



EU Twinning Project TR 08 IB SO 01
Promoting Gender Equality in Working Life



Component 1

*Aligning Turkish Legislation
with the EU Gender Equality Acquis*

Activity 1.2

*Elaboration of a report including
recommendations and amendment proposals*

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Summary in Tables

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

Part 1**Labour Law, No. 4857, and By-Laws; Penal Code, No. 5237; Law of Obligations, No. 818**

Main focus on amendments should be on Art. 5 LL. It should be amended by introducing definitions of discrimination and a provision on positive action, by extending the scope of application, by objectifying the justification of an unequal treatment and by shifting the burden of proof in favour of the victim of discrimination.

An introduction of definitions of discrimination would strengthen an effective protection against (sexual) harassment. Regarding remedies and sanctions there are provisions lacking or insufficiently articulated concerning the inefficiency of discriminating collective agreements, the right of complaint within undertaking, the prohibition of victimisation, an independent equality body (the Anti-Discrimination and Equality Law is still a draft) and the empowering of NGOs.

Employment contracts outside the Labour Law require comprehensive protection against discrimination: Therefore the Law of Obligations, the Press Labour Law and the Maritime Labour Law should be amended in this regard as well as Art. 4 LL. Regarding pregnancy and maternity protection and reconciliation of work and family the Labour Law, its bylaws and secondary labour laws are insufficient. Provisions regarding pregnancy and maternity or parental leave as well as the right to return after maternity leave and protection from dismissal are missing or regulated insufficiently with regard to the directives 2006/54 and 2010/18.

Law in force	Proposal for amendments	Chapter of the report	Page
Labour Law, No. 4857			
Art. 4: The provisions of this Law shall not apply for the below specified businesses and business relations (...)	Without prejudice of Art. 5, the provisions of this Law shall not apply for the below specified businesses and business relations (...)	1.1	4
Art. 5 Sect. 1: No discrimination based on language, race, sex, political thought, philosophical belief, religion, sect and similar grounds can be made in the business relation.	Supplement 1 (Text of Dir.): There shall be no direct or indirect discrimination on grounds of sex (and of the other grounds listed there) in the public or private sectors, including public bodies, in relation to: (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;	1.2 a)	5

- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty;
- (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

Supplement 2:

For the purposes of this law, discrimination includes: direct or indirect discrimination, harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct; instruction to discriminate against persons on grounds of sex; any less favourable treatment of a woman related to pregnancy or maternity leave.

Supplement 3 (Text of Dir.):

For the purposes of this law, the following definitions shall apply:

- (a) "direct discrimination": where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;
- (b) "indirect discrimination": where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;
- (c) "harassment": where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
- (d) "sexual harassment": where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

<p>Art. 5 Sect. 2: The employer cannot treat part-time worker against full-time worker and definite-term worker against indefinite-term worker differently unless on founded reasons.</p>	<p>The employer cannot treat part-time worker against full-time worker and definite-term worker against indefinite-term worker differently unless it is objectively and reasonably justified by a legitimate aim.</p>	<p>1.2 b)</p>	<p>8</p>
<p>Art. 5 Sect. 3: The employer cannot treat a worker differently in concluding the labour contract, establishing the conditions thereof, implementation and termination thereof due to sex or pregnancy, unless biological reasons or those pertaining to the work qualifications oblige.</p>	<p>(1) The employer cannot treat a worker differently in access to employment including the training leading thereto, unless, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate. (2) A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.</p>	<p>1.2 c)</p>	<p>10</p>
<p>Art. 5 Sect. 4 and 5: In general terms, wage is the amount provided and paid in cash to a person by the employer or third persons in return for work performed.</p>	<p>In general terms, wage is the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/her employment from his/her employer.</p>	<p>1.2 d)</p>	<p>11</p>
<p>Art. 5 Sect. 6: In case of contradiction to the provisions of the above paragraph in the business relation or termination, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage.</p>	<p>In case of contradiction to the provisions of the above paragraph, the worker can demand the rights that he/she has been deprived of besides compensation or reparation for the loss and damage sustained as a result of discrimination on grounds of sex.</p>	<p>1.2 e)</p>	<p>12</p>
	<p>Example of the German General Equal Treatment Act: (1) In the event of a violation of the prohibition of discrimination, the employer shall be under the obligation to compensate the damage arising therefrom. (...) (2) Where the damage arising does not constitute economic loss, the employee may demand appropriate compensation in money. This compensation shall not exceed three monthly salaries in the event of nonrecruitment, if the employee would not have been recruited if the selection had been made without unequal treatment.</p>	<p>1.2 e)</p>	<p>12</p>

Art. 5 Sect. 7: Without prejudice to the provisions of article 20, the worker is obliged to prove that the employer has contradicted to the provisions of the above paragraph. However, when the worker puts forward a situation strongly suggesting the probability of the existence of an infringement, the employer becomes obliged to prove that no such infringement exists.	Without prejudice to the provisions of article 20, the worker is obliged to prove that the employer has contradicted to the provisions of the above paragraph. However, when the worker puts forward facts from which it may be presumed that there has been direct or indirect discrimination, the employer becomes obliged to prove that there has been no breach of the principle of equal treatment.	1.2 f)	14
Art. 5: Missing (positive action measures)	Example on Positive Action from the German Equality Act: Olumlu önlemler. 8. ila 10. ve 20. maddelerde sayılan sebepler dikkate alınmaksızın, uygun ve makul önlemler vasıtasıyla, 1. maddede sayılan bir sebebe dayanan mevcut olumsuzluklar engelleniyor veya gideriliyorsa farklı muamele geçerlidir.	1.2 g)	14
Art. 12: Any worker employed on a definite-termed labour contract cannot be subjected to a different treatment compared to an equivalent worker employed on an indefinite-termed labour contract merely on the grounds that his/her labour contract has a definite term, unless a reason justifying discrimination exists.	Any worker employed on a definite-termed labour contract cannot be subjected to a different treatment compared to an equivalent worker employed on an indefinite-termed labour contract merely on the grounds that his/her labour contract has a definite term, unless that reason is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.	1.4 a)	19
Art. 17 sect. 6 (2): Pursuant to first paragraph of article 18, the worker is paid an indemnity equal to three times of the notification period in case the labour contracts of workers not covered by articles 18, 19, 20 and 21 of this Law are terminated through misuse of the right of termination.	Pursuant to first paragraph of article 18, the worker is paid an indemnity equal to three times of the notification period in case the labour contracts of workers not covered by articles 18, 19, 20 and 21 of this Law are terminated through discrimination or misuse of the right of termination.	1.4 b)	21
Art. 17: Missing (dismissal protection)	Protection against less favourable treatment or dismissal of workers during pregnancy or maternity leave or applying for it.	1.5 and 1.6	22 and 35
Art. 72 LL: It is prohibited to employ men below the age of eighteen and women at any age in underground or underwater positions such as mine galleries, cabling, sewerage and tunnel construction.	It is prohibited to employ men and women below the age of eighteen in underground or underwater positions such as mine galleries, cabling, sewerage and tunnel construction.	1.3	15
Art. 74 Sect. 1: It is the principle that the female workers should not be caused to work for a period of sixteen weeks in total, eight weeks before and eight week after delivery. In	It is the principle that the female workers should not be caused to work for a period of sixteen weeks in total, eight weeks before and eight week after delivery. In case of plural pregnancy, such eight-week	1.5	22

<p>case of plural pregnancy, such eight-week period before delivery is increased by two weeks. If, however, health condition allows, the female worker may work until three weeks before delivery, upon approval of physician. In this case, such worked periods are added to the periods after delivery. The non-employment periods granted to female workers and which the women worker cannot benefit from prior to birth in the event of premature birth are granted by means of adding such to periods after birth.</p>	<p>period before delivery is increased by two weeks. If, however, health condition allows, the female worker may work until three weeks before delivery, upon approval of physician. In this case, such worked periods are added to the periods after delivery. The non-employment periods granted to female workers and which the women worker cannot benefit from prior to birth in the event of premature birth are granted by means of adding such to periods after birth. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date and the actual date of childbirth, without the remaining portion of leave being reduced.</p> <p>A female worker is entitled to return to her job or to an equivalent post on terms and conditions which are no less favourable to her after maternity leave. At the same time, she benefits from any improvement in working conditions to which she would have been entitled during her absence.</p>		
<p>Art. 74 Sect. 5: The female worker is granted unpaid leave for up to six months after expiry of sixteen-week, or in case of plural pregnancy, eighteen-week period, upon request. Such period is not considered in calculating the annual paid leave right.</p>	<p>Upon her request, following the expiry date of 16 week maternity leave or 18-week maternity leave in case of multiple pregnancy given to the female employee; or following the expiry date of the paid leave of a female employee who made a temporary care agreement to adopt a child under 8 years of age the female employee or her employee husband, or her employee husband, upon their request, may be granted unpaid leave for a period of up to 6 months. Men and women workers have an individual right to parental leave. This period may, upon couples' request, be used as two consecutive periods. This period shall not be taken into account in the calculation of paid annual vacation. (...) A female worker is entitled to return to her job or to an equivalent post on terms and conditions which are no less favourable to her after maternity leave. At the same time, she benefits from any improvement in working conditions to which she would have been entitled during her absence. At the end of parental leave, female and male workers have the right to return to the same job or to an equivalent or similar post. When returning from parental leave, the workers can request changes to their</p>	1.6	32

	working hours and/or patterns for a certain period of time.		
Art. 79 Sect. 6: If the age, sex and health conditions of the workers employed in an enterprise present obstacle for their employment in such positions, they are also prevented from being employed.	If the age, sex and health conditions of the workers employed in an enterprise present obstacle for their employment in such positions, they are also prevented from being employed. Sex forms an obstacle for employment when the sex of the worker is a genuine and determining factor and when the exception of one sex is appropriate and necessary for a legitimate aim.	1.3	19
Remedies and Sanctions			
Missing (collective agreements)	Example of the German General Equal Treatment Act 7 (2): Any provisions of an agreement which violate the prohibition of discrimination under Subsection (1) shall be ineffective.	1.7	36
Missing (complaints)	Example of the German General Equal Treatment Act 13 (1) Employees shall have the right to lodge a complaint with the competent department in the firm, company or authority when they feel discriminated against in connection with their employment relationship by their employer, superior, another employee or third party on any of the grounds referred to under Article 1. The complaint shall be examined and the complainant informed of the result of the examination. 13 (2) The rights of worker representatives shall remain unaffected.	1.7	36
Missing (information)	Example of the German General Equal Treatment Act (1) The employer has the duty to take measures necessary to ensure protection against discrimination on any of the grounds referred to under Article 1. This protection shall also cover preventive measures. (2)The employer shall draw attention to the inadmissibility of such discrimination in a suitable manner, in particular within the context of training and further training, and shall use his or her influence to ensure that such discrimination does not occur. Where an employer has trained his or her employees in an appropriate manner for the purpose of preventing discrimination, he or she shall be deemed to have fulfilled his or	1.7	36

	<p>her duties under section (1).</p> <p>(3) Where employees violate the prohibition of discrimination under Article 7 (1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to put a stop to the discrimination; this may include cautioning, moving, relocating or dismissing the employee in question.</p> <p>(4) Where employees are discriminated against in the pursuance of their profession by third persons within the meaning of Article 7 (1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to protect the employee in question.</p> <p>(5) This Act and Article 61b of the Labour Courts Act (Arbeitsgerichtsgesetz), as well as information concerning the departments competent to handle complaints pursuant to Article 13 shall be made known in the enterprise or public authority. This may be done by putting up a notice or displaying information leaflets in a suitable place or by using the information and communication channels normally used in the enterprise or authority.</p>		
Missing (victimisation)	<p>Example of the German General Equal Treatment Act</p> <p>(1) The employer shall not be permitted to discriminate against employees who assert their rights under Part 2 or on account of their refusal to carry out instructions that constitute a violation of the provisions of Part 2. The same shall apply to persons who support the employee in this or who testify as a witness.</p> <p>(2) The rejection or toleration of discriminatory conduct by an affected employee may not be used as the basis for a decision affecting that employee. Section (1) second sentence shall apply mutatis mutandis.</p>	1.7	36
Equality Body and Anti-Discrimination Organisation			
Missing (Equality Body)	<p>Examples of the Austrian Equal Treatment Act4 (1)</p> <p>The Ombud for equal treatment between women and men in employment is entrusted with the task of counselling and supporting persons who feel discriminated within the intent of Title One of the Equal Treatment Act. She acts on her own initiative and independently.</p>	1.8	39

Missing (Anti-Discrimination Organisation)	<p>Examples of the German Equal Treatment Act</p> <p>(1) “Anti-discrimination organisation” shall refer to any association of persons which attends to the particular interests of persons or groups of persons discriminated against within the meaning of article 1; in accordance with their statutes these organisations must operate on a non-profit and non-temporary basis. The powers set out in sections (2) to (4) shall be granted to such organisations with at least 75 members or an association comprising at least seven organisations.</p> <p>(2) Anti-discrimination organisations shall be authorised, under the terms of their statutes to act as legal advisor to a disadvantaged person in the court hearings. Otherwise, the provisions set out in the rules of procedure, in particular those according to which legal advisors may be barred from being heard, shall remain unaffected.</p> <p>(3) Anti-discrimination organisations shall be permitted to be entrusted with the legal affairs of disadvantaged persons under the terms of their statutes.</p> <p>(4) The special rights of action and powers of representation of associations for the benefit of disabled persons shall remain unaffected.</p>	1.8	39
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Implementing Regulation for the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes and Implementing Regulation for the Working Conditions of Female Workers at Night

<p>Article 9</p> <p>Female workers, from the determination of their pregnancy by the doctor until the birth; and Breastfeeding female workers starting from the birth date, cannot be asked to work at night shifts for a period of six months. For Breastfeeding female workers; in case that, it is determined necessary when the health of the mother and the child is considered, and this situation is proven by the doctor of the work site, common health unit of the work site, workers health clinics, and in absence of these by the nearest social Insurance Institute, Local Health Centers, by the doctors of Government or Municipality, this period can be extended to one year. Keeping reserved the provisions of the Implementing Regulation</p>	<p>Female workers, from the determination of their pregnancy by the doctor until the birth; and Breastfeeding female workers starting from the birth date, cannot be asked to work at night shifts for a period of six months. For Breastfeeding female workers; in case that, it is determined necessary when the health of the mother and the child is considered, and this situation is proven by the doctor of the work site, common health unit of the work site, workers health clinics, and in absence of these by the nearest social Insurance Institute, Local Health Centers, by the doctors of Government or Municipality, this period can be extended to one year. Keeping reserved the provisions of the Implementing Regulation concerning the Working Conditions of Pregnant or</p>	1.5	22
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concerning the Working Conditions of Pregnant or Breastfeeding Women and, Breastfeeding Rooms and Child Care Homes, published in Gazette numbered 25522 and dated 14/7/2004; the working durations of these workers are arranged in such a manner that it meets day shifts.	Breastfeeding Women and, Breastfeeding Rooms and Child Care Homes, published in Gazette numbered 25522 and dated 14/7/2004; the working durations of these workers are arranged in such a manner that it meets day shifts. If a transfer is technically and/or objectively not feasible or cannot reasonably be required, a leave from work or an extension of maternity leave have to be possible.		
Article 11: It is essential that the pregnant worker cannot be asked to work eight weeks before and after the birth, total sixteen weeks. In multi-pregnancy, extra two weeks are added to the leave of four weeks in which the worker will not be asked to work.	It is essential that the pregnant worker cannot be asked to work eight weeks before and after the birth, total sixteen weeks. In multi-pregnancy, extra two weeks are added to the leave of four weeks in which the worker will not be asked to work. In the case that children are hospitalized at birth or children are born with disabilities extra two weeks are added to the post-natal leave.	1.5	22
Implementing Regulation for the Working Conditions of Female Workers at Night Shifts			
Art 6: The Employers of every type of work site out of the borders of Municipality, and the Employers, being in the borders of Municipality, who have difficulty in regular transport services at shift change hours, are liable for providing the transport of the female workers at night shift, with convenient vehicles from and to their residences and the nearest locations.	The Employers of every type of work site out of the borders of Municipality, and the Employers, being in the borders of Municipality, who have difficulty in regular transport services at shift change hours, are liable for providing the transport of the workers at night shift, with convenient vehicles from and to their residences and the nearest locations.	1.3	17
Implementing Regulation for the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes			
Art. 8	Inclusion of a paid leave as of Art. 18 Social Insurance and General Health Insurance Act (see there for further details)	1.5	27
Art. 14	Inclusion of possibility of breastfeeding time during working time	1.5	30
Art. 15	Rethink the quota	1.5	31
Law on Collective Labour Agreement, Strike and Lockout, No. 2822			
a. Art. 5: Provisions in breach with indivisibility of the State with its country and nation, national sovereignty, Republic, national security, public order, general order, general ethics and general health and		1.7	36

provisions that incite encourage and protect actions that are considered as offences by the laws and that are in breach with the imperative provisions of the laws and bylaws cannot be included into the collective labour agreements.			
Press Labour Law No. 5953			
Art. 16 Sect. 8: In the event of pregnancy of female journalists, they will be considered on leave starting from month 7 of pregnancy until the second month after delivery. During this period, the business shall pay the journalist half of the salary the journalist was receiving. As soon as the delivery takes place or in the event that the infant is born dead, salary will be paid for one month as of the date of occurrence of such incident. The benefits that the journalist will get from the security or other entities he is associated with will not affect such payment.	In the event of pregnancy of female journalists, they will be considered on leave starting from month 7 of pregnancy until the second month after delivery. During this period, the business shall pay the journalist half of the salary the journalist was receiving. As soon as the delivery takes place or in the event that the infant is born dead, salary will be paid for one month as of the date of occurrence of such incident. The benefits that the journalist will get from the security or other entities he is associated with will not affect such payment. A female worker is entitled to return to her job or to an equivalent post on terms and conditions which are no less favourable to her after maternity leave. At the same time, she benefits from any improvement in working conditions to which she would have been entitled during her absence. Without regard to whether or not the labor contract between the employer and the journalist is made for a definite term, the labor contract cannot be terminated by the employer during the period of pregnancy until the end of maternity leave (second month after delivery). A female worker is entitled to return to her job or to an equivalent post on terms and conditions which are no less favourable to her after maternity leave. At the same time, she benefits from any improvement in working conditions to which she would have been entitled during her absence.	2	43
Art. 27: b) employers who fail to pay the amount payable to the journalist in the events written in the first, second or third paragraphs of article 16,	b) employers who fail to pay the amount payable to the journalist in the events written in the first, second, third or eighth paragraphs of article 16,	2	45
Missing (Prohibition of Discrimination)	Inclusion of Art. 5 LL	2	42
Missing (Parental Leave)	Add provision on parental leave	2	46
Maritime Labour Law, No. 854			

Missing (discrimination protection)	Inclusion of Art. 5 LL	3	46
Missing (maternity leave, pregnancy)	Inclusion of Art. 74 LL	3	46
Penal Code, No. 5237			
Art. 105	Broaden scope of application	4	48
Law of Obligations, No. 818			
Art. 393 sect. 2: Service contracts, in which the employee undertakes to provide a service regularly on part-time basis to the employer, are also construed as service contracts.	Service contracts, in which the employee undertakes to provide a service regularly on part-time basis to the employer, are also construed as service contracts. The employer cannot treat part-time worker against full-time worker and definite-term worker against indefinite-term worker differently unless it is objectively and reasonably justified by a legitimate aim.	5.1	48
Art. 394 sect. 1: Service contracts are not contingent upon a certain form, unless there is a provision to the contrary. A service contract shall be construed as being established when a person performs a certain work, which shall be only carried out against remuneration as required by the situation, for a certain period and said work is accepted by the employer.	Service contracts are not contingent upon a certain form, unless there is a provision to the contrary. A service contract shall be construed as being established when a person performs a certain work, which shall be only carried out against remuneration as required by the situation, for a certain period and said work is accepted by the employer. In these contracts shall be no direct or indirect discrimination on grounds of sex.	5.1	48
Art. 398	Inclusion of protection of overwork of pregnant, nursing and breastfeeding workers	5.4	51
Art. 409: In the event of the employee not being able to perform his/her work for a short period of time compared to the period in which work has been performed without any reason attributable to the employee as a result of illness, compulsory military service or work required by the laws and similar reasons, in a long term service relationship, the employer shall be obliged to make payments for said period on an equitable basis for said period unless it is covered by any other means.	In the event of the employee not being able to perform his/her work for a short period of time compared to the period in which work has been performed without any reason attributable to the employee as a result of illness, compulsory military service or work required by the laws and similar reasons, or in the event of maternity leave, in a long term service relationship, the employer shall be obliged to make payments for said period on an equitable basis for said period unless it is covered by any other means.	5.4	52
Art. 417 Sect. 3	Inclusion of ensuring the health and safety of pregnant workers	5.3	51
Art. 421	Add Art. 421A on Maternity Leave It is the principle that the female workers should not be caused to work for a period of sixteen weeks in total, eight weeks before and eight week after delivery. In	5.4	53

	<p>case of plural pregnancy, such eight-week period before delivery is increased by two weeks. If, however, health condition allows, the female worker may work until three weeks before delivery, upon approval of physician. In this case, such worked periods are added to the periods after delivery. The non-employment periods granted to female workers, which cannot be used due to premature birth, are granted by means of adding to periods after birth. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date and the actual date of childbirth, without the remaining portion of leave being reduced. In the case that children are hospitalized at birth or children are born with disabilities extra two weeks are added to the post-natal leave.</p> <p>Art. 421 b Parental Leave Upon her request, following the expiry date of 16 week maternity leave or 18-week maternity leave in case of multiple pregnancy given to the female employee; or following the expiry date of the paid leave of a female employee who made a temporary care agreement to adopt a child under 8 years of age the female employee or her employee husband, or her employee husband, upon their request, may be granted unpaid leave for a period of up to 6 months. Men and women workers have an individual right to parental leave. This period may, upon couples' request, be used as two consecutive periods. At least one of the six months shall be provided on a non-transferable basis. This period shall not be taken into account in the calculation of paid annual vacation. (...)</p> <p>A female worker is entitled to return to her job or to an equivalent post on terms and conditions which are no less favourable to her after maternity leave. At the same time, she benefits from any improvement in working conditions to which she would have been entitled during her absence. At the end of parental leave, female and male workers have the right to return to the same job or to an equivalent or similar post. When returning from parental leave, the workers can request changes to their working hours and/or patterns for a certain period of time.</p>		
Art. 423 Sect. 3:	Employer shall not be entitled to make any	5.4	55

Employer shall not be entitled to make any deductions in the annual paid leave period of the female employee, who cannot perform her work obligation for a period of not more than three months due to pregnancy and giving birth.	deductions in the annual paid leave period of the female employee, who cannot perform her work obligation for a period of 16 weeks due to pregnancy and giving birth.		
Art. 435	Add non-discriminating definition on “rightful grounds”	5.5	55
Art. 439	Add non-discriminating definition on “rightful grounds”	5.4	55
Missing (Remedies and Sanctions)	Broaden scope of application of Art. 417	5.2	50
Missing (Remedies and Sanctions)	Inclusion of compensation and reparation	5.2	50
Missing (Prohibition of Victimisation)	Inclusion of prohibition of victimisation	5.3	51
Missing (Termination of Contract)	Inclusion of protection against discriminating dismissals	5.5	55
Missing (Termination of Contract)	Pregnancy, birth and maternity leave do not constitute a valid reason for termination of any form of contract.	5.5	56
Law Proposal on Anti-Discrimination and Equality (DRAFT)			
Please see report pages 56ff. for further details.			
Part 2 Civil Servants Law, No. 657; Trade Unions Law for the Public Servants, No. 4688; By-law on Recruitment			
<p>One of the biggest challenges is the narrow scope of application: The Civil Servants Law only applies to Civil Servants according to Art. 4 type A Law Nr. 657. The other types such as workers, contracted staff and temporary staff are not covered under Law No. 657. Due to a lack of regulation or of providing the relevant articles, some topics mentioned in Dir. 2006/54 (e. g. defence of rights, maintenance of employment rights, time off for ante-natal examinations or prohibition of dismissal) could not be analysed. Others were insufficient like for instance disciplinary measures which cannot be interpreted as compensation and reparation or penalties, within the meaning of Art.18 and 25 Directive 2006/54/EC.</p> <p>The report strongly recommends positive action measures such as part-time work, child care facilities or tele-work.</p> <p>This part of the report does hardly give concrete phrasing proposals.</p>			
Law in force	Proposal for amendments	Chapter of the report	Page
Civil Servants Law, No. 657			
Art. 7: Public servants shall not become affiliated to political parties, or conduct themselves in any manner aimed at providing	Adopt the definitions of the directive	I	10

<p>advantage or disadvantage for any political party, person or group; they shall not discriminate on the basis of language, race, sex, political ideology, philosophical belief, religion or religious doctrine; they shall not under any circumstances make any declarations and pursue a course of action with political and ideological aims or participate in such actions.</p>			
<p>Art. 10 para 2: Superiors shall treat the public servants in their charge equally and fairly. They shall use the authority of their superior position within the principles described in laws, regulations and statutes.</p>	<ul style="list-style-type: none"> - Adopt the definitions of the directive - Consider positive action measures 	II	12
<p>Art. 36 X A Point 2: Public servants holding the title of M.Sc. engineers, engineers, M.Sc. architects, architects, having completed four years of higher education, and those assigned in educational services, graduates of the Men's Technical Higher School of Teaching, the Men's Technical School of Teaching and the State Higher School of Applied Arts, shall be recruited at the grade and step obtained by adding one grade to their entrance grade and step.</p>	<ul style="list-style-type: none"> - Amend the wording of the provision - Consider positive action measures 	III	17
<p>Art. 46: Ministries and other public organisations and institutions (except the Office of Undersecretary of the National Intelligence Organisation) shall determine the number, category and grades of the vacant posts where staff needs to be appointed and notify the State Personnel Department.</p>	<p>Consider positive action measures and a quota</p>	V	22
<p>Art. 60: Persons that possess the general qualifications referred to in Article 48 may be appointed to exceptional positions. The special provisions in the laws of the relevant institutions shall continue to apply. That notwithstanding, the qualifications required for state artists shall be defined with regulations. Appointment to the Office of the Legal Advisor of the Foreign Minister shall require very good knowledge of a foreign language as well as compliance with the other requirements referred to in the relevant special law.</p>	<p>Consider positive action measures</p>	VIII	31
<p>Chapter 2 (Art. 64ff.): Provisions with respect to step advancement</p>	<p>Consider maternity/paternity and parental leave as positive action measures</p>	IX	32

Art. 72:	<ul style="list-style-type: none"> - Granting the right to a female civil servant to ask for transfer to another city - Amend the Penal Code regarding violence against women 	X	33
<p>Art. 83 para 2: The period of national military service shall be granted as step advancement in the acquired grade prior to their leave for national military service. The step advancement granted in the grade of the post they occupied prior to their leave for national military service shall also be taken into account. Where the sum of the step advancements prior to national military service and the period in national military service exceeds three years, the staff concerned shall be granted step advancement in the next grade advancement for the years exceeding this three-year period.</p>	<ul style="list-style-type: none"> - Maternity/paternity/parental leave period factored in step advancement - Consider positive action measures 	XI	40
<p>Art. 99: The normal working week for public servants shall be in general 40 hours.</p>	Amend regarding parents to reduce weekly working hours	XII	41
<p>Art. 101: Working hours and procedures of the public servants employed in services delivered on 24 hour basis are regulated by their organizations. However, women public servants cannot be assigned for night duties and shifts prior to twenty-fourth week of pregnancy in the event of such being specified in medical report and after the twenty-fourth week of the pregnancy in any case and for one year following the birth. Disabled public servants cannot be assigned for night duties and shifts unless such is requested by the public servant.</p>	Amend wording regarding circumstances/conditions required for the prohibition of night work	XIIIb	47
<p>Art. 104 A para 1: Civil servants shall be given paid maternity leave for a total period of sixteen weeks, eight weeks before confinement and eight weeks after the birth is granted to the woman worker. In case of multiple pregnancy, an extra two week period is added to the prenatal maternity leave of eight weeks paid maternity leave.</p>	<ul style="list-style-type: none"> - Inclusion of provisions on maternity leave and on time off for ante-natal examinations, prohibition of dismissal and defence of rights - Consider developments of EU legislation 	XIII	48
<p>Art. 104 B: Paternity leave of ten days is granted to public servants upon their request in case of their spouses giving birth while a leave of seven days is granted to the public</p>	<p>Consider unmarried fathers: Due to birth of his child, male civil servant may be granted x days leave upon request.</p>	:XIII	56

servant in the event of his marriage or his child's marriage or in case of death of his spouse or child, parents and siblings of himself or his spouse upon his request.			
Art. 104 C: Excluding the cases stipulated in clause (A) and (B), a leave of ten days can be granted cumulatively or partially within one year to the public servants due to their excuses by the superior authorized for assignment in the center, governor in the province, district governor in the district and diplomatic mission chief abroad with the consent of superior of public servant's unit. When needed, casual leave of additional ten days can be granted by means of following the same procedure excluding the teachers. In such cases, this leave granted for second time is deducted from annual leave.	See examples in the report	XIII	57
Art. 104 D: Breastfeeding leave is granted to female public servants to enable breastfeeding of their children as three days (hours?) per day for the initial six months after the completion of postpartum maternity leave and as one and a half hour per day for the second six months. The preference of the female public servant will be considered as a basis for on which hours and how many times a day the breastfeeding leave will be used.	- Consider fathers: After the maternity leave, fathers or mothers should be given feeding leave x hours a day. Civil servants have the right to decide at what times and in how many instalments they will use the feeding leave.	XIII	60
Art. 108 F: Public servants who leave service for military service shall be deemed to be on unpaid leave in the course of the military service and their posts shall be maintained.	Maintain the post of civil servants for the periods of maternity and parental leave	XV	69
Art. 123: Those showing outstanding zeal and performance in comparison to their co-workers in their institutions may be given an award, provided that the award does not exceed one salary within a given financial year and two salaries in the case of the public servants falling into the category of security services and the public servants assigned to the customhouses within the Office of the Undersecretary of Customs, following the consent of the relevant Minister or the Minister in charge. Where appropriate, they may be granted one more salary, on a proposal from the Minister and with the approval of the Prime Minister.	Add a gender balance provision	XVI	70

<p>Pursuant to this Article, the number of staff to be awarded shall not exceed one percent of the total number of free posts at the beginning of the year, and two percent of free posts allocated to the Office of the Undersecretary of Customs and the category of training and education services and the category of security services.</p>			
<p>Art. 125 D: The disciplinary penalties, actions and cases carrying such penalties are set out below: D- Deferment of step advancement: to halt the step advancement in the current step of the staff one to three years, according to the gravity of the action. Actions and cases generating the penalty of deferment of step advancement shall be: discriminating on the basis of language, race, sex, political ideology, philosophy, religion or belief in the performance of duties, conducting oneself in a manner aimed at acting in someone's favour or to someone's detriment.</p>	<p>Add provisions on compensation and reparation, defence of rights and burden of proof</p>	<p>XVIII</p>	<p>71</p>
<p>Art. 152: Bonuses shall be paid in the following forms: - Difficult-work bonus, paid to those whose work is difficult with regard to the nature of the job and working conditions, - Work risk bonus, paid to those whose work is dangerous for health and life, - Financial responsibility bonus to accountants who are responsible for submitting accounts to the Court of Auditors and to treasurers and other staff who have responsibility for deficits, - Bonus paid to staff who are difficult to find, retain in position or employ in certain places.</p>	<p>Adopt the definitions of the directive</p>	<p>XX</p>	<p>75</p>
<p>Art. 191: Day nurseries or social facilities may be established for the staff as and when the need arises. The procedure and principles relating to the establishment and operation of these shall be defined with regulations to be prepared jointly by the State Personnel Department and the Ministry of Finance.</p>	<p>Consider state allowances, tax reductions or other measures promoting pre-school education and childcare</p>	<p>XXIII</p>	<p>79</p>
<p>Art. 202: Married public servants shall be entitled to the family allowance. The said allowance shall be granted over</p>	<p>Provide allowances no matter if the spouse is working and receiving salary or not to promote womens' participation in the labour market</p>	<p>XXIV</p>	<p>80</p>

<p>the amount calculated by multiplying the index of 1500 in the case of spouses not in gainful employment and who do not receive a pension from any social security institution and 250 in the case of each child, by the salary coefficient (one folds increase for each child under age group of 0-6 including 72th month). Where a family allowance of a similar nature in respect of children is granted to the spouse by virtue of a work contract or collective bargaining is less than that granted to staff, solely the difference shall be paid. The Council of Ministers shall be authorised to increase the index numbers above up to a maximum of three times the said amount.</p> <p>The above provisions shall apply to the children of widowed staff.</p> <p>In the event of divorce or separation, the court shall also decide to whom and at what rate the said allowance is to be granted.</p> <p>The said allowance shall also be granted in the case of dependent step-children of staff.</p>			
<p>Art. 203 para 2 and 207 para 2: The family allowance shall be paid together with the monthly salary. Where both husband and wife are public servants, the said allowance shall be granted to the husband only. Family allowances shall be paid as being exempt from all taxes and deductions and may not be attached for the purpose of settling debts.</p>	<p>Split allowances if both spouses are civil servants</p>	<p>XXV</p>	<p>81</p>
<p>Art. 206 Point 2: The family allowance in respect of a child shall not be granted in the case of children who: (...) 2. have reached the age of 25,</p>	<p>No differentiation between sons and daughters, especially between married and unmarried daughters.</p>	<p>XXVI</p>	<p>82</p>
<p>Art. 221 and 222: Art. 221 – For the purpose of training staff for assignment to certain categories, institutions may; - provide professional education and training within their organisations, - sponsor the education or specialisation programmes in educational institutions in Turkey, - sponsor the education or specialisation programmes in educational institutions abroad. Art. 222 – Staff to be educated by their institutions in Turkey or abroad shall be</p>	<p>Consider positive action measures</p>	<p>XXVII</p>	<p>84</p>

selected via competitive tests.			
<p>Art. 226: Advisory boards shall be established to provide the benefit of their opinions on matters pertaining to the administration of the public staff. Such boards shall be established in two types: The Higher Advisory Board Institutional Advisory Boards The Higher Advisory Board shall be established as a centralised body to present advisory opinions on general matters pertaining to the administration of public staff. Institutional Advisory Boards shall be established within each institution to present advisory opinions on general matters pertaining to the administration of public staff. The said boards shall consist of equal numbers of administrative representatives and staff representatives.</p>	Consider a gender balanced Board or a quota	XXVIII	85
<p>Additional Art. 12: The Ministry of Finance and the State Personnel Department shall carry out analyses on the organisation and method, on posts and any other necessary analyses on the institutions falling under the said laws and all the other institutions financed through the State budget, for the implementation of the present Law and the other laws on personnel. Requests for posts and allowances shall be based on long-term plans and programmes.⁸⁷ The posts of State budget specialists shall be given to the Ministry of Finance and the posts of State personnel specialists given to the State Personnel Department in accordance with the General Law on Posts in order to perform the said duties. State budget specialists and State personnel specialists shall be authorised to make all the analyses in the institutions concerning requests for posts and allowances and to examine all related documents. Other matters and the details of work methods shall be defined by means of regulations relating to duties and work.</p>	<ul style="list-style-type: none"> - Gender mainstreamed analysis - Dissemination of information 	XXIX	86
Trade Unions Law for the Public Servants, Law No. 4688			
<p>Art. 19: Trade Unions and Confederations of Public Servants are authorized to participate in</p>	Provide social dialogue	I	87

collective bargaining, to conclude collective bargaining and become parties, in the name of their members, within the limits of the provisions of this Law.			
Art. 8: Compulsory organs of trade union branches, trade unions and confederations are general assembly, board of directors, supervisory board and disciplinary board. Trade unions and confederations can establish other organs, provided that they do not assign duties, powers and liabilities of the compulsory organs.	Consider a gender balanced expert group or a quota	II	89
By-law on Recruitment			
	Consider gender mainstreaming		91
Part 3 Turkish Social Insurance and Universal Health Insurance Law			
<p>Part 3 discovers first shortcomings of the European Law: The shortcoming substantive scope of the directive 79/7 causes that the Directive does not apply to provisions on survivors' benefits and family benefits. Applying Art. 10 of the Turkish Constitution and International Conventions on the gender (equality) issue shall bridge these gaps of the directive.</p> <p>It is recommended to amend Art. 3 Social Insurance and Universal Health Insurance Law and add definitions. Art. 6 para 1 lists up different groups of individuals who are not deemed to be insurance holders. The constellations covered by the article concern especially women and this may lead to indirect discrimination. Consequently, it is recommended to amend Art. 6 para 1.</p> <p>The Social Insurance and Universal Health Insurance Law should protect efficiently pregnancy and maternity by considering the topic and its effects for instance in Art. 9 (2), 18 or 26. Child care credits, as known in many EU member states and explained in the report, could be a suitable option to improve the pension schemes by amending several Articles and introducing a new provision on this issue.</p>			
Law in force	Proposal for amendments	Chapter of the report	Page
Social Insurance and Universal Health Insurance Law			
Art. 3: 11) Service contract: shall mean the service contract defined in Code of Obligations number 818 dated 22/4/1926 and work contract or service contract defined in the labour legislation,	11) Service contract: shall mean the service contract defined in Code of Obligations number 818 dated 22/4/1926 and work contract or service contract or employment contract defined in the labour legislation, 11a) Home services: shall mean all paid services that are performed in or for a household or households, 11b) Charged worker: shall mean a worker who carries out paid work on the basis of a contract defined under number 11,	Part 3, Chapter 2, I.1	29

	<p>11c) Non-permanent worker: shall mean a worker who works for a definite period for another individual,</p> <p>18a) Actual service term increments: shall mean increments awarded because of disadvantages suffered during the insurance career due to special risks and having the effect to be added to premium days in calculation of pensions and single payments,</p> <p>18b) Nominal service term increments: shall mean increments awarded for days where premiums have not been paid, but which have to be added to premium days in calculation of pensions and single payments,</p> <p>18c) Child care credits: shall mean credits granted for periods of child raising which shall have the same effect as paid premium days,</p>		
<p>Art. 6 para 1: b) Relatives up to third degree, who live together in the same residence and work in the works carried out in the residence where they live, without having anybody else from outside,</p>	<p>First proposal: b) abrogated</p> <p>Second proposal: b) Relatives up to third degree, who live together in the same residence and work in the works carried out in the residence where they live, without having anybody else from outside, and who document that, after deducting the costs of the activity, monthly average of their income from this activities is less than thirty times the lower limit of daily earning subject to premium defined by Law,</p>	<p>Part 3, Chapter 2, I.1.1</p>	<p>29</p>
<p>Art. 6 para 1: c) (Amended: 17/4/2008 - 5754/4th Art.) Individuals who work in home services (excluding charged and permanent workers)</p>	<p>First proposal: c) abrogated</p> <p>Second proposal: Individuals who work in home services as charged and non-permanent workers, provided their works last only up to 30 days within one calendar year,</p>	<p>Part 3, Chapter 2, I.1.3</p>	<p>30</p>
<p>Art. 6 para 1: i) Excluding public authorities, among the individuals who are employed in temporary works on service contract in agricultural works or forestry works and who work independently on his/her own account, the ones who are active in agricultural activities and who document that, after deducting the costs of the activity, monthly average of their income from agricultural activities is less than thirty times the lower</p>	<p>First proposal: 1) abrogated</p> <p>Second proposal: 1) Excluding public authorities, among the individuals who are employed in temporary works only up to 30 days within a calendar year on service contract in agricultural works or forestry works and who work independently on his/her own account, the ones who are active in agricultural</p>	<p>Part 3, Chapter 2, I.1.3</p>	<p>30</p>

limit of daily earning subject to premium defined by Law	activities and who document that, after deducting the costs of the activity, monthly average of their income from agricultural activities is less than thirty times the lower limit of daily earning subject to premium defined by Law		
Art. 6 para 1: k) (Amended: 17/4/2008 - 5754/4th Art.) Among the individuals who work on their own names and accounts and are exempt from income tax and registered to the registry of traders and artisans, the ones who document that, after deducting the costs of the activity, the remaining amount of their monthly activity income is less than thirty times the lower limit of daily earning subject to premium	First proposal: k) abrogated Second proposal: In item (k) shall be deleted the words 'and registered to the registry of traders and artisans'	Part 3, Chapter 2, I.1.3	30
Art. 9 para 2: However, in cases of execution of provisions on diseases or maternity, the insurance status shall be deemed to be lost starting from the tenth day following; a) in cases where the insurance holder is on unpaid leave, participates in strike or the employer announces lockout pursuant to the relevant laws, the date on which such statuses end,	a) in cases where the insurance holder is on unpaid leave awarded after the expiry of maternity leave, participates in strike or the employer announces lockout pursuant to the relevant laws, the date on which such statuses end,	Part 3, Chapter 2, I.3	39
Art. 16 para 3: Nursing benefit applicable by the date of delivery, over the tariff determined by the Board of Directors of the Institution and approved by the Minister, shall be payable from the maternity insurance to the female insurance holder or to the male insurance holder due to his not insured spouse giving birth, and, among the insurance holders under item (a) and (b) of paragraph one of Article 4 of this Law, to the female insurance holder receiving income or pension or to the spouse of male insurance holder receiving income or pension due to own works, for each newborn, provided that the newborn lives.	Nursing benefit applicable by the date of delivery, over the tariff determined by the Board of Directors of the Institution and approved by the Minister, shall be payable from the maternity insurance to the male insurance holder due to his not insured spouse giving birth provided that the newborn lives. In case of a female insurance holder whose husband is also insurance holder, father and mother determine the one who shall be eligible for nursing benefit by presenting a unanimous declaration to the institution. In lack of such a declaration nursing benefit shall be granted to the mother. Among the insurance holders under item (a) and (b) of paragraph one of Article 4 of this Law, the benefit shall be payable to the female insurance holder receiving income or pension or to the spouse of male insurance holder receiving income or pension due to own works, for each newborn, provided that the newborn lives.	Part 3, Chapter 2, II.7	46
Art. 16 para 4: In order to pay nursing benefit to a female insurance holder or to male insurance	In order to pay nursing benefit to a female insurance holder or to a male insurance holder.	Part 3, Chapter 2, II.7	46

holder due to his spouse giving birth.			
Art. 18 para 1: c) (Amended: 17/4/2008 - 5754/11th Art.) In case of maternity of headmen stated in item (a) and (b) of paragraph one of Article 4 and female insurance holders under numbers (1), (2) and (4) of the same item, each day of not working including eight - week periods before and after birth and, in cases of multi birth, adding another two weeks to the said eight weeks before the birth, provided that minimum ninety days short term insurance premium is notified within one year before the birth,	c) In case of maternity of female insurance holders under item (a) of paragraph one of Article 4, of headmen stated in item (b) thereof and female insurance holders under the same item and not-insured wives of self-employed insurance holders working in their business without being employee or business partner of their husbands, each day of not working including eight - week periods before and after birth and, in cases of multi birth, adding another two weeks to the said eight weeks before the birth, provided that minimum ninety days short term insurance premium is notified within one year before the birth,	Part 3, Chapter 2, II.6.3	43
Art. 18 para 1: Provided that rest report is granted by medical doctor or health committees authorized by the Institution;	e) In case of pregnancy each day of unpaid leave awarded before the beginning of maternity leave pursuant to Article 8 of the Implementing Regulation for the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes,	Part 3, Chapter 2, II.6.3	43
Art. 26 para 2 b) (Amended: 17/4/2008 - 5754/14th Art.) be holding insurance for a period of minimum ten years and should have paid totally 1800 days or	In case Art. 40a should be adopted, item (b) of para 2 of Art. 26 should be amended as follows: b) be holding insurance and child care credits for a period of minimum ten years and should have paid totally 1800 days or	Part 3, Chapter 2, III.2.1	50
Art. 28 para 2: a) old-age pension shall be granted provided that the individual is over 58 if the individual is female or over 60 if the individual is male and that minimum 9000 days of invalidity, old-age and survivors' insurance premiums are notified. However, the number of premium days condition shall be applied as 7200 premium days for the insurance holders under item (a) of paragraph one of Article 4.	In case Art. 40a should be adopted, item (a) at issue should be amended as follows: a) old-age pension shall be granted provided that the individual is over 58 if the individual is female or over 60 if the individual is male and that minimum 9000 days of invalidity, old-age and survivors' insurance premiums and child care credits are notified. However, the number of premium days and child care credits days condition shall be applied as 7200 premium days and child care credits days for the insurance holders under item (a) of paragraph one of Article 4.	Part 3, Chapter 2, III.3	52
Art. 28 para 8: (Appended paragraph: 17/4/2008 - 5754/16th Art.) One fourth of the paid premium days after the enactment of this Law of the ones, among the female	After the words '... the ones, among the' shall be deleted the following word 'female'.	Part 3, Chapter 2, III.3	52

insurance holders who request to be put on retirement or old-age pension, who have disabled child to the extent of being in need of permanent care of another person, shall be added to the sum of number of premium payment days and these added periods shall be subtracted from the retirement age limits.			
Art. 29 para 2: Average monthly earning is thirty times the average daily earning, calculated by the sum of insurance holder's earnings subject to premium, found by updating with the update coefficient realized every year, for the years passed from the year of the earning up to the date of requesting pension, divided by the total paid premium days excluding the nominal service period and actual service period increment.	In case Art. 40a should be adopted, para 2 at issue should be amended as follows: Average monthly earning is thirty times the average daily earning, calculated by the sum of insurance holder's earnings subject to premium, found by updating with the update coefficient realized every year, for the years passed from the year of the earning up to the date of requesting pension, divided by the total paid premium days excluding the nominal service period and actual service period increment and periods of child care credits.	Part 3, Chapter 2, III.4.1	54
Art. 29 para 3: Replacement rate shall be applied as 2% for each 360 days of total paid premium days of the insurance holder, passed subject to invalidity, old-age and survivors insurances. Periods less than 360 days shall be considered proportionally in this calculation. However, the replacement rate shall not be over 90%.	In case Art. 40a should be adopted, item (a) at issue should be amended as follows: Replacement rate shall be applied as 2% for each 360 days of total paid premium days of the insurance holder, passed subject to invalidity, old-age and survivors insurances, of child care credits days and actual and nominal service term increment days. Periods less than 360 days shall be considered proportionally in this calculation. However, the replacement rate shall not be over 90%.	Part 3, Chapter 2, III.4.1	54
Art. 34 para 1: b) (Amended: 17/4/2008 - 5754/21st Art.) Among the children, who are not put on income or pension due to not working under this Law, excluding items (a), (b) and (e) of paragraph one of Article 5, or under legislation of a foreign country or due to their own insurance status; 3) the daughters, whatever the ages are, not married, divorced or widow, shall receive 25% each.	First proposal: 3) abrogated Second proposal: Article 108a (Annulment) a) Article 34 paragraph one item (b) number (3) of this Law shall be rendered invalid on December 31, 2021.	Part 3, Chapter 2, III.6.5	66
Art. 37: Paragraph 1: Marriage benefit shall be payable in advance, for once, at the amount of two years of pension or income they receive, upon marriage and request of the daughters, whose income or pensions should be terminated due to marriage. In	First proposal: Paragraph 1: abrogated. Paragraph 2: abrogated. Second proposal: Article 108a (Annulment) b) Article 37 paragraph one and two of this	Part 3, Chapter 2, III.6.6	69

<p>case a right holder who is receiving marriage benefit becomes right holder within two years following the termination date of the pension, no income or pension shall be payable until the end of two-year period and such individuals shall be deemed to be holders of universal health insurance under item (f) of paragraph one of Article 60.</p> <p>Paragraph 2: In case marriage benefit is granted, pensions or incomes of other right holders shall be re-determined in accordance with Article 34, starting from the payment period following the end of the period during which marriage benefit is granted.</p>	<p>Law shall be rendered invalid on December 31, 2021.</p>		
<p>Missing (Child care credits)</p>	<p>Art. 40a – Child care credits* –: (appended) Child care credits are granted for three years after birth if the child has been raised on the territory of Turkey or in a country where the residence is equivalent to a residence in Turkey. Child care credits shall have the same effect as paid premiums. Where child care credits and paid premiums cover the same period both of them are to be taken into account. The right to child care credits shall be granted to the parent who actually raises the child. Where both mother and father provide child care, they determine the one who shall be eligible for the right by presenting a unanimous declaration to the Institution. They can also determine that the period of child care credits shall be divided between them and which period of it shall be assigned to either parent. In lack of such a declaration child care credits shall be granted to the mother.</p> <p>*This proposal is orientated at the German law. Of course, it is for the Turkish legislator to decide which solution shall be favoured. So also the Swedish or Hungarian example presented under Part III Chapter III No 4.1.2. of this report could be taken into consideration or a combination of the best practice examples. Also a totally new concept could be imaginable.</p>	<p>Part 3, Chapter 2, III.4.1.3</p>	<p>59</p>
<p>Missing (Nominal service term increments)</p>	<p>Art. 40b – Nominal service term increments – (appended)</p>	<p>Part 3, Chapter 2,</p>	<p>59</p>

	<p>Nominal service term increments which do not qualify for rights with this Law, but have to be considered in the calculation of pensions or single payments shall be granted for periods of</p> <p>a) maternity leave not yet covered by days of child care credits;</p> <p>b) periods of unpaid leave granted due to pregnancy before the beginning of maternity leave according to labour legislation;</p> <p>c) unpaid leave granted to female workers after the expiry of maternity leave according to labour legislation, if no child care credits have been granted to them for the same period;</p> <p>d) temporary incapacity due to sickness during which statutory temporary incapacity benefits have been paid;</p> <p>e) unemployment during which statutory unemployment benefits have been paid.</p>	III.4.1.3	
<p>Art. 41 para 1: a) (Amended: 17/4/2008 - 5754/67th Art.) unpaid birth or maternity leave terms granted pursuant to Laws and terms requested by female insurance holders under item (b) of paragraph one of Article 4, for twice, but not exceeding two-year period following the date of birth, provided that the concerned individual does not work at workplace on service contract and the child lives,</p>	<p>First proposal: In case Art. 40a should be adopted, Art. 41 para 1 item (a) would become irrelevant. From this results the following proposal: a) abrogated</p> <p>Second proposal: In case Art. 40a should not be adopted, Art. 41 para 1 item (a) should be amended as follows: a) unpaid birth or maternity leave terms granted pursuant to Laws and terms requested by female insurance holders under item (b) of paragraph one of Article 4 and periods of child care provided by men, for twice, but not exceeding two-year period following the date of birth, provided that the concerned individual does not work at workplace on service contract and the child lives,</p>	Part 3, Chapter 2, III.7	70
<p>Part 4 Law on Trade Unions, No. 2821; Law on Collective Agreements, Strikes and Lock-outs, No. 2822</p>			
<p>This part of the report describes comprehensively the legal aspects of positive action measures (Chapter 2.1, pages 4ff.) and Gender Mainstreaming (Chapter 2.2, pages 7ff.). Regarding the internal constitution of trade unions it is of major importance for gender equality that they need to attract and promote women in their own ranks as well, which is currently not the case. However, the paramount importance of trade unions and collective bargaining for promoting gender equality in working life is ascertained in the report.</p>			

The report focuses in addition on the main problem areas concerning trade unions in Turkey: precarious and informal work, discrimination structures in working life and – as said – male-dominated structures of trade unions. It is therefore suggested to amend Art. 2 Trade Union Law in terms of its narrow definition and in terms of its double quota. Furthermore this part lists several examples of actual equality measures trade unions could take to fight discrimination structures in working life as well as suggestions for legal amendments as of Art. 7, 9 and 32 ff. on gender equality measures like minimum standards or ombudspersons. Regarding the increase of female participation in trade unions part 4 suggests new provisions to enlarge composition of the organs of trade unions with women’s committee or representative as well as other measures to relieve women to participate in trade unions. Positive action measures – as described at the beginning of part 4 – are proposed for each of the said problem areas. This part of the report did not primarily focus on single provisions, but instead examine the possibilities of trade unions to contribute to gender equality in a few problem areas, taking in mind opportunities for positive action as well as the implementation of gender mainstreaming. Please see the report for further details.

Law in force	Proposal for amendments	Chapter of the report	Page
Law on Trade Unions, No. 2821			
<p>Art. 2: <i>Worker:</i> Any person working under a contract of employment shall be considered to be a worker. Any person who undertakes to do mainly manual work under a contract for transport, excluding the vehicle owner, or gives his work to a publisher under a publishing contract, on a professional basis, and any person who does professional or manual work in an undertaking by way of participation under an ordinary contract of partnership, on condition that such a contract is open to any other person fulfilling the same conditions, shall also be considered to be a worker within the meaning of this Act. The coverage of any person working under a contract of employment by the Act respecting the Retirement Fund of the Turkish Republic shall not be an obstacle for that person to be considered to be a worker. Art. 20: Any person who is a worker within the meaning of this Act and is over 16 years of age may join a workers' trade union. Persons under 16 years of age may join trade unions with the written consent of their parent or guardian.</p>	<ul style="list-style-type: none"> - Amend definition to include also workers with no formal working contract - Consider positive action measures for informal workers or workers in precarious jobs 	3.2.1	16
<p>Art. 7: The following shall be indicated in the statutes of trade unions or confederations:</p>	<ul style="list-style-type: none"> - Add a commitment to gender equality like consideration of gender equality in the trade union’s activities on all levels 	3.2.2	21

(...)	- Add an instruction to indicate a framework for anti-discrimination and equality measures, and instruments of data collection to facilitate gender mainstreaming, as well as procedures for the dissemination of information		
Art. 9: The mandatory organs of confederations and trade unions and their branches are: the general congress; the management committee; the board of auditors; and the disciplinary board.	Introduce a special ombudsperson or other entity for women who have been discriminated against, harassed or sexually harassed by their superiors or co-workers	3.2.2	21
Art. 9-11; 15-17: Art. 9: The mandatory organs of confederations and trade unions and their branches are: the general congress; the management committee; the board of auditors; and the disciplinary board. (...) Art. 15: The management committee of trade unions and their branches shall be composed of at least three and not more than nine members; the management committee of confederations shall be composed of at least five and not more than 29 members.	- Introduce a specific organ (such as a women's committee) in charge of monitoring, promoting and implementing women's rights, creating and implementing gender equality programs and trainings, and to increase female participation in decision making processes. - Introduce a women's representative on the management committee, the board of auditors and/or the disciplinary board, in charge of representing women's interests in the union; - Introduce an entity to receive and examine discrimination claims against other union Members; - Reserve a certain number of seats in the management committee and the boards for female members.	3.2.3	24
Art. 24 para 4: The fact that a worker who is a member of a workers' union becomes temporarily unemployed or accepts other employment, on condition that such employment is within the branch of activity of the union, shall not affect his membership in the union.	Add a provision which expressly lists the cases of pregnancy, maternity leave or parental leave, or leave of work due to child care obligations.	3.2.3	24
Art. 31 para 5: No worker shall be dismissed on account of his participation in the activities if trade unions or confederations outside his hours of work, or during hours of work with the employer's permission, and no worker shall be subject to discrimination for any reason.	Allot a certain amount of working-time for <i>all</i> union Members in which they can carry out union activities.	3.2.3	24
Art. 32: The activities of trade unions shall be (...)	Add the representation of women (as plaintiff or defendant, or in another capacity) in matters arising out of discrimination or (sexual) harassment claims.	3.2.2	21
Art. 33	Add explicit references to:	3.2.2	21

<p>Trade unions and confederations may carry on the following activities in addition to any other powers they may enjoy under ordinary legislation as bodies with legal corporate status: (...)</p>	<p>a) vocational trainings and other programs meant to increase women's participation in the labour market, women's career development, women's access to jobs and promotions, women's participation in decision-making on all levels of the labour process; and generally raise awareness in favour of gender equality, as well as activities targeting men, particularly covering the issues of shared domestic and child-care obligations; b) offer crèches or other child-care facilities; c) collect relevant data in terms of equal treatment between men and women within an undertaking or a branch of activity; d) provide employees with information about the rights of women.</p>		
<p>Art. 34: A trade union, whose competence to conclude the collective labour agreement is certified, shall appoint shop stewards from among its members at the establishment in the following manner (...) Art. 35: The functions and the duties of shop and chief stewards, on condition that they are limited only to the establishment, shall be: to take notice of workers' requests and the handling of grievances; to promote and maintain co-operation, harmony at work and peaceful relations between workers and employers; to protect the rights and interests of the workers; to assist and supervise the application of working conditions provided for in labour legislation and collective labour agreements.</p>	<p>- Consider a special shop steward, dedicated to further women's equality in an undertaking. - Consider solutions for trade unions not fulfilling the condition of Art. 34</p>	3.2.2	21
<p>Division 2: Prohibited activities (Art. 37-39)</p>	<p>Include direct and indirect discrimination, harassment, and sexual harassment.</p>	3.2.3	24
Law on Collective Agreements, Strikes and Lock-outs, No. 2822			
<p>Art. 2: A collective labour agreement is an agreement concluded between a workers' trade union and an employers' trade union or an employer who is not a member of any union, with the object of regulating the matters with regard to the conclusion, content and termination of contracts of employment. Collective labour agreements may also contain other stipulations as to the mutual</p>	<p>Add a commitment to and a consideration of gender equality measures when negotiating collective agreements, especially regarding crèches or child-care facilities and parental leave arrangements</p>	3.2.2	21

rights and obligations of the parties, application and supervision of the agreement and the means to be resorted for the settlement of disputes.			
<p>Art. 12: The workers' trade union representing at least 10 per cent of the workers engaged in a given branch of activity (excluding the branch of activity covering agriculture, forestry, hunting and fishing) and more than half of the workers employed in the establishment or each of the establishments to be covered by the collective labour agreement shall have power to conclude a collective labour agreement covering the establishment or the establishments in question. In the case of enterprise collective labour agreements, the establishments shall be considered as one whole unit in the calculation of more than half majority.</p>	Reduce significantly or abolish the quota or make exceptions for domestic and home-based workers	3.2.1	16