objectives as follows;

- Promote and disseminate the values and practices underlying gender equality.
- Improve the understanding of issues related to gender equality, including direct and indirect gender discrimination and multiple discriminations against women, by evaluating the effectiveness of policies and practice through prior analysis, monitoring their implementation and assessing their effects.
- Develop the capacity of players to promote gender equality effectively, in particular through support for the exchange of information and good practice and networking at Community level.

On the other hand, “the Structural Funds (European Regional Development Fund, European Agricultural Guidance and Guarantee Fund, European Social Fund, and Financial Instrument for Fisheries Guidance) are the main EU tools for re-distribution of resources between regions and between different groups in the population”<sup>42</sup>. In 1999, the structural funds and gender mainstreaming strategy were strengthened (EWL 2003: 12).

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<sup>41</sup> [http://europa.eu.int/comm/employment\\_social/gender\\_equality/actions/index\\_en.html](http://europa.eu.int/comm/employment_social/gender_equality/actions/index_en.html)

<sup>42</sup> [http://europa.eu.int/comm/structural\\_funds/index\\_en.html](http://europa.eu.int/comm/structural_funds/index_en.html)

### **3.4. THE POLICY FRAMEWORK**

Within this chapter, the economic based structure of the EU and its parallel policies have been discussed earlier, where it is emphasized that the EU's main structure is based on the assumption that if equal opportunities can be supplied to women and men, gender equality can be realized within the societies. On the other hand, since the Treaty of Rome (1957), we see policy changes in the field.

If we look at the historical development of the equality understanding and its policies within the EU; at the beginning, we see that 'equality of opportunity' was understood only as equal pay and equal treatment in the workplace, and to reach these targets, affirmative action and positive discrimination policies have been applied. On the other hand, by 1996 'the gender- mainstreaming' policy was introduced to the EU structure.

#### **3.4.1. Equal Treatment, Affirmative Action, and Positive Discrimination**

Since the inception of EU gender equality policies and the establishment of the relevant tools in this field, 'equal right and treatment' has been accepted and almost exclusively concerned with the area of employment. In this framework, according to Rees (1998: 41), three main gender inequalities exist, and the EU has been struggling to abolish occupational segregation, which is determined as "horizontal segregation that refers to occupational segregation; vertical segregation (glass ceiling), which means that even though women and men work at the same sector, their statuses and levels are different; contractual segregation, which refers to full-time and permanent job contracts for men, while part-time and temporary (atypical) contracts for women".

The understanding that sees 'equal opportunity' as 'equal treatment' was first introduced by Mary Wollstonecraft, and the basic assumptions of liberal feminist tradition (KSSGM 2002: 51). This approach has been discussed within Chapter II.

Rees (1998) sees the equal opportunity policies as necessary tools. However, she also states that "they are insufficient for bringing gender equality into societies; because only

one category of women, who are white, middle or upper class, educated, mainly working women can benefit from these policies” (Rees 1998: 31). She adds that “the equality aquis that was prepared with ‘equal treatment’ approach could not prevent occupational segregation and gender pay gap, even, some of the action programmes have been blamed for protection and development of the status quo between women and men” (Rees 1998: 120).

On the other hand, positive (affirmative) action and positive discrimination have been realized with the awareness that ‘equal treatment’ policies are insufficient. Therefore, the focus point of these policies is to equalize the starting point of women and men, and by this way to contribute to fair competition between them. In order to utilize these policies, the first step should be determination and elimination of women’s disadvantages, particularly in education and work life. However, this approach is not for changing the existing models, but to strengthen women’s position for competition and promotion (KSSGM 2002: 53). Therefore, “these policies have been criticized for supporting middle or upper class women and do not contribute to change the existing situation” (Rees 1998: 37).

On the other hand, ‘positive discrimination’ can be seen as the natural outcome of ‘positive action’. This approach can be determined as one step forward from positive action, which foresees specific mechanisms for an underrepresented group of women, and aims to change the status quo (KSSGM 2002: 53). As it is stated within CEDAW Article 4.2, these models also require temporary special measures, which means that with the elimination of the existing gender inequalities or discriminations, these policies will also be ended.

At the European level, we come across the ‘fair play’ movement, which started in the United Kingdom but has also been adopted particularly in Belgium, the Netherlands, and Italy. ‘Fair play’ requires the determination of the problems that women face with child and elderly care, recruitment and promotion for work, and the abolishment of these



problems in order to develop the abilities of women (KSSGM 2002: 53). In these countries, the employer, who adopts this 'fair play' strategy gains governmental support.

Although the necessity of these policies has been stressed, they have been also criticized for creating additional 'inequalities'. These kinds of policies are not welcomed and 'positive discrimination' at the workplace is forbidden in the United Kingdom (Rees 1998: 37). In addition, the Kalanke Decision<sup>43</sup> of the ECJ shows that this resistance exists at the EU level. On the other hand, despite the ECJ's rejection of automatic, unconditional, and strict quotas, Communication to the Council and the EP shows that the Member States can adopt any kind of positive discrimination tools including flexible quotas.<sup>44</sup> On the other hand, the Marshall Case<sup>45</sup> (1997) emphasizes that in case of the same level of qualification of women and men candidates, positive discrimination cannot be applied against men, the objective criterion should be applied.

### **3.4.2. Gender Mainstreaming**

The principle of mainstreaming was officially included in the Treaty on the EU with the Amsterdam revisions. But, before the adoption of the Treaty, the EU has played a very active role in the promotion and implementation of gender mainstreaming since the early 1990s. For the first time, 'gender mainstreaming' strategy was used by the EU through

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<sup>43</sup> In the 1995 *Kalanke* decision, the ECJ was asked to consider a German attempt to implement positive action measures. In that case, a German landscaper working for the Bremen Parks Department was passed over for promotion in favor of a female colleague. Both candidates were found to be qualified for the position, but priority was given to the female candidate under a Bremen law which required that, in such "tie break" situations, priority must be given to the woman for positions where women do not make up at least half of the staff at that level. The ECJ struck down the law, holding that national regulations guaranteeing automatic promotion of women who hold qualifications equal to their male counterparts exceed the requirements of the Equal Treatment Directive and constitute impermissible discrimination ([http://www.hrcr.org/safrica/equality/Marshall\\_LandNordhein-Westfalenhtm.htm](http://www.hrcr.org/safrica/equality/Marshall_LandNordhein-Westfalenhtm.htm)).

<sup>44</sup> Equal Opportunities for Women and Men in the European Union, Annual Report 1996, Employment and Social Affairs, Luxembourg 1997

<sup>45</sup> *Marshall v. Southampton and South West Hampshire Area Health Authority (No. 2)*, Case C-271/91 (1993), ECR I-4367, para. 24; *Dekker v. Stichting voor Jong Volwassenen (VJW) Plus*, Case C-177/88 (1990), I-ECR 3941, para. 23; *Von Colson and Kamman v. Nordrhein-Westfalen*, Case 14/83 (1984) ECR 1891, para. 23.

the Third (1991-1995) and Fourth (1996-2000) Equal Opportunities Action Programmes, which had already advocated the inclusion of the gender perspective in all the policy areas and activities of the EU. Both programmes offered support to projects in order to find working models to promote gender equality efforts in the Member States, including developing ways of integrating the gender perspective into all policy areas.

At the Fourth World Conference on Women (Beijing 1995) the EU was emphasizing the importance of gender mainstreaming and was pushing the EU for realization of the commitments of the Beijing PfA. As mentioned above, in 1996 the Commission issued a Communication on “Incorporating equal opportunities for women and men into all Community policies and activities” in which it stated that mainstreaming involves

*...not restricting efforts to promote equality to the implementation of specific measures, but mobilizing all general policies and measures specifically for the purpose of achieving equality by actively and openly taking into account at the planning stage their possible effects on the respective situations of men and women.’ (Commission of the European Communities 2000: 5)*

The gender mainstreaming strategy, with the EU perspective ‘policy’, does not replace ‘positive action’ measures or policy, but can be seen as complementary, where the Community for Framework Strategy on Gender Equality (2001-2005) brings together all the different EU initiatives and programmes, it also helps for designing to promote gender equality with an across-the-board mainstreaming approach (EUSA 2002: 1).

From the EU perspective, (EUSA 2002: 2) “the decision for gender mainstreaming was taken by the EU in 1996 to introduce gender mainstreaming.

The effects of the gender mainstreaming approach of the Commission were particularly noticeable in the Fourth Equal Opportunities Action Programme, which was clearly inspired by the 1995 UN Beijing Conference on Women. The Programme aimed to promote the integration of equal opportunities for women and men into the preparation, implementation and monitoring of all policies and activities at Community, national, regional and local level. But the main development with regard to mainstreaming came

with the Treaty reforms introduced in Amsterdam. In the Amsterdam Treaty, the concept of gender mainstreaming was introduced for the first time into the text of the Treaties. This strategy has become visible by Article 2, 3, and 13 of the Treaty of Amsterdam (1999) that emphasize the importance of including equality between men and women as one of the objectives of the process of European integration (Hantrais 2000: 117; Shaw 2001: 3). These Articles formalize the obligation of the Community to integrate the gender perspective as a horizontal objective affecting all areas. The integration of equal opportunities for men and women into all policies and programmes is therefore “an obligation incumbent upon Member States, their regions and local entities, as well as Community institutions” (Guerrina 2003).

With the aim of furthering its mainstreaming policy, on 7 June 2000 the Commission adopted the first comprehensive Framework Strategy on Gender Equality, as covering all aspects of the question: equality in economic, social, and civil life, equality in decision-making, and gender roles and stereotypes. It affects all Community policies and all Commission services. In addition, it combines measures for fostering gender equality with the mainstreaming of gender issues in all Community policies. Mainstreaming has thus become a central element in the Commission’s new Framework Strategy. In line with the integrated approach, the Strategy makes use of all existing tools and structures, while supporting the development of new ones: monitoring, indicators and benchmarking.

However, besides the danger of ‘gender mainstreaming’ that was mentioned within *Chapter II*, Shaw (2000:3-4) explains that “the Amsterdam revisions, can be said to constitutionalize the guaranteed of proactive policy-making to eliminate inequality, a markedly different guarantee to that of bare equal treatment or on-discrimination”. This approach is expected to be able to move beyond the limited focus of the EU gender regime and to “overcome the biases inherent within the liberal paradigm” (Shaw 2000: 3-4). Shaw also adds that as policy tool, “gender mainstreaming fails to challenge the male bias of the public sphere”.

The new opportunities as well as new strategies of ‘gender-mainstreaming’ have also been highlighted by the European feminists. According to EUSA’s review (2002: 2), the major scepticism comes from the EWL, who accepts the transformative potential of gender mainstreaming, but is also concerned about the privileged status of women’s rights within the context of EU social policies. Also, as it was mentioned within the *Chapter II*, the other dilemma is the possibility of marginalization of gender mainstreaming. If we look at the latest three Directives on ‘non-discrimination’, we can easily say that they are right to have this fear.

### **3.4.3 Policy Shifts**

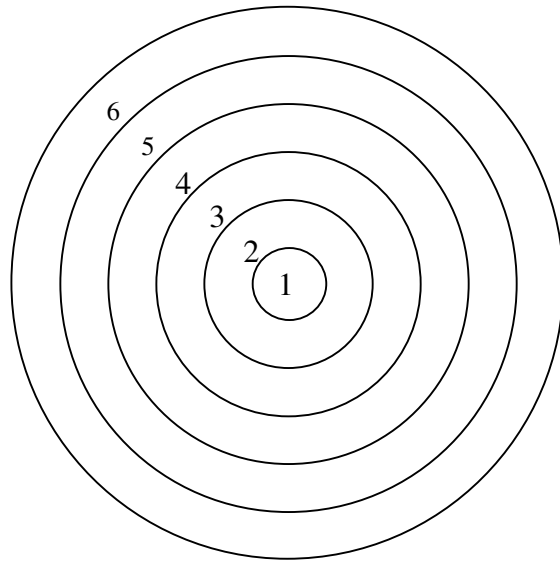
When we look at the categorization of the EU in terms of gender policies, we come across *Legislation, Gender Mainstreaming, the Community Framework Strategy on Gender Equality, the Action Programme*. However, as discussed in Chapter II, the UN policy shifts can also be observed within the policy shifts of the European Union gender equality policies, which are: non-discrimination, integration of women into development, advancement of women, and empowerment of women.

Also, Reanda (1992) adds ‘gender mainstreaming’ as the fifth turning-point of the international gender equality policies. On the other hand, as determined in Chapter II, it is possible to evaluate the EU gender equality policies’ shift with the categorization of ‘equal rights’, ‘equal treatment’, ‘equal opportunities’, ‘positive action’, and ‘equality of outcomes’.

Within the European system as a multi-level one, we see the different gender regimes and the legal and procedural standards, which have a strong connection with this supranational system and its policies on the field. Within this thesis, all these categories will be covered by focusing on the ‘Directives’.

According to Wahl (2003: 24), these circles reflect the various phases of the European gender policies.

1. Equal Pay  
Equal Pay Directive 75/117/EEC
2. Equal Treatment/ Anti Discrimination  
Voluntary positive action  
Equal Treatment Directive  
76/207/EEC
3. Expanding Opportunities  
Pregnant Worker Directive  
92/85/EEC  
Parental Leave Directive
4. Sexual Harassment  
1991 Commission  
Recommendation  
(Protection of Dignity), Directive  
2002/73/EC
5. Indirect Discrimination  
Burden of Proof Directive 97/52/EC
6. Mainstreaming (Genuine EU Policy)  
Amsterdam Treaty



**Figure 3.4** Concentric Models of Equality Policies in the EC/EU

**Source:** Wahl, A. (2003). “Liberal, Conservative, Social Democratic or... European? Europeanization and the Case of Equal Employment Regimes in the EU”, *Social Politics: International Studies in Gender, State and Society*, Vol. 12, Number 1, Spring 2005, p. 67-95, *Oxford University Press*, p. 24.

Wahl (2003: 24) states that “the EU equality policies are constituted at different levels: nations, market and supranational forces”. The sources for the EU equality regime include intergovernmental negotiations among representatives of Member States in the Council of Ministers as well as the supranational policies and rulings generated by the Commission and the ECJ as it was stated by Walby (2003) earlier. Wahl (2003: 25) claims that “because of these different allocations of power and interest, the Council and the Commission with the ECJ produce different kinds of equality policies than do the representatives of national interests”. In this regard, the Council’s decisions often reflect the lowest common decision because a single opposing voice can stop the process. Although, the decision-making system was changed during 1980s, and the EU’s intergovernmental dimension strengthened, the Member States’ different approaches have big impact on the Council in terms of gender equality. Because these members do not have the same standards or a common understanding of ‘gender equality,’ taking decisions on the relevant issues remain problematic. Supranational institutions as the EU,

“need to look beyond the lowest common denominator and support broader policies that expand the scope of their own competences” (Wahl 2003: 25).

On the other hand, Teresa Rees (1998) distinguishes between three ideal-typical approaches to gender issues: equal treatment, positive action, and gender mainstreaming. Equal treatment, in Rees’s words, “implies that no individual should have fewer human rights or opportunities than any other”, and its application in the European Community (EC) context has taken the form of the adoption of Article 119 on equal pay for men and women, and the subsequent adoption of a series of Directives on equal pay and equal treatment in the workplace. Such an equal treatment approach is an essential element in any equal opportunities policy. Rees also states that the existing approach focuses on the formal rights of women as workers, and therefore fails to address the fundamental causes of sexual inequality in the informal ‘gender contracts’ among women and men (Rees 1998: 32).

In contrast to the equal treatment approach, Rees posits a second approach, called positive action, in which “the emphasis shifts from equality of access to creating conditions more likely to result in equality of outcome” (1998: 34). In this context, ‘positive action’ can be determined as the adoption of specific actions on behalf of women, in order to overcome their unequal starting positions in a patriarchal society. Rees also adds that positive action may also take the form of positive discrimination, which seeks to increase the participation of women through the use of affirmative-action preferences or quotas (Rees 1998: 37).

Since the 1980s, we have been observing a narrow equal treatment perspective. However by the Community Strategy Programme on Gender Equality, the adoption of specific, positive action measures on behalf of women were launched. Rees (1998: 37) claims that during the 1990s, these positive action policies were maintained and as result three major policy initiatives were started as “the EC’s Action Programmes, which have fostered pilot projects and the exchange of best practices in areas such as child care and the political

representation of women, as well as the creation of networks of experts and advocates in women's rights issues; second, the EU has recently witnessed a lively debate over positive discrimination, stimulated by the European Court's decisions (*Kalanke* and *Marschall* cases), and culminating in the reaffirmation of the member states' right to adopt positive discrimination schemes under EU law; third, the adoption of the Maastricht Treaty, with its pillar devoted to Justice and Home Affairs issues, has created the political space for a new and vigorous EU policy on violence against women, an area previously off-limits to the economically oriented EC." Some scholars and activists see these initiatives as allowing the EU to undertake concrete action in areas beyond the narrow equal treatment approach, while some others claim that they remain inadequate for bringing gender equality in the European Society. As following these policies, 'gender mainstreaming' appears as the third strategy.

On the other hand, Walby (2003) focuses on the equality directives in terms of the European Union's policy shifts. She interprets the early Directives of 1975 and 1976, as "providing women's equality on a 'sameness' model consistent with men's experiences, the later interventions have gone beyond this, developing the strategies of 'reconciliation of working and family life' and, most recently, gender mainstreaming"(Walby 2003: 12). In addition, she claims that this 'strategy' also can be observed in the Directives of 1975- the mid-1980s' time period. However, the latter strategy does not assume sameness; rather, in the attempt to 'reconcile working and family life,' she emphasizes that "these measures focused on the better articulation of employment with care-work, often via the regulation of time, rather than payment that include the Directives regulating maternity, paternity and parental leave as well as excessive hours".

Walby (2003: 12) also asserts that

*These policies affect not only women's but also men's capacity to care. This latter set of Directives thereby extended the EU policy into matters that affected the family; even though under the principle of subsidiary family policy was still formally a national matter alone. This strategic phase thus goes beyond any 'male' model, incorporating features more typical of women's lives, such as childcare, into the organization of employment. To some extent I would argue that the latter model*

*is potentially transformatory, in that men are given rights to care, not a typical feature of most men's lives, through entitlements to paternity leave and to parental leave.*

On the other hand, the most recent development in strategy can be seen as 'gender mainstreaming'. It is claimed that this strategy goes beyond narrowly defined 'women's issues' to touch all policy areas.

Walby (2003: 13) finds two main ways for contributing to the development of gender equality within the EU as "the deepening of EU powers over equality for women in the Treaty of Amsterdam; second the broad interpretation given to employment policy and, most importantly recognizing the inter-connectedness of the economic with other domains within the gender regime". For the second way, she mentions three policy areas as "(1) policies concerning taxation and the provision of benefits and welfare (by showing the two directives of 1976<sup>46</sup>); (2) issues of fertility and sexuality especially contraception, abortion, and sexual preference; (3) combating of violence against women through policies for criminal justice and public services".

For fertility and sexuality, Walby emphasizes that the policies on these issues can be seen as belonging to the national level, because they are related with the economic dimension. However, she adds that "these policies are being challenged in two ways: First, the freedom to travel and to sell services anywhere opportunity in the EU makes possible accessing to contraception and abortion services in any country" (Walby 2003: 14). Therefore, even if abortion is forbidden in Ireland, Irish women can use their freedom to travel right and realize the abortion in any Member State, where it is not forbidden. Secondly, she mentions the ECJ ruling, in which discrimination against transsexuals contravenes the Equal Treatment Directive. She asserts that "with this directive, by coming into force of the Employment Directive in 2006, discrimination on ground of sexuality, including sexual preference in employment will be illegal".

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<sup>46</sup> Equal treatment with regard to statutory social security schemes (79/7/EEC) and Equal treatment with regard to occupational social security schemes (86/378/EEC)



On the other hand, unfortunately ‘violence against women’ issues do not have access to the supranational dimension of the EU such as applying to the ECJ, but there are special programmes such as DAPHNE and STOP (Walby 2003: 15).

These claims are also supported by Pollack and Burton (2000). They argue that the early policy of the European Union for gender equality has focused narrowly on women as participants in the workplace, while ignoring the most fundamental aspects of women’s inequality in European society (Pollack and Burton 2000:1). On the other hand, they emphasize that “during the 1990s, the EU moved beyond its previous emphasis on equal treatment, to both positive action and gender mainstreaming”. Regarding their claim, we really come across positive actions on behalf of women within the *acquis communautaire*. The European Commission has pressed forward a series of specific, positive actions on behalf of women, both within and outside of the workplace, such as childcare and affirmative action, to questions of women in leadership and violence against women. Also for the ‘gender-mainstreaming’ approach, the Commission adopted this strategy in 1995 as it has already mentioned.

When we look at the EC and the Council regarding gender equality, we find that the EC also recommends the use of all three gender equality strategies simultaneously. The European Commission (2000: 5), in its ‘Community Strategy on gender equality’ states that the ‘principle of equal treatment for women and men’ is a fundamental principle of Community law. In addition, the EU notes that “action should be continued as combining integration of the gender dimension with specific action”. Finally, with the statement of the European Council, gender mainstreaming is defined as the third and the most promising strategy:

*Member States will, through an integrated approach combining gender mainstreaming and specific policy actions, encourage female labour market participation and achieve a substantial reduction in gender gaps in employment rates, unemployment rates, and pay by 2010 (European Council, 2003).*

Therefore, these facts are also validating Burton- Pollock's argument that at least in the programs of the EU; the three approaches to gender equality co-exist. But, at this stage, we need to ask 'what are the implications of the three approaches, namely equal treatment, special programs and gender mainstreaming for gender equality?', Have they been implemented sufficiently, and to what extent are they able to abolish the gender inequalities within the Member States? Later on in this chapter, this question will be discussed.

The EU gender equality policy, at its first step (equal treatment/ equal opportunities) was intended to create a standard of equality for women and men in employment based on minimizing gaps to achieving the same level of participation in employment, the same level of unemployment, and the same level of pay. Second, for "specific action or preferential treatment", the Barcelona European Council's<sup>47</sup> decision and targets can be seen as one of the samples that increased focus on women's activities, and emphasized difference between men and women unlike the first treatment's 'sameness' understanding. Third, the adoption of gender mainstreaming as a strategy can be seen from the Council's decision that

*...particular attention will be given to reconciling work and family life, notably through the provision of care services for children and other dependants, encouraging the sharing of family and professional responsibilities and facilitating return to work after a period of leave (European Council 2003)*

But this transformation did not happen overnight. The earlier mentioned global political change for 'gender equality' also affected the European Union and it lead to the Union's political changes for 'gender equality' during the 1970s. According to Walby (2003: 9-10), besides the global change in the field, since the 1970s up to now there have been other factors, which have created pressure on the Union;

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<sup>47</sup> On 15- 16 March 2002 at the Barcelona European Council, it is agreed that the Barcelona European Council, so that this is available by 2010 to at least 90% of children between 3 years and at least 33% of children less than 3 years of age.

*Elected women representatives in parliaments; and the gender machinery (women's units) in government administrative bureaucracies. According to the Elections in 2004, today, women count for 31% of the total number of the members of the European Parliament and their political views ensure the realization of the gender equality policy<sup>48</sup>; Feminist movement in civil society (especially the existence of the European Women's Lobby<sup>49</sup>, which is the largest coordinating body of national and European non-governmental women's organizations in the European Union, with over 4000 member associations in the 25 Member States; The European Commission has been effective in bringing forward proposals for policy development.*

To these factors, Reinalda adds the third enlargement of the EC in 1973 with the United Kingdom, Ireland, and Denmark as the fourth cause, which affected the EC's gender policy by changing bureaucrats and leaders (Reinalda 1997: 213).

While targets and principles are set at the EU level, their implementation is left to Member States, and they are nationally evaluated by annual reports on developments in the National Action Plans of the Member and Candidate States, and at EU level evaluated by the EU Commission with the assistance of an expert network. In addition, the EC's 'equal Opportunities Unit' has been publishing a regular report (Equality Magazine) to display the implementation of the Directives within the Member States. However, as it was discussed earlier, these monitoring and evaluation mechanisms cannot be seen as adequate, there is a need for better assessment mechanisms.

### **3.5 INSTITUTIONAL FRAMEWORK**

Among the EU institutions, the Equal Opportunities Unit of the EC and the Women's Rights Committee of the EP are reviewed to be the most notable components of the institutional framework with their transnational network of experts and activists in the area of equal opportunities. However, in order to provide a holistic picture, these entities will be discussed within the context of the main institutions of the EU, which are the Council of Ministers, the European Commission and the European Parliament.

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<sup>48</sup> <http://www.oska.org.pl/pe/english/project/>

<sup>49</sup> <http://www.womenlobby.org/DocList.asp?SectionID=7&LangName=english>

### **3.5.1 The Council of Ministers (the Council)**

Members of government of the Member States meet in the Council of Ministers. The Social Affairs Council of Ministers, where national ministers of social affairs are represented is the Council that is responsible for most decisions relating to equality of women and men. This body has the final word for legislation and programmes in this field. The EWL and women's organizations have been demanding the establishment of a specific council on gender equality in order to raise the profile of gender equality issues and policies. However, still, there is no specific Council of Ministers for gender equality, despite the high status of gender equality in European law and the repeated demands of women's organizations. But, EWL (2004: 21) states that "informal ministerial meetings on gender equality have been organized by most EU presidencies".

According to Arribas and Carrasco (2003), from a political point of view, the Council of Ministers has a significant role in the promotion of gender equality, particularly gender mainstreaming. Despite that, there is no specific gender unit within the Council, in other words, at the intergovernmental level of the EU, the Council Presidency plays an important role for bringing gender issues to its agenda. If the European Presidency is sensitive to gender equality, the Council can be more effective for creating agenda on the issue. Each Member State of the EU occupies the Presidency for a term of six months. In addition, the most important tools for gender equality under the European aquis communautaire are the equality Directives, which are taken by the decision of The Council of Ministers. Despite that they take place under the secondary law of the Union, they have binding character. However, each Member State has been following a different path for their implementation under their social policy.

The Council of Ministers is the EU main decision-making body, and it represents the member states by the attendance of ministers from each of the EU national governments. Thus, it is impossible to talk about a determined women's representation, which depends on the national women's representations of the Member States.

### 3.5.2 The European Commission (The EC)

Within the EC, gender equality policies are mainly the responsibility of the Directorate General and Commissioner on Employment and Social Affairs, whose name has been changed in August 2004 into Commissioner and Directorate General on Employment, Social Affairs and Equal Opportunities. The inclusion of 'Equal Opportunities' structure into this directorate's name can be seen as a positive development (EWL 2004: 20).

The European Commission is the main implementation body within the European Union structure, and also the body that proposes new legislation. The Equal Opportunities Unit is placed in the EC Directorate General for Employment, Industrial Relations and Social Affairs. It is in charge of ensuring compliance with the EU directives on equal opportunities for women and men and encouraging the integration of women into the labour market and improving the status of women in society. This Unit is also responsible for the implementation of the Community Framework Strategy on gender equality.<sup>50</sup>

The EC recently presented the Fourth Annual Work Programme within the Framework Strategy on Gender Equality. This strategy was already mentioned under the third dimension of the EU gender equality policy.

Besides the Equal Opportunities Unit, we come across

- 'The Commissioner's Group on Equality' that is composed of the President of the Commission and three Commissioners. The mission of this group is "to keep an overview on equal opportunities between women and men at the European Commission level and discuss in particular the question of mainstreaming a gender perspective into all services and policies" (EWL 2004: 20).
- 'The Advisory Committee on Equal Opportunities', which is an advisory body on equal opportunities. This Committee is represented by the ministerial representatives that

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<sup>50</sup> <http://www.womenlobby.org/Document.as?DocID=391&tod=11490>

composed from the 25 Member states, and regularly meets for giving opinions to the EC on major new policies that have an effect on women.<sup>51</sup>

The EWL has an observer status within the Advisory Committee. Within this structure, EWL helps the EC formulate and implement the Community measures aimed at promoting equal opportunities for women and men and to encourage the continuous exchange of information between the Member States and the various actors involved. However, despite that the Committee's works have been seen as useful, EWL (2004: 20) states that "there is no evidence that those reports are taken into account by the EC and resources for the Committee have been recently reduced".

In addition, the 'Inter-service Group on Gender Equality' was set up at the initiative of the Group of Commissioners as a support mechanism and to improve interdepartmental cooperation in relation to gender quality.

The EC consists of 25 women and men (currently 28% women) nominated as Commissioners by each of the Member States, assisted by about 24,000 civil servants<sup>52</sup>. The members of the Committee are appointed for a five-year term.

### **3.5.3 The European Parliament (The EP)**

The EP is the only European institution elected directly by the citizens of the Member States. The work of the EP is organized in different parliamentary Committees, including the Committee on Women's Rights. The Women's Rights 'Committee can be seen as a very important space that played an important role advancing gender equality issues within the EP.<sup>53</sup> The Committee can act by initiative reports, which put on the agenda issues linked to women's rights, and on the other hand, through its legislative role for the

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<sup>51</sup> [http://www.europa.eu.int/comm/employment\\_social/equ\\_opp/index\\_en.htm](http://www.europa.eu.int/comm/employment_social/equ_opp/index_en.htm)

<sup>52</sup> Ibid.

<sup>53</sup> [http://www.europarl.eu.int/committees/femm\\_home.htm](http://www.europarl.eu.int/committees/femm_home.htm)

adoption of directives on the basis of articles 13 and 141 of the Treaty of Amsterdam (1997). However, EWL (2004: 21) states that this committee has not a 'legislator' status, and its existence is regularly called into question.

There is also a unit within the EP administration that is in charge of gender equality in relation to personnel policies, which is in charge of implementing internal gender equality programmes. The latest and most positive development is the creation within the European Parliament of an internal High Level Group on Gender Equality in April 2004. The main mission of this group is "to ensure that the European Parliament takes into account the issues of gender mainstreaming and equal opportunities in all the policy areas which are debated in its committees" (EWL 2004: 21).

Arribas and Carrasco (2003: 26) mention that the EP has always been active for contributing to gender equality at the EU level, and the Committee on Women's Rights is an important commission.

We see that the EP is a significant institution, as is the EC, for implementing the existing gender equality policies. Sometimes for the excluded areas of the EU legislation such as 'violence against women', we see the EP's initiatives such as in 1998, when Parliament adopted a report entitled 'Year of Zero Tolerance of Violence against Women', which resulted in an action programme (DAPHNE) carried out with help from a network of associations and non-governmental organizations.

The EP "does not have a full legislative power, as do parliaments in Member States, but it can give political impulses and has control over the budget legislation, policies, and many political actions affecting women".<sup>54</sup> In addition, the EP and the EC have promoted respect for the principles of equality between women and men in their reform of the Structural Funds, which was already mentioned under the 'Action Programme' title

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<sup>54</sup> <http://www.womenlobby.org/Document.as?DocID=391&tod=11490>

earlier. In this framework, the EP appears as a significant institution, because it bears influence on the adoption of the EU budget.

The current Parliament (2004-2009) has 732 Euro- parliamentarians or MPs and 30 % of the MPs elected are women (EWL 2004: 21).

### **3.5.4 The European Court of Justice (The ECJ)**

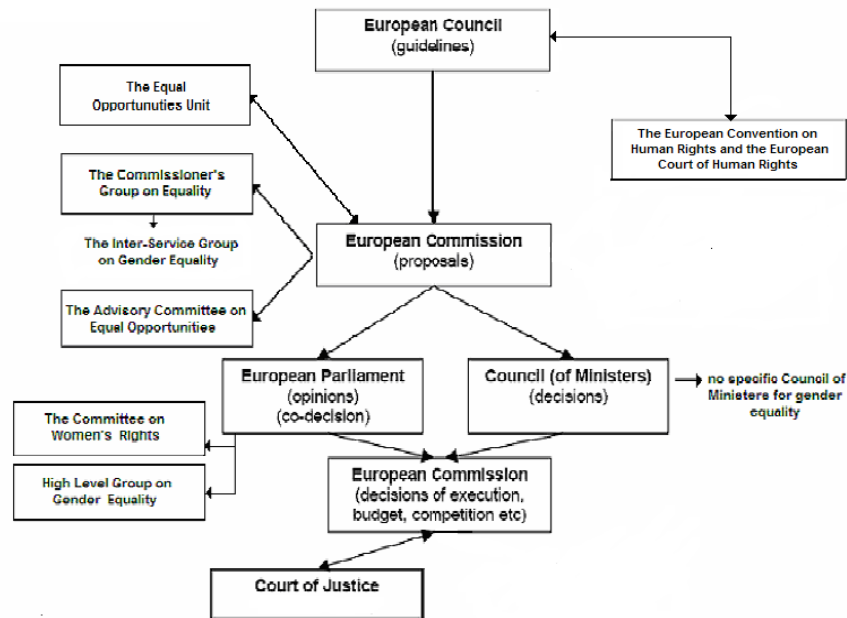
The ECJ is made up of 25 Judges and 8 Advocates-General<sup>55</sup>, who have played a large role in building equal opportunities, in particular for pushing the EU legislation in the right direction (EPSU 2002: 3). Also, the institution has an important role particularly for the interpretation and implementation on positive action jurisprudence.

The equality Directives, which have been activated by women litigants in the member states, have been enforced by the ECJ in the many equal-pay and equal-treatment cases such as Defrenne Case as it was mentioned earlier.

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<sup>55</sup> [http://www.curia.eu.int/en/instit/presentationfr/index\\_cje.htm](http://www.curia.eu.int/en/instit/presentationfr/index_cje.htm)





**Figure 3.5** The Decision Making Mechanism of the EU (including gender equality bodies)

### **3.6 THE ROLE OF CIVIL SOCIETY AND WOMEN’S MOVEMENT**

Gender equality has recently become an issue of increasing interest and importance to EU policy-makers. Despite the lobbying of groups like the European Women’s Lobby (EWL), the European Women Lawyers Association (EWLA), and Women in Development Europe (WIDE), gender equality has not been achieved yet. However, the relationship of the women’s movement at the national and international level with the European political institution has significant importance. Mazur emphasizes the existence of three kinds of political pressures for advancing women’s political interests as: “feminist movements in civil society; elected women representatives in parliaments; and the national gender machineries in governmental administrative bureaucracies” (Mazur cited in Walby 2003: 9).

As latter two are discussed in this thesis, the focus here will be on women’s organizations.

Within the EU structure, there is a need to bridge between citizens and the European institutions. For this need NGOs can play an active role. EWL (2004: 4) states that civil dialogue at the EU level is organized without formal rules, and there is no official status of NGOs. However, the dialogue between women's NGOs and the EC is better from the other EU institutions.

In addition, within the EP, the Women's Rights Committee regularly organizes hearings and women's NGOs from different levels are always invited to present their views. However, the Council of Ministers is the most closed EU institution; access is rather limited and there is no opened formal consultation with NGOs. The latest development (June 2004) in relation to civil dialogue is the introduction of Article I-46 on 'The principle of participatory democracy' in the Treaty Establishing a Constitution for Europe that introduces an "open, transparent and regular dialogue" between the EU and civil society (EWL 2004: 5).

The civil society organizations in the EU countries reflect their expectations and primary concern areas regarding gender.<sup>56</sup> Women's non-governmental organizations play a critical role in lobbying for gender equality initiatives in all fields of concern and holding the EU and national governments accountable- not just meeting EU Directives de jure, but ensuring their de facto enforcements. The struggle for achieving full equality between women is still ongoing in all parts of Europe.

For this dialogue, two umbrella organizations are particularly important: the European Women's Lobby (EWL), and the Women's Committee of Trade Unions' Confederation.

### **3.6.1 The European Women's Lobby (EWL)**

The European Women's Lobby (EWL) can be seen as the largest co-coordinating body of national and European non-governmental women's organizations in the European

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<sup>56</sup> [www.abig.org.tr/en/template.asp?nx=0&id=1428&go=Turkey+and+the+EU%3AFuture+of+Europe](http://www.abig.org.tr/en/template.asp?nx=0&id=1428&go=Turkey+and+the+EU%3AFuture+of+Europe) - 38k

Union, with over 4000 member associations in the 25 Member States. The EWL's goal is determined as “to achieve equality between women and men in Europe and to serve as a link between political decision-makers and women's organizations at EU level”.<sup>57</sup>

We also see that, the EWL also works to promote the implementation of a European social policy and to ensure that women are involved in co-operation between the European Union and other countries (particularly the East European countries). In this regard, EWL represents the interests of its member organizations to the European institutions, and its membership to the EC's Advisory Committee is important. For the EC, the EWL recently submitted its road-map that defines the priorities for gender equality for 2006-2010. Within the EWL, national and international member organizations can adopt different policies and implement them. This opportunity shows the main difference of the EWL from any other association.

The EWL (2004: 5) summarizes the activities of the organization as the follows

- *to ensure that equality between women and men remains visible and central to the political process of the European Union, working through our members at national level and directly with European decision makers to influence and develop new policies to achieve equality*
- *to act as a general resource and information service, through telephone, email, our web site, news bulletins, press releases, to a wide range of individuals and organizations, including to members of the European Parliament and other decision-makers*
- *to monitor EU policy and legislation and provide analysis and briefings for the members of the EWL, and send these to members of the European Parliament, the European Commission and governments*
- *to undertake lobbying and campaigning actions at European level on a wide range of issues that have an impact on achieving equality between women and men, and support our members' activities and campaigns at national level*
- *to work in partnership with other NGOs to promote civil dialogue and participatory, parity democracy for all people living in Europe*
- *To work in partnership with women's rights NGOs across the European region and globally to promote equality between women and men.*

In 2005, the National Coordination of Turkey for the EWL became a full-member of the EWL with voting capacity.

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<sup>57</sup> <http://www.womenlobby.org>

### **3.6.2 The Women's Committee of the European Trade Unions' Confederation**

Regarding women's role in the European Trade Unions, Bergamaschi (2000: 159) states that since the mid-1980s gender perspective has increasing. The new initiatives and programmes have been developed. Those programmes have two objectives; "to secure positions in decision-making bodies and to make gender perspective one of the keystones of trade union policies and industrial relations in a period when both have been undergoing real renewal". However, Cockburn (1995) states "despite 40 percent of total trade union membership of women trade unions, they are underrepresented in decision-making bodies and there is no indication that this gender ratio is changing rapidly". On the other hand, Leisink (cited in Bergamaschi 2000: 534) sees this under-representation as the result of trade unions' policies, which ignore the women workers' concerns.

As the umbrella organization of the EU in terms of 'trade union', we come across the European Trade Unions' confederation (ETUC), and within this organization, the ETUC Women's Committee (established in 1973). But, this Committee holds only 40 percent of the ETUC structure, without adequate power for decision-making.

According to Bergamaschi, social policy came on the EU agenda, and gender issues received the new impetus, but still "the gender perspective does not have a focal role in the preparatory work of the EU institutions" (Bergamashi 2000: 161). Women are still excluded from the key work groups. She finds the reason for the existing situation in the engendered culture, indifference, an underestimation of the problems, and bureaucratic hostility, which ended when the women in the EU institutions reacted against this marginalization. She claims that, if women's trade unions' have 40 percent representation today it is the result of women trade unionists have attempted to make women more visible as political subjects, going beyond national boundaries and suggesting more relevant ways of dealing with women's conditions in collective bargaining. With her comprehensive article, we find that within the trade unions or in the ETUC, there are two distinctly different periods in terms of 'gender equality'. In the first, between 1985- 1999, policy was directed toward the introduction of positive action for gender equality and the

setting up of women's committees that would implement women's policies. The second phase starts from 1991 and continues, which includes equal treatment and equal opportunity for men and women in general labour policies, going beyond the promotion of equality measures specifically for women.

If we look at the recent statistics that reflect the result of policies and women's movement initiatives, in general under-representation of women still exists. Bergamaschi states that "women hold 20 percent of leadership positions within ETUC-affiliated national confederations, and many of these posts are second or third level", and adds that "in the European Industrial Committees, they never constitute more than 10 percent of the Executive Committees, while in the Steering Committees the percentage is even lower" (Bergamaschi cited in Rossilli 2000: 166).

For creation of the gender equality dimension within the ETUC and a discussion of the role of women's trade unions, the most important impact was created at the Milan Seminar (1991) by the ETUC Women's Committee. This seminar also started the second phase of gender equality policies within the field. It is accepted that the second stage (from 1991 to the present) was started by this seminar.

In general, if we look at the European trade unions' structure, we see that the equal treatment and equal opportunity policies focus mainly on the labour market, equal pay for work of equal value, the regulation of atypical jobs, social security, and fair distribution of private responsibilities between men and women. But, no doubtly, the focus of the policy remains employment. Despite that the European Union's gender equality policy mainly focuses on the area of employment, the women's trade unions are under-represented and lack of power is an important problem.

Alongside the feminization of union structures, gender inequalities also exist in the ETUC, and without the initiatives and attempts of the women's trade unionists despite their problematic state, the recent improvements could not have been made.

### **3.7 THE EUROPEAN GENDER EQUALITY POLICIES IN SELECT AREAS**

As it was stated earlier, the EU gender equality policies' main focus is the area of employment, but with the supporting programmes such as the Framework Strategy of Gender Equality, the gender equality was targeted within the different spheres of life such as education, political participation, and elimination of violence against women, health, gender roles and stereotypes. However, none of these provisions or areas of concern are supported by strong legislation; their status is even weaker than the equality directives, they are covered only by the Community Action Programmes without a proper assessment.

#### **3.7.1. Women in Economy**

Equal participation by women and men in both economic and social development and benefiting equally from the existing resources can be seen as the key factors to achieve gender equality. But, the EU's main focus is still remaining on the field of 'economy'. However, even for this targeted area, the current situation is far from achieving gender equality in the EU. Today, the EU gender equality policies do not yet sufficiently promote women's economic rights.

Despite that the main focus of the EU gender equality legislation is 'employment'; especially the binding Council Directives have been adopted in this area, discrimination against women in the labour market. There is still a need for better legislation and implementation (EWL 2005: 53).

According to the EWL's one of the recent and most comprehensive report<sup>58</sup> (2004: 55), the EU relevant equality policies on the field are criticized because that;

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<sup>58</sup> "Report On The Evaluation of The Beijing+ 10 Implementation In The European Union (2004)

- 1) For the EU gender equality policies, the main focus remains at the economic growth and competition. There is no ‘integrating gender equality perspectives’ into the EU’s macro economic policies. In this regard it can be said that the EU conflicts with its ‘gender-mainstreaming’ policy.
- 2) The impact is the EU gender equality policies are still weak. The major indicators, which are ‘gender pay gap’, and the female unemployment rate show that both at the EU and national level gender equality could not be achieved yet. While the existing policies remain non-systematic, gender impact assessment is also lacking.
- 3) Although, the EU has gender budgeting in the framework of the ‘Structural Funds’, particularly the ‘Action Programme’ for the Member States it is not a binding requirement, which is needed for achieving gender equality at national level.
- 4) Despite that social policies are the main mechanism for re-distribution of resources and work for eliminating the harmful effects of the markets on citizens within the EU structure; however instead of integration, social policies remain as ‘marginalized’.

On this area, we come across with the Council Equality Directives, which focus on the area of employment regarding to equal pay and treatment, reconciliation of family and professional life, care responsibilities, and social security schemes.

But, as they were given with details in *Chapter III*, the thesis argue that directives’ main concern is the equal treatment of women in the work place. Most of them are based on the “non-discrimination (2000/43/EC), “equal rights” (75/117/EEC), and “equal treatment” (76/207/EEC, 79/7/EEC, 86/378/EEC, 86/613/EEC, 2000/78/EC, 2002/73/EC, 2004/113/EC) approaches. On the other hand, there are different directives, which requires different provisions on the different issues such as 92/85/EEC (calls for protection of pregnant women, women who have recently given birth and women who are breastfeeding), 93/104/EC and 97/81/EC (calls for organization of working-time, and part-time work). But, when we look at them we see that their main concern is also the area of employment, and they adopt “affirmative action” as different from the other directives. On the other hand there are two other Council Directives existing within the EU, and they bring new perspective to “gender equality. Among them, while Parental

Leave- 96/34/EC Directive concerns for the role of men regarding to care-work and strengthens the situation of women in employment, Burden of Proof- 97/80/EC Directive brings new understanding for struggling with “sexual harassment” and facilitates the victim’s situation.

However, in addition to these directives’ limited scope regarding to achieve ‘gender equality’, their impact also shows significant differences on the base of The Member States implementations. For example, ‘equal pay for equal work of value’ principle first appeared in 1957 as Article 119 of the Treaty of Rome, in 1975 as the directive (75/117/EEC), and finally, in 1997 Article 141 of the Treaty of Amsterdam. However despite that these earliest provisions, in the year of 2005, the Member States and the EU still face with the ‘gender pay gap’.

Regarding to the area of ‘employment’ and ‘women in economy’, the EC’s statistics display the existing gender inequalities on this field. Appendix C supplies an overview for the employment rates based on gender in EU25.

**TABLE 3.1 Women in the Economy (EU- 15)**

<b>Gender pay gap (average gross hourly earning of women as a percentage of men’s)*:</b>	
15 old EU Member States	
1995: 17%	
2001: 16%	
<b>Unemployment rates (EU-15)*</b>	
Women	Men
1994: 12, 7 %	9, 9 %
2000: 9, 7 %	7, 0 %
2001: 8, 7 %	6, 4 %
<b>Long-term unemployment rates, i.e. 12 months or more (EU-15)*</b>	
Women	Men
1994: 6, 3 %	4, 6 %
2000: 4, 5 %	3, 1 %
<b>Part-time employment (EU-wide)*</b>	
- 33 % of women in employment are working part-time	
- 6 % of men in employment are working part-time	

**Source:** *The social situation in the European Union, European Commission, 2003 p. 159-159*



As it was given in *Chapter II*, besides of the EU gender equality aquis and its provisions, the Members States' gender welfare regimes also play a significant role. For example, when we look at the highest employment rate, we face with Denmark and Sweden, which are adopter 'social democratic gender welfare regimes'. On the other hand, the countries that adopt 'male-breadwinner' and 'social capitalist' welfare regime such as Greece, Italy, Spain and Portugal face with the highest women employment rates.

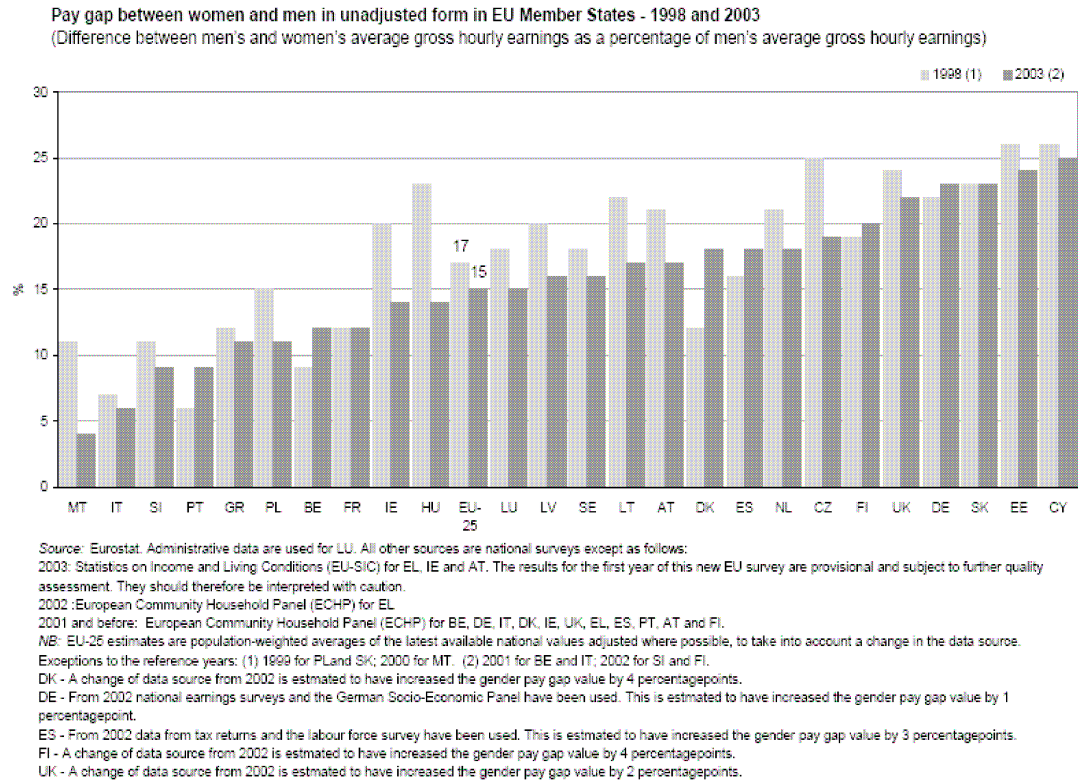
**TABLE 3.2 Women and employment in the EU Member States**

Country	Employment Rate 15-64 year old (%) 2002		Part-time 2002 %		Self-Employment 2002 %		Gender Pay Gap % 1999
	Women	Men	Women	Men	Women	Men	
<b>EU15</b>	54.9	73.0	33.7	84	6.1	10.3	84
<b>Belgium</b>	51.1	68.1	37.7	89	7.6	11.0	89
<b>Denmark</b>	72.6	80.2	31.4	86	2.0	5.6	86
<b>Germany</b>	58.7	72.6	39.3	81	3.7	5.9	81
<b>Greece</b>	42.7	71.7	8.1	87	18.9	27.8	87
<b>Spain</b>	44.0	72.8	17.0	86	9.3	13.9	86
<b>France</b>	56.4	69.6	29.7	88	3.8	7.1	88
<b>Ireland</b>	55.2	74.7	30.5	78	4.0	16.1	78
<b>Italy</b>	41.9	68.9	16.7	91	7.7	13.4	91
<b>Luxembourg</b>	50.8	74.9	25.6	n/a	2.7	1.8	n/a
<b>Netherlands</b>	65.9	82.9	72.8	79	6.5	8.4	79
<b>Austria</b>	60.2	76.7	33.6	79	4.5	5.7	79
<b>Portugal</b>	61.2	76.3	16.4	95	19.3	19.1	95
<b>Finland</b>	67.3	70.9	17.1	81	6.4	10.1	81
<b>Sweden</b>	72.5	75.5	32.9	83	3.9	8.9	83
<b>UK</b>	65.3	77.7	44.0	78	5.0	11.5	78

**Source:** <http://www.ibeuropa.com/Database/6000/6100.htm#6109>

The report<sup>59</sup> of the EC (2005) on gender equality states that “despite that the economic slowdown during the last few years, the gender pay gap has remained almost unchanged”. However, as we can see from below in Portugal, France, Belgium, Denmark, Estonia, Finland, and Slovakia; we see that gender pay gap increased in the 1998-2003 time period. Among the 25 Members of the EU, the highest rates belong to two new members (Cyprus and Slovakia), and three old members Greece, Denmark and Finland. The lowest gender pay gaps are seen in the Malta, Italy, Slovenia, Portugal and Germany. But, the EU25 average for gender pay gap is 84%, while the employment rate is only 54.9% for women.

<sup>59</sup> The report of the EC (2005) on gender equality, which submitted to the Parliament, the European Economic and Social Committee and The Committee of the Regions on Equality between Women and Men in 2005.



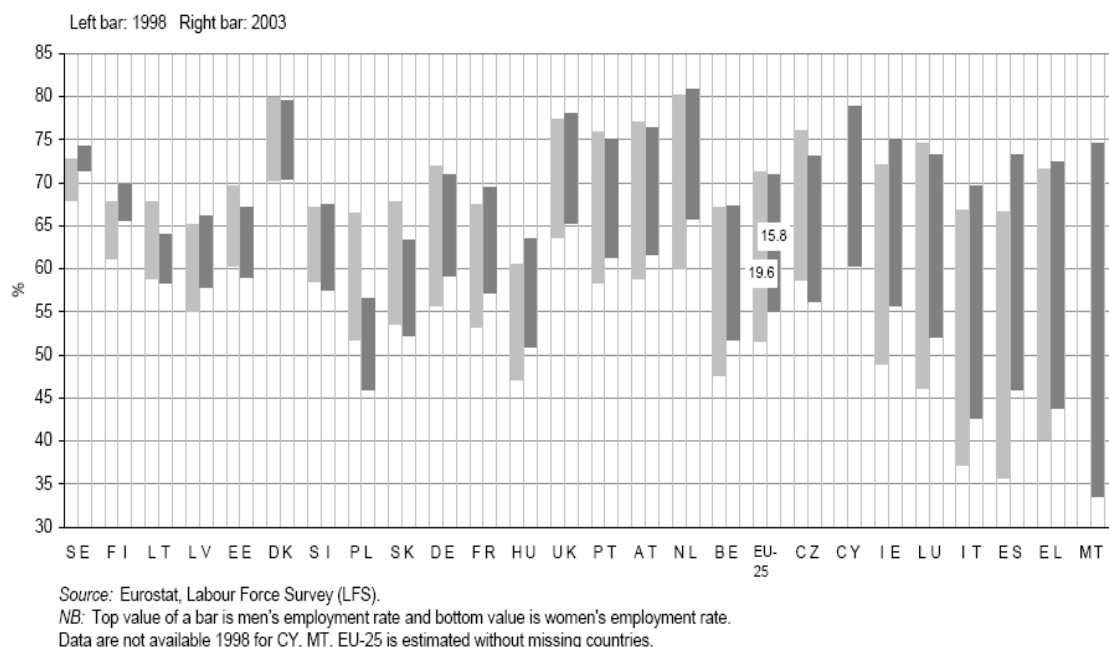
**Figure 3.6** Pay Gap between Women and Men in Unadjusted Form in EU Member States 1998 and 2003

The above-mentioned report also states that “the gender gap in employment decreased by 0.5 percentage points to 15.8 % between 2002 and 2003 in the EU-25. With the female employment rate at 55.1 %, the intermediate target of women’s employment rate (57 % in 2005) still remains within reach” (Commission 2005: 4).

Regarding the other important directive, which is ‘Equal treatment as regards access to employment’ (76/207/EEC), and the figure 14 from the same report shows the result of the implementation of this directive. In the framework of this directive, gender equality for accession to the employment could not be achieved yet as can be seen from the following page.

**Absolute gender gap in employment rates (women and men aged 15 - 64) in EU Member States - 1998 and 2003**

(Difference between women's and men's employment rates)



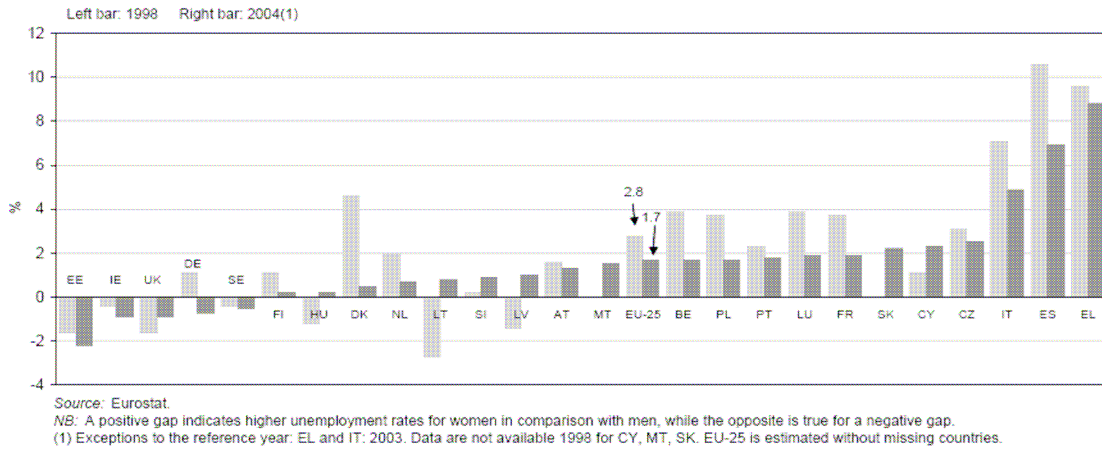
**Figure 3.7** Absolute Gender Gap in Employment Rates (women and men aged 15-64) in the EU Member States- 1998 and 2003

The above-given figure shows that “apart from younger women aged 15-24, women’s employment rates continued to increase for all age groups and particularly so for older women”<sup>60</sup>, while this rate has been decreasing in Turkey. However, the same figure also shows that the highest rate belongs to the gap between older women and men.

We also see that unemployment rates are 10 % for women and 8.3 % for men (Commission 2005: 4). Despite that the highest unemployment rates belong to the new members in general, the statistic of EU25 shows that unemployment of women is still high in compare with men as it can be seen below.

<sup>60</sup> Eurostat, LFS, 2003

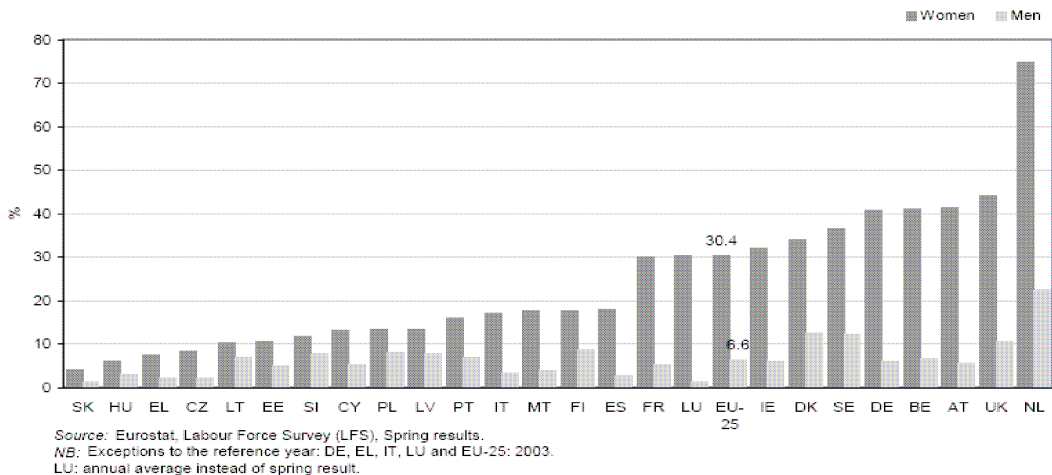
**Absolute gender gap in unemployment rates (women and men aged 15 years and over) in EU Member States - 1998 and 2004**  
(Difference between women's and men's unemployment rates)



**Figure 3.8 Absolute Gender Gap in employment Rates (women and men aged 15 years over) in the EU Member States- 1998- 2004**

Regarding to the “Framework Agreement on part-time work (97/81/EC)” Directive; with the figure 16, we see that part-time and flexible job are still mainly occupied by women. In the 25 Members of the EU, the average is 30.4% women to 6.6% men in terms of part-time employments. On the other hand the highest rate belongs to Netherlands with more than 70%.

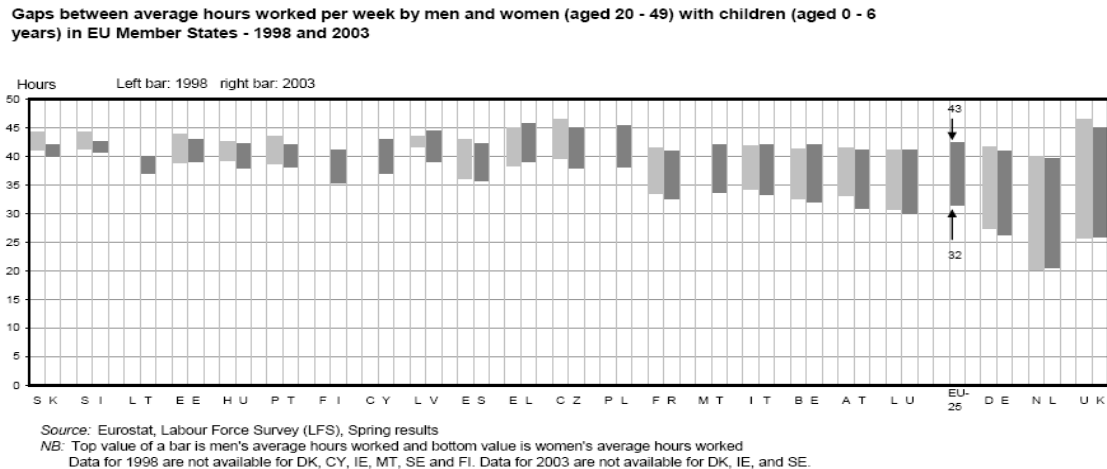
**Share of part-time employees among women and men employees, In EU Member States - 2004**



**Figure 3.9 Share of Part-Time Employees Among Women and Men Employees in the Member States- 2004**

The Commission (2005: 4) interprets the figure 16 as “the share of part-time employment is on average 30.4 % for women compared to only 6.6 % for men and the gap has slightly increased since 1998”. This can be seen as one of the explanatory fact of gender gap.

The following figure also shows the gender gap also exists in terms of working hours for the age of 20-49.

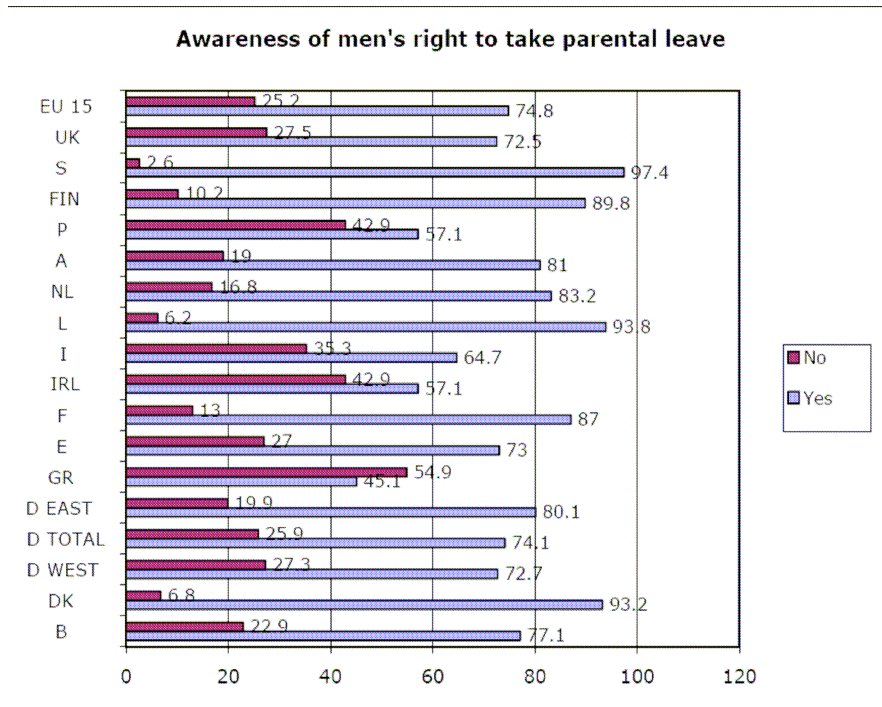


**Figure 3.10** Gaps between Average Hours Worked Per Week by Men and Women (aged 0-6 years) in The Member States- 1998 and 2003

Regarding to the area of employment, the EC (2005: 5) estimates that “the gender pay gap will be slightly lower than today’s rates (15%) for EU-25”.

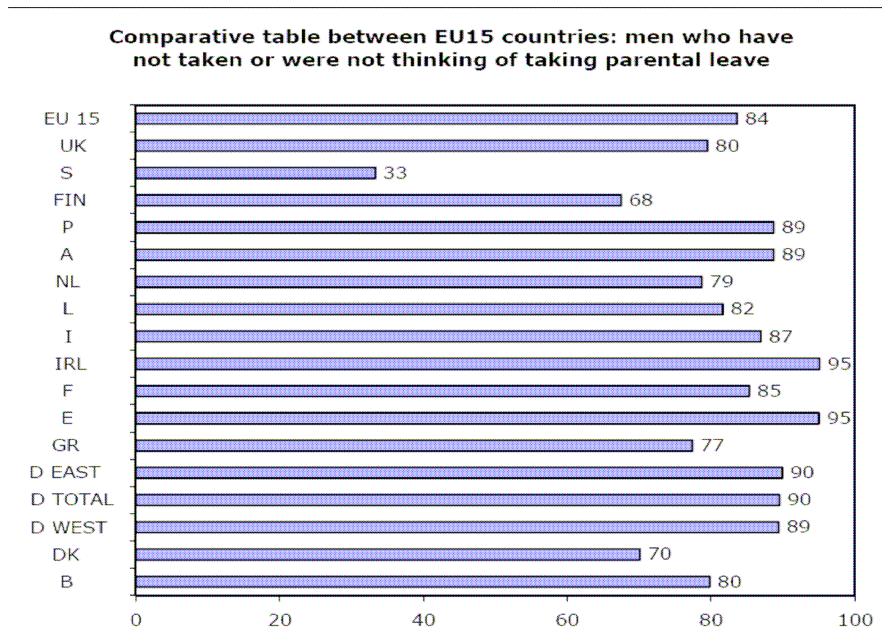
On the other hand, regarding to most innovative Directive, 96/34/EC, which is on “parental leave”, we see that realization and implementation of this directive also show differences in the Member States from the figure 18 and 19. Those figures are the outcomes of the European Opinion Research Group’s field research, which was held on 18<sup>th</sup> March- 30<sup>th</sup> April 2003 in the 15 EU Member States with 5688 men, who is older than 18. The research was published by the European Commission in 2004.

According to these figures, despite that in the old 15 Members, the rate of the awareness of men’s rights to take parental leave is 74.8%.



**Figure 3.11** Awareness of Men’ Right to Take Parental Leave

*Source:* The European Commission (2004), “Europeans’ Attitudes to Parental Leave”, Field Research, p.7



**Figure 3.12** Comparative Tables between EU15 Countries: Parental Leave

*Source:* The European Commission (2004), “Europeans’ Attitudes to Parental Leave”, Field Research, p. 10

According to the table 3, the traditional assumption and behaviours, which are the common usage of maternity leave still exist, and ‘care-work’ is still seen as a female obligation. In this context, the highest rates belong to Portugal and Spain with 100%.

**TABLE 3.3 National Take-up Rates of Parental Leave**

Country	Percent take-up by women	Percent take-up by men
Austria	90%	1%
Denmark	93%	3%
Finland	99%	64%
Germany	95%	1%
Netherlands	40%	9%
Norway	94%	33%
Portugal	100%	N/A
Spain	100%	N/A
Sweden	90%	78%

**Sources:** Wilkinson, H. et. al. (1997). *Time out: The costs and benefits of paid parental leave*. London: Demos; 1)Eironline, *Nordic seminar highlights equal opportunities from men's perspective* (<http://www.eiro.eurofound.ie> accessed 4/17/02); 2)European Commission (1998). *Care in Europe: Joint Report of the "Gender and Employment" and the Gender and Law" Groups of Experts*. 3)Waldfoegel, J. (2001). *Family and medical leave: evidence from 2000 surveys*, *Monthly Labour Review*

On the other hand, when we look at the implementation of the provisions regarding to ‘gender mainstreaming’, we see that the implementation of this strategy and for the EU, ‘policy’ is also lacking. In **Chapter II** in general, in **Chapter III** by focusing the EU; this policy approach terminology and its dangers have already been given. With Jill Rubery’s (2004: 610) figure (Appendix D), the implementation and impact of gender mainstreaming becomes more visible on the base of country implications.

Also, Appendix E shows the provisions of some of the Member states in order to close gender gap in some of the concerning areas.

### **3.7.2. Women and Education**

According to the liberal perspective of the EU, education and training are essential areas for achieving equality between women and men, and this perspective has been stated in the European Treaties and resolutions of the different institutions; the Framework

Strategy on Gender Equality- the Commission has a special target relating 'education' within 2001-2005 Programme.

For education, the main issue is on the 'vocational training' by focusing the area of employment and the only relevant Council Directive is "Equal treatment relating to employment, vocational training, promotion and general working conditions (1976/207), which is amended by the Directive 2002/73. In addition, on the legal basis we come across with the Article 149 of the Treaty of European Community<sup>61</sup>, which calls The Member States "shall contribute to the development of equality education by encouraging between The Member States". In addition, the Council Resolution of 27 November 2003 is also on equal access to and participation of women and men in the knowledge society. On the Treaty base, we come across with Article 149 of the Treaty of Amsterdam (1997), which states that the Community "shall contribute to the development of quality education by encouraging cooperation between The Member States". Also, with the Lisbon Strategy<sup>62</sup>, adopted in March 2000, the EU recognizes the important role that gender equality can play "for contributing to the European Union becoming the most competitive and dynamic knowledge-based economy in the world".

As an institutional framework, there are two Commission take place as specifically dealing with education and research: Directorate General for Education and Training and Directorate General for Research, which has a special unit called 'Women and Science'.

But, none of these programmes have been specifically created for the equality between women and men. They only include the statement of 'respect for gender equality', and they only define 'women' as a disadvantageous group.

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<sup>61</sup> The Treaty Establishing the European Community (1997), Article 149: The Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organization of education systems and their cultural and linguistic diversity.

<sup>62</sup> An agreement reached by EU heads of government at the Lisbon European Council in 2000 to integrate employment, economic and social policies in order to make the EU the most competitive economy in the world. More information: [http://europa.eu.int/growthandjobs/index\\_en.htm](http://europa.eu.int/growthandjobs/index_en.htm)



Finally, as it was states with *Chapter III*, the Framework Strategy on Gender Equality calls for the promotion of: “the employability and the access of women to information technologies jobs, particularly by enhancing participation of women in relevant education and training as well as awareness of gender discrimination and the need for a gender balance in civic education and for efforts to eradicate stereotypical gender discrimination in education, for example in educational materials, and to develop good practice in this field”.

EWL (2004: 30) states that, all 25 the Member States of the EU provide full and universal primary and secondary education, however, inequalities exist in the area of ‘education’, however the following the obstacles and remaining gaps in the field of education as;

- 1) The EU provisions on this field are extremely restricted, and the only equality directive focuses on ‘vocational training’, while the number of female technical professions is highly limited.
- 2) The textbooks that mainly for the primary education as well as the messages from teachers include ‘gendered’ statements.
- 3) Women’s role as care-takers still remains the major structural barrier for ‘adult women’s education’, In some cases, even if women re-start their educational lives, because of ‘double-burden’, they often cannot complete the existing programmes.
- 4) The skills gap between women and men remains a significant problem in Europe.
- 5) Women are under-represented in scientific fields.<sup>63</sup>
- 6) The above-mentioned ‘Adult Education Action’ projects do not see women as target groups, but as ‘disadvantaged’ in general terms.
- 7) Certain groups of women such as rural and migrant or disabled women are not considered with special measures due to their special needs.

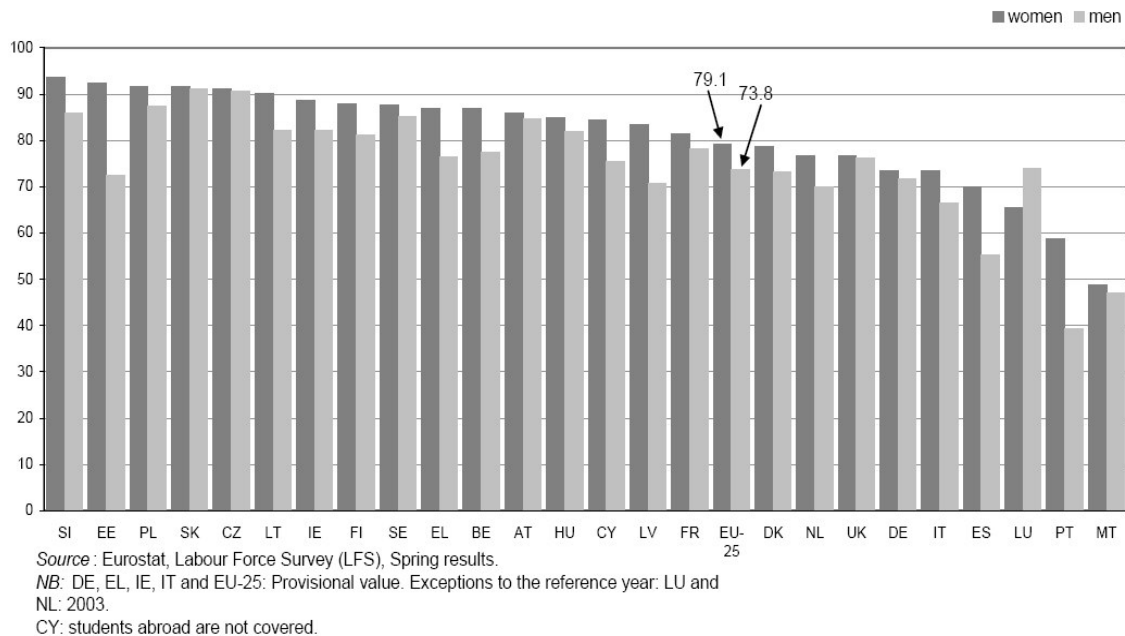
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<sup>63</sup> Only 25 per cent of students in science and technology subjects and 6 per cent of students in engineering (from “Equal Opportunities for Women and Men in the European Union”, Annual Report 1998, European Commission), Women researchers are still a minority in the Government and Higher Education Sectors, a trend that is accentuated in the natural science and engineering fields from (Statistics in Focus, Women, Science and Technology: Measuring Recent Progress Towards Gender Equality, Theme 9 – 6/2004).

The EC's Report (2005) 'women and education' part shows that educational attainment to the school of women is high. However, in the light of EWL's perspective, it is stated that "while women in Europe are attaining more educational qualifications than men, this is not reflected in their employment situation" (EWL 2004: 34).

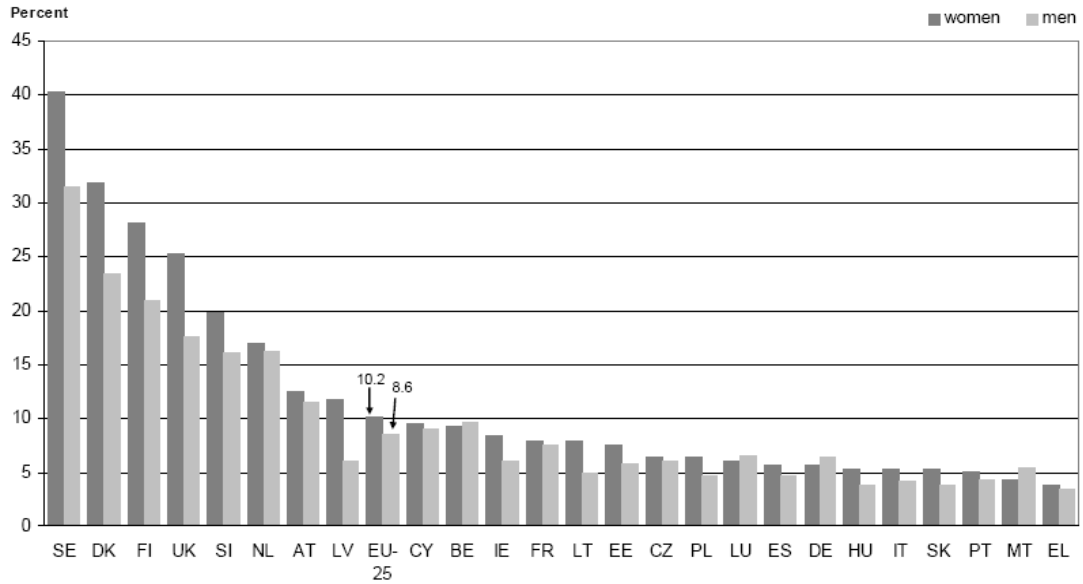
From the figure 20, we see that women, aged 20-24, educational attainment is higher than men attainment with 79.1% to 73.8. Also, the figure 21 shows that for the life-long learning, women's participation is slightly higher than men's. However, figure 22 shows that, despite that this rate, as a consequence of maintaining the education, men hold 86% of professorship status, while women hold only 14% in the 25 EU Members. These statistics can be interpreted as women still outnumber men in education.

**Educational attainment (at least upper secondary school) of women and men aged 20 - 24, in EU Member States - 2004**



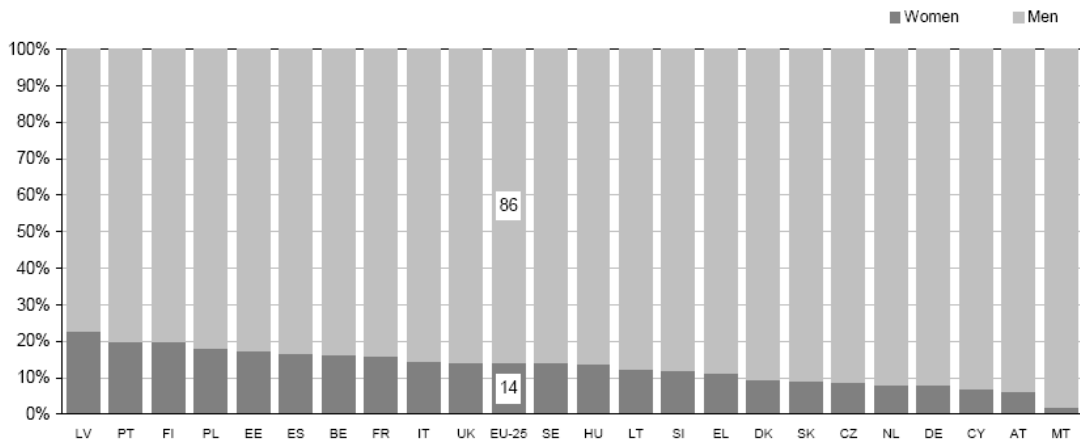
**Figure 3.13** Educational Attainment 8 (at least upper secondary school) of women and men aged 20-24) in the EU Member States- 2004

**Life-long learning - Percentage of the population aged 25-64 participating in education and training over the four weeks prior to the survey, 2004**



**Figure 3.14 Life-long Learning- Percentage of the Population aged 24-64**

**Full professors or equivalent (Grade A) in EU Member States - Sex distribution 2002<sup>1</sup>**



Source: European Commission, Research DG, Wis database.  
 NB: (1) Exceptions to the reference year: CY, DK, FR, IL, IT, NO, PT: 2001; EL: 2000; AT: 1998. Data are not available: IE, LU.  
 NL: FTE as exception to HC; SI: Data are estimated.  
 Data are not comparable between countries due to differences in coverage & definitions.

**Figure 3.15 Full Professors or Equivalent (Grade A) in the EU Member States- Sex Distribution 2002**

### 3.7.3. Women in Politics

Despite that women make up more than half of the population in the EU, they continue to be under-represented in all European decision-making bodies, in political decision-making in the EU Member States and in economic and social decision-making.

The Treaty of Amsterdam (1997) provides a general gender equality provisions with its Article 141, which calls The Member States to establish "specific advantages" for the "under-represented sex". On the other hand, there is no binding provision for gender equality in political decision-making in the European institutions. Despite that there is no Council Directive exist on this area, there are some other provisions take place in the EU level as follows:

- 1) Council Resolution of 27 March 1995 on the balanced participation of men and women in decision-making<sup>64</sup>
- 2) The EP Resolution on women in decision-making of 02/03/2000<sup>65</sup>.
- 3) The EP report on "Elections 2004: How to ensure balanced representation of women and men"<sup>66</sup> 116 of October 2003
- 4) The EP Resolution<sup>67</sup> on a draft common procedure for the EP elections 117 of 1998 considers that: "When lists of candidates for European elections are drawn up, account must be taken of the objective of equality between men and women and that it is primarily for political parties

However, as EWL (2004: 61) states that "there are various obstacles and remaining gaps exist, and different factors play a role in relation to gender equality in political decision-making, in particular political parties, the electoral system in place, the possibility to hold

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<sup>64</sup> OJ C 168 04.07.95 p.3

<sup>65</sup> This EP Resolution endorses the use of quota as a transitional measure to bring more women into decision-making.

<sup>66</sup> Lone Dybkjaer Report A5-0333/2003

<sup>67</sup> Resolution A4-02212/1998

several mandates at the same time, the political culture and gender stereotypes” (EWL 2004: 61)

Data on women in decision making at European level shows the serious gaps at the EP level: The proportion of women rose from 17.3% to 29,6% after the 1999 elections. Besides of this low representation, at the EU institutions level, women’s participation is also lacking. According to the EWL report (2004: 62), the numeric situation of women in the EU institutios

**The EP:** Women represent the majority of the EP staff (54%), but only 22% of ‘A’ category staff (20% in 1998).

**The Council of Ministers:** The Council of Ministers is composed of representatives at ministerial level from each Member State; the percentage of women therefore depends on the presence of women in national governments. Today, women’s representation within the Council is around 23%<sup>68</sup>.

**The European Commission:** By the 2004-2009 legislative periods, women’s representation became 28% within the EC. However, EWL (2004: 62) “only one of the five Vice- Presidents is a woman and the EC President has never been a woman”.

In addition, the EU declares these rates as it is given in the table 4, 5 and 6.

**TABLE 3.4 Women’s Representation in the EC**

	President	Members			
		Women(N)	Men (N)	Women (%)	Men (%)
<b>European Commission</b>	M	7	17	29	71

Source: *European Commission, DG EMPL, Database on women and men in decision-making*

<sup>68</sup> European database women in decision making: [http://www.europa.eu.int/comm/employment\\_social/women\\_men\\_stats/out/measures\\_out416\\_en.htm](http://www.europa.eu.int/comm/employment_social/women_men_stats/out/measures_out416_en.htm)

**TABLE 3.5 Women's Representation in the Committee of the Regions**

	President	Members			
		Women(N)	Men (N)	Women (%)	Men (%)
<b>Committee of the Regions</b>	M	51	254	17	83

*Source: European Commission, DG EMPL, Database on women and men in decision-making*

**TABLE 3.6 Women's Representation in the Economic and Social Committee**

	President	Members			
		Women(N)	Men (N)	Women (%)	Men (%)
<b>Economic and Social Committee</b>	W	89	231	28	72

*Source: European Commission, DG EMPL, Database on women and men in decision-making*

Regarding the above-mentioned figures, EWL criticizes the EU institutions' quota systems<sup>69</sup> for decision-making positions. In addition, despite the Amsterdam Treaty's commitment to gender equality, EWL determines the gender criteria as very weak and rarely used provision, when it comes to defining nomination/election rules. The table 7 shows the latest statistics on this area.

**TABLE 3.7 Women's Representation in the European and National Parliaments**

<b>Representation of women in the European Parliament:</b> 1995: 26.8% and 2004: 30.3% women
<b>Representation of women in national parliaments<sup>70</sup>:</b> 15 old EU Member States: 1996: 14.8% 2004: 25.9%
25 Member States and accessing countries: 2004: 20.1%
<b>Managers (15 EU Member States)<sup>71</sup>:</b> 1995: 30% women; 2002: 30% women

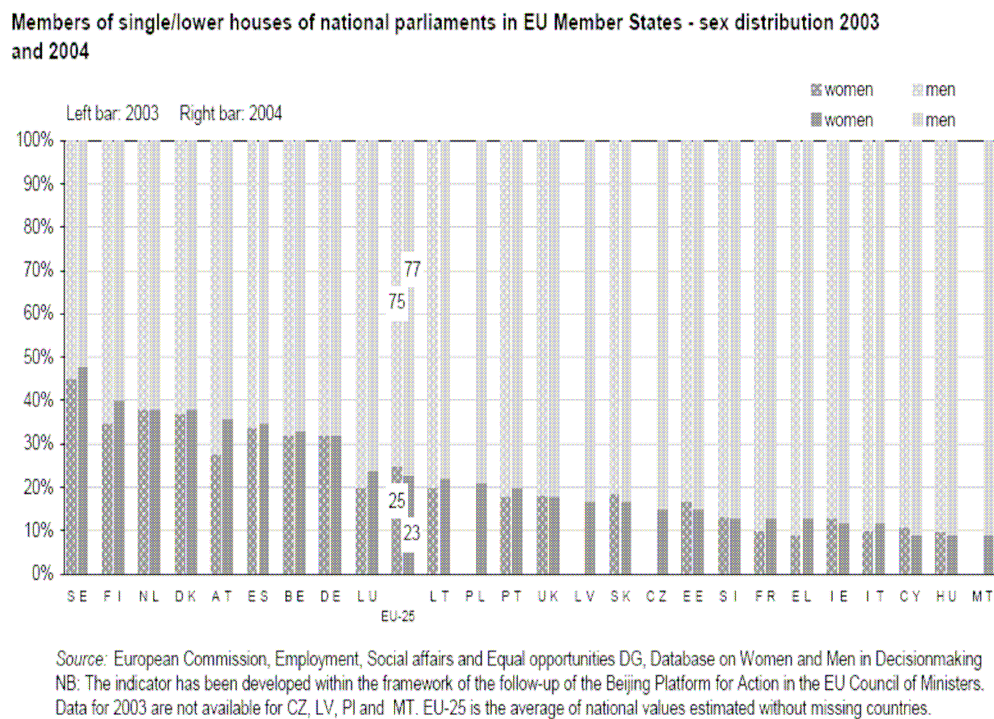
*Source: The European Women's Lobby (2004), "Beijing+10 1995-2005: Review of the Implementation of the Beijing Platform for Action by the European Union, p. 11*

<sup>69</sup> Quotas by nationality/country for the European Parliament; a combination of criteria - nationality, political party, even personality - for all kinds of nominations, including for Commissioners

<sup>70</sup> European Commission data base on women in decision-making

<sup>71</sup> Note Pascale Joannin, Robert Schuman Foundation, « L'Europe, une chance pour la femme » (May 2004).

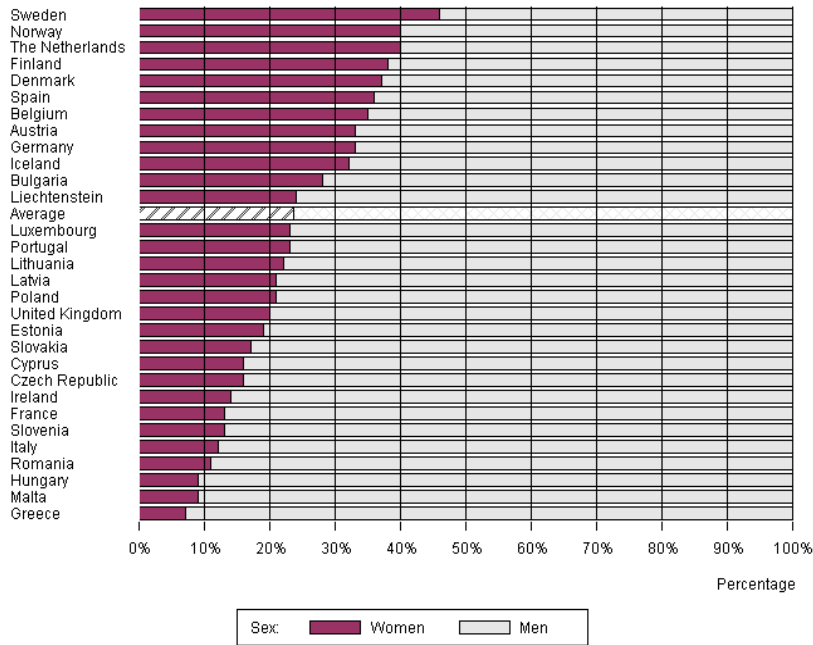
Besides of the given statistics and information above, the figures 23, 24, 25, and the table 8 provide the statistics, that belong to the Member States national parliaments and they are given by the EU's different institutions. As we can see from the figure 23, the women's representation in EU25 (average) is 23-25%, while the EP 30.3% women's representation. Among the EU Member States, the highest women's representations belong to Scandinavian Members, which adopt 'social democratic' gender welfare regimes.



**Figure 3.16** Members of Single/Lower Houses of National Parliaments in EU Member States- Sex Distribution 2003 and 2004

The EC represents only one table by its latest report on gender equality, and states that balanced participation in decision-making is looked at in the political and economic fields (Commission 2005: 11).

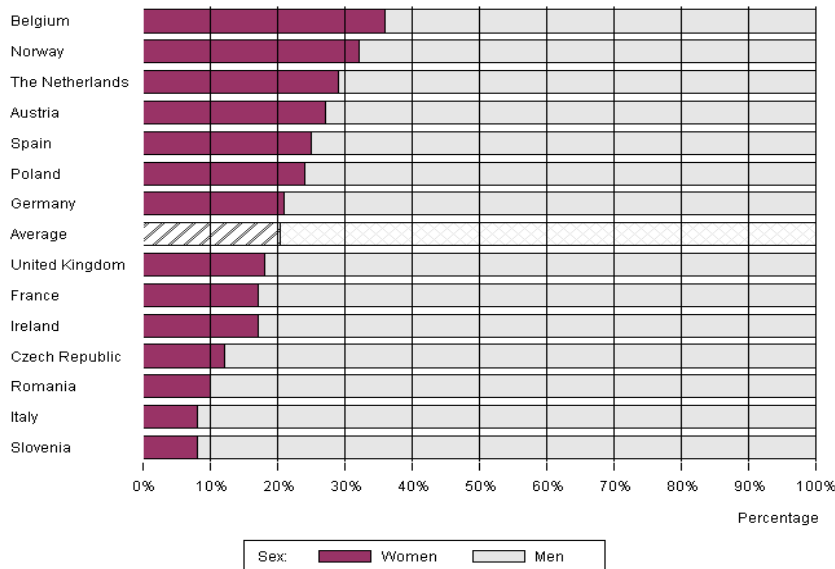
President and members of the lower/single houses of the national/federal parliament



Source: European Commission, DG EMPL, Database on women and men in decision-making

**Figure 3.17** President and Members of the Lower/Single Houses of the National/ Federal Parliament

President and members of the upper houses of the national/federal parliament



Source: European Commission, DG EMPL, Database on women and men in decision-making

**Figure 3.18** President and Members of the Upper Houses of the National/ Federal Parliament



**TABLE 3.8 % of Women MPs at the EU Members**

Member State	% of Women MPs (equivalents)
Sweden	45.3
Finland	37.5
Denmark	36.9
Netherlands	36.7
Spain	36.0
Belgium	34.7
Austria	33.9
Germany	32.8
Luxembourg	23.3
Lithuania	22.0
Portugal	21.3
Latvia	21.0
Poland	20.2
UK	19.7
	19.5
Estonia	18.8
Czech Republic	17.0
Slovakia	16.7
Cyprus	16.1
Greece	14.0
Ireland	13.3
France	12.2
Slovenia	12.2
Italy	11.5
Malta	9.2
Hungary	9.1

**Source:** [http://www.womenandequalityunit.gov.uk/public\\_life/parliament.htm](http://www.womenandequalityunit.gov.uk/public_life/parliament.htm) (2004)

Finally, in terms of women’s participation to decision-making process, Appendix F shows that the situation is worse than their participation to employment, in other words, they can contribute to production, but they cannot take part in the decision-making procedures of this function. The average is 30% for the EU25.

#### **3.7.4. Violence against Women**

Violence against women can be determined as one of the most serious violation of women’s human rights and fundamental freedoms. The EWL’s data on violence against women states that “at least one woman in five experiences violence by an intimate

partner”<sup>72</sup>. However, until this title, it is not possible to see the relevant data from any EU institutions.

At the EU level, on legal base, the Declaration on Combating Domestic Violence Declaration #13 can be seen as a significant process. By definition, a declaration has a political, declaratory nature and does not constitute a specific legal base for Union action. The Declaration only invites the Member States to combating domestic violence. According to EWL (2004: 3), “the scope of the Declaration is limited in that it only refers to domestic violence; it would have much better if it referred to all forms of violence against women, while the Declaration does not have legal status but represents a moral obligation and political will”.

The primary measure at the EU level to address violence against women is the DAPHNE as a multi-annual programme to facilitate and support NGOs working in the area of violence. In 2004, the EU Council adopted a new Daphne programme for a period of five years (2004-2008). Unfortunately, because that Turkey has not paid its country-based proportion for this programme, Turkish women could not benefit from DAPHNE Programme yet.

Also, we see that, since 2000, four EU Presidency Conferences on the issue of combat violence against women were organized as they are given below. At each of these conferences a considerable number of recommendations were adopted. However, the EU needs stronger provisions for violence against women.

- Lisbon, **Portugal**, 2000: “Violence against Women: Zero Tolerance”
- Santiago de Compostela, **Spain**, 2002: “Violence against Women, focusing on three forms of violence (domestic violence, violence in school and sexual harassment)”
- Athens, **Greece**, 2003: “Combating domestic violence and trafficking in women”

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<sup>72</sup> European Women’s Lobby : « Unveiling the Hidden Data on Domestic Violence in the EU », 1999.

- Dublin, **Ireland**, 2004: “Violence against Women – From Violation to Vindication of Human Rights”

In this regard, the Directive that adopted in 2002 revising the first equal treatment directive from 1976 (76/207/EEC, and 2002/73/EC), which provides a definition of harassment and sexual harassment in the workplace, as a form of discrimination based on sex; can be seen as a positive step. Also the Council Resolution on initiatives to combat trafficking in human beings, in particular women (2003/C 260/03)<sup>73</sup> constitutes the legal basis on this field. However, the EU gender equality aquis does not have any directive, which focuses on the “violence against women” and the violence outside the work place.

EWL (2004: 47) states the obstacles and remaining gaps as they are

- 1) There is a need for ‘strategy and clear political commitments’ for combating violence.
- 2) Since 1998, we come across with several The Council Presidencies’ Recommendations and Resolutions, however, these do not have any follow-up mechanisms, and still there is no Council Directive for ‘violence against women’.
- 3) Lack of data on violence against women.

On the violence against women, none of the EC Report on gender equality has ‘violence against women statistics’. At the EU level, the most comprehensive data come form EWL, as they can be seen below:

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<sup>73</sup> Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women (2003/C 260/03):  
[http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c\\_260/c\\_26020031029en00030004.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_260/c_26020031029en00030004.pdf)

**Domestic violence**

- In the EU **1 in 5 women** experience violence by their intimate male partner. 95 % of all acts of violence against women (VAW) take place within the home<sup>74</sup>.
- 6 women die every month in France as a result of domestic violence<sup>75</sup>
- In the UK: 8 women every month<sup>76</sup>
- In Finland: 27 per year<sup>77</sup>.

**Sexual harassment**

- Between 40 and 50 % of female employees have experienced some form of sexual harassment or unwanted sexual behaviour in the workplace<sup>78</sup>.

**Violence experienced by women in prostitution**

- The average age of women entering into prostitution is 13 or 14; there is no evidence to suggest that this age is decreasing<sup>79</sup>.
- Data provided by the British Medical Journal on the experience of client violence against women prostitutes indicates that 93 % of women had an experience of client violence<sup>80</sup>
- Around 80 % of women in prostitution have been sexually abused in their childhood<sup>81</sup>.

**Rape**

- Reported numbers of rape in England and Wales (in 2001): 9743 cases; Germany (in 2001): 7891 cases<sup>82</sup>.

**Trafficking in women**

- Approximately 500,000 women are annually trafficked into Western Europe.
- In 1981 there were 2 500 prostitutes, 10 000 in 1985, 20 000 in 1989 and 25 000 on 2003.<sup>83</sup>

**Figure 3.19** Some Figures Regarding Violence Against Women

**Source:** *The European Women's Lobby (2004), "Beijing+10 1995-2005: Review of the Implementation of the Beijing Platform for Action by the European Union, p. 11*

<sup>74</sup> "Unveiling the hidden data on domestic violence in the EU", European Women's Lobby, 1999.

<sup>75</sup> Interview of French Minister for Equality and Parity, Nicole Ameline, "Violence envers les femmes: il faut lutter ensemble", in: le Bulletin de la Commission Femmes, Amnesty International, no. 7, march 2003.

<sup>76</sup> WOMANKIND newsletter, Spring/Summer 2003.

<sup>77</sup> "Faith, Hope, Battering: A Survey of Men's Violence against Women in Finland", Markku Heiskanen, Minna Piispa; Statistics Finland, Council for Equality, Justice 1998:20, Equality between women and men SVT, 1998, p.4.

<sup>78</sup> "Sexual Harassment at the workplace in the European Union", European Commission, Employment and Social Affairs, Equality between women and men, 1998, p. 15. the Netherlands transforming the local Women by the UNECE ECE/AC.28/2004/10.

<sup>79</sup> "La prostitution un metier comme un autre?", Yolande Geadah ; VLB éditeur, 2001, p. 137.

<sup>80</sup> British Medical Journal: Do you want the latest evidence? "Personal characteristics, drug use, and experience of client violence by prostitutes working indoors or outdoors", downloaded on 17/2/2003 from: <http://bmj.com/cgi/content/full/322/7285/524/Ful>

<sup>81</sup> Fact sheet on Human Rights Violations, Prostitution Research & Education, Melissa Farley, <http://www.prostitutionresearch.com>

<sup>82</sup> "Rape – Still a forgotten issue. Briefing document", Linda Regan and Liz Kelly, Rape Crisis Network Europe, 2003, p. 6.

<sup>83</sup> Note on Trafficking in Women by the UNECE ECE/AC.28/2004/10.

## CHAPTER IV

### **IMPLICATIONS OF EUROPEAN UNION GENDER EQUALITY POLICIES FOR TURKEY**

The Turkish Republic within its first years took a giant step forward in terms of women's participation in public life, realizing radical changes for Turkish women's social status, while at the same time disassociating itself from the Ottoman order to evolve into a modern society (Kerestecioğlu 2004: 35). As Kerestecioğlu states, the main paradigms of the Republic were modernization and nationalization, and from some aspects, women's rights were used for making the modernization process visible during this period of transition.

In the 1980s, with the impact of the second-wave feminist movement, the Republican era and the rights acquired for women were criticized mainly by radical feminists in Turkey. In this regard, it was emphasized that the 'equality before law' principle and being given the opportunity to participate in public life were not sufficient to guarantee gender equality. The system of legislation was also criticized for its lack of promotion and protection of gender equality.

However, before looking at the historical development of 'gender equality' in Turkey, there is a need to establish a bridge between the European Union gender equality policies, and Turkey's commitments.

Non-discrimination and gender equality are among the fundamental values on which the EU is based as stated by the previous chapters. In the framework of the EU aquis

communautaire and for its membership criteria, 'gender equality policies' are an integral part of the Copenhagen political criteria, and all candidate countries should confirm their legislation and implementation before the accession negotiations (Pavan- Woolfe 2004: 1).

The EU has formulated three basic criteria, known as the Copenhagen Criteria, which must be met by candidate countries before full membership is granted:

*Candidate countries have to be stable democracies, where the rule of law and respect for human and minority right is ensured; Candidate countries need to have a functioning market economy which has the capacity to compete within the single European Market; Candidate countries are required to transpose the *acquis communautaire* , the common body of EU legislation, into national legislation and to ensure its implementation<sup>84</sup>*

Besides these general criteria, all the EU legislation regarding the treatment of women and men are outlined in Chapter 13 of the *acquis*, under the title of 'Employment and Social Policy'. There are no provisions or any other regulations about gender equality in any of the other policy areas covered and, thus this issue has not been covered at all outside the field of employment and social policy. The *acquis communautaire* includes all rights and obligations taking power from the EU treaties and laws, and it consists of primary (the Treaty of Amsterdam) and secondary European Law (Council Directives), soft law instruments (e.g. Community acts and initiatives such as the Action Programme, the Community Framework Strategy on Equality between women and men), as well as the case law of the European Court of Justice. Therefore, it can be said that the approach to gender equality has been limited to equal treatment of women and men in the field of employment and social policy. In all other chapters of the *acquis*, gender equality has been disregarded (Steinhilber 2002: 3-4).

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<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/03/1499&format=HTML&aged=0&language=EN&guiLanguage=en>

If we look at the relations between Turkey and the EU, we see that the positive developments in Turkey as well as the country's intention to continue reform towards complying with the Copenhagen criteria were welcomed by the European Council Summit in Helsinki (10-11 December 1999). As a consequence, Turkey was then determined as one of "the candidate States destined to join the EU on the basis of the same criteria as applied to the other candidate States".<sup>85</sup>

The decisions taken at Helsinki were important for the EU- Turkey relations. From then, Turkey, like other candidate countries was to benefit from a pre-accession strategy to support its reforms. The 'accession and harmonization' process started and on 4<sup>th</sup> December 2000, the Council of Ministers adopted the 'Accession Partnership' Document, which was formally adopted by the Council on 8 March 2001. With this document, the EU supplied a roadmap for Turkey in order to display the priority areas of the accession process.

The purpose of the 'Accession Partnership' is "setting out in a single framework the priority areas for further work identified in the Commission's 2000 Progress Report on the progress made by Turkey towards membership of the European Union, the financial means available to help Turkey implement these priorities and the conditions which will apply to that assistance".<sup>86</sup>

Regarding the above-mentioned document, the Turkish Government adopted its National Programme for the Adoption of the Acquis (NPAA) on 19 March 2001.<sup>87</sup> The programme provided a wide-ranging agenda of political and economic reforms. At the

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<sup>85</sup> <http://www.abig.org.tr/en/template.asp?nx=0&id=451&go=Turkey+and+the+EU%3AHistory>

<sup>86</sup> Ibid.

<sup>87</sup> The National Programme for the Adoption of the Acquis is the candidate country's timetable for preparing for accession. It estimates the timing and cost of the steps needed to prepare the country for membership and the implications for staff and financial resources (<http://europa.eu.int/comm/enlargement/pas/phare/>).

same time, a government decree was issued on the implementation, co-ordination and monitoring of the NPAA (Moroğlu 2003: 1).

The NPAA contains short and medium-term required actions, and also has a section regarding 'equality between men and women'. In this framework, the amendments of the Constitution, the Labour Law, the Civil Code, and the Penal Code as well as the adoption of CEDAW Optional Protocol (2000), that was signed by Turkey on 8 September 2000 and came into force on 29 October 2002, can be seen as some of the steps taken regarding the short and medium-term targets of the NPAA.

Furthermore, a revised NPAA was adopted by Turkey on 24<sup>th</sup> July 2003, foreseeing the reconciliation of family and working life through such provisions on as 'parental leave' and 'maternity leave within the European standards' accordance with the framework of the relevant Council Directives.

Before analyzing the implications of the EU gender equality legislation and policies for Turkey, a brief historical review of gender equality will be discussed.

#### **4.1. HISTORICAL OVERVIEW OF 'GENDER EQUALITY' IN TURKEY**

Since the establishment of the Republic, Turkey has been in a movement of 'modernization' within many areas of society, such as politics, law, and economy. Within this process, the issue of the status of women in Turkey has taken prominence.

Like the other women in the world, women in Turkey have been struggling for equal citizenship rights and being treated as independent individuals, since the early days of the Republic. While, this struggle has always had an 'international' dimension in Turkey, the impact of the international and regional instruments and mechanisms such as the UN and the EU gender equality regimes, have become more visible.



Kardam and Ertürk (199: 171) state that “the historical genesis of gender equality in Turkey started by the establishment of the Turkish Republic, where gender equality has taken part within the modernization process to achieve international acceptance of Turkey as ‘modern’ or ‘Western’ state”.

Regarding this modernization process and in order to understand the early positions of women’s struggle in Turkey, Tekeli (1986: 645) suggests the following periodization.

- 1) *The structure of the Pre- Tanzimat Ottoman society (up to 1839);*
- 2) *The process of ‘Westernization’, starting with Tanzimat and continuing until the end of the First World War (1839-1918);*
- 3) *The first years of the Republic and the single-party regime (1923-1950);*
- 4) *The period of ‘fast’ social change starting after 1950 and coming to the present.*

However, within the focus of this thesis, this periodization will be limited from the first years of the Republic to the present in order to analyse ‘gender equality’ patterns and the ‘women’s movement’ in Turkey, while the previous periods will be briefly mentioned. As Tekeli (1986) argues, the turning point will be taken as the 1980s because this date symbolizes an important shift and diversification of the feminist movement in Turkey. By analyzing these periods, the emergence of ‘gender equality’ as a demand of the feminist movement in Turkey will also be discussed.

Sirman (1989: 666) states that “in the modern Turkish context, feminism appears firstly as an ideology that attempts to articulate the position of women in society as a central issue”. From 1889 to 1876, while the Ottoman’s were undertaking a series of reforms in the fields of administration, legislation, and education, they were influenced by the French Revolution and its new ideas of freedom, equality and the notion of citizenship. In this regard, “women, who have been historically seen as mothers and wives were responsible for the well-being of the Ottoman man and for the creation of future enlightened generations”, and their education was seen as important for creating responsible citizens (Sirman 1989: 669). With this opportunity given, women became

visible by their writings in newspapers and journals, and some of them were critical of men's role in the subordination of women as well as of the Ottoman family system (Tekeli 1986; Sirman 1989). During this period, women's demands were mainly for entering the public sphere. On the other hand, more insistent voices of women were heard during the Second Constitutional period (1908- 1919) by the Young Turk Revolution (Sirman 1989: 670). Yet, despite the fact that the women of these two time periods can be considered to be the pioneers of the Turkish women's movement with their demands for equality between women and men, they have nonetheless mainly remained as mothers and wives.

#### **4.1.1. 1923- 1980 Period**

By the early Republican period, we see that women were still mothers and wives for the Turkish society. However, owing to the above-mentioned heritage as well as the influence of international developments regarding 'gender equality', women also acquired an additional mission; that of educating the nation (Sirman 1989: 673). This mission gained more importance during the first years of the Turkish Republic, because it was important to emphasize the differences between the Ottoman Period and the new Republic. This was partly attempted by depicting "women as equal to men among the pre-Islamic Turks in Central Asia, unlike during the Islamic- Ottoman Period" (Arat 2000: 109). This approach to women has been used by the Republican modernist elite as a symbol of modern Turkey, because improving women's status also showed the resolution of two societies; the Ottoman and Turkish.

In this regard, the reforms that were realized within the 1920-1930 period provided 'new roles' and 'new opportunities'. The new regime replaced the Islamic civil code, which included inequalities between women and men in marriage, divorce, inheritance and custody over children, with a secular code adopted from the Swiss. These reforms have subsequently been also criticized, because they could not be sufficient remedies for gender inequalities and subordination remaining in such fields as legislation, education, economy and political life within a sexist system (Çubukçu 2004: 55). Even the above-

mentioned reformist civil code which based ‘personal status’ and ‘family’ law entirely on secular grounds greatly improved women’s status, entailed the patriarchal norms of the times, for instance Article 41 called ‘husband’ as the head of family. This, of course, was the rule in much of Western legal tradition of the era.

The Turkish Civil Code adopted in 1926 by the very young Turkish Republic, nonetheless, contained a number of important advances for women. It also had its roots in the strong central state tradition and some patriarchal practices.

The Code outlawed polygamy and granted equal rights to divorce to both partners, equal child custody rights to both parents, and equal access to education to women and men (inter. alia, Abadan Ünat, Ş. Tekeli, Zehra Arat, Kardam and Ertürk 1999: 171). After 76 years, with the outstanding effort of the Turkish women’s movement, in November 2001, the Turkish Parliament approved the New Turkish Civil Code, which abolished the supremacy of men in marriage and thus established the full equality of men and women in the family.

In 1930, women were granted the right to vote and to be elected for Municipal Office and after four years in 1934, they were granted the right to hold national elected public office by a Constitutional amendment. In 1935, 17 women took part in the Grand National Assembly of Turkey<sup>88</sup>.

However, during the 1930s, “as a result of the state’s control of the gender discourse and the state’s claim to having bestowed women their rights”, the activism of the women’s movement was limited (Kardam and Ertürk 1999: 172). In this regard, it can be argued that “emancipation of women was realized under the strict discretion and monopoly of the Kemalist elites, and women were not allowed to organize their own lobby for their own rights” (Arat 2000: 111). As Arat (2000) states in 1923, the effort by Nezihe

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<sup>88</sup> [http://www.dic.gov.tr/tkba/kadin\\_haklari.htm](http://www.dic.gov.tr/tkba/kadin_haklari.htm)

Muhittin to initiate a 'Women's People's Party' was curtailed, and instead she was advised to form a women's union.

As one overlook, the developmental history of the Turkish women's movement, one comes across approaches and definitions for 'gender equality' that run parallel and/or echoing those of the international women's movement overtime. During the one-party period (1930-1945) in Turkey, "the major women's groups, who followed Atatürk's interpretation of gender issues and expressed gratitude to the secular state for having granted them their rights" (Kardam and Ertürk 1999: 172) dominate the scene. The rights achieved with the Republican reforms, such as women's participation in public life and the right to vote and be elected, were seen as enough by this movement, and having equal opportunities with men in order to achieve economic independence was determined as the most important goal from the 1930s through the 1990s.

Between the first years of the Republic and the 1960s, we see a kind of national and international stagnation because of the existence of acquired civil, social and political rights for women. That time-period has been called the 'infertile years' by some analysts (Tekeli 1998: 337). However, with the 1960s and 1970s, dissatisfactions and critical approach appear on the scene. The outcomes of the legal rights acquired during the first decades of the Turkish Republic, as well as the way these rights were implemented by women in Turkey were questioned. As a consequence, by the 1980s, the new Turkish women's movement was openly re-examining and rejecting traditional sexual roles. Thus, the post-1980's women's movement has been classified as the 'second-wave' feminist movement, which sheltered 'radical', and 'socialist' feminisms within its structure (Çubukçu 2004: 57).

From the inception of the Republic until the 1980s, in general, we see that the conditions for women's emancipation and women's rights have been determined by the state. As a result, we come across a slightly passive women's movement in those years. As Arat states "after the Republic was founded in 1923, radical attempts were undertaken to improve the status of women, because the new regime had democratic aspirations"

(1994: 243). After the dissolution of the Ottoman Empire, where Islamic law was an important source of legislation, the founders of the Republic aimed to establish a liberal Western society, secular as well as democratic, in Turkey (Arat 1989; Tekeli 1982). Until 1980, the Turkish women's movement's demand for equality between women and men was limited to rights given by the state, as the right of education, right to vote and right to be elected.

#### **4.1.2. From 1980s to Present**

During the sixties and seventies Turkish women began to be drawn into a rather different discourse from the one that had characterized their mothers as women. This discourse was articulated by the student movement and the various brands of the Marxist left (Sirman 1989: 680). Following these years, and particularly as a result of the military intervention in 1980 heavily impacting the political and socio-cultural character of Turkish society. New opportunities and more spaces appeared for the Turkish women's movement while the rest of Turkish civil society was extremely limited, and "the pre-1980 political actors on the Left and the Right were persecuted" (Tekeli cited in Arat 2000: 112).

As Kardam and Ertürk (1999) state, in the 1980s and 1990s the, "women's movement has arisen and begun to mature, and by 1990s women's organizations were representing diversity in Turkey, with different perceptions, aspects and 'gender equality' definitions". Those years were determined as the era of expanded gender discourse by Kardam and Ertürk. They find two reasons behind this discourse opening up dialogue and channels of collaboration. "The influence of the international women's rights regime and gender-sensitive donor assistance", as well as the "openness within Turkish society that allowed more space for women and the accompanying maturation and shifts" was cited in this regard (Kardam and Ertürk 1999: 167).

During this period, women transcribed, and criticized the formation of 'feminine identity' and reproduction processes while they were finding new ways for 'existence'.

They could manage to create a new ‘political sphere’ for their activities, projects and discussions (Çubukçu 2004: 57). This time period is also marked by the demand for ‘de facto’, instead of ‘de jure,’ equality in Turkey. During this time, the women’s activists “demanded substantive equality beyond formal equality, expressed their needs to be in control of their own sexuality and protested domestic violence” (Arat 2000: 113).

During the first years of the 1980s, we encounter a women’s movement independent from the state, which was composed mainly of non-hierarchical and independent forms of organizations, small ‘consciousness awareness raising’ groups, or ad-hoc committees, which had first appeared to take active roles within the 1970s’ political atmosphere (Berktaş 1990: 293). Women of this independent movement were calling themselves as ‘feminists’, and Western feminism had a strong influence on them (Sirman 1989: 683).

Within the same period, in 1979, the Third World Conference on Women took place and what can be called the women’s bill of rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in the UN. The above-mentioned national developments were also strengthened by the influence of this international women’s rights regime and its instruments.

By the end of the 1980s, it was seen that the women’s movement as well as feminist ideology could not be exclusively dominant in all spheres, however ‘women’s problems’ became visible and central to the political agenda (Çubukçu 2004: 70). During this term we came across several actions, marches and protests, but the institutionalization process could not yet be realized.

As different from the previous period, the women’s movement of the 1980s criticized the primary political concern of “equalizing women and men in the public domain” as “ignoring the differences between men and women, especially in the private domain” (Arat 2000: 115). Mainly, they were against the assumption of the Kemalist reformers, who believed “the question of male-female equality had been resolved through the new

legal framework”. They were challenging this question from different aspects such as emphasizing ‘sexuality’, ‘violence’, and ‘difference’.

In light of this diversification within the feminist movement, during the 1980s, Turkish gender discourse was witnessing the existence of different feminisms such as socialist feminists, who saw gender equality as the possible result of ‘socialist order,’ and radical feminists, who were drawing attention to tradition, culture and patriarchy. In addition, as different from their European counterparts, the Turkish women’s movement included a conservative or Islamic women’s movement. While “Kemalist feminists have emphasized the significance of the maintenance of secularism, Islamist movement was putting their strength to Turkish society’s traditions and norms instead” (Kardam and Ertürk 1999: 174). Among the Islamist feminist movement, we come across “a group of women, some calling themselves feminist Muslims, others simply Muslims, and some preferring not to identify themselves, insisting that they be allowed to work in public service and attend universities with their heads covered” (Arat 2000: 199). On the other hand, during the 1980s, we also come across Kurdish women’s activism.

As we could see above, during the 1920s and 1930s, Turkish women were granted some important rights and opportunities, however, till the 1980s those rights had been seen as enough and had not been examined by the state. On the other hand, in Turkey we also see the women’s right’s developments parallel the patterns of the international women’s movement. As it was stated in *Chapter II*, at the end of the 19<sup>th</sup> century and beginning of the 20<sup>th</sup> century, we come across ‘first-wave feminism’, which takes its main idea from the nationalization process and the citizenship rights of nation-states that also include women’s rights (Berktaş 2004). In this regard, this feminist movement can be termed as ‘equality feminism’ in, that it is based on the demand for ‘equal citizenship’ rights with men. Furthermore, the acquired rights were seen as adequate in order to achieve ‘equality’ in the Turkish context. On the other hand, ‘second-wave feminism’ struggles with a sexist or patriarchal system with emphasis on ‘freedom’ expression to be able to realize the acquired rights in social, cultural, economic and political life (Ünat 1988: 330), de facto.

Within the 1990s, we encounter the institutionalization of ‘women’s politics’ at the official level in Turkey for the first time. The institutionalization of gender equality started in the 1970s in most European countries. In Turkey, the gender equality institutionalization started with the establishment, in 1987, of the ‘Advisory Board for Women Policies’ as a part of the State Planning Organization’s General Directorate of Social Planning.<sup>89</sup> Following that, in December 1989, the Family Research Institute and in April 1990, the General Directorate on the Status and Problems of Women, were established as a part of the Prime Ministry.

The General Directorate on the Status and Problems of Women (GDSPW) was established on 25<sup>th</sup> October 1990 by the Law #422 in accordance with the framework of CEDAW, which had been ratified by Turkey in 1985 and the decisions of the Third World Conference on Women and the Nairobi Strategies as well as the Sixth Five-Year Development Plan of Turkey. Its mandate was defined as the protection and realization of the rightful status of women and gender equality in the social, economic, cultural and political context (Şenol, İřat and Sayın 2004: 12).

GDSPW had initially been formed as a part of the Ministry of Labour and Social Security, and on 24<sup>th</sup> June 1991, it was located within the Prime Ministry. On 13<sup>th</sup> October 1993, the Directorate was re-structured under the Undersecretariat of Women and Social Services of the Prime Ministry. However, the relevant ‘enabling statute’ was abrogated by the Constitutional Court in the same year. After this abrogation, the above-mentioned Undersecretariat was re-established on 2<sup>nd</sup> June 1994 with the organizational law of the GDSPW was sent to the Parliament by the government only five years after 5 July 1999. This organizational law could not be adopted by the Parliament for another three years, and as a consequence the General Directorate’s legal status was very controversial for a long time. On 27 November 2002, the Directorate was set up under the Ministry of Labour and Social Security one more time, and just one year later, on 29 March 2003, the General Directorate once again became a part of the Prime Ministry. As

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<sup>89</sup> <http://www.ksgm.gov.tr/tarihce.html>



the organizational law of the institution, which was the national machinery for gender and women's issues, had to wait for almost a decade to be adopted by the Parliament without a legal basis between 1994 and 2004. Finally, on 27 October 2004, the organizational law of the GDSPW (#5251) was adopted by the Turkish Grand National Assembly, and the structure was placed under the Office of Prime Minister.

Kardam and Ertürk (1999: 178) state that the GDSPW has, nonetheless, “been quite successful in putting gender issues on the public agenda, supporting research and education for gender issues, acting as a coordinating body among government institutions on gender issues, and promoting a dialogue between women's organizations and the state in a more democratic fashion” (Kardam and Ertürk 1999: 178).

In 1993, in order to increase the capacity of GDSPW, within the ‘Women's Integration to the Development’ Project, which was carried out by this unit and funded by the UN Development Programme (UNDP), the ‘Women's Unit’ within the State Institute of Statistics (SIS) was established and gender-based data collection started within the State Institute of Statistics (Şenol, İřat and Sayın 2004: 12). In addition, within the Ministry of National Education, the Ministry of Agriculture and the General Directorate of the Social Services and Child Protection Agency, additional units for the status of women were established as a part of the same project. Also, through the contribution of the same project, the first two ‘gender and women's studies’ departments were established in the Middle East Technical University and Ankara University. Today, there are 14 ‘gender and women's studies’ departments within the Turkish universities in different provinces (Şenol, İřat and Sayın 2004: 12).

In addition to these institutional developments, an ad hoc Parliamentary Commission (Commission on the Research for the Status of Women) was established in 1998, in order to study the women's situation in Turkey and evaluate it in the framework of CEDAW. (KSSGM 2000: 10). This temporary commission worked until 23 July 1998.<sup>90</sup> Today, the

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<sup>90</sup> [http://www.die.gov.tr/tkba/kadin\\_haklari.htm](http://www.die.gov.tr/tkba/kadin_haklari.htm)

establishment of a parliamentary ‘Standing Commission on Gender Equality’ and a ‘Gender Equality Ombudsman’ appear as the demands of the Turkish women’s movement. They are regarded as essential instruments in order to monitor the implementation of legislation, policies and programs to eliminate discrimination against women.<sup>91</sup> It is argued that “such a permanent governing body would oversee the establishment and implementation of legislation, policies and programs to eliminate discrimination against women in concurrence with the equality framework law; monitor gender mainstreaming develop strategies and action plans” (WWHR 2004: 13).

Besides the increasing governmental institutions in women and gender equality field, the number of active women’s organizations and the impact of the women’s movement have significantly increased in Turkey as following the Fourth UN World Conference on Women in 1995 (Çubukçu 2004: 100).

The consequent, legal, institutional and civil society developments regarding equality between women and men in Turkey will be discussed in a later section of this chapter.

## **4.2. TURKEY’S INTERNATIONAL OBLIGATIONS REGARDING GENDER EQUALITY**

In order to implement an international convention through domestic law, some particular conditions are required. In this regard the most important requirement is “that international law should be able to be implemented directly, or the signatory state’s domestic law should give permission to this kind of applications” (Süral 2005: 4). While this was not the case earlier, with the amendment of Article 90<sup>92</sup> of the Turkish

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<sup>91</sup> Statement by Ela Gökalp to the Committee on the Elimination of All Forms of Discrimination Against Women on the Fourth and Fifth Periodic Report of the Government of Turkey, 17 January 2005

<sup>92</sup> ARTICLE 90: The ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey, shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification.

International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In case of contradiction between international agreements regarding basic rights and freedoms approved through

Constitution in 2002, the international gender equality regime could become more effective in Turkey. According to the amended article, the Constitutional Court cannot make decisions regarding provisions of international agreements that have been ratified by Turkey, as unconstitutional (Süral 2005: 2). Since, this amendment, “the accountability of international documents was strengthened” (Süral 1995: 56), the international women’s rights regime and its tools have also become more powerful within Turkey’s domestic law.

Regarding Turkey’s international commitments in terms of women’s rights, and equality between women and men, we come across more than one international institution (inter-governmental organization), including the UN, the International Labour Organization (ILO), the European Council, and the European Union. As the main focus of this thesis is the EU gender equality policies and their implications in Turkey, the other international arrangements and Turkey’s obligations under there will be given brief attention. However, it is important to look at the UN mechanism in this field as it has been often referred to by the EU, where its gender aquis remains inadequate and in order to compare and understand the EU gender equality regime,

#### **4.2.1. The United Nations**

Regarding the UN international human rights arrangements and conventions, we first come across the Charter of the UN, which was signed on 26 June 1945, and came into force in the same year. Turkey signed the Charter on 15 August 1945. On the other hand, “the right of all persons to equality before the law and protection against discrimination constitutes a universal right” recognized by the Universal Declaration of Human Rights, was signed by Turkey in 1949, and came into force in the same year on 27<sup>th</sup> May.

The relevant UN Conventions that are also ratified by Turkey are listed in Figure 4.1, below.

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proper procedure and domestic laws, due to different provisions on the same issue, the provisions of international agreements shall be considered.

Body	Treaty	Signed	Ratified
UN	Convention on the Political Rights of Women	1.12.1954	26.12.1960
UN	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	20.12.1985	19.01.1986
	Optional Protocol	08.09.2000	29.10.2002
	International Covenant on Civil and Political Rights (ICCPR)	15.08.2000	23.12.2003
	International Covenant on Economic, Social and Cultural Rights (CESCR)	15.08.2000	23.12.2003

**Figure 4.1** The UN Conventions and Turkey

Among these conventions, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol has a significant importance in terms of struggling with gender discrimination and realization of equality between women and men.

CEDAW defines ‘discrimination against women’ as

*...any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>93</sup>*

was ratified by Turkey in 1985. At that time reservations were also placed by Turkey for articles 15/2, 15/4, 16/1 (c), (d), (f) and (g) of this Convention. These reservations pertained, respectively, to women’s identical legal capacity to that of men (15/2); men

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<sup>93</sup> Article I. For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

and women having the same rights regarding residence and domicile (15/4); the same rights and responsibilities during marriage and its dissolution (16/1 (a)); the same rights and responsibilities as parents in matters relating to their children (16/1 (d)); the same rights and responsibilities with regard to guardianship, wardship and trusteeship (16/1 (f)); and the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation (16/1 (g)). These reservations to CEDAW were withdrawn in September 1999 in light of the review and amendment of the Turkish Civil Code.<sup>94</sup> In addition, the Optional Protocol to CEDAW, which was signed by Turkey on 8 September 2000, was ratified on 30 July 2002, came into force in January 2003.

As Kardam and Ertürk (1999: 180) state “not only the international conventions or declarations but also the UN conferences and forums can be determined as largely responsible for the development of both an international women’s movement and the more formal governmental and non-governmental infrastructures”.

In Turkey too the awareness acceleration initiated by the UN Declaration in 1975 of the ‘Decade for Women’ and the intensification of the international women’s movement, have impacted the agenda and women’s issues had become more visible through out the 1970s, 1980s and 1990s. Clearly, the legal and institutional developments outlined earlier were affected by the international covenants and platforms of action and the women’s movement in civil society picked up pace and visibility during the 1980’s and 1990’s as can be observed from the demonstrations and public demands appearing on the scene.<sup>95</sup>

### **As a Specialized Organization of the UN, International Labour Organization (ILO)**

ILO arrangements and conventions contain articles regarding both women and men workers.

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<sup>94</sup> Combined Fourth and Fifth Periodic Report of Turkey, CEDAW/C/TUR/4-5, p. 3-4

<sup>95</sup> [http://www.un.org.tr/undp/docs/women\\_turkey.pdf](http://www.un.org.tr/undp/docs/women_turkey.pdf)

In general, ILO's conventions regarding gender equality are, the Equal Remuneration Convention (#100)<sup>96</sup>, and the Discrimination (Employment and Occupation) Convention (#111)<sup>97</sup>. On the other hand, the Convention on Underground Work (Women) (#45), the Workers with Family Responsibilities Convention (#156) the Convention on Maternity Protection Convention (#3), and its revised version in 1952 (#103), and finally the Convention on the Occupational Health Services (# 161) and its accompanying Recommendation (# 171)<sup>98</sup> were adopted. The following figure (Figure 4.2) provides an overview of ILO<sup>99</sup> conventions and their implications for Turkey. The conventions registration dates show the date for coming into force by their registration to the General Director of ILO.

Body	Treaty	Signed	Ratified
ILO	ILO Conventions	Registration dates (in general)	Registration dates (for Turkey)
	45 Underground Work (Women) Convention	21.04.1938	The First ILO Convention ratified by Turkey
	100 Equal Remuneration Convention (Fundamental Convention)	19.07.1967	Ratified
	Discrimination (Employment and Occupation) Convention (#111) (Fundamental Convention)	19.07.1967	Ratified

<sup>96</sup> #100- Article 1

For the purpose of this Convention-- (a) the term *remuneration* includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment; (b) the term *equal remuneration for men and women workers for work of equal value* refers to rates of remuneration established without discrimination based on sex.

<sup>97</sup> #111- Article 1: 1. For the purpose of this Convention the term *discrimination* includes-- (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies; 2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination; 3. For the purpose of this Convention the terms *employment* and *occupation* include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

<sup>98</sup> <http://www.ilo.org/public/englisg/standards/norm/whatare/stndards/women.htm>

<sup>99</sup> Ibid.

	The Workers with Family Responsibilities Convention (#156)	11.08.1983	-
	the Convention on <u>Maternity Protection Convention (#3)</u> , the Convention on <u>Maternity Protection Convention- Revised (#103)</u>	28.06.1952	-
	<u>Night Work (Women) Convention (Revised), (#89)</u> , and <u>Night Work (Women) Protocol (#171)</u>	26.06.1990	-

**Figure 4.2** ILO Conventions and Turkey

#### 4.2.2. The European Council

Regarding Turkey’s commitments in the framework of the European Council’s documents, the first convention is the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) that was signed on 4 November 1950, and ratified on 19 March 1954 by Turkey. Turkey recognized the right of individual complaint to the European Court of Human Rights, and the compulsory judicial power of the Court, which is the authorized court of the convention, in 1987. In addition, the Protocol #11, which arranges the control mechanism of the Convention, was signed by Turkey on 11 May 1994. The Protocol (#12) that expands the antidiscrimination obligation particularly within the public authorities is still waiting for ratification (Şenol, İşat and Sayın 2004: 10).

Article 14 of the European Convention for the protection of Human Rights and Fundamental Freedoms calls that “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

The European Social Charter, which opened for signature in Turin on 18 October 1961 and came into force on 26 February 1965, was signed by Turkey on 18 October 1961 and ratified on 16 June 1989<sup>100</sup>. The Charter is seen as the complementary document of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>100</sup> [http://www.hrcr.org/docs/Social\\_Charter/soccharter2.html](http://www.hrcr.org/docs/Social_Charter/soccharter2.html)

The Article 8<sup>101</sup> of the Charter, which is titled as ‘protection of women’ has been changed as the ‘right of employed women to protection of maternity’ as a consequence of the development of ‘gender equality’ understanding. This change has come to be read as the transition from ‘protective approach’ to ‘equality approach’ (KSSGM 2002: 162), in European gender regime.

#### **4.2.3 The European Union**

Relations between the EU and Turkey are based on the Ankara Agreement, which was signed by both parties on 12 September 1963 and came into force on 1 December 1964. On 14 April 1987, Turkey presented its first application for membership to the European Economic Community (EEC), which was rejected by the EEC in 1989. It was only as a decade after the original application and as a consequence of the continued efforts of Turkey for this membership, the Luxembourg European Council in December 1997, confirmed "Turkey's eligibility for accession to the EU". Following this, the European Council in Helsinki (10-11 December 1999) welcomed the "recent positive developments in Turkey, as well as its intention to continue its reform towards complying with the Copenhagen criteria" and declined Turkey as "a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States".

These developments were followed by the Accession Partnership Document that was adopted by the Council of Ministers on 4 December 2000, and Turkey's National

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<sup>101</sup> Article 8 - The right of employed women to protection of maternity with a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake: 1.to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks; 2.to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period; 3.to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose; 4.to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants; 5.to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.



Programme<sup>102</sup> (NPAA) was adopted by the Turkish Cabinet the following year. Turkey's obligations and commitments were classified as short and medium term within this programme and the Accession Partnership Document that was revised in 2003. In addition, 'Community Programmes Framework Agreement' was signed on 28 June 2002, which covered the programmes for realization of 'equality between women and men' (Moroglu 2003: 16).

Among the short and medium term commitments made by Turkey in these documents, the ones related with gender equality were included under the 'Social Policy and Employment' title as follows:

**Short Term**

- *EU legislation on individual and collective labour law, health and safety at work, equality of treatment between men and women, and combating discrimination will be transposed into Turkish Labour Law. Training activities will be held to improve the administrative capacity. Also implementing regulations will be prepared in the areas of health and safety at work.*
- *The Active Employment Measures Project will be implemented for combating unemployment.*
- *The administrative capacity of the Ministry of Labour and Social Security for EU alignment and participation in the European Social Fund and Dublin Foundation will be strengthened.*
- *In the framework of the Constitution, the principle that 'women and men have equal rights' will be allocated.*
- *New Turkish Civil Code, which brings new arrangements in terms of equality between men and women, will be adopted.*
- *The draft organizational law of the General Directorate on the Status of Women will become a law.*

**Medium Term**

- *CEDAW Optional Protocol will be ratified.*
- *The necessary amendments and changes will be realized within the Turkish Labour Law in order to ensure harmonization with 'equal treatment' principle and the relevant Council Directives.*
- *The institutional capacity of the social security system and the social funds required implementing the EU acquis on social protection and social inclusion will be strengthened.*
- *A National Employment Plan consistent with the European Employment Strategy will be developed.*

When we look at this document, we see that 'equality of treatment between women and men' takes place within the 'priority list' titled as 'Task 13.1.4' title, and 'Combating

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<sup>102</sup> National Programme For The Adoption Of The Acquis (NPAA), prepared according to the Decision of the Council of Ministers Dated 23 June 2003 No. 2003/5930, published on (Official Gazette Dated 24 July 2003 No. 25178 bis, available at <http://www.abgs.gov.tr/NPAA/up.htm>)

Discrimination’ takes place under ‘Task 13.1.5’ title in details. With this document, regarding the above-mentioned issues, Turkey commits herself to the harmonization of Turkish Labour Law with the EU legislation as described in the box below:

**Priority Description: Task 13.1.4 Equality of Treatment between Men and Women list’<sup>103</sup>**

*In the field of equality of treatment between men and women, the Council Decision of 19 May 2003 on the Accession Partnership with the Republic of Turkey envisages the adoption of a program for the transposition of relevant EU legislation in the short term, and transposition and implementation of relevant EU legislation in the medium term. In addition, Turkey’s participation in the Community Programme on Gender Equality, was made possible by the Decision of the Council of Ministers No. 2003/5224, published in the Official Gazette No.25027 on 21 February 2003*

*In addition to the legal alignment, implementation and inspection, equality of treatment also includes informing all the relevant parties, especially NGO’s. To that end, the Community Programme on Gender Equality, under the responsibility of the Department of EU Coordination within the Ministry of Labour and Social Security has an important role. Within this context, regular monthly seminars have been held since March 2003 with the participation of relevant parties.*

*These meetings and results of research will be published and will be discussed in an international platform in Bratislava in Autumn 2004. The transposition of Council Directive 2002/73/EC is completed with the Labour Law. Details of this Council Directive will be regulated by the implementing regulation, which is going to be issued within 6 months of the publication of Labour Law. The Schedule for the completion of the transposition of Council Directives 75/117/EEC, 76/207/EEC and 97/80/EC is given in*

**Combating Discrimination: Task 13.1.5<sup>104</sup>**

*The Council Decision of 19 May 2003 on the Accession Partnership with the Republic of Turkey envisages the adoption of a programme in the short term for the transposition of relevant EU legislation in the field of combating discrimination. The legislation is expected to be transposed and implemented in the medium term. The Memorandum of Understanding for the Community Programme on Combating Discrimination, which has been initiated within the context of Council Decision No.2000/750/EC was signed on 25 November 2002. The Memorandum of Understanding was approved by the Decision of Council of Ministers No.2003/5224 on 3 February 2003 and it has been published in the Official Gazette No. 25027 dated 21 February 2003. Turkey is going to participate in the Programme from 1 June 2003. The Department of EU Coordination of the Ministry of Labour and Social Security has been given the responsibility for the execution of the Programme. Council Directives 2000/43/EC and 2000/78/EC are partially adopted by the Labour Law.*

With regard to the EU gender equality legislation and policies evaluation of Turkish legislation, the Turkish Cabinet decision on ‘Relating to the Commitment for the Implementation, Coordination and Monitoring of Turkey’s National Programme,’

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<sup>103</sup> National Programme For The Adoption Of The Acquis (NPAA), prepared according to the Decision of the Council of Ministers Dated 23 June 2003 No. 2003/5930, published on (Official Gazette Dated 24 July 2003 No. 25178 bis, available at <http://www.abgs.gov.tr/NPAA/up.htm>

<sup>104</sup> Ibid.

numbered as 2003/5960 and the chapter calling for ‘equality between women and men,’ was also adopted (Moroglu 2003: 15). The Accession Partnership document undertakes the transformation of the EU gender equality legislation into the domestic law in the short run, and its implementation for the medium term. In addition, by the Turkish Cabinet decision on 3 February 2003 numbered 2003/5224, Turkey participated in the European Community Gender Equality Programme. The programme will be conducted by the Ministry of Labour and Social Security EU Coordination Department, while the same decisions taken for ‘Combating Discrimination’ Programme (‘13.1.5’ under the NPAA) are to be conducted by the same ministry.

The following tables (Tables 4.1 and Table 4.2) from the NPAA supply a better vision for the EU gender equality policies and their implications for Turkey including Turkey’s commitments on the ‘gender equality’ field.

**TABLE 4.1 In the Framework of Turkey’s NPAA and the Equality between Women and Men**

Title and Number of EU Legislation	Title of Draft Turkish Legislation	Responsible Institution	Proposed Date of the Approval of the Minister/Council of Ministers	Proposed Date of Adoption and Entry into force
Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women	New Legislation	Ministry of Labour and Social Security	2004, III. Quarter	1- 31.12.2004 2- 31.12.2004
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	New Legislation	Ministry of Labour and Social Security	2004, III. Quarter	1- 31.12.2004 2- 31.12.2004
Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC 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	New Legislation	Ministry of Labour and Social Security	2004, III. Quarter	1- 31.12.2004 2- 31.12.2004
Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex	New Legislation	Ministry of Labour and Social Security	2004, III. Quarter	1- 31.12.2004 2- 31.12.2004
Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC	New Legislation	Ministry of Labour and Social Security	31.12.2004	2- 31.12.2004
	Law on the Amendment of Civil Servants’ Law, Labour Law, Social Security Law and Republic of Turkey Retirement Fund Law	General Directorate on the Status and Problems of Women	2004, III. Quarter	31.12.2004
Council Directive 92/85/EEC of 19 October 1992 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC))	Law on the Amendment of Civil Servants’ Law, Labour Law, Social Security Law and Republic of Turkey Retirement Fund Law	General Directorate on the Status and Problems of Women	2004, III. Quarter	2- 31.12.2004

**TABLE 4.1 (Continued)**

Title and Number of EU Legislation	Title of Draft Turkish Legislation	Responsible Institution	Proposed Date of the Approval of the Minister/Council of Ministers	Proposed Date of Adoption and Entry into force
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	New Legislation	Ministry of Labour and Social Security	2004, III. Quarter	1- 31.12.2004 2- 31.12.2004
Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood	New Legislation	Ministry of Labour and Social Security	2004, III. Quarter	1- 31.12.2004 2- 31.12.2004
Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes	New Legislation	Ministry of Labour and Social Security	2004, III. Quarter	1- 31.12.2004 2- 31.12.2004
Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes	New Legislation	Ministry of Labour and Social Security	2004, III. Quarter	1- 31.12.2004 2- 31.12.2004
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin	New Legislation	Ministry of Labour and Social Security	2004, III. Quarter	1- 31.12.2004 2- 31.12.2004
Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation	New Legislation	Ministry of Labour and Social Security	2004, III. Quarter	1- 31.12.2004 2- 31.12.2004

**Source:** [http://: www.abgs.gov.tr](http://www.abgs.gov.tr)

**TABLE 4.2 Schedule of Necessary Institutional Changes**

<b>Task 13.1.4 Equality of Treatment Between Men and Women (Ministry of Labour and Social Security)</b>		
<b>1</b>	Strengthening the institutional structure in order to ensure participation in Community Programme on gender equality and efficient implementation	2003 - 2006
<b>2</b>	Establishment of a Commission for harmonisation of legislation	2005
<b>3</b>	Training of members of the Commission for harmonisation of legislation	2005
<b>4</b>	Training of the social partners on harmonised legislation	2005
<b>Task 13.1.4 Equality of Treatment Between Men and Women (General Directorate on the Status and Problems of Women)</b>		
<b>1</b>	Strengthening the institutional and legal base of the General Directorate on the Status and Problems of Women	2004
<b>2</b>	Establishment of a Law Department in the General Directorate on the Status and Problems of Women	2004
<b>Task 13.1.5 Combating Discrimination (Ministry of Labour and Social Security)</b>		
<b>1</b>	Recruitment of 10 personnel in order to establish the preliminary structure of the Equality Body within the Directorate General of Labour	2005
<b>2</b>	Participation in the Community Programme on Combating Discrimination	2003 – 2006
<b>3</b>	Training of members of the Commission for harmonisation of legislation	2005

**Source:** [http://: www.abgs.gov.tr](http://www.abgs.gov.tr)

Besides its NPAA, Turkey also accepts its responsibility for the primary law and secondary law of the Community in terms of equality between women and men. As a part of primary law, Turkish legislation as well as implementation should be in line with Articles 2, 3(2), 13, 13, and 141 of the Treaty of Amsterdam; Articles 20, 21 and 22 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); Article 16 of the European Social Charter (1961) as it was stated earlier.

### **4.3. THE REVIEW of TURKEY' S GENDER EQUALITY LEGISLATION**

#### **4.3.1. Equality before the Law, Prohibition of Gender Discrimination and 'Equality between Men and Women'**

As it was discussed earlier in this chapter, since the establishment of the Republic of Turkey, numerous legal improvements have been realized. If we look at the most recent developments since the 1990s, we see that the EU accession process has created a great impetus for change. However, for the realization of these developments, the contribution of the longstanding efforts of the Turkish women's movement should not be ignored.

The most recent developments regarding 'equality between women and men' can be listed as follows.<sup>105</sup>

- *The new Civil Code became effective as of January 2002;*
- *The protective measures against 'sexual harassment in the workplace' contained in the Act # 4857 of the labour law passed in 2003;*
- *Establishment of Family Courts in 2003, dealing with issues related to Family Law;*
- *Change in Article 10 of the Turkish Constitution to include the statement that "the government is responsible to enforce equality between man and woman" in May 2004;*
- *The new Penal Code was adopted in 2004 and came into force on 1st June 2005.*

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<sup>105</sup> "Shadow Report of Turkey (2004)" by The Executive Committee for NGO Forum on CEDAW-Turkey

In addition, as a part of the Accession Process, the European Commission has prepared 6 ‘Progress Reports’ to evaluate the developments in Turkey, since October 1998, regarding the progression to full-membership. Among these reports, the EC Progress Report for Turkey in the year 2004 gives the greater space to ‘gender issues’. The following developments have been determined as positive steps taken in the country:

- *Article 10 of the Constitution, which includes the provision that men and women, shall have equal rights and that the state has the duty to ensure that this equality is put into practice.*
- *The new Penal Code, which is generally progressive in terms of women’s rights, and addressing such crimes as ‘honour killings’, sexual assault and virginity testing.*
- *There is an increased awareness of violence against women and some pressure is being exerted to oppose it.*
- *On 22<sup>nd</sup> May 2003, the New Turkish Labour Law was adopted on July 2004, which extended civil servants’ maternity leave to 16 weeks. With this new law, the harmonization with the Council Directives 92/85/EEC of 19 October 1992 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 was also realized.*
- *Circular issued in January 2004 by the Office of the Prime Minister calling for the observance of gender equality in public service recruitments (European Commission (COM) 2004: 18-33, 45-47, 109-112).*

Additionally, the EC Progress Report for Turkey (2005)<sup>106</sup> welcomes the law establishing the General Directorate on the Status of Women (GDSW) as well as the adoption of the new penal code, and describes them as having profoundly improved women’s fundamental rights and gender equality (COMM 2005: 97).

However, despite the positive legal changes, Turkey has not yet developed any national action plan regarding gender equality. Although there has been a period of rapid change within the framework of the European Union’s Copenhagen criteria, as well as the Pre-Accession Programme, in terms of ‘gender equality’ and the principle of equality before law, numerous shortages and difficulties still exist. The CEDAW Shadow Report also identifies the following shortcomings:

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<sup>106</sup> European Commission, “Progress Report, Turkey”, {COM (2005) 561 final}, Brussels, 9 November 2005 SEC (2005) 1426



- For ‘monitoring and leading for the elimination of discrimination’, establishment of a permanent commission on ‘equality between women and men’ within the Parliament has been neglected.
- Legislative and administrative bodies neglect to consult and take into consideration the views and wishes of women’s organizations in the process of enacting laws on public administration reforms and law on local administrations.
- Although the ‘Law on Protection of Family (#4320)’ has been in effect for 7 years, it has not been widely implemented.
- The fact that the law of property between husband and wife in case of divorce set forth in the New Civil Code does not apply for the marriages which are valid on the date when the Code was entered into force causes discrimination against 17 million women as these women cannot benefit from the law to acquire properties gained during the marital union within the event of divorce.
- For the newly established family courts, the regulations concerning closed sessions during trials are not formulated in the Law, which creates problems for women. In addition, the necessary in-service trainings have not been completed yet.
- During changing period and adoption of the amendments of the new Turkish Penal Code that will enter into force in June 2005, despite this fact, as mentioned before, no concrete legal amendment for the elimination of honour killings were added in the new Criminal Code. Incest is not clearly defined as a crime. Adolescents between the ages of 15-18 having voluntarily sexual relationship will face imprisonment. Moreover, the expression of ‘sexual orientation’ was not included in the definition of discrimination.
- In order to protect women from discrimination, it is necessary to take the other special measures through amendments on quotas etc., in particular in the laws on political parties and elections (CEDAW Shadow Report 2004: 6).

The EC 2004 Progress Report on Turkey’s performance with regard to the necessary steps and legislative formulations on gender equality can be summarized as follows:

- Legal, administrative and institutional arrangements remain inadequate to combat violence against women
- Women remain vulnerable to discriminatory practices, due largely to a lack of education and high illiteracy rate (19% of women in Turkey are illiterate and in the Southeast this figure is considerably higher). Moreover, the portrayal of women in school textbooks reinforces this discrimination.
- Turkey has not yet accepted Article 8 of the European Social Charter on the right of employed women to the protection of maternity.
- In the framework of ‘national legislation’, there is a need for ‘parental leave’ arrangement.
- ‘Equal pay for equal work of value’ principle has not been implemented yet.
- For the ‘burden of proof’ directive as well as the directives on ‘obligatory and occupational social security’, there is a need for further efforts.
- The scope of the Labour Law needs to be expanded, and the inclusion of the excluded sectors and establishments.
- Women are underrepresented in elected bodies and government (4% of members of Parliament and one Minister). At the 2004 local elections, only 25 female mayors were elected in comparison to 3209 male mayors, therefore there is a need for increasing the number of women within the decision-making mechanisms.
- A law that would establish the General Directorate on the Status and Problems of Women, which has been awaited for almost ten years, still not adopted.

The latest EC Progress Report (2005) for Turkey further elaborates the problematic aspects of the gender equality initiatives as follows:

- *No progress can be reported as regards the transposition of the EC Directives prohibiting gender discrimination in employment. As it was reported in 2004 Progress Report, full transposition of the directives on gender-equality is still required, in particular concerning parental leave, equal pay, and access to employment, burden of proof, as well as statutory and occupational social security.*
- *The Turkish law should also stipulate that associations, which have a legitimate interest in ensuring that the principle of equal treatment is applied, may engage as provided in the acquis, either on behalf or in support of the complainant, in any judicial or administrative procedure.*
- *The Equality Body required by the acquis still needs to be established, with further efforts are needed to improve gender equality in economic and social life and to ensure effective enforcement of the relevant legislation.*
- *Greater attention is being paid to women's rights, but violence against women remains a matter of serious concern (COM 2005: 112).*

In the most recent version of the Accession Partnership Document's <sup>107</sup> 'Economic and Social Rights' section under the 'Women's Rights' title, the following issues are mentioned as high priority areas:

- *Implement legislation relating to women's rights, particularly the Civil Code, the new Penal Code and the law on the protection of the family.*
- *Pursue measures against all forms of violence against women, including crimes committed in the name of honour. Ensure specialized training for judges and prosecutors, law enforcement agencies, municipalities and other responsible institutions and establish shelters for women at risk of violence in all larger municipalities, in line with current legislation.*
- *Further promote the role of women in society, including their education and participation in the labour market and in political and social life, and support the development of women's organizations to fulfil these goals.*

The above concerns demonstrate that although there is need for further legal, institutional, administrative and financial efforts to enhance gender equality in general and equality in the areas of employment in Turkey, a series of significant reforms have

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<sup>107</sup> European Commission, Council Decision On the Principles, Priorities, and Conditions contained in the Accession Partnership with Turkey, {SEC (2005) 1426}, Brussels, 9 November 2005, COM (2005) 559, p. 8-9

been realized in the framework of the EU accession process. These reforms, more the less require effective implementation

The following chapter will focus on the reforms and legal arrangements. The Constitution, the new Labour Law, the Civil Code, and the Penal Code, Occupational Security Law and the other relevant arrangements as well as gender equality in the areas of education, political participation, employment, and violence against women will be taken up. All these achievements for gender sensitive and balanced legislation can be seen as important developments; however, to achieve this end, these need to be put into practice. In other words, there is a need for the realization of the principle of 'equality of outcome'.

The ensuing discussion is an expose of the achievements and existing obstacles within Turkish legislation regarding gender equality and its compliance with EU gender acquis as well as the NPAA of Turkey.

### **The Constitution**

Regarding Turkish gender equality legislation, the formal starting point for considering equality for women can be seen first as the Constitutional reforms. Within the framework of the Constitution, the legislation requires equal treatment between men and women (Süral 2005: 1).

Article 10 of the Turkish Constitution sets at the outset the principle of equality before the law for all Turkish nationals. According to this article, discrimination based on any ground such as sex, race, colour, language, political opinions, philosophical belief, religion and sect is prohibited.

For ensuring gender equality, the most important amendment has been to Article 10 of the Constitution, which now states

*All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. Men and women have equal rights and the State is responsible to implement these rights. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings (Article 10 of the Turkish Constitution).*

If we compare this to previous version of the same article, which used to state that

*Everyone shall be equal before the law without discrimination based on language, race, gender, political opinion, philosophical belief, religion, sect, etc. no person, family, group of people or class shall be granted any concession. State bodies and administrative officers are obliged to act in their all processes in accordance with the principle of equality before the law.*

We can see that there is a significant strengthening of the state's obligation to realize gender-equality *de facto* in the amended Article 10. Nonetheless, some women's NGOs still argue that the amended version of the Article 10 is not sufficiently clear. Furthermore, they argue that the phrase "no privilege shall be granted to any..." could be used to prevent adoption of 'temporary special measures' or 'positive action' measures for realization of gender equality.

The two CEDAW Shadow Reports prepared by Turkish women's NGOs highlight the importance of the adoption of an 'Equality Framework Law' in order to ensure that gender equality is ensured in all legislation. The reports state that "an 'Equality Framework Law' would entail the gender equality principles of non-discrimination, equal opportunities and affirmative action for *de facto* equality applicable to all national legislation, thereby providing the necessary basis for the adoption of all appropriate measures to overcome discrimination and for women to exercise their fundamental human rights and freedoms in full equality with men" (WWHR 2004; CEDAW Shadow Report 2004: 5). Such a 'framework law' would facilitate the formation of comprehensive policies and strategies for the attainment of gender equality as foreseen in the Constitution.

Article 41<sup>108</sup> of the Constitution was also amended in October 2001 with a view to establish the principle of equality between spouses as a basis of the family. Similarly, the amended version of Article 66<sup>109</sup> of the Constitution on Turkish citizenship now stipulates that no discrimination will be made on the basis of gender in the case of a foreign parent.

Finally, with the amendment of Article 90 of the Constitution, which clearly placed international human rights conventions over national legislation including the Constitution, the international gender equality regimes have become more effective over domestic law in Turkey, as it was stated earlier.

### *Civil Code*

As a consequence of the long-standing struggle and campaigns of women's organizations, particularly the rise of a strong feminist movement after the 1980s, along the lines of the international feminist movement, the new Turkish Civil Code (# 4721) was adopted and came into force on 1<sup>st</sup> January 2002. Prior to this adoption, however, some landmark amendments had already been made in Turkish legislation, pertaining to human rights of women. The annulment by the Constitutional Court of Article 159 of the old Civil Code in 1990, which had stated that 'women needed their husbands' consent to work outside the home; and the repeal by the Parliament of Article 438<sup>110</sup> of the Criminal

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<sup>108</sup> Article 41 (As amended on October 17, 2001): The family is the foundation of the Turkish society and is based on the equality between the spouses. The state shall take the necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially where the protection of the mother and children is involved, and recognizing the need for education in the practical application of family planning.

<sup>109</sup> Article 66 (As amended on October 17, 2001): Everyone bound to the Turkish state through the bond of citizenship is a Turk. The child of a Turkish father or a Turkish mother is a Turk. Citizenship can be acquired under the conditions stipulated by law, and shall be forfeited only in cases determined by law. No Turk shall be deprived of citizenship, unless he commits an act incompatible with loyalty to the motherland. Recourse to the courts in appeal against the decisions and proceedings related to the deprivation of citizenship shall not be denied.

<sup>110</sup> Before its repeal, Article 438 of the Criminal Code use to provides for a reduction of one-third in the punishment for rapists if the victim was a sex worker, and a new law on domestic violence, enabling a

Code, which stipulated a lower, punishment for rape of prostitute, the annulment by Constitutional Court, in 1990 and 1996, Article 441 and 440 of the then in force Penal Code, providing differential treatment/punishment of adultery for husbands and wives and the passage in 1998 of the Law on the Protection of the Family (#4320), which, in content, is a domestic violence legislation, constitute such crucial legislative efforts of the pre- 2002 (new Civil Code) era (inter.alia Acar 2000; WWHR 2002: 7).

The new Civil Code, on the other hand, has taken a new approach to the family and to women's role in the family. This approach is reflected in several provisions of the law, which now states that:

- *the husband is no longer the head of the family; spouses are equal partners, jointly running the matrimonial union with equal decision-making powers*
- *Spouses have equal rights over the family abode*
- *Spouses have equal rights over property acquired during marriage*
- *Spouses have equal representative powers*
- *The concept of 'illegitimate children', which was used for children born out of wedlock, has been abolished; the custody of children born outside marriage belongs to their mothers (WWHR 2002: 7).*

Article 8 of the 'Law of Persons' of the Turkish Civil Code requires that "all persons are the subjects of rights". While, under the previous law, a married woman was considered as one with limited legal competence (albeit such limitations pertained to a few cases explicitly cited by the law), under the new law, "these limitations do not exist any longer and therefore men and women possess the essentials for full capacity, whether married or not" (Süral 2003: 4-5).

In addition, Article 11 of the Civil Code now provides that legal majority is attained at age 18 or upon marriage, and equalizes the legal age of marriage for sexes, raising it from 15 to 17 for women. Boys and girls who have not completed 17 years of age cannot get married. Nonetheless, under extraordinary conditions and for an important cause the law

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survivor of domestic violence to file a court case for a 'protection order' against the perpetrator of the violence.

still allows for judge' permission for marriage of 16 year olds, after listening to their statutory representative(s).

Article 21 and 186 of the new Civil Code state that it is not the husband but the both spouses that choose the domicile, differing from the earlier law, which had designated that a married woman had her husband's domicile.

Article 18 of the Civil Code grants women the right to use their maiden name to be placed in front of the husband's surname (Article 173).

Under the Civil Code, "Law of Property accords women the equal right to hold title and convey land, and the ability to record property ownership; Law of Obligations covers legal transactions, tortious liability and unjust enrichment, no legal distinction has been made by the Law of Obligations between men and women; there is no discrimination by gender in the Law on Banks and Credit Regulations" (Süral 2005: 8). The current legal matrimonial property regime is 'participation' in acquisitions', which guarantees, to both spouses, equal division of all assets acquired during marriage, in the case of divorce.

However, despite all these reformist developments under the new Civil Code, in the case of divorce, the 'Regime Regarding the Ownership of Acquired Property' (Articles 218-241) cannot be applied to the marriages, which were established before 1<sup>st</sup> January 2002, the date of passage of the new Civil Code, means that, in case of divorce, only those in marriages made after this date can benefit from the equal sharing of all property acquired during marriage.

In the CEDAW Country Report (2003: 68) the property regimes are defined as follows:

*The legal property regime adopted by the new Civil Code is the Regime Regarding the Ownership of Acquired Property (Articles 218-241). This regime introduces the provision that added value of all property acquired during marriage shall be shared equally in the case of divorce. By adopting an egalitarian matrimonial property regime, the new law not only recognizes the monetary contributions made by the partners to the marriage unity, but also acknowledges the value of the*

*physical and mental labour that goes into the reproduction of daily life of the family. Thus, the new property regime recognizes the unpaid work of women within the household. The new property regime is valid if couples do not choose another regime in writing before or after they get married. There are four property regimes in the law: Regime Regarding the Ownership of Acquired Property (legal property regime under the new law); Separation of Property (Articles 242-243); Separation of Shared Property (Articles 244-255); and Joint Property Regime (Articles 256-281). The latter two also existed under the former Civil Code. With the exception of the last regime, the others require settlement of common assets when the matrimonial union is terminated. The legal property regime under the former Civil Code was the Separation of Property. This regime recognized the individual ownership of goods registered in the name of each spouse. Accordingly, after divorce, each partner retains the property they owned prior to marriage and which they acquired in their name during marriage. Since, the conventional practice in Turkey is that men, more often than not, are the legal owners of family assets, in the event of divorce women often encounter severe deprivation under this regime. Therefore, the new property regime is a contribution not only to women's economic security but also to their self-esteem and empowerment. However, the new legal property regime does not apply retrospectively.*

The importance of this amendment of the Civil Code becomes clearly visible in view of the fact that women's labour force participation in Turkey remains at a miserably low rate of 26%. As a consequence, women's NGOs, have felt that many women, who would benefit from this provision have been left out of its scope. Therefore, they claim that "Article 10 of the Enactment Law of the Turkish Civil Code needs to be amended so as to enable 'Regime Regarding the Ownership of Acquired Property' (to be) applicable to all marriages" including those prior to the date the new Civil Code has taken effect (WWHR 2004: 12).

As a part of Turkey's 'National Programme' under the 'Political Criteria' of the 2<sup>nd</sup> Chapter, heading 2.1.13, the New Civil Code has been determined as one of the 'short-term targets'. However, because of the above-mentioned arrangements reining deficiencies regarding the property regime, many the Turkish women's NGOs do not agree that this obligation has been fulfilled completely (Şenol, İşat and Sayın 2004: 5). Lately, there has been a proposal submitted to the Parliament by some women MP's of the opposition party, while no action has since been taken.



Within the new Civil Code, the main provisions of ‘Law of Family’ can briefly be summarized as shown in Figure 4.3 below.

Previous Rule	Current Rule
The husband is the head of the conjugal union.	(Lifted)
The husband duly provides for the maintenance of wife and children. The wife has the management of household affairs	The spouses, each according to his or her capacity, care jointly for the proper maintenances (Art. 185-186)
The husband represents the conjugal union. The wife has, for the purpose of providing the current necessities for the home, the same authority as the husband to represent the conjugal union.	Each spouse represents the conjugal union in matters of the current requirements of the family during their matrimonial life (Art. 188)
The regular matrimonial property regime is the separation of property.	The regular matrimonial property regime is ‘participation in acquisitions’ (Art. 215).
The husband chooses the conjugal home.	The spouses determine the conjugal home jointly (Art. 186)
During the marriage the parents exercise parental power jointly. The husband’s views shall prevail if there is disagreement.	During the marriage the parents exercise parental power jointly (Art. 218).

**Figure 4.3** Major Amendments in the Family Law: From Paternalist Approach to Gender Equality Framework Strategy for Equality between the Spouses

**Source:** Süral, N. (2003), “Legal Framework for Gender Equality”, p.4

Additionally, other legislative amendments and initiative have been realized to ensure gender equality in accordance with international standards.

The Act on Establishment, Jurisdiction and Trial Procedures of Family Courts was enacted on 9 January 9 2003 as another important developments.

The new Nationality Law following on the principles of the Constitution consider the child of a Turkish father or a Turkish mother a Turk. Previously, there was a sentence, which stated that, the citizenship of a child of a foreign father and a Turkish mother would be defined by law. This was deleted in October 2001.

Until recently, there had also existed provisions in the Turkish Nationality Law that discouraged dual nationality and included a gender discriminatory approach. According to these provisions, a foreign woman who married a Turkish citizen acquired Turkish

nationality with a declaration to the marriage officer (Articles 5, and 42). She acquired Turkish nationality automatically only if she lost her former nationality upon marriage or if she were stateless at the time of marriage. However, a foreign man married to a Turkish woman was not within the scope of the stated articles; he was entitled to an amendment in the Turkish nationalization procedure (Article 7/b) (Süral 2005: 9). With the adoption of Act no. 4866 on June 4, 2003 amending the Turkish Nationality Act, it is ensured that a foreign women or man married to a Turkish citizen are both subjected to the same legal terms in acquisition of Turkish nationality upon marriage. According to this, all couples are required to be married for at least three years and should cohabit and also have the intention for remaining married (Article 1 amending Article 5). Today, neither women nor men shall lose their Turkish nationality if they marry a foreign spouse.

#### **4.3.2. Implications of the Council Directives in the Field of Employment**

Within the EU gender equality policies, the ‘economic dimension’ takes primacy and within this framework, significant changes are needed in Turkey.

Labour market regulations, whether laid down with economic or with social concerns, have important gendered effects. For example, the gender segregated occupation structure, the provision of maternity leave, the regulation of working hours, or the conditions of employment for part-time work have an impact on women’s labour market participation.

In Turkey, there are two main categories of paid employment: civil servants, whose status is regulated by the Civil Servants Law (#657), and other workers, who are covered mainly by the Labour Law (# 4857). Regarding gender discrimination, Article 3 and 4 of the Civil Servants Law requires that among the workers, there is no discrimination based on gender either for the public or for the private sector (Süral 2005: 11).

Articles 48 and 49 of the Constitution provide everyone the freedom and the right and duty to work, while Article 50 has a more protective character by stating that “no one

shall be required to perform work unsuited to his age, sex and capacity”. In addition, international and regional instruments such as CEDAW, ILO Conventions and Recommendations, the Council of Europe Revised Social Charter and the EU Council of Ministers’ regulations provide additional provisions in the field of employment.

The new Labour Act makes visible Turkey’s increased efforts for catching up with the latest developments such as parental leave, burden of proof in cases of sex discrimination,<sup>111</sup> sexual harassment at the workplace,<sup>112</sup> and extended maternity leave,<sup>113</sup> which have also been central to recent amendments in various regional and international regulations such as: ILO Convention no. 183 (Maternity Protection Convention Revised) that became effective on 7 February 2002; Article 8 of the Council of Europe Revised European Charter that became effective on 1<sup>st</sup> July 1999; the European Community Directive (96/34/EC) of June, 3 1996 on the framework agreement on ‘parental leave’; the Council Directive (97/80/EC) of December 15, 1997 on the burden of proof in cases of discrimination based on sex; the Council Directive (2000/78/EC) of November 27, 2000 establishing a general framework for equal treatment in employment and occupation; and the Charter of Fundamental Rights of the European Union of December 2000.

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<sup>111</sup> The Court of Justice of the European Communities has held that the rules on the burden of proof must be adopted when there is a prima facie case of discrimination and that, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex adopted rules conforming to the decisions of the Court of Justice. The last paragraph of Article 5 the new Labour Act is a mere adaptation of the Directive to labour relations.

<sup>112</sup> Sexual harassment constitutes discrimination on the grounds of sex. Council Recommendation of 13 December 1984 on the promotion of positive action for women (84/635/EEC), European Parliament Resolution of 11 June 1986 on violence against women, Council Resolution (90/C/02) of 29 May 1990 on the protection of dignity of women and men at work, Commission Recommendation of 27 November 1991 on the Protection of the dignity of women and men at work (92/131/EEC), and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation contain provisions on sexual harassment in the workplace. Articles 24/II/b and 25/II/c of the new Labour Act regulate sexual harassment in the workplace in conformity with the relevant rules of the above-mentioned EC regulation.

<sup>113</sup> The 12-week maternity leave that was not in line with 14-week maternity leave envisaged by the ILO Convention no. 183 on Protection of Maternity, and Article 8 of the Revised European Social Charter. As a consequence 16-week maternity leave right was given to the female workers, who work under the Labour Law (#4857), on the other hand the Civil Servants Law does not include the same provision..

In the field of employment, we come across the Council Directives. The recent situation of Turkey's compliance with these secondary law provisions is displayed below.

**The Principle of 'Equal Pay for Equal Value of Work' (Council Directive 75/117/EEC of 10 February 1975 on the Approximation of Law of the Member States Relating the Application of the Principle of Equal Pay for Men and Women)**

Within the Turkish legislation, the Constitution Articles 10<sup>114</sup>, 49<sup>115</sup>, 55<sup>116</sup>, and 70<sup>117</sup> regulate this Directive, and the Directive became more applicable as a result of the amendment of Article 90, which provides that "No appeal to Constitutional Court can be made with regard to these agreements on the grounds that they are unconstitutional".

In addition, regarding the area of employment, the EU institutions refer to Article 11 of CEDAW, which is determined as one of the international commitments of Turkey, since the ratification of the Convention, and it provides a comprehensive framework for gender discrimination in the work place as it can be seen below.

*CEDAW (1979) Article 11: States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

*(a) The right to work as an inalienable right of all human beings;*  
*(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;*

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<sup>114</sup> Article 10: All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. Men and women have equal rights and the State is responsible to implement these rights. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

<sup>115</sup> Article 49: (As amended on October 17, 2001) everyone has the right and duty to work. The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace.

<sup>116</sup> Article 55: (As amended on October 17, 2001) Wages shall be paid in return for work. The state shall take the necessary measures to ensure that workers earn a fair wage commensurate with the work they perform and that they enjoy other social benefits. In determining the minimum wage, the living conditions of the workers and the economic situation of the country shall be taken into account.

<sup>117</sup> Article 70: Every Turkish citizen has the right to enter public service. No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service.

*(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;*  
*(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;*  
*(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;*  
*(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*

On the other hand, the relevant ILO Conventions (#100, #111), and the European Council Social Charter (Article 4) also take place at the area of ‘employment’, regarding ‘gender equality’ as Turkey’s international commitments.

The principle of ‘equal pay for work of equal value’ was entered into Turkish legislation for the first time by the Law on Amendments of Labour Act of January 25, 1950, and the amended new version of the labour Law of 22 May 2003 (#4857) defines ‘the principle of equal treatments’ by its Article 5 as follows:

*No discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons is permissible in the employment relationship.*

*Unless there are essential reasons for differential treatment, the employer must not make any discrimination between a full-time and a part-time employee or an employee working under a fixed-term employment contract (contract made for a definite period) and one working under an open-ended employment contract (contract made for an indefinite period).*

*Except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the conclusion, conditions, execution and termination of his (her) employment contract due to the employee’s sex or maternity.*

*Differential remuneration for similar jobs or for work of equal value is not permissible.*

*Application of special protective provisions due to the employee’s sex shall not justify paying him (her) a lower wage.*

*If the employer violates the above provisions in the execution or termination of the employment relationship, the employee may demand compensation up his (her) four months’ wages plus other claims of which he (she) has been deprived. Article 31 of the Trade Unions Act is reserved.*

*While the provisions of Article 20 are reserved, the burden of proof in regard to the violation of the above – stated provisions by the employer rests on the employee.*

*However, if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialized shall rest on the employer.*

In addition, by the #25540 Regulation on Minimum Wage, gender discrimination is prohibited similar to the #2822 Law on Collective Bargaining Agreement and Contract for Services of 5 August 1983 (Şenol, İřat and Sayın 2004: 16).

Article 39 of the new Labour Code states that “with the object of regulating the economic and social conditions of all employees working under an employment contract, either covered or uncovered by this Act, the minimum limits of wages shall be determined every two years at the latest by the Ministry of Labour and Social Security through the Minimum Wage Fixing Board”<sup>118</sup>. On the other hand, the public workers’ wages, whose rights are regulated according to the #657 Law, are determined by the Law of Government Budget that is prepared by the Ministry of Finance and submitted to the Turkish General Assembly.

With regard to Article 2<sup>119</sup> of the Directive, “due to reason of being wronged by failure in the application of the principle of equal treatment, persons can pursue their rights by administrative procedures of Labour Inspection Board” and also by judicial process as mentioned in Article 5 of Act No 4857 on Labour Courts and “Articles 1 and 10 of Act No 5521 on Labour Courts. Besides, all citizens have petition rights based on Article 7<sup>120</sup> of Act No 3071”<sup>121</sup>.

Regarding Article 7 of the Directive that “The Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of employees by all appropriate means, for

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<sup>118</sup> <http://www.ilo.org/public/english/region/eurpro/ankara/legislation/law4857.htm>

<sup>119</sup> Member States shall introduce into their national legal systems many measures as a re necessary to enable all employed who consider themselves wronged by failure to apply the principle of equal pay to pursue their claims by judicial process after possible recourse to other component authorities.

<sup>120</sup> “With respect to the results of applications made to component authorities by Turkish citizens and the foreigners living in Turkey concerning either their personal wishes and complaints or those related to public affairs and with respect to current stage of affairs concerning the ongoing procedures, an answer with a reason is given to the applicants in a period not later than 30 days. In case the ongoing procedure is completed, the result is also communicated.

<sup>121</sup> [http://ab.calisma.gov.tr/index\\_dosyalar/Page902.htm](http://ab.calisma.gov.tr/index_dosyalar/Page902.htm)

example at their place of employment”. Article 35 of the Law of Trade Unions supplies “in workplaces where collective labour contracts are implemented, the employees are informed by shop stewards”.<sup>122</sup> However, we see that this obligation of information will be carried out which is not within the scope of a collective labour agreement.

All these arrangements prohibit ‘gender discrimination’ according to the above-mentioned domestic, regional and international legislation requirements. None of these arrangements and the practices of the relevant institutions can have ‘discriminative’ character; however, it does not mean that there is no wage difference between women and men (Şenol, Işat and Sayin 2004: 18).

On the other hand, as it has already been mentioned in *Chapter III*, both the mentioned directive and the Turkish legislation do not have occupational classification, and therefore there is a need for the determination of ‘work of equal value’ and equalization of women and men’s wages according to this classification. In general, it is difficult to say that, the principle of ‘equal pay for work of equal value’ has been achieved. According to the 2004 Human Development Report of the UNDP, the wage difference between women and men is 40% to the detriment of women in Turkey.<sup>123</sup>

Also, the CEDAW Country Report (2003: 44) states that “there are wage/salary inequalities between women and men due to gender inequalities in educational levels, patterns of job continuity, promotion procedures etc”. The report states that “in both public and private sectors, since the management level jobs are occupied mainly by men, men earn 20-60 % more than women in the former and 30-150 % in the latter, while, size of establishment in the public sector is not a determinant of wage differential by sex, in the private sector, wage differentials in establishments with over 20 employees tend to favour men”.

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<sup>122</sup> Ibid.

<sup>123</sup> UNDP, 2004 Human Development Report, Country Fact Sheet, Turkey, <http://www.un.org>

Article 5 of the Council Directive states, “due to reason of being wronged by failure in the application of the principle of the equal treatment, persons can pursue their rights by administrative procedures of Labour Inspection Board” and also by judicial process as mentioned in Article 5 of Act No: 4857 and Articles 1 and 10 of Act No: 5521 on Labour Courts.<sup>124</sup> Besides, all citizens have petition rights as it is ensured by Article 7 of Act No: 3071. On the other hand, workers, who can pursue their rights with petitions, are described by the Article 18 of Act No: 4857 as the workers who have been working at a workplace with 30 or more workers and who hold work contracts that started at least six months before the petition is made (Şenol, İřat and Sayın 2004: 19). Therefore, it is seen that despite the claim of the Ministry of Labour and Social Security, which requires the full alignment with the Directive, the right of petition was not recognized for all workers. According to an SIS survey, “only 28.5% of male workers and 21.7% of female workers work at the above-mentioned work places, which employ 30 or more workers”.<sup>125</sup> On the other hand, all the public workers, who work under the #657 Law, have the right of petition.

Regarding Article 6 of the Council Directive, and Article 5 of Act no: 4857, in case of violation of these articles, Article 99 states that

*..the employer or his representative who acts in violation of the principles and obligation foreseen in Articles 5 and 7 of this Act, does not give the employee the document mentioned in the last paragraph of Article 8, acts in violation of the provisions of Article 14, and violates the obligation to arrange a work certificate in accordance with Article 28 or writes incorrect information on this certificate, shall be liable to a fine of fifty million liras for each employee in this category<sup>126</sup>*

In addition, as parallel to the Article 7 of the Council Directive, all the workers have the right to obtain information about these arrangements and legislation.

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<sup>124</sup> [http://ab.calisma.gov.tr/index\\_dosyalar/Page902.htm](http://ab.calisma.gov.tr/index_dosyalar/Page902.htm)

<sup>125</sup> The Report was prepared by Nevin Şenol according to the SIS demand and regarding to Right to Obtain Information Law of October 10, 2003 (#4982).

<sup>126</sup> <http://www.ilo.org/public/english/region/eurpro/ankara/legislation/law4857.htm>



When we look at the trade unions' roles for this directive, we see that neither the Trade Unions Law (Act No: 2821) nor the Law on Collective Bargain Agreement contain a gender discrimination statement. On the other hand, it is difficult to say that trade unions in Turkey could manage to allocate the 'positive discrimination programmes', 'the principle of equal pay for equal work of value', the punishment of sexual harassment at the work place or the other relevant issues within their structures (Şenol, İřat and Sayın 2004: 23). In this regard, it is a fact that women workers do not have an adequate knowledge of their rights. For example, to the "which arrangements should be included within the collective bargaining agreements for women workers question could not be replied to by 57% of female workers" (Toksöz 2004: 234).

**Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion and working conditions**

This Directive, Article 11 of CEDAW and ILO Convention #111 provide the framework for Turkey's legal obligations regarding the 'equal treatment' principle.

Article 5 of the new Labour Law with regard to 'principle of equal treatment' title, constitutes the main regulation, and supplies the most comprehensive framework. Article 5 foresees the prohibition of direct and indirect discrimination; however, the comprehensive definition of discrimination is not given within the article. In addition, even Article 5 determines an 'equal treatment' principle for the recruitment process as well as establishes 'work relation' with the work contract, it is difficult to say that the reference to 'work relation' includes the recruitment procedures, and the significant gap between the Directive's Article and the Turkish legislation still remains (Şenol, İřat and Sayın 2004: 27). At this stage, it can be argued that since the Labour Law does not have any clear statement for recruitment, Article 10 of the Turkish Constitution can be applied to the Directive. But, as it will be discussed later in this chapter, in practice gender inequalities exist with regard to 'equal treatment'.

In addition, Article 10 of the Turkish Constitution as well as Articles 48<sup>127</sup> and 49 formulate the national legislation for this Council Directive.

Regarding ‘equal treatment’, Nurhan Süral (2003: 11) emphasizes the need for labour market flexibility and atypical types of work. She states, “Especially atypical types of employment<sup>128</sup> needed to be formulated, and provisions on working time should become a lot more flexible” (Süral 2005: 11). If it is considered that women mainly occupy this atypical kind of employments, the need for a new arrangement in the scope of this directive will become more visible.

Under the article 70 of the Constitution, every Turkish citizen has the right to enter the public service, and Article 5 of the Labour Law strengthens this provision by stating that no discrimination can be made on the basis of gender in work relations. The relevant statistics and the obstacles for the women’s employment such as the male dominated social structure, which can take various forms and does not give permission to reconciliation of family and professional life for women will be discussed later on. However, it can be said that there is a need for a strong political will for changing the existing situation in employment. It should be remembered that ‘asking the permission of the husband for working’ was legally abolished in 1996 from the Civil Code (Article 159), while the tradition of working with husbands’ permissions still exists for women in practice.

In addition, as Süral (2003: 12) states that “inequalities persist across Turkey in women’s disproportionately larger share of responsibilities for household work and the care of children and the elderly, in managing the ‘double day’ difficulties” (Süral 2005: 12).

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<sup>127</sup> Article 48: Everyone has the freedom to work and conclude contracts in the field of his/her choice. Establishment of private enterprises is free. The state shall take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in conditions of security and stability.

<sup>128</sup> In general, atypical employment can be classified into part-time work, agency work, fixed-term employment (temporary employment, daily employment and contract employment) and others (on-call work, telework, etc.) (Ogura 2003: 2).

Therefore, 'equal treatment' at only the workplace cannot solve the existing problems in Turkey. Reconciliation of family and professional life requires special attention.

On the other hand, within the scope of this directive, regarding 'vocational training', the existing structure is lacking for the private sector, while the Law on Civil Servants (Act No: 214) regulates all public institutions' vocational training procedures as well as in-service training procedures. Thus, it cannot be said that Turkish legislation fulfils the Directive, particularly with the Articles 2.2 and 4.

In the framework of the Directive, 'women's protection' is provided at the work place in some aspects. In addition, Article 88<sup>129</sup> of the new Labour Law arranges protection of women. However, the article is a requirement for only the work places, where 100 or more workers are employed.

Regarding 'maternity leave', the Turkish legislation allows 16-week maternity leave. On the other hand, the duration of this leave is 14-weeks within the EU aquis. From some aspects, this longer maternity leave within the Turkish legislation can be seen as a threat for women's returning to the labour force.

For the 'termination of work' by a valid reason, Article 18 (paragraph d and e) of the new Labour Law states "...race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, and absence from work during maternity leave when female workers...shall not constitute a valid reason for termination."

Regarding job definitions, we do not encounter any legislative discrimination at recruitment, or jobs that are divided as jobs for women and men. On the other hand,

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<sup>129</sup> Article 88: A regulation to be prepared by the Ministry of Labour and Social Security, after taking the opinion of the Ministry of Health, shall specify during which periods and in what types of jobs the employment of pregnant and nursing women is to be prohibited, what conditions and procedures they shall abide by while working on jobs in which they may be employed as well as how the nursing rooms and child care centres are to be established.

according to the SIS 2004 first quarter report,<sup>130</sup> women's participation in the labour markets is only 22.5%. The employed female population's 53.1% take part within agriculture, and 83.3% of them are unpaid domestic labour. Following the agricultural sector, women make up 26.5% service sector, and 13.4% of the industrial sector. However, female participation was 27.9% for 2003 according to the SIS 2003 statistics, which also show a decreasing rate of female employment.

As we could see above, despite that the principle of equal treatment in employment was included in the Labour Law, which was enacted in 2003, legislation is developed without taking women into account. Women are only taken into consideration in a limited way for pregnancy and childbearing, where measures are overprotective and limited to not allowing work during the night, underground and underwater. Extensive inequalities continue in implementation despite the above-mentioned legislation. In this regard, wage inequality can be seen as the most visible indicator for displaying the existing inequalities. In the private sector, wage inequality depends on the level of qualification that is required by the job. In this context, women's education becomes more important for job requirements and requested qualifications. Besides the wage inequalities, women face with gender discrimination in the social security system. Because they mainly occupy non-standard or flexible time jobs, they are generally excluded from the necessary social security provisions. Also, in agriculture, the insurance eligibility conditions of women, who work on their own account is different from those applying to men; although the head of family status has been abolished with the change in the Civil Law, still only those of such women who are head of household can be insured.

The Council Directive 76/207/EEC of 9 February 1976 was revised by the Council's 2002/73/EC Directive, which introduces the concepts of harassment, related to sex and sexual harassment and states that they are forms of discrimination in violation of the equal treatment principle. In Turkish legislation, "the new Labour Law refers to sexual harassment as a basis for justified contract terminations and compensation entitlements,

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<sup>130</sup> State Institute of Statistics, the Newsletter of July 16, 2004 issues 906-126

in other words, sexual harassment constitutes a valid reason to terminate the labour contract” (Süral 2005: 14). Regarding this provision, Article 24/II/b and d of the new Labour Law states that “a worker who has been sexually harassed by the employer, by a fellow worker or by a third person in the workplace may instantly terminate his/her labour contract”. Similarly, the visa versa case mentioned within the Article 25/II/b-c. As a consequence of these facts, it is difficult to say that the Turkish legislation and its practices fulfil the requirements of the Council Directive on this field.

**Council Directive 92/85/EEC of 19 October 1992 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**

In Turkey, the protective provisions on maternity apply to all women workers. The new Labour Act envisages a maternity leave of 16 weeks (Article 74). In the framework of this law, pregnant workers are entitled to time off, without loss of pay, in order to attend ante-natal examinations.

Based on Article 88 of the Labour Law 4857 “a regulation on the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding will be issued by the Ministry of Labour and Social Security by taking the opinion of the Ministry of Health. Within this framework, alignment with the first 6 articles of the Directive was provided”.<sup>131</sup>

Article 50 of the Constitution, and as a part of Turkey’s international commitments, CEDAW Article 11, paragraph 2 regulate this directive. The new Labour Law has some restriction for the right of an employer “to dismiss a pregnant female worker employed under a labour contract of fixed or indefinite duration, and specifies valid reasons for contract termination and increasing the safeguards against all types of abusive dismissals for workplaces with 10 or more workers” (Süral 2005: 13-14). However, despite these

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<sup>131</sup> [http://ab.calisma.gov.tr/index\\_dosyalar/Page902.htm](http://ab.calisma.gov.tr/index_dosyalar/Page902.htm)

provisions, the comprehensive protection measures, especially in case of pregnancy are missing. (Şenol, İřat and Sayın 2004: 38).

Article 7 of the Directive regulates the women workers' night shifts at industrial works as bringing protection for breastfeeding women workers and only for industrial work. But, pregnant workers are not within the scope of this regulation. However, when the regulation based on Article 73<sup>132</sup> of the Labour Law is issued full alignment will have been provided. In addition, Article 74<sup>133</sup> and 88<sup>134</sup> of the Labour Law supplies additional arrangements for working during maternity leave and breastfeeding. For the night work, Article 73 and for maternity leave Article 74 of the Labour Law supply additional rights for women workers while maternity protection takes part within the Social Insurance Law Act No: 506. Regarding work security, the relevant Article 18 was displayed earlier.

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<sup>132</sup> Article 73: The principles and methods for employing women who have completed the age of eighteen on night shifts shall be indicated in a regulation to be prepared by the Ministry of Labour and Social Security upon receiving the opinion of the Ministry Health.

<sup>133</sup> Article 74: In principle female employees must not be engaged in work for a total period of sixteen weeks, eight weeks before confinement and eight weeks after confinement. In case of multiple pregnancies, an extra two-week period shall be added to the eight weeks before confinement during which female employees must not work. However, a female employee whose health condition is suitable as approved by a physician's certificate may work at the establishment if she so wishes up until the three weeks before delivery. In this case the time during which she has worked shall be added to the time period allowed to her after confinement.

The time periods mentioned above may be increased before and after confinement if deemed necessary in view of the female employee's health and the nature of her work. The increased time increments shall be indicated in the physician's report.

The female employee shall be granted leave with pay for periodic examinations during her pregnancy.

If deemed necessary in the physician's report, the pregnant employee may be assigned to lighter duties. In this case no reduction shall be made in her wage.

If the female employee so wishes, she shall be granted an unpaid leave of up to six months after the expiry of the sixteen weeks, or in the case multiple pregnancy, after the expiry of the eighteen weeks indicated above. This period shall not be considered in determining the employee's one year of service for entitlement to annual leave with pay.

Female employees shall be allowed a total of one and a half hour nursing leave in order to enable them to feed their children below the age of one. The employee shall decide herself at what times and in how many instalments she will use this leave. The length of the nursing leave shall be treated as part of the daily working time.

<sup>134</sup> Article 88: A regulation to be prepared by the Ministry of Labour and Social Security, after taking the opinion of the Ministry of Health, shall specify during which periods and in what types of jobs the employment of pregnant and nursing women is to be prohibited, what conditions and procedures they shall abide by while working on jobs in which they may be employed as well as how the nursing rooms and child care centres are to be established.

This directive is also “regulated with the new Labour Law Act No: 4857, Social Insurance Law Act No: 506, Civil Servants Law Act No: 657, Retirement Fund Law Act No: 5434, Regulation on Conditions of Night Work for Women Workers Act No: 25548 of August 9, 2004 within the framework of Labour Law, and Regulation of Work for Pregnant of Nursing Workers and Nursing Rooms and Day Nurseries Act No: 25522 of July 14, 2004”.<sup>135</sup> However, the last regulation is required for the workplace that employs more than 100 workers.

**Council Directive 97/80/EC of December 1997 on the Burden of Proof in Cases of Discrimination Based on Sex**

Within Turkish legislation, there is only one act that matches with this directive, which is the Law on Labour Court Act No: 5521. The first article of this act requires the establishment of labour courts in case of conflict between workers and employers in terms of the work contract or violations (Şenol, İřat and Sayın 2004: 46). Also, Article 10 of the same law states that “administrational authorities responsible for the implementation of the Labour Act shall forward to the Labour courts”.

97/80/EC Directives requires that “it shall be for the respondent to prove that there has not been a breach of the principle of equal treatment” (97/80/EC), while Article 5 (paragraph 7) of the Act No: 4857 gives burden of proof to employers only in cases when the worker strongly puts forward a claim against the employer. In this framework, concerning the termination of contract as mentioned by Articles 18, 19, and 20; the burden always appear as the employer’s responsibility. Articles 18, 19<sup>136</sup> and 20<sup>137</sup> of the Labour Law also emphasize that because of sex, the work contracts cannot be terminated.

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<sup>135</sup> <http://www.calisma.gov.tr/>

<sup>136</sup> Article 19: The notice of termination shall be given by the employer in written form involving the reason for termination, which must be specified in clear and precise terms. The employment of an employee engaged under a contract with an open-ended term shall not be terminated for reasons related to the worker’s conduct or performance before he is provided an opportunity to defend himself against the allegations made. The employer’s right to break the employment contract in accordance with Article 25/II of the Labour Act (for serious misconduct or malicious or immoral behaviour of the employee) is, however, reserved.

Finally, in parallel with the Directive's Article 5, which states that "The 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 appropriate means", the measures taken will be implemented by trade union representatives in the business where a collective labour contract exists, however, in the business where there is no trade union representative, we are not able to see any mechanism of transferring the relevant information.

**Council Directive 97/81/EC 15 December 1997 Concerning the Framework Agreement on Part-Time Work concluded by the Union of Industries of European Community (UNICE), the European Centre of Public Enterprises (CEEP), European Trade Unions Confederation (ETUC) (as including the 'Organization of working time' (93/104/EC) Directive**

Within the Turkish legislation, Article 13 of the Labour Law that regulates this Directive states:

*The employment contract shall be considered as a part-time contract where the normal weekly working time of the employee has been fixed considerably shorter in relation to a comparable employee working full-time.*

*An employee working under a part-time employment contract must not be subjected to differential treatment in comparison to a comparable full-time employee solely because his contract is part-time, unless there is a justifiable cause for differential treatment. The divisible benefits to be accorded to a part-time employee in relation to wages and other monetary benefits must be paid in accordance to the length of his working time proportionate to a comparable employee working full-time.*

*The comparable employee is the one who is employed full-time in the same or a similar job in the establishment. In the event there is not such an employee in the establishment, an employee with a full-time contract performing the same or similar job in an appropriate establishment which falls into the same branch of activity will be considered as the comparable employee.*

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<sup>137</sup> Article 20: The employee who alleges that no reason was given for the termination of his employment contract or who considers that the reasons shown were not valid to justify the termination shall be entitled to lodge an appeal against that termination with the labour court within one month of receiving the notice of termination. If there is an arbitration clause in the collective agreement or if the parties so agree, the dispute may also be referred to private arbitration within the same period of time.

The burden of proving that the termination was based on a valid reason shall rest on the employer. However, the burden of proof shall be on the employee if he claims that the termination was based on a reason different from the one presented by the employer.

The court must apply fast-hearing procedures and conclude the case within two months. In the case the decision is appealed, the Court of Cassation must issue its definitive verdict within one month.



*If there are vacant positions suited to the qualifications of employees working in the establishment, the employees' requests to move into full-time from part-time jobs or vice versa shall be taken into consideration; vacancies shall be announced without delay.*

Despite the positive dimensions of this article, the conditions for 'differential treatments' were not determined clearly.

In addition, Article 41 and 63 of the new Labour Law regulate the part-time work within Turkish legislation, which are in line with the Directive.

**Directive 86/613/EEC of 11 December 1986 on the Application of the Principle of Equal Treatment between Women and Men Engaged in an Activity, Including Agriculture, in a Self- Employed Capacity, and on Protection of Self- Employed Women during Pregnancy and Motherhood**

Article 2 of the Directive covers two dimensions as follows:

- a) Self- employed workers, i.e. all persons pursuing a gainful activity for their own account, under the conditions laid down by national law, including farmers and members of the liberal professions;*
- b) Their spouses, not being employees or partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self- employed worker and perform the same tasks or ancillary tasks,*

The equivalent national legislation pieces for this directive are the Law on Social Security Organization for Artisans and the Self-Employed Act No: 1479, with the Law on Agriculture Social Security Organization for Artisans and the Self-Employed Act No: 2926. Both of these legislations do not include 'maternity protection'. Thus, Turkish legislation is not harmonized with this Directive yet. In Turkey's National Programme under the 13.1.4 title, Turkey states its responsibility to harmonize the legislation to the EU gender equality acquis.

To be enabled to use the right that is determined by the Act no: 2926, there was a condition for women to be head of household. The above-mentioned law was requiring that in order to be insured, women should be the head of the family. This inequality has been eliminated in 2003 by the adoption of the new Turkish Code 2001, and the

concerned statement was annulled by the Law no: 4956, and the legislation became harmonized (Şenol, İřat and Sayın 2004: 50).

In the framework of the Council Directive's Article 5<sup>138</sup>, the Turkish legislation supplies the Law Act No: 818 and Turkish Trade Law No: 6762 that is in line with the Directive.

On the other hand, regarding Article 6<sup>139</sup> of the Directive, "the relevant change has occurred via Law No: 4956 that has come into force after issued in the Official Gazette dated 02. 08. 2003 and No: 25187, foreigners are included under the coverage of the Law on Social Security Organization for Artisans and the Self-Employed Act No: 1479 and voluntary insurance has been established".<sup>140</sup> On the other hand, the above-mentioned arrangement covers only women, the same rights are not valid for men, therefore this regulation can also be determined to be in favour of gender equality (Şenol, İřat and Sayın 2004: 50).

Regarding Article 9<sup>141</sup> of the Directive, Article 125 of the Constitution can be applied for such cases; therefore, the national legislation is in line with the Directive.

**Council Directive 96/34/EC of 3 June on the Framework Agreement on Parental Leave Concluded by the Union of Industries of European Community (UNICE), the European Centre of Public Enterprises (CEEP), European Trade Unions Confederation (ETUC)**

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<sup>138</sup> Without prejudice to the specific conditions for access to certain activities which apply equally to both sexes, Member States shall take the measures necessary to ensure that the conditions for the formation of a company between spouses are not more restrictive than the conditions for the formation of a company between unmarried persons

<sup>139</sup> Article 6: Where a contributory social security system for self-employed workers exists in a Member State, that Member State shall take the necessary measures to enable the spouses referred to in Article 2(b) who are not protected under the self-employed worker's social security scheme to join a contributory social security scheme voluntarily.

<sup>140</sup> [http://ab.calisma.gov.tr/index\\_dosyalar/Page902.htm](http://ab.calisma.gov.tr/index_dosyalar/Page902.htm)

<sup>141</sup> Article 9: The Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply the principle of equal treatment in self-employed activities to pursue their claims by judicial process, possibly after recourse to other component authorities"

This directive aims to determine the minimum needs for the reconciliation of family and working life for both parents. Whereas the Directive envisages that “women and men workers are entitled to an individual right to parental leave on the ground of the birth or adoption of a child, Article 74 of the new Labour Law 4857 regulates this right only in terms of women up to six months after end of the maternity leave (from the end of eight week after delivery)”.<sup>142</sup> However, Turkish legislation does not consider the father or the situation on grounds of adoption.

The Draft Bill on Re-Arrangement of Parental Leave has been prepared by the General Directorate on Women’s Status and Problems and proposed to the Presidency Office, however, it has not been accepted yet. The draft proposes to give 6 months leave to fathers and change the name of ‘maternity’ leave into ‘parental’ leave (Şenol, İřat and Sayın 2004: 51). Regarding the parental leave legislation, Turkey’s relevant commitment takes part within Turkey’s NPAA.

The Council Directive 96/34/EC states “the parents who use their parental leave right cannot be dismissed”, and similar protection is provided by Article 1 of the new Labour Law under the ‘Justification of Termination with a Valid Reason’ title as stated earlier. One of the most important protection shortages is that the Labour Law does not protect the right of mothers to return to the same situation after the maternity leave while the 96/34/EC directive does. In addition, the directive protects the acquired rights till the end of maternity leave, while the Turkish Labour Law does not have this kind of protective statement. Finally, according to the new Labour Law, during the maternity leave, the social insurance premium is not paid by the employer while the Social Insurance Law Act No: 506 supplies the right for health services only to mothers and the persons who are under their protections (Şenol, İřat and Sayın 2004: 53).

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<sup>142</sup> [http://ab.calisma.gov.tr/index\\_dosyalar/Page902.htm](http://ab.calisma.gov.tr/index_dosyalar/Page902.htm).

In general, it is observed that “Turkish legislation is not parallel with the Directive and ‘child-care’ still remains as the mothers’ responsibility rather than a ‘family responsibility’” (Şenol, İřat and Sayın 2004: 54).

**Council Directive 96/97/EC of 20 December 1996 Amending Directive 86/37/EEC on The Implementation of The Principle of Equal Treatment for Men and Women in Occupational Social Security Schemes (as including the Directive on ‘Equal Treatment With Regard to Statutory Social Security Schemes’- 79/7/EEC)**

Regarding this Directive, Article 60 of the Constitution states “Everyone has the right to social security; the state shall take the necessary measures and establish the organisation for the provision of social security”.

Regarding the social security legislation, the following figure displays the existing framework in Turkish legislation.

<b>Social Security Legislation</b>	<b>Act No:</b>	<b>Adoption Date M/D/Y</b>	<b>Coverage</b>
<b>Retirement Fund Act</b>	5434	8/6/1949	Civil Servants
<b>Social Insurance Act</b>	506	17/7/1964	Industrial Workers
<b>Tradesmen, Small Artisans and the Other Self-Employed Social Security Act</b>	1479	2/9/1971	Self-Employed
<b>Social Security Act of the Self- Employed in the Agriculture Agricultural Workers’ social Security Act</b>	2926	17/10/1983	Self-Employed in the Agriculture
<b>Agricultural Workers’ social Security Act</b>	2925	17/10/1983	Agriculture Workers
<b>Unemployment Insurance Act</b>	4447	25/8/1999	Industrial Workers Upon Loss of Employment

**Figure 4.4** Turkish Social Security Legislation

As a general rule, the principle of equal treatment exists in the field of state and occupational social security systems. In this framework, “contributions to and entitlements from social security schemes are the same for men and women and gender neutral terminology is used by the acts, which supply medical care, sickness benefits,

maternity benefits, invalidity benefits, old-age benefits, survivors' benefits, employment injury benefits and employment benefits are the branches of social security" (Süral 203: 17). In Turkey, among these above-mentioned laws, only the Social Insurance Act No: 506 consists of 'maternity protection'. The NPAA of Turkey envisages the inclusion of maternity protection in these laws, because there are still some gender discriminative provisions. For example, the Social Security Law on the Self-employed in Agriculture foresees 'maternity protection' only if the mother is also the 'head of household' (Süral 2005: 17).

In addition, the act foresees different retirement ages for women and men.<sup>143</sup> This regulation can also be determined as another form of 'gender discrimination', and as against to the Directive's Article 3 Clause (f)<sup>144</sup>.

Also, in practice, the 'equal treatment' principle could not be achieved yet in Turkey. The number of uninsured workers is quite high, and most of them do not use their petition right because of the fear for losing their jobs. Women occupy the majority of this uninsured work, and this fact displays the indirect gender discrimination in the field of social security (Şenol, İřat and Sayın 2004: 55). Regarding the Council Directive, unequal treatment in practice is also stated by the CEDAW Country Report (2003: 49) as follows:

*...although there have been some increases in women's access to social security schemes over the years, the situation is far from satisfactory. Between the years from 1994 to 2001, women's ratio in the private social security system (BağKur) increased from 9.4 to 9.6; in the Social Security Legislation (SSK) scheme from 9.9 to 19.9 and in the system that covers public servants (Emekli Sandığı) it has increased from 30.6 % to 33.1 %.*

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<sup>143</sup> According to the Act, the retirement age is 58 for women, while it is 60 for men.

<sup>144</sup> Article 3: 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 1997. They shall forthwith inform the Commission thereof. When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States. 2. Member States shall communicate to the Commission, at the latest two years after the entry into force of this Directive, all information necessary to enable the Commission to draw up a report on the application of this Directive.

Regarding the Council Directives, Implementing the Principle of Equal Treatment between Persons Irrespective of Racial and Ethnic Origin (2000/43/EC) Directive, and Establishing a General Framework for Equal Treatment in Employment and Occupation (2000/78/EC) Directive; the relevant Turkish legislation was displayed under the 'Equality before Law, Prohibition of Gender Discrimination' and 'Equality between Men and Women' title.

Finally, the Council Directive 2004/113/EC of 13 December 2004 implements the principle of equal treatment between men and women in the access to and supply of goods and services. Turkish legislation does not have any discriminative arrangements; however the discrimination and gender inequalities appear in practice in the areas of concern, as will be examined later in this chapter.

Despite that, the principle of the 'right to work' is secured by the Turkish Constitution, and more specifically, according to Article 48 of the Constitution, "all individuals have the right to work and sign a contract", and Article 49 defines work as "everyone's right and responsibility" and proclaims that "the state shall improve working conditions and protect the workers" as well as the aforementioned amendments in the area of employment, women still face gender discrimination in this field. We come across a serious gap between the existing legislation and implementation.

The subject of women in employment can be analysed into two different levels: macro and micro levels. At the macro level, there are more universal and generalized theories and practices on the women's labour issue. In a broad sense, the universal features and characteristics of women's paid employment are valid in the Turkish context, which can be observed in the marginalization of women in the labour force in terms of low pay, poor working conditions, and occupational segregation. To talk about the macro-economic background of the women's labour issue in Turkey, the 1980s appears as a significant period, when the structural adjustment policies were put on the agenda. During these years, the most distinctive characteristic of the economies was their globalisation trend and re-structuring, mainly because of the economic crisis that

occurred worldwide in the 1970s (Ecevit 2002a: 121). While the structural adjustment policies were ignoring human resources, the households, and particularly women and children, appeared to be the most affected and vulnerable groups. On the other hand, by the 1980s, we come across a new international division of labour. In this framework, the informal sector can be determined as one of the outcomes of these developments (Ecevit 2002a: 125) Capital was in need of cheap labour that was free from the state and social security. The informal sector was developing in many forms, such as unregistered small-scale enterprises to home working, which became an attractive option for women, even with its low pay, lack of job security and social insurance.

As following 1980s, during 1990s, as concerning the negative impacts of these economic developments for women, the Beijing PfA appears as one of the most comprehensive international documents. Regarding this document, and its commitments in the field of employment, Turkey determined the following deficiencies by its 'Response to the Questionnaire on Implementation of the Beijing Platform for Action':<sup>145</sup>

*In Turkey, employment of women is continuing to be one of the basic areas of problems. In the context of globalisation, unemployment of women during the last twenty years in Turkey has shifted to unregistered economy. The significant and continuous decline of women in participation of workforce is shown as the most important proof of this view. The participation of women in the workforce, which was 34 % in 1990, became 27.9 % in 1998 and 25.9 % in 2001. Looking at the situation as to the employment status, out of 100 woman only 11 work in their own business as employer, 39 work as an employee in return of daily or monthly pay, and half work as family worker without any salary.*

Similarly, the 4<sup>th</sup> and 5<sup>th</sup> Combined Periodic Report of Turkey (2003: 44) asserts that

*Until recently, the labour force participation of women has shown a downward trend, dropping from 30.5% in 1995 to 25.9 % in 2001. During the same period, male participation decreased from*

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<sup>145</sup> Response of the Republic of Turkey to the Questionnaire on Implementation of the Beijing Platform for Action, April, 2004, Ankara, p. 2

*77.9% to 72.9 %. The primary factor that accounts for the falling rates in female labour force participation is rural to urban migration, whereby, the majority of the migrating women, who previously worked as unpaid family workers in agriculture, become housewives in the urban setting or engage in informal sector jobs. The number of housewives increased from roughly 10 million in 1995 to about 12 million in 2002. Although, with the recent changes in the Civil Code women's domestic contribution to the household economy is acknowledged, this understanding is not reflected in the labour force statistics. Likewise, income generating activities or piecework that women may engage in at home or other forms of informal sector employment, also escape formal statistics. It is estimated that women hold nearly 65 % of the informal sector jobs, whereas for men this ratio is 37.5.*

The above-mentioned situation is also displayed by the OECD reports, where Turkey takes place at the bottom line with its high female unemployment rate. Turkey's female participation in employment in the most female-concentrated sectors such as the manufacturing industry remains even lower than the countries having the lowest female participation in the world, and sharing the same industrialization level with Turkey such as South Korea and Malaysia, or less industrialized countries like Tunisia or Morocco (İlkkaracan 1998: 285). It can be said that this picture is quite different from the situation of the EU Member States, where the target for 2010 is determined as 60% women's employment by the Lisbon Strategy (2000).

In this regard, if we look at the SIS statistics, we see that the female employment rate was more than 70% in 1955; however this rate decreased to around 30% in the 1990s.<sup>146</sup> Behind this decrease, the most agreed upon reason has been determined as internal migration, and as a consequence, female population movement from rural to urban centers (İlkkaracan 1998; Ecevit 2002a). On the other hand, regarding this decrease, Turkey's above-mentioned response to PfA Implementation (2004: 2) determines the 'migration from rural to urban areas', 'women's lack of education', and 'the difficulties to reconcile family and working life' as follows:

*...Besides, in Turkey where there is an intense migration from rural to urban areas, women who are in the workforce in their village can not find a job when they move to the city due to their lack of education and professional skills and generally become housewives. 11.5 million (67.8) of the 17*

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<sup>146</sup> İstatistiklerle Kadın, 1927- 1992, Ankara, Devlet İstatistik Enstitüsü, 1995. (Women in Statistics, 1927-1992, Ankara, SIS, 1995)



million women, who are not in the workforce, claim that the reason they are not in the workforce is because they are 'housewives'. This situation decreases the participation of women in the workforce both in rural and urban areas. Women who have to work because of the low income of the family go into the informal sector without social security and have to work in low status-income jobs. This situation does not reflect in the manpower data and unemployment rates look very high. Besides the uneducated and unskilled women the fact that the rate of unemployment among educated and young women population is also high is an important indicator to be able to understand employment of women. Rate of unemployment among the young women population who live in the city and who are at least high school graduate is twice as much as the men in the same situation (Unemployment rate for women is 43 % while for men is 20 %). ...The basic reason of working women to end their work life after a short period and/or not to be able to show their potential for advance in their career is the problem for women to reconcile their work and home life. Woman has to share the responsibilities of taking care of children and elderly in her family life with her husband and/or with the state. The number of day care centres in the country is still insufficient in spite of all efforts.

Regarding female employment in Turkey, as it can be seen below, by the year 2000, women's employment rate was appearing as 39%, while male employment was 70.6 %. On the other hand, according to Table 4.3, in the year of 2003, women's employment decreased to 25.19 %. However, the latest women's employment rate is determined as only 24.3 % percentage by the OECD Outlook for Employment Report (2005).

**TABLE 4. 3 Population by Labour Force Status, 1980-2000**

Census year	Total population	Population 12 years of age and over	Labour force	Employed	Labour force part. rate (%)	Unemployed ,and	Unemp. (%)	Population not in labour force
<b>Total</b>								
<b>1980</b>	44 736 957	30 539 621	19 212 193	18 522 322	62,9	689 871	3,6	11 194 199
<b>1985</b>	50 664 458	35 339 299	21 579 996	20 556 786	61,1	1 023 210	4,7	13 670 254
<b>1990</b>	56 473 035	40 783 431	24 726 601	23 381 893	60,6	1 344 708	5,4	16 030 516
<b>2000</b>	67 803 927	51 724 194	28 544 359	25 997 141	55,2	2 547 218	8,9	23 173 230
<b>Female</b>								
<b>1980</b>	22 041 595	15 137 801	6 927 936	6 813 509	45,8	114 427	1,7	8 169 368
<b>1985</b>	24 992 483	17 535 704	7 647 265	7 492 733	43,6	154 532	2,0	9 849 302
<b>1990</b>	27 865 988	20 234 706	8 653 041	8 408 414	42,8	244 627	2,8	11 570 818
<b>2000</b>	33 457 192	25 683 222	10 164 540	9 429 736	39,6	734 804	7,2	15 516 101
<b>Male</b>								
<b>1980</b>	22 695 362	15 401 820	12 284 257	11 708 813	79,8	575 444	4,7	3 024 831
<b>1985</b>	25 671 975	17 803 595	13 932 731	13 064 053	78,3	868 678	6,2	3 820 952
<b>1990</b>	28 607 047	20 548 725	16 073 560	14 973 479	78,2	1 100 081	6,8	4 459 698
<b>2000</b>	34 346 735	26 040 972	18 379 819	16 567 405	70,6	1 812 414	9,9	7 657 129

**Source:** <http://www.die.gov.tr/tkba/istatistikler.htm>

**TABLE 4.4 Employment Rates in Turkey**

Group	2000	2001	2002	2003
Total	48.90 %	47.80 %	46.71 %	45.53 %
Men	71.67 %	69.32 %	66.87 %	65.88 %
Women	26.16 %	26.30 %	26.57 %	25.19 %

*Source:* [www.kagider.org/en\\_statistics](http://www.kagider.org/en_statistics)

In the light of these statistics and the earlier comparison between the Turkish legislation and the EU gender aquis, it can be argued that despite that the Turkish legislation does not include gender-based discriminatory provisions, there is a contradiction between the legislation and the implementation of the Council Directive 76/207/EEC of 9 February 1976 that foresees the principle of equal treatment for women and men as regards access to employment, vocational training, promotion and working conditions. Thus, the first requirement appears as an employment policy aiming to increase female employment. In order to meet the required implementation of the Council Directives, there is an urgent need for the Government to develop a coordinated and comprehensive long-term plan of action that addresses the multiple dimensions of women's lack of employment. Such a plan should pay attention to the fact that the EU target was determined as increasing female employment to 60% by 2010 (in line with the EU 2010 Lisbon Criteria), and with its 24, 3% female employment rate, Turkey is still far from this target.

In the scope of this Directive, we come across some measures that mainly focus on skills and vocational training of women. However, the only reason behind women's low employment cannot be explained by 'lack of education'. "The women's traditional responsibility in domestic work and care, as well as the social restrictions on their freedom of mobility can be seen as just some of the exiting problems that women face".<sup>147</sup> In order to struggle with the low level of female employment, first of all the reasons behind this fact should be determined in respect to the different needs of women, and the structure of female employment should be understood.

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<sup>147</sup> Statement by İpek İlkkaracan To the Committee on the Elimination of All Forms of Discrimination Against Women on the Fourth and Fifth Periodic Report of the Government of Turkey, 17 January 2005

Pınar İlkkaracan (1998: 287) categorizes women's labour force in Turkey into three categories as: mainly under-class unpaid family workers in agriculture; lower class, urban women who are employed in labour-intensive jobs with lower income levels; and well-educated, middle or upper-class urban women as professionals or managers. Despite the fact that all the women of these three categories face gender-based discrimination in the field of employment, their problems are different. For the first group, İlkkaracan (1998) states that the problem is not to participate into the labour force, but being unpaid family labour, and working under hard conditions without social security, while the third group face with the 'glass ceiling' in their professional lives.

On the other hand, the second group's members are mainly first or second-generation internal migrants. For this group, Ecevit (2002b: 25) states that "even though a few of these migrant women have the opportunity of entering the urban labour markets by means of very marginal occupations, those jobs could not make a significant contribution to the development of the work patterns". Also, "when they migrate from rural to urban, the majority of the migrating women, who previously worked as unpaid family workers in agriculture, become housewives in the urban setting or engage in informal sector jobs" (CEDAW Shadow Report 2004: 22). In addition, İlkkaracan (1998: 286) emphasizes the 'double-burden' for these women, who have to continue their domestic work, and maintain their care-taker roles along with the marginal occupations that mainly take place within the above-mentioned informal sector such as cleaner, child or patient care-givers or low-waged factory workers. Also, they have been facing with the patriarchal norms within the social structure, which has become even harder as a consequence of 'migration' in their urban lives.

By the State Institute for Statistics data given below (Table 4.5) displays the high proportion of female unpaid family labour in Turkey. Also, Table 4.6 shows that in the year 2000 female unpaid family labour was 68.8 %, while male unpaid worker was only 13.8 %.

**TABLE 4.5 Employed Population by Employment Status, 1970-2000**

Population 12 years of age & over					Unpaid
Census year	Total(1)	Employee	Employer	Self employed	family worker
<b>Total</b>					
1970	15 118 887	4 172 699	105 487	4 036 372	6 804 329
1975	17 383 828	5 386 527	145 245	4 164 683	7 670 172
1980	18 522 322	6 162 002	176 459	4 277 257	7 859 506
1985	20 556 786	6 978 181	192 948	4 662 181	8 721 860
1990	23 381 893	8 990 727	313 175	5 204 162	8 871 277
2000	25 997 141	11 314 030	677 316	5 228 491	8 775 012
<b>Female</b>					
1970	5 812 545	595 103	11 786	385 419	4 820 237
1975	6 204 322	876 513	8 122	294 018	5 021 626
1980	6 813 509	945 851	7 218	323 471	5 535 511
1985	7 492 733	1 072 481	10 750	351 067	6 058 365
1990	8 408 414	1 489 263	19 355	612 768	6 286 865
2000	9 429 736	2 289 330	84 753	564 147	6 491 303
<b>Male</b>					
1970	9 306 342	3 577 596	93 701	3 650 953	1 984 092
1975	11 179 506	4 510 014	137 123	3 870 665	2 648 546
1980	11 708 813	5 216 151	169 241	3 953 786	2 323 995
1985	13 064 053	5 905 700	182 198	4 311 114	2 663 495
1990	14 973 479	7 501 464	293 820	4 591 394	2 584 412
2000	16 567 405	9 024 700	592 563	4 664 344	2 283 709

*Source:* <http://www.die.gov.tr/tkba/istatistikler.htm>

**TABLE 4.6 Percentage of employed population by employment status (%), 1970-2000**

Population 12 years of age & over					Unpaid
Census year	Total(1)	Employee	Employer	Self employed	Family worker
<b>Female</b>					
1970	100,0	10,2	0,2	6,6	82,9
1975	100,0	14,1	0,1	4,7	81,0
1980	100,0	13,9	0,1	4,7	81,3
1985	100,0	14,3	0,1	4,7	80,9
1990	100,0	17,7	0,2	7,3	74,8
2000	100,0	24,3	0,9	6,0	68,8
<b>Male</b>					
1970	100,0	38,4	1,0	39,2	21,3
1975	100,0	40,4	1,2	34,7	23,7
1980	100,0	44,7	1,5	33,9	19,9
1985	100,0	45,2	1,4	33,0	20,4
1990	100,0	50,1	2,0	30,7	17,3
2000	100,0	54,5	3,6	28,2	13,8
<b>Number of women per 100 men</b>					
1970	62	17	13	11	243
1975	55	19	6	8	190
1980	58	18	4	8	238
1985	57	18	6	8	227
1990	56	20	7	13	243
2000	57	25	14	12	284

*Source:* <http://www.die.gov.tr/tkba/istatistikler.htm>

On the other hand, regarding the women's labour force participation, Ecevit (2002b: 21) states "the most underlying factors that have led to decrease of women's participation in the labour force in Turkey are changes in economic structures, accompanying social transformations". Ecevit (2002b) also states that female participation in the labour force also depends on 'age', 'levels of education', 'economic sectors', 'professions', and 'employment status'. As it can be seen from Appendix G, the highest female employment rate belongs to 20-24 age groups with 1.622.151, while for the same age group this rate is almost as twice with 2.827.731 male employment. For the relations between women's employment and 'age', İlkkaracan (1998: 286) emphasizes that while the employment rate reaches its highest peak for the 20-24 age group among women, because of their marriage and children, it starts to decrease and reaches its lowest level for the 30-34 age-group. On the other hand, with the growth of their children, the employment rate of women increases again, but not as much as the rate of the 20-24 age group.

Regarding the 'education' dimension, Table 4.7 shows that for the year 1999, the highest female employment belongs to the well-educated for both rural and urban women; however there is also a correlation between the place of residence, education and employment. Because, we see that as unpaid family workers or agricultural workers, women are employed, even if they are illiterate. For the 'education' and 'employment' relations, despite that the state sees 'education' as the most important determinate for women's employment, Ecevit (2002: 24) asserts that "women's comparatively higher unemployment rates in comparison to men's and their comparatively longer duration spent unemployed is a complex phenomenon that cannot be simply explained by their lower levels of education in respect to men". However, as it was stated earlier, since 'lack of education' is not the only barrier for women's participation in the labour force, the required measures cannot be limited to only education in general or particularly 'vocational training'. The 'Women in education' title will be discussed later in this chapter in detail.

**TABLE 4.7 Regarding Education Level, Participation to Labour Force of Women and Men (Turkey, Urban, Rural/1999)**

Education Level	TURKEY		URBAN		RURAL	
	Female	Male	Female	Male	Female	Male
Illiterate	27.0	51.2	5.5	40.7	42.5	57.2
Literate without Diploma	20.6	46.2	7.5	35.1	35.6	55.1
Primary School	30.5	73.0	10.8	67.2	52.9	79.0
Secondary School	17.0	56.7	12.1	53.5	30.3	62.4
Vocational Secondary School	3.4	34.9	3.8	25.0	-	54.1
High School	33.2	71.0	28.6	67.9	50.4	80.2
Vocational High School	44.7	78.2	40.4	76.2	66.8	85.3
Faculty	71.8	84.7	71.3	83.7	77.7	90.5
Total	29.7	68.3	15.8	64.3	47.6	73.7

*Source: DİE/HHİA, Nisan 1999 in Ecevit, Y. (2002). "Çalışma Yaşamında Kadın Emeginin Kullanımı ve Kadın- Erkek Eşitliği", Kadın-Erkek Eşitliğine Doğru Yürüyüş: Eğitim, Çalışma Yaşamı ve Siyaset, TUSIAD, No- T2001-3/294*

Regarding the 'economic sector', 'professions', and the 'employment status', Appendix H and I show that women are mainly employed as agriculture workers with 75.7 %, while this rate is 33 % for male employment. On the other hand, the lowest rate belongs to female 'administrative and managerial worker' with 0.4 %, while it is 5.9 % for males. Appendix I confirm these facts, showing women mainly as the agricultural sector's unpaid family workers.

Beside the gender gap at employment status as it was discussed above, in general, "discrimination based on gender appears mostly at pay, occupational orientation, job assignment, and organizational behaviours"<sup>148</sup> (Acar, Ayata, and Varoğlu 1999: 7).

Regarding the sharp gender pay gap in Turkey, Table 4.7 determines four indicators as affecting pay, which are: educational status, occupational group, 'branch of economic activity', and 'the size of establishment'. Table 4.8 shows that except the 'transportation, communication, and storage' branch of the economic activity, women are paid less than men, and this gap reaches its highest peak at the agricultural economic activity, where men are paid 4.3 times more in the public sector, and 2.5 times more in the private sector.

<sup>148</sup> In Turkey, out of 2 million trade union member workers, only 300.000, which is 15% of women (Koray 1992: 104).

Also, the table shows that the education level makes significant pay difference for the private sector, while it is not a significant factor for the public sector.

**TABLE 4.8 Average monthly earning by main characteristics, 1994**

[12 years and over population employed as regular employee and casual employee)							
		Public			Private		
		Female	Male	M/F	Female	Male	M/F
<b>Educational status</b>							
	Illiterate	5950,0	7260,1	1,2	1286,2	3152,2	2,5
	Literate without diploma & primary school	5691,6	7885,1	1,4	1798,3	3850,0	2,1
	General junior high school & high school	5324,0	7663,7	1,4	3003,3	4956,9	1,7
	Vocational junior high school & vocational high school	5881,2	9215,3	1,6	4134,6	5427,7	1,3
	University & higher	7396,6	9691,7	1,3	8730,5	12910,5	1,5
<b>Occupational group</b>							
	Scientific, technical, professional and related workers	6653,7	7768,9	1,2	4267,4	6390,8	1,5
	Administrative, executive and managerial workers	8956,0	9390,3	1,0	11932,0	14169,3	1,2
	Clerical and related workers	5396,5	7021,5	1,3	4157,8	6397,8	1,5
	Sales workers	3227,8	7802,3	2,4	2880,8	4967,0	1,7
	Service workers	4408,7	6514,4	1,5	2434,7	3567,6	1,5
	Agricultural animal husbandry, forestry workers, fishermen	1457,3	6279,9	4,3	885,3	2196,3	2,5
	Non-agricultural production and related workers	7778,3	9793,0	1,3	2111,6	4096,8	1,9
<b>Branch of economic activity</b>							
	Agriculture	2248,9	5732,3	2,5	862,3	2199,7	2,6
	Mining and quarrying	9776,2	11478,3	1,2	2744,8	4843,4	1,8
	Manufacturing	7682,2	10727,5	1,4	2427,0	4864,8	2,0
	Electricity, gas and water	6608,6	10297,3	1,6	-	8164,9	-
	Construction	10436,0	11437,2	1,1	2931,9	4016,8	1,4
	Wholesale and retail trade, restaurants and hotels	6000,1	7122,9	1,2	2922,8	3960,3	1,4
	Transportation, communication and storage	5333,4	8023,2	1,5	6647,5	5098,4	0,8
	Finance, insurance, real estate, business services	7386,8	9081,2	1,2	4701,0	6094,9	1,3
	Community, social and personal services	6115,2	7404,7	1,2	2639,8	4297,3	1,6
<b>Size of establishment</b>							
	Less than 2	3140,5	4234,2	1,3	1592,7	2571,8	1,6

**TABLE 4.8 Continued**

2-4		5262,7	6506,0	1,2	2564,7	3900,7	1,5
5-9		6270,7	7761,0	1,2	2743,3	5016,2	1,8
10-19		6897,2	9009,3	1,3	3801,9	5914,5	1,6
20+		7352,1	9196,8	1,3	2688,9	5680,0	2,1
Computed by Social Structure and Gender Statistics (SIS) by using raw data of Income Distribution Study 1994 (SIS)							

**Source:** <http://www.die.gov.tr/tkba/istatistikler.htm>

In light of the above-given information and statistics, it can be said that first of all in practice, the Council Directive (75/117/EEC) on the ‘equal pay for the same work or work of equal value’ principle could not be achieved in Turkey. In addition, since women are mainly employed as unpaid family workers or workers in the informal sector, where social security is lacking, the implementation of the Council Directives on equal treatment with regard to statutory social security schemes (79/7/EEC), equal treatment with regard to occupational social security schemes (86/378/EEC), and equal treatment for self-employed and their assisting spouses (86/613/EEC) remain inadequate. The problems exist even at the legislation level.

Also, the existing deficiencies mainly appear for the new concepts and acquisitions (KSSGM 2002: 212). In this regard, the Directives of the Framework Agreement on Parental Council Directive (96/34/EC), the Burden of Proof in Cases of Discrimination Based on Sex (97/80/EC), and Establishing a General Framework for Equal Treatment in Employment and Occupation (2000/78/EC) Directive can be seen among the above-mentioned new acquisitions. The last Directive requires the relevant measures for not only elimination of gender-based discrimination but also the discriminations that are based on religion, disability, age and sexual preferences. Besides, both the Law #657, and the Labour Law should give the right for ‘parental leave’ in order to reconcile family and working life and take the heavy burden of ‘care’ response off women’s backs.

For the existing problems, Ecevit (2002b: 32) emphasizes the need for the following action and policies within the area of employment: “National policies in increasing labour force participation and preventing unemployment; policies toward increasing women’s



labour force participation and preventing their unemployment; policies providing compatibility between family life and working life with the aim of easing working women's lives; policies against segregation in the process of adoption to the Council Directives as well as the EU gender aquis”.

In addition, Nurhan Süral (2002: 213-218) highlights the need for “flexible and atypical types of work where working women are concentrated needed to be regulated by taking into consideration the idea of preventing indirect discrimination”, while the CEDAW Shadow Report (2004: 5) mentions the following deficiencies and needs:

- *The legislation has to be reviewed from a gender perspective. The government has to introduce legislation showing it does not support but on the contrary oppose discrimination, that it finds the development of the equal sharing of family responsibilities important, it should, for example, develop the institution of parental permission. Ways of accomplishing such applications through collective bargaining and voluntary agreements should also be sought.*
- *The government should abandon its hesitating conservative stand and start to take temporary special measures, develop national plans and programs and implement them. In the field of entrepreneurship, positive discrimination should be applied especially in the field of loan, borrowing and insurance.*
- *The statistics should be improved; the female labour force should be given visibility. Public budgets should be subjected to gender budgeting analysis and the fact that women do not benefit equally from resources made visible.*

#### **4.4. GENDER EQUALITY IN OTHER POLICY AREAS**

Since the beginning of this study, , it is argued that the EU gender equality policies mainly focus on the area of employment. Despite that from the ‘equal rights’ understanding to ‘equality of outcomes’ approach, a significant distance has been covered by these policies, they still take part within the secondary law and with a limited scope in the EU aquis communautaire. As we could see from above even this limited scope could not be transferred into Turkish legislation, thus the implementation of the relevant legislation and the other areas need attention.

In this regard, parallel with *Chapter III*, gender equality in areas other than employment will be briefly discussed for Turkey.

#### **4.4.1. Women in Education**

Since the establishment of the Turkish Republic, ‘education’ has been seen as an important subject for women. It has been emphasized, because it was seen as the most effective way of transforming the Ottoman subjects into nationalist citizens with modern and secular minds (Arat 1997: 157). The Law of Unification of Education, which underlies the fundamental principles of the Turkish education system that was adopted in 1924, sought the “secularization, centralization, and standardization of the curricula for the schools”, and in this context, the new regime manifested itself by its commitment to girls’ education (Arat 1997: 159). On the other hand, Feride Acar (1994: 161) emphasizes that the Kemalist Revolution legalized equality between women and men in Turkey, and women were encouraged to become educated and participate in public life as part of the state directed policy of Westernisation. According to Acar (1994: 161), there is a paradox for women: while the reforms opened up for women, avenues of educational attainment, economic independence, social mobility and political efficacy that were previously unthinkable, they did not effectively alter the patriarchal nature of values because Kemalism did not attempt to question patriarchal family and gender relations. Today, it can be said that this patriarchal nature and these values still exist, and they can be seen as one of the main obstacles for the education of women.

Regarding gender equality within education, Article 42 of the Turkish Constitution states “equal education opportunity is assured for boys and girls” (Süral 2005: Equal opportunities in education in general, and the education of women in particular, are secured as legal rights in the law. This approach is reflected in the Equality of Opportunity section of the Basic National Education Act, which states that “opportunity of education is equal for all women and men and institutions of education are open for everyone, regardless of language, religion, race and sex” (CEDAW Country Report 2003: 32). Also, Article 8 states that “opportunity of education is equal for all women and men,

and institutions of education are open for everyone, regardless of language, religion, race and sex”. Since the establishment of the Republic, there are several achievements listed by Mine Göğüş Tan (2002: 9) as follows:

- *The legal framework supportive of women’s equal participation in education*
- *Increasing rates of literacy, schooling and higher education for women*
- *Considerable progress in girls’ compulsory elementary education the length of which was finally raised from 5 to 8 years in 1997*
- *Co-education at all levels*
- *Corresponding rates of women teachers and students*
- *Rising employment rates for highly educated women*
- *Large proportion of women in such esteemed fields as medicine and law*
- *Total number (23,099) and the proportion of women academicians exceeding those of their counterparts in some of the industrialized countries*
- *Local and regional efforts of public and non-governmental organizations to initiate non-formal education and training systems to reach women and girls in rural communities and other disadvantaged and marginalized groups*
- *The critical voice of the women’s movement and a rich volume of publication in women’s issues deepening women’s awareness and strengthening demands for social change and action*
- *A long history of academic interest in the field of women’s studies, which is now a specialized field of multidisciplinary, postgraduate programme in universities*

These positive developments are also mentioned by the ‘Response to the Questionnaire on Implementation of the Beijing Platform for Action’ (2004) as follows:

*...some legal arrangements are made to meet the expenses of eight year primary education. In order to implement these legal arrangements effectively, a state project named “The 2000 Project for Contemporary Education” is put into force. The purposes of this project are to provide 100% schooling in primary education; to increase quality in primary education, to decrease the number of students in one class to 30 and to put an end to the practice of consolidated classes. Another aim is to widespread the Transported Education which is especially important for girls and to increase the enrolment capacities of Regional Boarding Primary Schools and Boarding Primary Schools. Especially, girls from rural settlements who do not have a school should benefit from these services. All expenses of the students in these schools are provided by the State. Students in remote and scarcely populated areas where transported education is not economic and where transportation facilities are inadequate are placed in Boarding Primary Schools. During 2000-2001 education year, 100 thousand female and 185 thousand male students benefited from these facilities. After the enactment of the Law number 4306, the number of Regional Boarding Primary Schools and Boarding Primary Schools increased by 97 % and 80 % respectively.*

However, “despite the considerable progress achieved towards universal compulsory education, there are persisting regional and gender inequalities in literacy, access to

schooling, enrolment rates and educational attainment” (Ertürk and Dayıođlu 2004: 53). In the year of 2005, Turkey could not achieve its commitments for the Beijing Platform for Action, which was to close the gender gap in primary and middle education before end of 2005. The following table shows 21.6 % of women as opposed to 5.6 % of men over 15 years of age are illiterate.

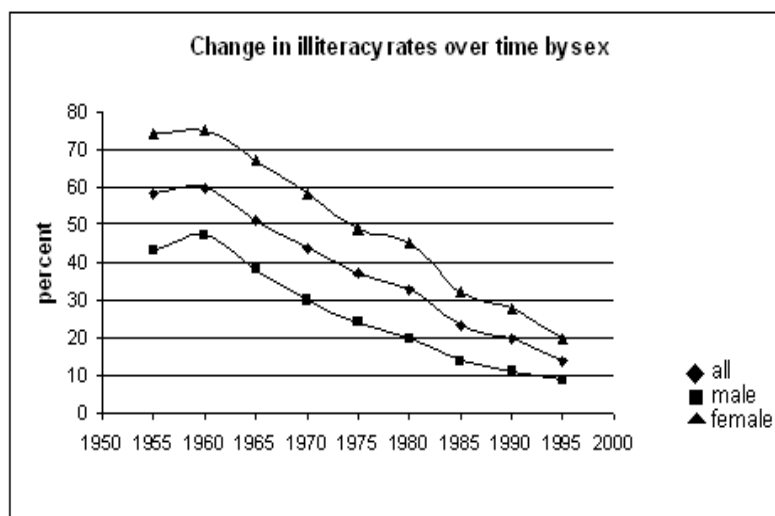
**TABLE 4.9 Non-Institutional Civilian Populations by Education Status- 2001**

<b>15 years and over</b>	<b>Female</b>	<b>%</b>	<b>Male</b>	<b>%</b>
<b>Illiterate</b>	4,983	21.6	1,275	5.6
<b>Literate without and diploma</b>	1,102	4.8	948	4.1
<b>Primary school (years)</b>	11,093	48.0	10,808	47.1
<b>Primary education (8 years)</b>	471	2.0	608	2.6
<b>Junior high school&amp;equivalent</b>	1,610	7.0	3,045	13.3
<b>High School&amp; equivalent</b>	2,805	12.1	4,605	20.1
<b>Higher education&amp; university</b>	1,036	4.5	1,667	7.3
<b>TOTAL</b>	23,100	100.0	22,956	100.0

*Source: Household Labour Force Statistic, 2001, SIS*

On the other hand, Figure 4.5 displays that despite the fact that the illiteracy rate among women has been decreasing, it is still higher than the illiteracy rate for men in general. This fact was also reported by the EC 2004 Turkey’s Progress Report<sup>149</sup> as stating “women remain the most vulnerable subject to discriminatory practices due largely to a lack of education and high illiteracy rate”.

<sup>149</sup> Commission of The European Communities, 2004 Regular Report On Turkey’s Progress Towards Accession, Brussels, 6.10.2004 Sec(2004) 1201, {COM(2004) 656 Final}



**Figure 4.5** Change in Illiteracy Over Time by Sex

*Source:* 2001 Statistical Yearbook of Turkey, SIS

From Table 4.9, the positive impact of compulsory education in Turkey, which increased from 5 to 8 years of schooling in 1997 by the Law #4306, can be seen. The closest percentages take place for primary school and primary education level, where compulsory education exists. Beside these figures, regarding the positive impact of compulsory education, the CEDAW Country Report states (2003: 35) that “in the last five years, enrolment rates for girls at the primary school level increased by 18 %, at secondary school level by 21 % and for boys the figures are 10 % and 15 % respectively”. In addition, for the secondary school education, the CEDAW report (2003) emphasizes that the share of female students in general increased from 42.9 % in the 1996-1997 academic year and to 45.2 % in 1999-2000. But, the same report also highlights the existing gender discrimination in terms of educational segmentation, which is most commonly observed in vocational and technical high schools. Table 4.10 shows the literate population distribution for different educational categories.

**TABLE 4.10 Distribution of Population across Educational Categories by Sex, 2000**

Censu Year	Literate without diploma		Primary school		Junior high school		Basic education		High School		Higher education	
	M	F	M	F	M	F	M	F	M	F	M	F
1970	34.8	39.7	51.4	49.5	7.1	5.2	58.5	54.7	4.9	4.2	1.9	1.4
1975	27.3	30.7	56.3	57.6	8.2	6.1	64.5	63.7	6.1	4.8	2.0	0.8
1980	23.0	26.8	55.3	57.5	9.5	6.8	64.8	64.3	8.0	6.7	4.1	2.1
1985	21.8	26.5	55.1	57.9	9.8	6.6	64.9	64.5	9.5	7.2	3.9	1.7
1990	18.4	21.6	55.3	59.9	10.8	7.6	66.1	67.5	10.7	8.3	4.8	2.8
2000	23.0	26.7	39.3	46.2	10.1	6.0	52.8	55.3	17.2	13.1	7.0	4.9

*Source: 2001 Statistical Yearbook of Turkey, SIS and 2000 Consensus of Population, SIS*

Although, “the educational attainment of both men and women has improved in Turkey over time” (Ertürk and Dayıoğlu 2004: 58), the school attendance of boys and girls still has differences in terms of age, and rural- urban living as it was shown by Table 4.11. In addition, beside the male- female literacy gap and differences between men and women’s educational attainment, there are also regional differences in education as Table 4.12 shows.

**TABLE 4.11 School Attendance by Age (%)**

	TURKEY	Urban	Rural
<b>Female</b>			
<b>Total</b>	74,8	79,0	68,8
<b>6-11</b>	90,5	90,4	90,7
<b>12-14</b>	74,4	79,8	67,3
<b>15-17</b>	43,6	55,2	26,4
<b>Male</b>			
<b>Total</b>	82,7	84,9	79,5
<b>6-11</b>	92,9	93,0	92,8
<b>12-14</b>	86,6	89,8	82,2
<b>15-17</b>	58,2	64,5	47,8

*Source: Child Labour Survey, 1999, SIS*

**TABLE 4.12 Distribution of Literate Population across Different Regions**

Regions	Illiterate		Literate no diploma		Preliminary School		Junior school		Basic education		High school		Higher education	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
<b>Marmara</b>	3.5	11.8	18.3	19.4	39.7	41.0	10.3	6.3	53.1	49.9	17.1	13.4	8.0	5.5
<b>Aegean</b>	4.7	15.8	19.0	19.7	42.8	42.1	8.9	4.7	54.6	49.2	14.9	10.8	6.9	4.5
<b>Mediterranean</b>	5.7	18.0	22.2	22.3	37.0	36.8	9.2	5.0	49.6	44.5	16.0	11.4	6.5	3.8
<b>Central A.</b>	4.4	15.0	20.4	20.9	34.7	39.0	10.5	5.3	48.6	47.0	18.6	12.1	8.1	5.0
<b>Black sea</b>	6.6	21.5	22.5	22.3	38.1	38.8	8.9	3.9	50.6	45.2	15.1	8.5	5.2	2.4
<b>Eastern A.</b>	11.3	34.1	26.7	24.4	29.2	27.3	9.1	3.5	41.5	32.9	16.0	6.8	4.6	1.8
<b>South-East A.</b>	12.4	35.4	27.8	25.7	31.4	26.1	8.1	3.2	42.7	31.3	13.1	5.9	4.0	1.7
<b>Turkey</b>	6.1	19.4	21.5	21.5	36.9	37.2	9.5	4.9	49.6	44.6	16.1	10.6	6.6	3.9

*Source: 2003 Consensus of Population, SIS*

On the other hand, regarding ‘women in education’, the two main obstacles are defined by Mine Göğüş Tan (2001: 14-17) as: “economic, social and infrastructural barriers”, and “discriminatory educational practices”. Therefore, by the completion of the compulsory education, we come across with the decrease of girls’ school attendance. Behind this fact, as Göğüş Tan states, the most significant obstacles appear as economic and social barriers. According to a nationwide survey by the Ministry of Education, 152,703 girls were not sent to school at the primary level in the 2001-2002 academic year. Further and stronger efforts are needed to include these girls in education; otherwise, they will part of the illiterate women population<sup>150</sup> in the near future.

In light of the statistics, the need for comprehensive educational reform to eliminate discrimination against girls in education becomes more visible. The existing curriculum, instructional materials and education programs, where the traditional gender roles still take place, should be revised, and teachers need to be given in-service training to create gender awareness (CEDAW Shadow Report 2004: 17). The report states the relevant recommendations for the area of education as follows:

<sup>150</sup> Adult literacy rate, female (% ages 15 and above), 2002 was 78.5%; adult literacy rate, male (% ages 15 and above), 2002 was 94.4%; combined gross enrolment ratio for primary, secondary and tertiary schools, female (%) in 2001\02 was 62%; combined gross enrolment ratio for primary, secondary and tertiary schools, male (%) in 2001\02 was 74% (www.kagider.org/statistics).

- *The State should fulfil the commitments made in Beijing +5.*<sup>151</sup>
- *For girls, birth certificates must be ensured for their school enrolment-- some girls are forced to work in the fields and migrate to other regions as seasonal workers. Their absence from school through seasonal migration and child labour should be followed up strictly by authorities.*
- *Male and female students should benefit from the scholarship, hosting and other educational opportunities equally, and this should be further supported by temporary special measures in favour of girls.*
- *Discriminatory components in the text books should be eliminated and text books should always be inspected.*
- *Special attention should be paid to the training of the parents and in service training. Service training for whom? ? For parents? For teachers?*
- *Special education for the rehabilitation of the handicapped girls at the school age is needed; and the education of the women in prisons is essential to include them back into the society.*
- *Ensuring the equality between men and women both in formal and informal education is only possible with policies of special measures and practices.*<sup>152</sup>

In addition, ‘vocational training’ and ‘life-long learning’ should be supplied to women, which is also stated within the scope of The Council Directive 76/207/EEC 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. In order to combat the ‘glass-ceiling’ in the working life as well as to supply opportunities to women to continue their education, ‘vocational training’ and ‘life long learning’ appear as the significant tools for women.

#### **4.4.2 Women in Politics and Decision Making Mechanisms**

In Turkey, the right to vote and to be elected was first granted to women for local elections in 1930, and subsequently for national elections in 1934.<sup>153</sup> From 1934, when the number of women in the Parliament was 18 out of 399 members of the Parliament, to the 2002 general elections, when 24 women were elected to the 550-member Turkish

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<sup>151</sup> At the Beijing Platform for Action, party States committed that everyone should have access to basic education before the end of year 2000; 80% of all children at the age of primary education should finish primary school and to close the gender gap in primary and middle education before the end of 2005. It is also stated that everyone in party states should complete primary education before the end of 2015. Turkey, by increasing compulsory education to 8 years in 1997, took a significant step in education. One further step is to educate girls in higher rates in order to close the gap in boys and girls education.

<sup>152</sup> the Committee on NGO Forum for CEDAW- Turkey, “the Shadow Report on the 4<sup>th</sup> and 5<sup>th</sup> Combined Periodic Country Report for Turkey”, 2004 Ankara

<sup>153</sup> [http://www.die.gov.tr/tkba/kadin\\_haklari.htm](http://www.die.gov.tr/tkba/kadin_haklari.htm)



Grand National Assembly, the percentage of women's representation has not changed. The following two tables show the recent situation of women's representation in the Parliament as well as in the local governments.

**TABLE 4.13 Women in the Parliament in Turkey**

ELECTION YEAR	TOTAL	WOMEN	MEN	WOMEN %
1935	399	18	381	4.5
1939	424	16	408	3.8
1943	455	16	439	3.5
1946	465	9	456	1.9
1950	487	3	484	0.6
1954	541	4	537	0.7
1957	610	8	602	1.3
1961	450	3	447	0.7
1965	450	8	442	1.8
1969	450	5	445	1.1
1973	450	6	444	1.3
1977	450	4	446	0.9
1983	400	12	387	3.0
1987	450	6	444	1.3
1991	450	8	442	1.8
1995	450	13	437	2.9
1999	500	23	527	4.2
2002	500	24	526	4.4

*Source: State Institute of Statistics, "Women's Network", www.die.gov.tr*

**TABLE 4.14 Representation and participation ratios of women in local governments in Turkey**

	Number of the women	Total number	Percentage (%)
<b>Local Elections in 1999</b>			
Mayor	20	3.216	0,6
Member of the Provincial Council	44	3.122	1,4
Member of the Municipal Council	541	34.084	1,6
<b>Local Elections in 2004<sup>154</sup></b>			
Mayor	19	3.216	0,6
Member of the Provincial Council	54	3.184	1,7
Member of the Municipal Council	864	34.477	2,5

*Source: The Committee on NGO Forum for CEDAW- Turkey, "the Shadow Report on the 4<sup>th</sup> and 5<sup>th</sup> Combined Periodic Country Report for Turkey", 2004 Ankara*

<sup>154</sup> The number of women elected for the "2004's Local Election" was determined through the Committee on NGO Forum for CEDAW- Turkey's efforts. There is no official statistics exist. Also, the Board of High Elections does not have any gender statistics.

Regarding the political participation of women, in the Board of the Ministers, there is only one woman minister who has traditionally been assigned as the minister responsible for women's affairs. The same figure is also mentioned in the CEDAW Country Report, as "since 1997, the number of female cabinet members in the various governments did not exceed two. There is only one minister in the current government". Since the number of women deputies is very low, it is hard to see women in the various commissions of the Parliament. Recently, 11 female members in total participate in 16 Commissions of the Parliament, and the only woman Member of Parliament is the Chairperson of the temporary inspection 'Commission on the Research of Customary and Honour Killings'.

On the other hand, as it was seen from Table 4.14, women's representation in local government is also low; although, increases have occurred in the 1999 elections.

Regarding women's participation in decision-making mechanisms, the CEDAW Country Report (2003: 27) states that "according to a 1996 publication, 27.5% of middle and high-level decision making positions within the public administration are women, which is compatible with their overall representation". On the other hand, for the private sector, as it was displayed by Appendix H women's representation at 'administrative and managerial' positions is only 0.4%.

Despite this low representation rate of women, "the laws on political parties and parliamentary elections are silent regarding quotas, no consideration has yet been given to the question of whether men, when they bear the consequences of positive action favouring women, may complain of discrimination against themselves" (Süral 2005: 8).

On the other hand, Serpil Sancar (2001: 41) draws attention to the below obstacles and causes:

- *the family, that is thought as the 'living field of women' is considered to be outside politics'*
- *Dominant social activity pattern for women is to participate in 'voluntary social work' associations which do not focus on the issue of women's empowerment, that makes them unable to change their invisibility in political decision making processes*
- *The 'male dominated model' in political decision- making processes has a discriminating effect*
- *The political parties do not consider the equality of women and men as an issue of democracy*
- *'Women's Branches' of the political parties have limited legal rights hindering the participation of women in the political decision making process*
- *Providing equality for women and men still does not exist as criteria for the success of political leaders*
- *Women working for the civil and political organizations are still incapable of networking for better cooperation towards reaching to a common agenda*
- *There is no sufficient support for women to be candidates in elections and increase their chances to be elected*

The CEDAW Shadow Report (2004: 10) emphasizes the shortcomings of both the relevant policy and its implementation in Turkey as follows:

- *'Act of the Political Parties and Elections' in Turkey does not include any temporary special measures to ensure the equality between men and women. Women's organizations, which have been more and more effective in determining the agendum of the women policies and organized in placing the social gender into main policies, have submitted the amendments that they want to do in the Acts to the Presidency of Parliament, the Government and political parties as a proposal. Especially the special measures to be taken are stated in this proposal. It is emphasized that 30 % representation rate and participation of each gender must be made obligatory and taken as the first principle. This proposal hasn't been put into the agenda of the Parliament yet.*
- *The functions and authorities of women branches must be determined in the by laws and regulations of the political parties so as to empower the equality and involvement of women in the decision making processes.*

Although, the EU does not have any directive on the 'women's representation in politics and decision-mechanisms', as it was stated earlier, this dimension take place within the Council Recommendations, the EP's Resolutions, as well as the Community Action Plan. With its 4.2 % women's representation in the Parliament, and 1 % women's representation at in the local governments, even the EU does not supply any directive on this field. Turkey should take temporary special measures in order to increase the role of women in politics and decision-making mechanisms.

### 4.4.3. Violence against Women

The 1993 UN Declaration on the Elimination of Violence against Women<sup>155</sup> (Article 8) defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (paragraph 1). Recent interpretations of this definition also include "the withholding of economic necessities from the victim".<sup>156</sup> On the other hand, according to CEDAW general recommendation number 19, gender-based violence is "directed against a woman because she is a woman or that affects women disproportionately".<sup>157</sup> In addition, the Beijing Declaration and Platform for Action Fourth World Conference on Women (1995) defines 'violence against women',<sup>158</sup> and also allocates it as one of the twelve critical areas of concern. Regarding this significant international document, by its 'Response to the Questionnaire on

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<sup>155</sup> G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993).

<sup>156</sup> Radhika Coomaraswamy, Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, para.30

<sup>157</sup> Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HR/GEN/1/Rev.1 at 84 (1994), (The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention).

<sup>158</sup> The term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

Accordingly, violence against women encompasses but is not limited to the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Implementation of the Beijing Platform for Action (2004)', Turkey emphasizes the steps taken to eliminate 'violence against women' as follows:

*The Law on Protection of the Family, Act no: 4320, enacted in 1998, aims to protect family members who are subject to violence, until divorce.*

*The Directorate General of Social Services and Child Protection Institute has opened 8 guest houses for women in various Provinces (İzmir, Bursa, Antalya, Ankara, Eskişehir, İstanbul, Samsun ve Denizli). There is one 1 shelter opened by İstanbul Küçükçekmece municipality. Besides, guidance and counseling services are offered by the Provincial Social Services Directorates of the 81 provinces as well as by the six counseling centers operated by civil society organizations and one such center operated by local government.*

*Training of security forces, health care personnel and other public servants who deal with women subjected to violence, and educating women and girls of their legal rights is another high priority goal in the fight against violence against women. The General Directorate on the Status and Problems of Women collaborates with civil society organizations in this field. In this context, spot videos and short movies about violence against women and centres for battered women have been prepared.*

As it was stated above, regarding violence against women, the Law on Protection of the Family (#4320), enacted in 17 January 1998, can be seen as a positive step in dealing with issues of violence against women, which is predominantly committed within the family. Before the adoption of this law, "cases involving domestic violence were considered under the general provisions of the Criminal Code, and this posed difficulties in the determination and punishment of such crimes due to the fact that the private sphere of the family life remained largely outside of the regulatory mechanisms of the existing legislative framework" (CEDAW Country Report 2003: 4). However, one of the most important positive steps can be seen as the new Turkish Penal Code. The amendments in the new Penal Code pertaining to women's human rights are as follows:

- The sexual offences are classified under the section 'crimes against individuals / crimes against inviolability of sexual integrity' instead of 'crimes against society / crimes against public morality and family' (In the old penal code, sexual offences were regulated under the section 'Crimes against Society' in the sub-section 'Crimes against Public Morality and Family');
- Patriarchal concepts such as chastity, honour, public morality, public customs, shame or decency are eliminated from the penal code;

- Progressive definitions of sexual offences are adopted, sexual harassment at the workplace is criminalized, and sentences for sexual crimes are increased;
- Provisions assuming rape, sexual assault or sexual abuse of children can occur with the consent of the victim are removed;
- Marital rape is criminalized;
- There are new measures to prevent sentence reductions granted to perpetrators of honour killings and ‘killings in the name of customary law’ are regulated as aggravated homicide;
- Provisions regulating the sexual abuse of children have been amended to explicitly define sexual abuse and remove the notion of ‘consent of the child’ in sexual abuse;
- Non-discrimination between virgin, non-virgin, married and unmarried women has been ascertained;
- The article granting sentence reduction to the killing of the newborn child born out of wedlock by the mother is removed;
- Provisions legitimising rape and abduction in case the perpetrator marries the victim have been abolished;
- The article regulating ‘indecent behaviours’ has been amended only to include sexual intercourse in public and exhibitionism.

In addition to the new Turkish Penal Code, recently, the ‘temporary inspection Commission on the Research of Customary and Honour Killings’ was established within the Parliament, and this initiative shows the constructive political will on this issue. The importance of this committee becomes clearer, by the fact that “the number of honour killings has been increased over the past years and reached ‘54’ during 2000-2004” (CEDAW Shadow Report 2004: 12).

However, despite all these positive steps to combat ‘violence against women’, women have been experiencing violence with its different forms in Turkey.

In light of the workshop<sup>159</sup> on ‘Violence Against Women’, which was held in 2003 with the intensive participation of women’s association as well as individual women from the different regions of Turkey, the following violation types have been determined: women suicides; honour and custom killings; prevention of girls from going to school; polygamy; tube-tying operations without consent; early-age and forced marriages (forced marriages with 20-30 years older men as 2nd or 3rd wife); forcing of women to give birth excessively; sexual harassment and violation of rights such as virginity testing; death threat in case of claim about in-family outlawed sexual relationship; prostitution by force, pornography; insufficient support for disabled women, and so on. On the basis of this information, the CEDAW Shadow Report (2004: 12) states, “violence against women in Turkey differs, and violence against women becomes more severe under the influence of poverty, armed conflicts or other social problems as well as discrimination because of ethnic roots, sexual preference and religious beliefs”.

However, despite the existence of these types of violence against women, Turkey does not have nation-wide statistics for ‘violence against women’, and we come across such statistics only with the intensive efforts of women’s NGOs and academicians as well as some of the media organizations as a part of their social responsibility projects. In Turkey, we see that ‘violence against women’ and the relevant issues have become visible by the efforts of the women’s movement in the 1980s. Among these studies, the results of researches done by women’s NGOs showed that 34 % of married men apply physical violence against their wives, and 97 % of the married women face violence at least once in their lives including verbal violence (CEDAW Shadow Report 2004: 12). According to another research that was carried out in Ankara, it was determined that 1/5th of the married women end up in hospital because of rape and physical violence at home, between 8-15 % of the married women are threatened verbally or by different devices. Finally, in light of another survey 35.6% of women indicated that they have experienced marital rape sometimes and 16.3% often (WWHR, 2000).<sup>160</sup>

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<sup>159</sup> The Civil Society Forum on CEDAW that held by Flying Broom on 18-19-20 April 2003 in Ankara.

While Turkey refers to these above-mentioned studies for ‘violence against women’ statistics, within its response for the implementation of the Beijing PfA, it states that “the results of Turkey Population and Health Survey shows that, half of married women consider that men can batter women if she deserves it. Even the other half says that women should not argue with men”.

Regarding the existing obstacles and problems on this field, WWHR (2004: 4-5), states these shortcomings as follows:

- *The new Turkish Penal Code, which has been accepted by the Parliament in September 2004 and came into force by 1<sup>st</sup> June 2004 fails to criminalize ‘honour killings’, and instead of using this exclusive term that define murders committed in the name of ‘honour’, the Parliament insists on the way to the less inclusive term of ‘custom killings’. Moreover, the justification of the same article opens the possibility for a sentence reduction in the case of ‘unjust provocation.’*
- *The new Turkish Penal Code also fails to ban ‘virginity testing’. The relevant article does not seek the consent of the woman as a necessary precondition for the conduct of a genital examination.*
- *The new Turkish Penal Code penalises consensual sexual relations between young people of 15-18 years of age upon complaint.*
- *The new Turkish Penal Code Article on discrimination does not include discrimination on the basis of sexual orientation.*

In the year 2005, Turkey still does not have a National Action Plan to combat ‘violence against women’. Furthermore, the number of women’s shelters<sup>161</sup> and counselling services remain insufficient.

In addition to these areas of concern, in terms of ‘gender inequalities,’ it should not be neglected that women have been facing with inequalities and discrimination in the fields of ‘health’, and ‘marriage, family relations, and traditional gender roles.’

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<sup>160</sup> Surveys published in 2000, Women and Sexuality in Muslim Societies, WWHR Publications: Istanbul, 2000.

<sup>161</sup> The first women’s shelter was opened in 1990. Under the Institution of Child Protection and Social Services, there are 8 shelters with totally 250-bed capacity. Also, 5 more shelters exist as the services of 5 municipalities, with barely 100-bed capacity (CEDAW Shadow Report 2004: 13)



In Turkey, regional differences in family structures, different types of marriages<sup>162</sup>, patriarchal family order, stereotyped gender roles, and the economic dependence of women in family, remain as facts. “The low educational status of women, as well as their frequent absence in the decision-making mechanisms, limits their opportunities to reach and control the resources that would protect their health. This situation has the most pronounced effect on sexual and reproductive health, and affects the fertility of women”.<sup>163</sup>

For combating all these gender discriminations and gender inequalities, there is a need for a women’s policy at the national level, and better implementations of both the existing legislation as well as the international commitments of Turkey.

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<sup>162</sup> **Berdel (Exchange):** Based on mutual agreement of two separate families, a “twin” marriage of two women and two men belonging to these families. In this type of marriage, if one of the couples is divorced, the other couple has to follow, even if they do not want to. If one couple exercises polygamy, the other couple is given the same right; **Child marriage:** Betroth given by the families of a boy and a girl when they were born; **Marriage with dowry:** Marriage depending on the payment of a dowry to girl’s father; **Marriage to end blood feud:** Marriage of a girl from the “family to be killed” to a man from the other family as compensation for blood; **Polygamy:** Marriage of a girl to a man who already has one wife or more; **Brother-in law marriage:** Marriage to a brother of the deceased husband in accordance with the family decision. The brother’s age or his marital status is considered irrelevant in this case; **Consanguineous marriage:** Marriage of the girl to one of her first relative, such as a cousin (The 4th and 5th Combined Periodic Country Report for Turkey by the Committee on NGO Forum for CEDAW-Turkey)

<sup>163</sup> The Executive Committee for NGO Forum on CEDAW- Turkey (2004), “Shadow Report on the 4th and 5th Combined Periodic Country Report for Turkey”

## **CHAPTER V**

### **CONCLUSION**

Equality between women and men has become a fundamental principle underlying the work of international and regional organizations as well as governments.

Within the area of employment, the UN system; the Council of Europe; and the European Union standards are along the same line. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) - the bill of women's rights represents the most comprehensive normative framework for gender equality compared to regional and sectorial ones. Within the UN mechanisms, women's rights are considered not only in the area of employment, but in other spheres of life as well, such as politics, education, and health, etc. The Council of Europe, on the other hand, focuses on 'human rights' in general rather than specifically on women's rights. Therefore, the European institutions often refer to CEDAW, where the existing EU policies remain inadequate.

The EU has three main policies for the realization of gender equality, these are; 'equal treatment'; 'positive action and discrimination'; and 'gender- mainstreaming'. Article 119 of the Treaty of Rome (1957), which emphasizes equal treatment, constitutes the basis of the EU gender equality regime. However, since the article was motivated by political concern rather than gender equality, it remained inactive till 1970s, when the article was challenged for equal pay by women workers in Belgium. This started a process of transformation, which resulted in the replacement of Article 119. Therefore, behind of the historical roots of EU gender equality policy and transforming Article 141

of the Treaty of Amsterdam (1997) in 1997, we see the challenge of women's movements.

The second policy, 'positive action and discrimination', became visible at the EU level by the decisions of the European Court of Justice, which were in favour of women's rights in 1970s as well as with special programmes and framework strategy of the Commission in 1980s. And finally, as the third policy, 'gender mainstreaming' emerged during 1991-1995 with the Third Action Programmes of the Community, and it was adopted as an official policy by the EU in 1996. Despite these policies and the specific Council Directives, it has not been possible to achieve gender equality even in the area of employment. While the scope of the equality policies is significantly limited, their implementation remains uneven within the Member States.

The main concern of the fourteen binding Council Directives is women's equal participation in employment, and the creation of equal conditions for them based on the 'equal treatment' perspective. The 'sameness' approach is common in the EU approach, which aims to remove barriers to women's labour market participation. Therefore, the EU strategy towards gender equality adopts a narrow practice of delivering equality for women, who can act in the same way as men.

Despite of the limited scope of the EU gender equality regime and its policies', , recently the European institutions adopted some innovative measures such as the introduction of European directives on parental leave, flexible working hours and measures to encourage men to take a greater role in childcare and the family, which are traditionally female fields.

Aside from the employment provisions, in other areas such as education, political participation etc., the EU institutions, particularly the Commission and the Parliament, have actively worked for better and expanded understanding of gender policy. Through Action programmes and funding initiatives, the EU has established links between women's social inequalities and discrimination and various social issues such as trafficking in women; violence against women; political participation of women; and

discrimination on the grounds of sexual preference. However, the provisions that take place outside the area of employment have even weaker legal status than the directives. They remain mainly as recommendations or resolutions without having proper monitoring and assessment mechanisms. Even in the employment field, there are no adequate statistics or database. For example, the EC's latest equality report on equality between women and men (2005) neither focuses on 'violence against women' nor include any statistics on these issues.

Today, the extent to which the EU can offer new possibilities for increased gender equality is controversial and researchers generally agree that gender equality has benefited from the Council's equality directives, particularly in the area of employment and participation in the labour market. Many draw attention to the limitations of European gender policy, criticizing the narrow focus of the directives and the Union's insistence on providing only 'soft law' measures for gender equality. As illustrated in this thesis, the primary concern of the EU gender equality regime and its policies is the area of employment. Thus, within the EU structure, some of the key areas of gender inequality are ignored such as, 'education', 'politics', and 'violence against women'. These fields are addressed only in the Community Action Programmes and the Council's Resolutions. Besides, the EU Member States face serious gender inequalities in additional areas in both legislation and implementation. For example, the situation of women in immigrant communities and those trafficked is addressed only in the recommendations and resolutions of the Council and the European Parliament. Therefore, the equality regime, which is heavily biased by its focus on "white, working, middle or upper class women", is being able to respond the needs of different women. In other words, the fact that the equality regime fails to recognize 'diversity' not only between women and men, but also among women is one of its most important deficiencies. In case of Turkey's full membership, with a large heterogeneous population, this shortcoming will become more visible.

As already mentioned, in addition to the limited character of the EU legislation on gender equality, the implementation of EU equality Directives and other policies is uneven, as a

result of national differences. There are different levels of political will and cultural patterns in the Member States and the EU process has not been successful in creating a supranational gender regime. Thus, a common understanding of gender relations across the Member States is lacking.

The EU can influence national gender policy in a variety of policy stages. The question then becomes, when and how can the EU intervene in the domestic policy path? This question has been addressed by scholars since the establishment of the EU. In this context, it is argued that globalization reduces the capacity of states and undermines the power of national sovereign structures and 'Europeanization' is seen as a key approach for the EU, which has power at both supranational and regional level. However, for its supranational power, it can be said that particularly for gender equality policies, it is far from fulfilling this capacity. There is doubt that the EU in its current state has the capacity for imposing gender equality policies to its Member States, and impacts their social policies. The member states have responded differently to the EU influence and the issue of gender equality has been left mainly to the national states under their social policies.

Since historically the EU evolved as an economic union, its social dimension has remained weak. Therefore, it must be asked whether the EU gender regime can be globally accepted as the United Nations mechanisms. How can the internal disagreements on the EU common policies be resolved, or as the European Constitution, will they remain as unsolved or contested documents?

The current uneven implementations within the Member States give clue about the answer. The differences in political cultures and different gender welfare regimes of the Member States may have negative impact on the implementation and internalization of gender equality policy. But, as CEDAW Article 5 states "States Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women", for none of the Member States the existing social and cultural patterns cannot be taken as an excuse. For the short term, the discussions on European Constitution have showed that to create consensus for some issues is still problematic at the EU level. With

the new 10 members joining the EU; the social, economic, cultural and political differences have become more visible, and decision taking became more difficult. Thus, more time may be needed to realize a more comprehensive EU gender equality regime, which covers areas outside of employment, and eliminate all the existing uneven implementations among the Member States. The EU gender equality regime and its monitoring and evaluation mechanism need to be improved. Currently, aside from the Commission's progress report, only the gender equality units such as the Women's Rights Committee in the EP have right to prepare reports on gender equality for the member and candidate countries.

In Turkey, in the framework of the EU accession process that was launched on 10 December 1999 by the Council Summit in Helsinki, significant developments have been realized in legislative changes for gender equality. With the changes in the Civil Code, the principle of 'equality among spouses' was recognized, and with the amendment of Article 10, the Constitution became more gender-sensitive and open to temporary special measures. On the other hand, with the new Labour Code, Turkish legislation became more harmonized with the EU acquis. Besides, like the CEDAW Optional Protocol, additional international documents have been signed and ratified by Turkey.

However, these legislative changes, amendments and legal reforms can only be seen as the starting point, and without implementation, these will remain on paper without contributing to gender equality in Turkish society. It can be said that 'equality before law' is more or less achieved in Turkey now. However, in practice, problems remain.

It should also be noted that even gender equality in the area of employment can not be achieved without equality in all spheres of life. Because of the limited scope of this masters thesis, only four areas of concern have been discussed, which are 'education', 'working life', 'political participation', and 'violence against women'.

Creation of a permanent 'gender equality commission' in the Parliament may provide better monitoring and evaluation of legislative process. In addition, in order to achieve

gender equality in all spheres of life and in all regions of Turkey; comprehensive policies for gender equality need to be established and supported. Also, there is a need for awareness raising for gender equality. The patriarchal structure that has been constituted during the centuries, behaviours, approaches, and roles cannot be changed over night, or by only legislative measures. Comprehensive and effective programmes should be developed, and implemented with the participation of all social actors.

Recent developments in Turkey show a visible shift from the policy of protection to one of gender equality in the Turkish legislation. However, unless this is supplemented and supported by other means, such as policies, action plans and awareness raising programmes, legislative measures on their own cannot overcome the existing gender equalities . An effective legislation is not an ‘end’, but only as a starting point for struggling with discrimination and gender inequalities. Even the full harmonization and adoption of the EU gender aquis and appropriate implementations will not be able to achieve gender equality in Turkey, because this aquis has serious deficiencies as they were stated through the thesis.

According to the UN Human Development Report (2002), Turkey ranks 88<sup>th</sup> out of 177 countries in terms of gender development index, indicating that Turkey is still far from achieving equality on this field.

At this stage, it can be asked that if Turkey becomes a full member in the EU, what kinds of rights or opportunities will be acquired by Turkish women. According to a public opinion poll,<sup>164</sup> women support the EU membership more than men. But, is the female population in Turkey aware about the EU gender equality policies, and their implications and possible effects for their lives?

As it has been argued in this thesis, the EU does not promise gender equality outside the area of employment yet. Despite that the fact that within the context of ‘gender-

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<sup>164</sup> Yılmaz Esmer, “Türk Kamuoyu ve Avrupa”, “Türkiye avrupa’nın Neresinde?”, 1997, p. 34

mainstreaming', there is a requirement to incorporate a gender equality perspective in all policies, well formulated policies still do not exist. It means that mainly working female population will be able to benefit from the EU gender equality regime. Given that women's employment in Turkey is only 24.3%, a small proportion of the female population in Turkey will be directly within the sphere of the directives.

On the other hand, the EU membership requires from its members to have stable democracies, where according to the Copenhagen criteria, the rule of law and respect for human right is ensured. Within such a context, taking step backwards in terms of gender equality legislation and implementation as well as the other fields will be difficult. In this regard, the proposal to criminalize 'adultery' during the new Turkish Penal Code reform process can be seen as an example. This proposal was met with an outcry from the civil society and strongly criticized within the EU.

Similar to the European women's struggle for Article 119 (141), Turkish women were able to use the EU process for lobbying and transforming the relevant legislation. Therefore, it can be said that not only by using the EU gender equality regime and its policies, but also using the common values, standards and other means; women will be able to benefit from Turkey's membership to the EU. In this regard, it should be stated that there is a need for strengthening the role of civil society not only for the lobbying activities, and better implementations of gender equality policies, but also for active engagement in raising gender awareness for both the public and for governmental officials.

The participation of civil society is essential in the transfer and implementation of regional and international gender equality instruments at national level. The positive dimensions of the EU gender aquis should be adopted while bearing in mind its deficiencies, and the gap should be filled within the gender dynamics of each society. For this, the EU gender equality regime and its policies should be understood throughout the society. In this regard, for example, the EU should not be perceived as a subject of study concerning only international relations departments, but also included 'Gender and



Women's Studies' programmes within the universities. The information on this field should also be shared by the public. In addition, joint projects among the European and Turkish women's NGOs should be increased for sharing good practices as well as experiences.

The EU should be seen as an economic, political, and social project; and all stakeholders should collaborate for this project. Realization of gender equality should not be seen only providing balanced data, and as a problem that concerns women. There is no doubt that gender equality includes individual development and increasing autonomy for women, but also contains the permanent role change for parents; the democratic transformation of family order; the changes for institutional practices. Therefore, achievement of gender equality concerns men as much as women, and the whole society. Working for better gender equality provisions and gender equality in this economic and social project should not be seen as the battle of sexes, but rather a joint initiative for a better society.

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## **APPENDICES**

### **APPENDIX A**

<p><b>1. 1945-1962: The norm of non-discrimination</b></p> <ul style="list-style-type: none"><li>• 1946 establishment of the Commission on Human Rights (CHR) and the Commission on the Status of Women (CSW)</li><li>• 1948 Universal Declaration of Human Rights</li><li>• 1952 Civil and Political Rights</li><li>• 1957 Nationality of Married Women</li><li>• 1962 Consent on Marriage, Minimum age of Marriage</li></ul> <p><b>2. 1963-1975: Integration of women into Development</b></p> <ul style="list-style-type: none"><li>• 1966 Economic, social, Cultural Rights</li><li>• 1967 Declaration on the Elimination of Discrimination Against women</li><li>• 1975 International Women's Year and the First World Conference on Women in Mexico City-theme: Equality, Development and Peace: adoption of 'World Plan of Action on Equality of Women and Their Contributions to Development and Peace'</li><li>• 1975 Recommendation to create INTRAW and UNIFEM</li></ul> <p><b>3. 1976-1985: the Decade for the Advancement of Women</b></p> <ul style="list-style-type: none"><li>• 1979 CEDAW- Women's Bill of Rights</li><li>• 1980 Second World Conference on Women in Copenhagen (mid-term review of the Decade)- adoption of resolution of battered women in the family</li><li>• 1985 Third World Conference on Women in Nairobi-adoption of 'Nairobi Forward Looking Strategies'</li></ul> <p><b>4. 1986-1995: Empowerment of Women</b></p> <ul style="list-style-type: none"><li>• 1986 UN expert group meeting on violence in the family</li><li>• 1992 CEDAW General Recommendation 19</li><li>• 1993 The World Conference on Human Rights in Vienna- Women's Rights are Human Rights</li><li>• 1993 Declaration on the Elimination of Violence Against Women</li><li>• 1994 CHR creates the post Special Rapporteur on Violence against Women, Its Causes and Consequences</li><li>• 1995 Forth World Conference on Women in Beijing- adoption of Beijing Declaration and the Platform of Action (twelve critical areas of concern)</li></ul>
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**Figure 1** Policy Shifts of the UN

**Source:** Ertürk, Yakın (2004), "Violence in the Name of Honour within the Context of International Regimes", in *Violence in the Name of Honour*, p. 175

## APPENDIX B

State	Date of signature (CEDAW)	Date of receipt of the instrument of ratification (CEDAW)	Date of signature (Optional Protocol)	Date of receipt of the instrument of ratification (Optional Protocol)
Austria	17 July 1980	31 March 1982	10 December 1999	6 December 2000
Belgium	17 July 1980	10 July 1985	10 December 1999	17 June 2004
Bulgaria	17 July 1980	8 February 1982	6 June 2000	
Cyprus		23 July 1985	8 February 2001	26 April 2002
Czech Republic		22 February 1993	10 December 1999	26 February 2001
Denmark	17 July 1980	21 April 1983	10 December 1999	31.May.00
Estonia		21 October 1991		
Finland	17 July 1980	4 September 1986	10 December 1999	29 December 2000
France	17 July 1980 <i>b/</i>	14 December 1983	10 December 1999	9 June 2000
Germany	17 July 1980	10 July 1985	10 December 1999	15 January 2000
Greece	2 March 1982	7 June 1983	10 December 1999	24 January 2002
Hungary	6 June 1980	22 December 1980		22 December 2000
Ireland		23 December 1985	7 September 2000	7 September 2000
Italy	17 July 1980 <i>b/</i>	10 June 1985	10 December 1999	22 September 2002
Latvia		14 April 1992	8 September 2000	
Lithuania		18 January 1994	8 September 2000	5 August 2004
Luxembourg	17 July 1980	2 February 1989	10 December 1999	1 July 2003
Netherlands	17 July 1980	23 July 1991	10 December 1999	22.May.00
Poland	29.May.80	30 July 1980		22 December 2003
Portugal	24 April 1980	30 July 1980	10 February 2000	26 April 2002
Romania	4 September 1980 <i>b/</i>	7 January 1982	6 September 2000	25 August 2003
Slovakia		28 May 1993	7 June 2000	17 November 2000
Slovenia		6 July 1992	10 December 1999	23 September 2004
Spain	17 July 1980	5 January 1984	14 March 2000	6 July 2001
Sweden	7 March 1980	2 July 1980	10 December 1999	24 April 2000
Turkey		20 December 1985	8 September 2000	29 October 2002
Ukraine	17 July 1980	12 March 1981	7 September 2000	26 September 2003
UK	22 July 1981	7 April 1986		17 December 2004)

a/ Accession; b/ Declarations or reservations; c/ Reservation subsequently withdrawn; d/ Succession

**Figure 2** Signatures and Ratification of CEDAW and Its Optional Protocol

*Source:* <http://www.un.org/womenwatch/daw/cedaw/states.htm>

## APPENDIX C

**TABLE 1** Persons In Employment Regarding To Sex (EU-25)- 2005

	Persons in employment			
	Women (N)	Men (N)	Men (N)	Men (N)
Austria	1858600	2202400	46	54
Belgium	1772700	2342600	43	57
Bulgaria	1449300	1630100	47	53
Cyprus	:	:	:	:
Czech Republic	2060100	2671200	44	56
Germany	17202600	21045200	45	55
Denmark	1272100	1482700	46	54
Estonia	290900	301600	49	51
Greece	1516300	2449700	38	62
Spain	6391500	10254800	38	62
Finland	1130300	1219700	48	52
France	11375300	13513000	46	54
Hungary	1817100	2152200	46	54
Ireland	756700	1039900	42	58
Italy	9211100	15074900	38	62
Lithuania	714000	727800	50	50
Luxembourg	110900	182600	38	62
Latvia	485600	511400	49	51
Malta	42200	94800	31	69
The Netherlands	3668400	4645100	44	56
Norway	:	:	:	:
Poland	6185300	7431500	45	55
Portugal	2310400	2753800	46	54
Romania	3363200	4029900	45	55
Sweden	2083200	2258100	48	52
Slovenia	405200	487600	45	55
Slovakia	941800	1120000	46	54

**Source:** European Commission, DG EMPL, Database on women and men in decision-making (2005)  
According to the latest report from the Commission to the Council, the European

## APPENDIX D

Members State	Level of GM	Change since 2002
Belgium	Good on full employment, weaker elsewhere	Little
Denmark	Very limited and primarily confined to guideline 6; main exception is the public employment service	2003 similar to 2002 but both a step back from 2001, where there was more concern with real equality rather than simply formal equality
Germany	No GM of general policy debate but some involvement of social partners	Greater involvement by social partners and more concern with child care but new political debate requires more GM but still absent
Greece	Good on full employment, weak elsewhere	Steady expansion since 1998 maintained
Spain	Limited GM of guidelines but GM present in new collective agreements	Similar provisions NAPemps: if anything, less visible in 2003
France	Very limited GM	Less visible than in the past particular developments in equal pay, collective bargaining, etc.
Ireland	Very limited GM (it is occasionally claimed that policies are positive for female employment; gender equality issues are not considered)	Limited change. Continuation of improvements to child care but cutbacks in programmes for inactive women
Italy	GM	No change from previous NAPemps (if anything, less visible than in the past)
Luxemburg	GM in six guidelines; focus on wage equality, decision making and training	Some evidence of continued progress in GM but still lacking a systematic follow-up and assessment of the proposed measures
Netherlands	Very limited GM	No change from previous NAPemps (if anything, less visible than in the past)
Austria	Very limited mainstreaming: claims that policies are positive for gender equality not substantiated	Deterioration compared to previous NAPemps- less visibility of GM in other guidelines, few policies claimed to be for gender equality but having negative effects
Portugal	Limited attention to GM	Loss of visibility since previous NAPemp
Finland	Key problems of gender equality identified and GM present but limited in the NAPemp	Improvements in so far as policies related to fixed-term contracts and gender pay presented as main issues

**APPENDIX D- Continued**

Gender Mainstreaming (GM) in the National Action Plans on Employment (NAPemps) 2003		
Members State	Level of GM	Change since 2002
Sweden	GM evident throughout NAPemp particularly in statistics but gender interests still not adequately defined	Progress in presentation of gender issues in all guidelines
UK	No mention of GM	Removal of all mention of GM even though already weak; only major improvement in child care policies plus self-employment framework

**Figure 3** Gender Mainstreaming in the National Action Plans on Employment

*Source:* Jill Rubery (2004), "The Ups and Downs of European Gender Equality Policy", *Industrial Relations Journal* 35:6, p. 615



## APPENDIX E

Member States	Targets on gender gap in employment	Targets on gender gap in unemployment	Targets on gender pay gap
Belgium	Commitments to reduction	Commitment to reduction	Commitment to reduction
Greece	Employment growth of 2% per annum for women and 1.5% overall up to 2010 (no specific commitments to reduce gender gap)	Reduce female unemployment rate to under 10% by 2006 and 8% by 2008 Reduce number of female long-term unemployed by 5%	Eliminate by 2008
France	60% female employment rate by 2006 (three percentage point increase)	Reduce number of female long-term unemployed by 5%	Reduction of one-third by 2010
Italy	46% female employment rate by 2005 (four percentage points increase)		
Netherlands	65% female employment rate by 2006 (excluding jobs of 12 hours or less)		
Austria	65% female employment rate by 2005		
Portugal	By 2005/6 reduction by one-third of gender gap in 200	By 2005/6 reduction by one-third of gender gap in 2001	Gradual decrease with view to elimination
Sweeden		Action to reduce unemployment rate for part-timers	
UK	70% employment rate for lone parents by 2010		

**Figure 4** Specific Targets Related to Closing Gender Gaps

*Source:* Jill Rubery (2004), "The Ups and Downs of European Gender Equality Policy", *Industrial Relations Journal* 35:6, p. 615

## APPENDIX F

**TABLE 2** Persons in Managerial Positions (EU- 25)

	Persons in managerial positions	
	Women (%)	Men (%)
Cyprus	19	81
Czech Republic	28	72
Germany	28	72
Denmark	27	73
Estonia	33	67
Greece	27	73
Spain	30	70
Finland	29	71
France	35	65
Hungary	34	66
Ireland	39	71
Iceland	:	:
Italy	20	80
Liechtenstein	:	:
Lithuania	41	59
Luxembourg	27	73
Latvia	38	62
Malta	20	80
The Netherlands	:	:
Norway	:	:
Poland	33	67
Portugal	32	68
Romania	:	:
Sweden	30	70
Slovenia	34	66
Slovakia	34	66
United Kingdom	32	68
Average (%)	30	70
Cyprus	19	81
Czech Republic	28	72
Germany	28	72

**Source:** Eurostat, Labour Force Survey (LFS) Notes: Managers are persons classified as Directors and chief executives, Production and operating managers, other specialist managers and Managers of small enterprises (ISCO (International Standard Classification of Occupations) category 12 and 13) in the European Commission, DG EMPL, and Database on women and men in decision-making

**APPENDIX G**

**TABLE 3 Labour force by age groups, 1955-2000** (*Source: <http://www.die.gov.tr/tkba/istatistikler.htm>*)

Population 12 years of age and over												
Census year	Age Group											
	Total	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65+
1955)	12 205 272	1 904 343	1 975 469	1 675 817	1 260 866	888 451	1 112 338	854 048	883 721	523 623	502 496	596 308
1960	12 993 245	1 684 691	1 849 632	1 908 498	1 649 225	1 175 236	871 801	920 623	931 532	640 936	654 076	686 600
1965	13 557 860	1 972 971	1 810 327	1 728 839	1 806 532	1 529 482	1 108 483	696 888	963 804	669 051	720 173	531 360
1970	15 118 887	2 187 544	1 996 378	1 629 861	1 550 248	1 636 288	1 354 234	910 125	696 389	657 946	647 681	781 109
1975	17 383 828	2 446 929	2 442 054	2 022 566	1 656 496	1 510 958	1 569 926	1 218 133	954 918	509 700	689 114	974 307
1980	19 212 193	3 023 775	2 856 126	2 401 534	1 931 514	1 583 599	1 474 816	1 453 113	1 171 108	729 074	441 936	699 288
1985	21 579 996	3 199 442	3 328 527	2 845 777	2 377 052	1 969 138	1 542 170	1 338 992	1 314 720	965 063	578 761	669 822
1990	24 726 601	3 567 565	3 527 960	3 398 565	2 913 436	2 492 477	1 959 304	1 463 677	1 223 961	1 106 576	798 111	873 435
2000	28 544 359	3 214 944	4 449 882	4 112 348	3 481 600	3 321 361	2 684 778	2 018 130	1 457 608	1 045 541	894 395	1 345 982
<b>Female</b>												
1955	5 261 709	807 770	814 536	739 584	525 673	377 300	456 142	337 431	389 523	208 624	274 882	318 199
1960	5 295 762	700 549	740 667	782 800	641 610	438 641	375 139	321 766	395 577	230 668	307 935	354 439
1965	5 137 031	828 004	692 784	700 526	685 142	544 803	413 476	259 431	368 579	238 514	300 688	100 415
1970	5 812 545	963 104	719 424	598 193	588 507	569 581	477 490	298 194	276 470	220 376	252 361	301 532
1975	6 204 322	1 018 724	838 028	627 153	529 739	511 736	523 684	382 925	333 535	178 817	250 082	364 185
1980	6 927 936	1 244 638	978 006	740 516	589 189	528 835	527 590	486 507	429 663	262 243	182 448	275 894
1985	7 647 265	1 329 890	1 132 381	861 957	697 857	594 866	512 926	475 893	483 486	370 127	228 854	271 299
1990	8 653 041	1 475 195	1 213 558	1 024 811	851 391	740 863	602 469	485 848	465 088	419 903	332 359	370 949
2000	10 164 540	1 352 665	1 622 151	1 361 878	1 078 573	1 011 968	808 941	647 321	539 975	434 791	413 153	628 209
<b>Male</b>												
1955	6 943 563	1 096 573	1 160 933	936 233	735 193	511 151	656 196	516 617	494 198	314 999	227 614	278 109
1960	7 697 483	984 142	1 108 965	1 125 698	1 007 615	736 595	496 662	598 857	535 955	410 268	346 141	332 161
1965	8 420 829	1 144 967	1 117 543	1 028 313	1 121 390	984 679	695 007	437 457	595 225	430 537	419 485	430 945
1970	9 306 342	1 224 440	1 276 954	1 031 668	961 741	1 066 707	876 744	611 931	419 919	437 570	395 320	479 577
1975	11 179 506	1 428 205	1 604 026	1 395 413	1 126 757	999 222	1 046 242	835 208	621 383	330 883	439 032	610 122
1980	12 284 257	1 779 137	1 878 120	1 661 018	1 342 325	1 054 764	947 226	966 606	741 445	466 831	259 488	423 394
1985	13 932 731	1 869 552	2 196 146	1 983 820	1 679 195	1 374 272	1 029 244	863 099	831 234	594 936	349 907	398 523
1990	16 073 560	2 092 370	2 314 402	2 373 754	2 062 045	1 751 614	1 356 835	977 829	758 873	686 673	465 752	502 486
2000	18 379 819	1 862 279	2 827 731	2 750 470	2 403 027	2 309 393	1 875 837	1 370 809	917 633	610 750	481 242	717 773

## APPENDIX H

**TABLE 4** Percentage of employed population by occupation (%), 1970-2000

		Population 12 years of age & over						
		Scientific, technical, professional related workers	Administrative & managerial workers	Clerical & realted workers	Commercial& sales workers	Service workers	Agricultural, animal, husbandry, forestry workers, fishermen& hunters	Non-agricultural production& related workers, transport equipment operators& labourers
Census year	Total							
<b>Female</b>								
1970	100,0	2,5	0,1	1,3	0,3	0,8	90,5	4,6
1975	100,0	2,8	0,1	2,1	0,5	0,9	87,5	6,0
1980	100,0	3,7	0,1	3,1	0,5	1,0	87,1	4,5
1985	100,0	4,0	0,1	3,2	0,8	1,2	86,3	4,5
1990	100,0	4,8	0,2	3,9	1,1	1,6	82,1	6,4
2000	100,0	6,9	0,4	6,5	2,3	2,8	75,7	5,5
<b>Male</b>								
1970	100,0	5,3	1,0	3,5	5,7	6,6	63,6	14,2
1975	100,0	4,2	0,6	3,6	4,8	4,7	52,8	29,3
1980	100,0	5,0	1,3	3,8	6,5	7,2	43,9	32,3
1985	100,0	5,5	1,2	3,8	7,1	7,8	42,9	31,7
1990	100,0	5,9	1,5	4,2	8,1	8,7	37,6	34,0
2000	100,0	7,5	2,0	5,6	8,4	10,1	33,0	33,3
<b>Number of women per 100 men</b>								
1970	62	34	6	27	4	9	104	24
1975	55	37	6	33	6	11	92	11
1980	58	43	6	48	5	8	116	8
1985	57	42	6	48	6	9	115	8
1990	56	46	8	51	8	10	123	11
2000	57	52	11	65	16	16	131	9

*Source:* <http://www.die.gov.tr/tkba/istatistikler.htm>

## APPENDIX I

**TABLE 5** Employed population by branch of economic activity, 1970-2000

Population 12 years of age & over										
Economic activity										
Census year	Total	Agriculture, hunting, forestry & fishing	Mining & quarrying	Manufacturing industry	Electricity, gas & water	Construction	Wholesale & retail trade, restaurants, hotels	Transport, storage & communication	Finance, insurance, real estate & business services	Community, social & personal services
<b>Total</b>										
<b>1970</b>	15 118 887	10 230 496	110 856	1 287 800	14 544	431 074	673 068	359 648	145 797	1 556 665
<b>1975</b>	17 383 828	11 694 513	111 746	1 457 283	20 107	532 428	803 662	482 853	221 666	1 828 233
<b>1980</b>	18 522 322	11 104 501	132 186	1 975 596	33 105	765 072	1 084 378	531 278	294 373	2 425 201
<b>1985</b>	20 556 786	12 118 533	137 126	2 185 369	23 224	750 546	1 382 636	615 888	389 254	2 847 289
<b>1990</b>	23 381 893	12 547 796	130 823	2 781 717	80 324	1 184 242	1 854 306	775 427	541 742	3 344 033
<b>2000</b>	25 997 141	12 576 827	96 035	3 276 173	98 152	1 196 246	2 512 777	853 255	808 126	4 545 535
<b>Female</b>										
<b>1970</b>	5 812 545	5 199 918	3 971	289 916	866	8 783	27 136	16 060	30 816	180 778
<b>1975</b>	6 204 322	5 484 490	1 459	257 439	2 332	4 977	46 716	18 168	53 211	272 233
<b>1980</b>	6 813 509	5 948 959	1 272	303 510	1 902	4 700	50 318	26 004	76 078	358 503
<b>1985</b>	7 492 733	6 484 257	1 797	332 248	1 095	6 697	81 798	31 387	98 698	441 248
<b>1990</b>	8 408 414	6 900 466	1 613	560 346	5 673	10 718	138 030	38 659	153 879	578 633
<b>2000</b>	9 429 736	7 133 056	2 699	624 180	8 381	19 419	344 938	63 124	263 900	964 301
<b>Male</b>										
<b>1970</b>	9 306 342	5 030 578	106 885	997 884	13 678	422 291	645 932	343 588	114 981	1 375 887
<b>1975</b>	11 179 506	6 210 023	110 287	1 199 844	17 775	527 451	756 946	464 685	168 455	1 556 000
<b>1980</b>	11 708 813	5 155 542	130 914	1 672 086	31 203	760 372	1 034 060	505 274	218 295	2 066 698
<b>1985</b>	13 064 053	5 634 276	135 329	1 853 121	22 129	743 849	1 300 838	584 501	290 556	2 406 041
<b>1990</b>	14 973 479	5 647 330	129 210	2 221 371	74 651	1 173 524	1 716 276	736 768	387 863	2 765 400
<b>2000</b>	16 567 405	5 443 771	93 336	2 651 993	89 771	1 176 827	2 167 839	790 131	544 226	3 581 234

*Source:* <http://www.die.gov.tr/tkba/istatistikler.htm>