“THE RIGHT TO RECONCILE WORK AND FAMILY RESPONSIBILITIES”: INTERNATIONAL FRAMEWORK AND A BRIEF OVERVIEW OF THE SITUATION IN TURKEY

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Approval of the Graduate School of Social Sciences

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ABSTRACT

"THE RIGHT TO RECONCILE WORK AND FAMILY RESPONSIBILITIES": INTERNATIONAL FRAMEWORK AND A BRIEF OVERVIEW OF THE SITUATION IN TURKEY

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This thesis analyzes the right to reconcile work and family responsibilities which is recognized as crucial in women's participation in the labor market. When women can not fully enjoy their right to work due to the burden of unequal gender division of labor, they become more vulnerable to poverty and male violence which impede them from developing their basic human capabilities. States should acknowledge that this is a human rights problem which is deriving from women's overburden as primary caregivers. In order to overcome this problem and transform the patriarchal structure of the market and the family; state intervention in the private sphere is required. Two alternative reconciliation models are examined. The first is the equality driven model that encompasses parental leave and childcare facilities, which necessitate positive intervention of the state and more likely to trigger structural change. The other is the flexibility or market driven model which is based on part-time work and homeworking strategies. They target women's participation in the labor market without necessarily leading to any change in the gender division

of labor. The effectiveness of these strategies is analyzed within a feminist jurisprudence method. While the focus is on the international framework, including the EU Member States, the specific case of Turkey is also considered. Given Turkey's socio-economic particularities, childcare largely depends on kinship relations and social policies regulating women's labor market participation are market driven. The data shows that women in Turkey do not equally enjoy their economic and social rights. Therefore, by examining the international framework for right to reconcile work and family responsibilities, it is hoped that a case can be made to call on Turkey to abide by its international obligations to grant this right.

Keywords: feminist jurisprudence, capabilities approach, EU Gender Equality Law, welfare regimes in Europe, reconciling work and family responsibilities, part-time work, childcare services, parental leave, homeworking.

ÖZ

"İŞ VE AİLE YAŞAMINI UYUMLAŞTIRMA HAKKI":
ULUSLARARASI ÇERÇEVE VE TÜRKİYE'DEKİ DURUMA KISA BİR BAKIŞ

Erden, Deniz
Yüksek Lisans, Toplumsal Cinsiyet ve Kadın Çalışmaları Bölümü
Tez Yöneticisi : Prof. Dr. Yakın Ertürk

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Bu çalışma, kadının emek piyasasına katılması, diğer bir deyişle temel bir insan hakkı olan çalışma hakkından yararlanması için çok önemli olduğu fark edilmiş olan iş ve aile yaşamının uyumlaştırılması hakkını analiz etmektedir. Kadınlar eşit olmayan toplumsal cinsiyete dayalı işbölümünün yükü yüzünden çalışma hakkından tam olarak faydalanamadıklarında, onları temel insan kapasitelerini geliştirmekten alıkoyan fakirlik ve şiddete karşı daha savunmasız hale gelmektedirler. Devletler, bunun, kadının bakımdan sorumlu tek kişi olarak ev içinde fazladan sorumluluk yüklenmesinden kaynaklanan bir insan hakları sorunu olduğunu kabul etmelidirler. Bu sorunla mücadele edilebilmesi için pazarın ve ailenin ataerkil yapısında değişim ve özel alana devlet müdahalesi gerekmektedir. Çıkış noktasının ne olduğuna göre iki uyumlaştırma modeli tanıtılmıştır. Önce ebeveyn izni ve çocuk bakım merkezleri ağı ile temsil edilen eşitlikten yola çıkan stratejiler incelenmiştir. Bunlar yapısal değişiklik yaratmakta daha etkilidir ve devletin olumlu müdahalesini gerektirmektedir. Diğer model ise pazardan yola çıkan ve esnekliği hedefleyen, kısmi süreli çalışma ve evde çalışma olarak adlandırılan stratejilerdir. Bunlar çoğunlukla toplumsal cinsiyete dayalı işbölümünü değiştirmeden kadınların emek piyasasına katılımını hedeflemektedirler. Bu stratejilerle ilgili düzenlemelerin etkinliği feminist hukuk teorisinin metotları uygulanarak incelenmiştir. Asıl odak

noktası Avrupa Birliği ülkelerini içeren uluslar arası çerçeve olsa da özel bir örnek olarak Türkiye'deki durumdan da bahsedilmiştir. Türkiye çocuk bakımında akrabalık ilişkilerine dayanmaktadır ve Türkiye'de kadınların emek piyasasına katılımını arttırmayı amaçlayan sosyal politikalar pazarın ihtiyaçlarından yola çıkmaktadır. Türkiye'de tüm veriler kadınların ekonomik ve sosyal haklardan eşit olarak faydalanmadıklarını göstermektedir. Böylece, iş ve aile yaşamını uyumlaştırma hakkına ilişkin yasal çerçeve çizilerek Türkiye'yi iş ve aile yaşamını uyumlaştırma hakkını tanımaya zorlayacak bir açılım umulmaktadır.

Anahtar Kelimeler: feminist hukuk teorisi, kapasite yaklaşımı, AB Toplumsal cinsiyet eşitliği hukuku, Avrupa refah rejimleri, iş ve aile yaşamının bağdaştırılması, kısmi zamanlı çalışma, çocuk bakımı, ebeveyn izni, evde çalışma.

To my mother who ‘chose’ to end her career as a lawyer to take care for me and my brother,

And

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LIST OF ABBREVIATIONS

AKP	Adalet ve Kalkınma Partisi (Justice and Development Party)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEEP	European Centre of Employers and Enterprises providing Public services
EC	European Community
ECJ	European Court of Justice
ETUC	European Trade Union Confederation
EU	European Union
EUCFR	European Union Charter of Fundamental Rights
EUREWM	EU Report on Equality Between Women and Men
EWL	European Women's Lobby
FGM	Female Genital Mutilation
GAD	Gender and Development
GNP	Gross National Product
HR	Human Rights
HÜNEE	Hacettepe Üniversitesi Nüfus Etütleri Enstitüsü (Hacettepe University Population Studies Institute
ILO	International Labor Organization
JDP	Justice and Development Party
KSGM	Kadının Statüsü Genel Müdürlüğü (General Directorate for Women's Status)
LFS	Labor Force Survey
NGO	Non-governmental Organization
NWM	National Women's Machinery
SIS	State Institute of Statistics
SSCPI	Social Services and Child Protection Institution
TÜİK	Türkiye İstatistik Kurumu (Turkish Statistical Institute)
U.S.	United States of America
UK	United Kingdom
UN	United Nations
UNICE	Union of Industries of the European Community
WHR	Women's Human Rights
WID	Women in Developmet
KEIG	Kadın Emeği ve İstihdamı Girişimi
RWFLWR	Reconciliation of Work and Family Life Workgroup Report

CHAPTER 1
INTRODUCTION

> "Quit if you can't manage both! After all, you only make 50 thousand Liras." (From her husband Eyüp to Şimşir)
>
> "Of course breadwinning is man's responsibility; otherwise why call him a man?" (by Hacer who is the sole bread-winner of the family since her husband lost his job)
>
> "The wife fits the home just as a flower fits a vase." (From her husband to Gündüz who has always worked)
>
> (quoted in Bolak, 1995)

1.1. The Research Problem

Two models have informed gender equality policies of European Union (EU) member states with respect to paid work and reproductive responsibilities: 1) market driven strategies which are flexible work arrangements such as homeworking and part-time work, 2) equality driven measures in conjunction with EU equality policies, most importantly parental leave and child-care services. This thesis examines the international normative framework in this regard and assesses the transformative potential of these models. The fundamental argument underlying this study is that flexible working models do not have the capacity to change women's position as the primary provider of reproductive work, they rather serve the need of the labor market while women's double burden continues. On the other hand, measures such as untransferable and compulsory parental leave or state sponsored child-care facilities have the capacity to convert the women-caregiver/ male-breadwinner model into a universal care-giver model (Fraser, 1997). However, such an approach necessitates state intervention, which itself is patriarchal in essence and under the attack of neo-liberal policies today. Therefore, securing women's equality and their equal access to social and economic rights depend on equality policies that target transforming domestic responsibilities of both women and men instead of arrangements that leave women with free time and space to combine work and family responsibilities. This means that reconciling

work and family responsibilities of both women and men requires state intervention. Within this framework, the thesis looks at Turkey as a concrete example and an EU candidate country, and asks the question: To what extent does the legal framework in Turkey complies with equality driven measures that enable parents to reconcile their work and family responsibilities?

Feminist scholarship with respect to the debates on the problem of reconciling work and family responsibilities should start with an examination of gender division of labor since many social scientists and theorists suggest that the main cause of women's subordinated position is their confinement to the private sphere and domestic labor (Lévi-Strauss's, 1971; Ortner, Chodorow; 1978), childcare in particular;[1] while men are confined to public sphere where paid work and politics take place. In other words, the need to reconcile work and family responsibilities is a consequence of gender division of labor and achieving gender equality requires transformation of this division of labor which is embedded in all aspects of life including work, family, state policies, legal theory and practice.

The role of the mode of production and men's struggle for keeping economic power in their hands through women's confinement to the private sphere has been emphasized in feminist theory. Many writers (Tilly and Scott, 1978; Zaretsky, 1976; Oakley, 1976; Davidoff and Hall, 1987) suggest that the rise of capitalism led to the separation of home and work. They blame capitalism as the primary cause of women's oppression and they associate women's confinement to private sphere and reproductive work with the separation of home and work after the rise of capitalism. On the other hand, advocates of the "dual-systems theory" such as Hartmann (1981), Carol Brown (1981), Delphy (1984) and Walby (1986), who put both capitalism and patriarchy in the centre of women's oppression, link women's confinement with the private sphere to patriarchy,[2] in doing so they blame both the family and the market.

[1] Research shows that whether it is because of the technological change, as socialists overemphasize, or because of the change in child-caring patterns (educative role of parents increase while physical care activities decline; Gardiner, 2000), today care-giving work seems to be the most important part of the domestic duties.

[2] Patriarchal relations in the household has pre-dated capitalism, it only led to the development of a new form of patriarchy (Walby, 1990).

State policies concerning both family and the market have been interlinked with each other in many ways. Women's biological capacity to become pregnant and the presupposition that they are automatically responsible for the care of the children because of this capacity (McGlynn, 2001) have been the main determinant of these policies. Both childbearing and childrearing (Smelser; 1959) became a burden that led to the justification of women's exclusion from the labor market as a strategy to subordinate women through the enactment of protective legislations that limit the hours and types of work for children and women in the nineteenth century in the Western world. During 2nd World War, women were employed in all the sectors that were previously dominated by men and they did not easily go back to their homes in the post-war period as was the case after the 1st World War. Upon the demonstration of women's ability to do men's jobs in this period, occupational segregation became a strategy in the labor market to safeguard jobs of male workers from the competition of female workers (Kreimer, 2004). Through occupational segregation women are marginalized from skilled and better-paid jobs. Their employment tends to be associated with work that is compatible with their domestic duties.

There is an increased participation of women within the labor force today; for example, women constitute 58.8 percent[3] of the EU workforce (Eurostat, 2008); however, most women are employed in part-time work.[4] Accordingly, Robinson (1988) suggests that gender segregation may be taking new forms with the evolution of the service based economy, full-time male jobs on the one hand and part-time female jobs on the other. In the EU, it has been acknowledged that women's confinement to domestic duties is an impediment to economic growth. For example, individual women's decisions to have a paid job in an environment where men, employers and the state do not share family responsibilities, declining birth rates.[5] In such environment, flexible working arrangements came into being.

[3] EU, 27 countries, women aged 15-64 (Eurostat, 2008).

[4] Among 27 EU countries 31,4 % of women are employed in part-time works compared to 7,8 of men according to 2007 data of the Eurostat (EUREWM).

[5] In a 2005 Green Paper, the European Commission says 'If Europe is to reverse this demographic decline, families must be further encouraged by public policies that allow women and men to reconcile family life and work' (eurofound, 2007).

However, flexible work perpetuates gender division of labor and if EU aims at enabling women to use their full human capabilities,[6] then it is necessary that every possible measure be taken to create multiple opportunities and choices for women. This is the only possible way that women escape ending up in lower status flexible types of work such as part-time work and home working. Having a job and an independent income becomes a real yearning for women as they become more aware of the importance of economic independence.[7]

In this regard, state responsibility and capacity for creating the conditions that would enable women to use their full human capabilities and achieve gender equality is crucial. Briar (1997) poses two important questions at this point. First is a major question of whether it is realistic to expect government policies to improve the financial situation and status of working women while in many countries state policies reaffirm women as a marginal and secondary labor force and primarily responsible for reproductive work. Second question is whether a woman-friendly state is a theoretical possibility and under what circumstances this might occur in practice (Briar, 1997). In order to analyze the second question posed by Briar (1997), particular attention is paid to the social democratic welfare regime, which claims to be woman-friendly through affirmative action of the state.

First of all, the answer of a state to the question "who has the responsibility of care-giving?" needs to be examined since the answer to this question determines the welfare regime of a given state which also determines the measures to be taken through state policy. Crompton, Lewis, and Lyonette (2007) divide Welfare regimes in Europe into five, according to their care giving model: liberal, corporatist, social-democratic, mediterranean, and post-communist regimes. Thus, this study examines the gender equality policies of several welfare regimes in Europe and in Turkey, through child-care policy instruments and legislations related with childcare

[6] Nussbaum(2002) lists Central Human Functional Capabilities for each person, these are: life, bodily health, bodily integrity, senses, imagination and thought, emotions, practical reason, affiliation, other species, play, and control over one's environment.

[7] Zeliha who was divorced from her husband due to domestic violence tells her conditions for a new marriage: "First of all I want to work; secondly, I am against any form of abuse and torture at home" (Kardam, 2005; page: 98).

regimes.[8] Turkey is classified within the mediterranean regime since it perceives caregiving work within the responsibility of individual families to be provided through kinship relations, this means to be performed by female members of the family (Gough, 1996).

According to Nancy Fraser (1997), in order to promote gender equality, the ideal model that should be encouraged by state policies is the universal caregiver model in which men and women are both expected and enabled to participate in paid and unpaid activities. This model requires a complete restructuring of the entire gender order where parental leave given both to mother and father is legislated on an untransferable basis to reduce the double burden women suffer and to motivate them into paid employment. Availability of adequate and affordable childcare services for both the mother and the father is also crucial in this model. However, in the neo-liberal era, states that aim to reduce public expenditures tend to place childcare responsibility either in the private sector or within the family.

On the other hand, some work patterns enable women to reconcile work and family responsibilities through part-time work and homeworking. Both of these patterns, which are defined as feminine employment patterns, constitute a threat to an egalitarian labor market. These feminine patterns result in women's alienation and facilitate the exploitation of women's labor within the labor market; they also constitute a trap for women by offering a way of participation in the workforce without giving up domestic duties. This is a trap because statistics show that it is mostly women who are part-time workers and homeworkers with domestic duties not men. This is a trap because it means poverty for women who work part-time or in the home as a sole parent or primary bread-winner. This is a trap for women because from promotion to retirement it restricts women's access to both public and private sector benefits. States are obligated to take adequate measures in order to ensure women's economic and social rights such as right to work, right to social security, and right to an adequate level of living which are crucial human rights for women to realize their full human capabilities (Nussbaum, 2002). State intervention in child-care and policies which encourage men to contribute to child-care such as

[8] Childcare regimes in Europe are classified by Letablier and Jönsson (2005) into five which are: The Nordic Childcare Regime, Childcare as a Family Policy Issue, Childcare as a Private Responsibility, Childcare as a Mother's Responsibility, and The Mediterranean Childcare Regime.

parental leave is the most effective way in targeting gender equality in the labor market.[9]

It is quite common in liberal states for governments to use economic constraints as an excuse for not financing affirmative action to promote gender equality. However, international law holds states responsible for the well-being of all their citizens and this responsibility necessitates a wide range of measures to be taken from legislative reform to public services. Today, women are enshrined with fundamental rights which include economic and social rights under several universally recognized human rights documents. Human rights standards draw the framework of responsibilities of states since it is acknowledged that complying with international obligations require positive responsibility of the state. It should be recognized that women's enjoyment of their human rights as a whole in equal partnership with men is dependent on their access to economic and social rights. For example, when a woman wishes to exercise her right to end an unwanted marriage, provision of a right to divorce in the national legislation is not enough, she needs an independent income, which means to exercise her right to work and to have property. On this account, state has to take measures to facilitate women's access to a sustainable livelihood. These measures may include providing childcare services, vocational training, credit, secured flexible working arrangements (flexicurity) etc.

On the other hand, it has been argued that the liberal state tradition which has a major effect on western law and concept of rights, is based on the principle on non-regulation in the private sphere to observe the right to privacy. This is called as the public-private dichotomy which is the primary argument of feminist jurisprudence and used to explain absence of law in motivating women's rights and gender equality. Due to the public-private dichotomy in legal theory,[10] when states are reluctant to intervene in the labor market and family relations in a

[9] In many countries some mothers would prefer to work longer hours if appropriate child care was available (Bryson, 1992).

[10].Principle of non-intervention is a myth, because the state is reluctant to intervene only when individual rights within the family are concerned. Whereas states have always regulated the family in terms of divorce, inheritance, custody, and taxation laws in order to perpetuate the male privileges (Ertürk, 2008). For example, article 159 of the previous Turkish Civil Code privileged patriarchy by granting the husband with the right to decide his wife's participation in the labor market. This article was altered by the Constitutional Court as being contrary to Turkey's obligation under international human rights law such as CEDAW.

transformative way, any measure taken to cope with the problem of reconciling work and family responsibilities fail and this failure results in women's dependence on a male-breadwinner, confinement to the domestic sphere or overburdening because of both paid and unpaid work without any time for leisure or self-interests.

The legal theory produced to reduce and eliminate these problems of women in employment is highly related with the concept of equality which by addressing inequalities within the labor market, is a step forward from protective legislation to equal pay and from equal treatment to affirmative action.

Universalism and neutrality, which are general terms of legal theory and underlie the equality approach of law, has been criticized by feminist legal theorists that the notion of abstract universality made maleness the norm of what is human in the name of neutrality. Abstract universality is ideology (Gould, 1993) and law legitimizes sex discrimination through the articulation of this ideology that justifies differential treatment on the basis of perceived differences between men and women (Taub & Schneider, 1993). This is an Aristotelian approach of equality which defines it as treating like persons like and unlike persons unlike. Some of the feminist legal theorists call for glorification of women's differences (Scales, 1993), some who are the proponents of equal treatment argue that any form of special protection even in the name of glorification can divide women- from one another, as well as from men (Olsen, 1993). However, women's childbearing capacity constitutes a concrete difference from men, thus Kay (1993) argues that special treatment is justifiable only when pregnancy is concerned. These discussions are inevitable as long as maleness is taken as the standard of all aspects of life. All equality principles target women to conform more to this maleness instead of transforming male life patterns and privileges. As a result, women's marginalization and subordination in the labor market continues.

Therefore, special treatment demands of feminists lead to enactment of protective legislations with a paternalistic[11] voice which both locate women to a non-worker status and make them more costly than their male counterparts for

[11] Paternalism refers to the interference of a state or an individual on behalf of another person, regardless of their will, and justified on the ground that it is for the good of the person concerned. (Stanford Encyclopedia of Philosophy, 2005).

employers. When reconciling work and family responsibilities are taken merely as measures of equality or non-discrimination, policies and courts may easily perpetuate the idea that women's priority is the home and childcare and be subject to protection in order to perform these duties easily even though this is contrary to formal equality principle. Despite the shortcomings of equality principles, the most powerful and effective instrument for the struggle against social injustices is still the rule of law and the language of universal human rights.[12]

However, affirmative action for gender equality has not been adopted by many EU member states. The core reason for this resistance is the patriarchal nature of the state that does not consider women's problems as state responsibility but a result of individual choices. On this account, this study argues that reconciling work and family responsibilities should be taken as a fundamental right. Granting right to reconcile work and family responsibilities is necessary in order to ensure that women exercise all of the human rights granted in human rights instruments. Furthermore, when reconciliation is taken as a fundamental right, states become responsible for taking adequate measures in order to transform the structure of both work and family, namely gender division of labor,. However, right to reconcile work and family responsibilities are not granted or implemented by states such as the right to live; since the former takes place within economic and social rights, their implementation is perceived to be conditional to the availability of economic resources and priorities of the states, and also they are subject to less powerful protection of law. However, all human rights should be implemented and protected as a whole since deficiency of a specific fundamental right always leads to deficiencies in enjoyment of other rights.

Genuinely, reconciliation of working life and family obligations and acceptance of men's and women's responsibilities to be equal concerning family obligations are important standards of recent years. Rights, which aim at reconciling work and family responsibilities, have been mentioned in several conventions on fundamental rights and policy documents: Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Article 11), International

[12] According to Olsen (1993) law is a social practice and some feminist gains have been and will continue to be achieved in the legal arena, however, broader reform can occur only in the context of broader economic, social and cultural change.

Labor Organization (ILO) Conventions such as The Workers with Family Responsibilities Convention (No.156) and Workers with Family Responsibilities Recommendation (No.165), revised Maternity Protection Convention (No.191), revised and adopted in 2000, the Home Work Convention (No.177) and the Part-time Work Convention (No.175), European Union Charter of Fundamental Rights (EUCFR) (Art. 33), Revised European Social Charter (Art. 27) regulate reconciliation of work and family responsibilities as a fundamental right. This shows that "right to reconcile work and family life"[13] is recognized at the global and regional levels namely at the United Nations (UN) and EU levels. These provide also provide a framework to pressurize Turkey to comply with this right.

Turkey is obliged to take measures in order to grant and enable the enjoyment of these reconciliation rights under the Article 90/5 of the Turkish Constitution since they are granted within international treaties on fundamental rights ratified by Turkey and due to the conditionality principle of the Copenhagen Criteria which binds Turkey as a candidate State for EU membership (Kardam, 2005). However, EU puts priority to gender equality principles within the labor market, since its main orientation is economic integration. This approach of EU is criticized heavily within feminist theory (Walby, 2004). Moreover, instead of Treaties, EU gender equality policies are mostly legislated by "soft law instruments"[14] including Council directives, Recommendations, Green Papers etc. Turkey's integration to EU law necessitates legal reform in line with *acquis communitaire,* including soft law and progress reports are the instruments to push candidate states to adopt their national law with the EU acquis. Despite all the effort for achieving gender equality, obviously EU is not a feminist entity and gender inequality continues also within the EU member states.[15] Most of the EU States, including Turkey still perceive

[13] EU Resolution On The Balanced Participation Of Women And Men In Family And Working Life (2000); "Article 5: Both men and women, without discrimination on the grounds of sex, have a right to reconcile family and working life."

[14] "Soft law" is a very general term used to refer to a variety of processes with one commonality which is that while all have normative content they are not formally binding (Trubek & Cottrell& Nance; 2005).

[15] Cadman Decision of the European Court of Justice, which legitimates to pay women workers less than their male counterparts due to their reduced working hours deriving from mandatory breaks in work for pregnancy and childcare, shows that gender-bias as a patriarchal phenomenon continues within even this court which is the major interpreter of the acquis communitaire.

reconciliation of work and family responsibilities as either a women's problem or a problem to be solved by women, in order to avoid both cultural change and public expenditure.

In Turkey, the Constitution, the Labor Code 4857 and the rest of the labor legislation have a paternalistic and exclusionary stance against working women. They locate women's work in a secondary and marginal non-worker status which is justified on grounds of women's reproductive capacity and mothering role. The legal ground of enacting Labor Code 4857 was declared by the Government as harmonizing Turkish labor law with international regulations such as EU acquis, ILO Conventions and other human rights documents. This code also offers flexible working models and gender equality measures as a consequence of the global economic and social agenda[16] and the EU integration process. However, despite the efforts to secure part-time work and homeworking and prohibit dismissals on grounds of pregnancy, this code is not adequate to increase the amount and position of women in the labor market, because:

a. It excludes agricultural work and the informal sector.

b. It does not regulate recruitment processes while prohibiting dismissals on grounds of sex or pregnancy.

c. It provides maternity leave but does not regulate parental leave or childcare services (crèche and daycare measures) which reflect the perception that only women are responsible for childcare.

Legal Draft of Parental Leave was prepared by the General Directorate for Women's Status (KSGM) in accordance with the EU acquis; however it still waits to be brought to Turkish Parliament's agenda. Moreover, two new legislation packages, employment package and Social Security Reform, passed from the parliament and legislated recently within a neo-classical economy concept which predicts a decline in public costs by cutting social services and creating a business friendly model.[17] Despite affirmative changes in achieving gender equality

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[16] The aim is to increase employment and the competitive power of the national market.

[17] The major attack against women's employment is the amendment in the article 88 of the Labor Code 4857 which previously regulated the obligation of employers who employ 150 and more women workers to establish child-care facilities within the establishment. According to the amendment in this article, employers are permitted now to purchase the child-care service. This

especially in the last decade, women's confinement to family and child-care seems to be more deep-rooted in Turkish society and change comes very slow.

1.2. Theoretical Orientation of the Thesis

Legal scholars first began in the early 1970s generating a body of what has come to be called feminist legal theory or feminist jurisprudence which is one of the most important movements in legal scholarship today. Actually, feminist voices on legal reform existed centuries before the "first wave"[18] of organized feminism. For example, in the United States (US) it occurred in the mid- nineteenth century when feminists united to fight for the vote, for married women's property acts, for custody of their children, and for other legal rights. Feminist jurisprudence was born as a result of the second wave of American feminism which is characterized by a reemergence of interest in the legal rights of women during the late 1960s and early 1970s. Another factor associated with the birth of feminist jurisprudence is the large numbers of women who began entering law schools in the late 1960s. The term "feminist jurisprudence", which brings women's perspective to legal criticism, was first consciously applied to this legal theory in the early 1980s (Weisberg, 1993). As Catherine A. MacKinnon defines it, "feminist jurisprudence is an examination of the relationship between law and society from the point of view of women" (MacKinnon, 2005).

Despite differences in schools of thought, feminist legal theorists are united in their basic belief that society is patriarchal in that it is shaped by and dominated by men. Feminist Jurisprudence, then, provides an analysis and critique of women's position in patriarchal society and examines the nature and extent of women's subordination (MacKinnon, 1993).

Feminist legal theorists are engaged with how law maintains subordination of women and the potential of law as a tool for change (Schneider, 1998). In the western culture, women were perceived to belong to the domestic sphere, where law did not apply. In the feminist thought women's experiences are important because

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article of Labor Code 4857 has been criticized by NGOs in Turkey in that it has created a more inferior position for female workers with child-care responsibilities than before.

[18] The enfranchisement of women in 1920 marks the end of this wave.

"personal is political". Thus, feminist jurisprudence criticizes absence of law in the private sphere in particular and domination of patriarchy on legal rules in general through women's experiences. Feminist jurisprudence also has a focus upon "the ways law legitimates, maintains, and serves the distribution and retention of power in society" (Wishik, 1993). Enacting and implementation processes of legal rules are indicated from the point of view of women and through women's experiences in this study while seeking for solutions to make them more woman-friendly. Thus, this thesis is based on feminist legal theory, namely feminist jurisprudence.[19]

1.3. The Research Method of the Thesis

The research method of this study derives from feminist methodology which is distinctive to the extent that it is shaped by feminist theory, politics and ethics and grounded in women's experience (Ramazanoğlu & Holland, 2002). This study mainly discusses a women's human rights problem which derives from the uneven distribution of paid work and domestic duties between women and men within patriarchal gender relations. Thus, this study leaves state policy and law at the centre of its analyses by using the methods of feminist jurisprudence.

According to West (1988), feminist jurisprudence has two distinct projects. The first project is the unmasking and critiquing of the patriarchy behind purportedly ungendered law and theory; the second might be called as reconstructive jurisprudence regarding the motivation behind feminist law reforms of the last two decades. This study aims at both unveiling the patriarchal bias in jurisprudence arising from women's different positioning within the labor market as being mothers and carers; and advocating for feminist law reforms in Turkey through an examination of respective legal instruments in the international level, comparing and criticizing the national legislation.

[19] Although I acknowledge their contributions of Marxist Feminists to feminist theory, especially in the conceptual level of women's work and employment, I do not follow their basic thesis in this study since it overemphasizes the role of capitalism in women's inferior position both in the society and labor market. Yet, it must be noted that socialist feminist believe that change must target childbearing and childrearing and concur that sexual-division of labor must be eliminated (Weisberg,1996). In this respect, it is possible to locate this study close to socialist feminist accounts. I do not adopt these theories as a whole since my solution offers in this study are mostly derive from internationally recognized and legislated offers at the state level despite several problems in implementing them.

Similarly, Wishik (1993) points out that legal scholarship about "women and law" has followed the phases seen in feminist scholarship in general. It has included:

1. Compensatory scholarship, the "add-women-and-stir" approach to correcting what male scholars had left out;

2. Criticism of the law and of inquiries about law and society because they exclude women and use patriarchally biased assumptions to further the oppression of women;

3. Collection of information about women's experiences of law from the perspective of women;

4. Conceptualization of a feminist method with which to understand and examine law.

Therefore, this study firstly brings with the feminist accounts in theory related with gender division of labor, difficulties in women's participation in the labor market and state policies which do not consider unequal power relations within the family in order to unmask the patriarchal relation both within the labor market and the family which is not considered in the mainstream theory. Secondly, it criticizes the male norm in all aspects of life including labor market, family and the legislations regulating to both. Thirdly, it examines women's experiences in Europe and Turkey arising from problems related with reconciling work and family lives. Finally, it adopts the method of reconstructive jurisprudence by suggesting legal solutions in order to transform the patriarchal gender relations within both the family and the labor market through using a human rights discourse on reconciling both.

The research procedure of this study is based on an attentive literature review, including both feminist and mainstream materials, as well as official data collected by states and international organizations. Moreover, this study highlights different types of experiences of women. In order to measure the adequacy of reconciling strategies, this study compares the welfare regimes in Europe, including in Turkey through the state policies on childcare, legislation promoting gender equality and statistics which show women's and men's participation in paid and unpaid work or leave arrangements in diverse ways. The grounds of policy measures, legal instruments and court decisions are examined from a feminist legal stance in order

to interpret the attitude of the public authorities to the problem of reconciling work and family responsibilities both at the UN and EU levels as well as in Turkey.

The limitations of this study mostly derive from lack of adequate research and publications related to the subject of this study as well as feminist legal research. Therefore, this thesis needs to be read in view of the following constraints:

1. Lack of adequate published or unpublished feminist researches focusing on work-family conflict in Turkey. Most of the unpublished graduate theses are from Labor Economics departments of universities and they aim at maximizing the benefit of the employers by providing best fit of employees to work.
2. Limitations of legal feminist scholarship in Turkey since most of the female legal scholars do not identify themselves as feminist even when they write about women's rights.
3. Western bias in the literature on women's work and employment. Thus the data, which they use in conceptualizing women's problems in this area, is not entirely applicable to the case of Turkey in all aspects. The Turkish experience has particularities as it incorporates Islamic and secular, modern and traditional, and democratic and authoritarian tendencies that shape the status of women (Ertürk, 2006; page:79). Therefore, on the one hand, because of its Islamic, traditional and authoritarian character and delay in industrialization, Turkey differs from Western experiences of patriarchy and capitalism. On the other hand, the case of Turkey shows parallel patterns to that of the Western experience because its modernization movement began during the latter period of the Ottoman Empire and has continued with the formation of the Republic and its more recent EU candidacy. Therefore, while mindful of Turkey's distinctness, I study it within a Western framework.
4. Inconsistencies in data in Turkey due to both conceptual problems as well as data collection in statistical methods. For example, there is limited information about the situation of women who work in the informal sector and are consequently considered to be housewives in labor force statistics (Özbay, 1995). Wage-work is perceived by women in Turkey mainly as the preoccupation of "male bread-winner" (Bolak, 1995) and also since 1950s non-participation in the labor market has become an indicator of higher status among women in Turkey (Özbay, 1995). Most women are reluctant to declare that they work and answer questions concerning their status as housewives. Also, women in Turkey constitute high proportions of

the informal sector mostly as homeworkers (Ecevit, 1995) and it is not possible to have statistics that show exact numbers of this unregistered and insecure work of women in the informal sector. As a result, despite their limitations, this study has relied on formal statistics.

Despite the above-mentioned limitations, I believe that this research is important in terms of the links it establishes between diverse focus points, such as reconciling work and family lives, equality policies, international regulations and legal reform, and its orientation to methods of feminist jurisprudence. I hope this study will motivate further research on the subject of how work and family life can best be reconciled to expand women's options beyond patriarchal norms.

1.4. The Structure of the Thesis

This thesis is organized in to six chapters.

Chapter 2 introduces the main concepts of the study with a feminist approach in order to prevent any confusion in their use during the study.

Chapter 3 establishes the relation between women's work whether paid or unpaid and the childcare responsibility. Patriarchal approaches to women's employment and reconciliation strategies driven by both the state and the market are also introduced.

Chapter 4 presents a critical review of feminist theory concerning reconciliation of work and family responsibilities in terms of labor market, state policies and law as patriarchal institutions. Welfare regimes in Europe, including in Turkey and EU equality policies, both related with childcare are analyzed through legislation and statistical data. By doing so, in this chapter I provide a framework of the reconciliation policies and rights. I also discuss in this chapter solution of the reconciliation problem in feminist theory. Also in this chapter, welfare and childcare regimes which Europe and in Turkey are introduced.

In Chapter 5, global and regional human rights regimes are taken into account within the limits of the subject matter of the study: right to reconcile work and family lives. This problem is discussed within human rights context and instruments of international and regional organizations which Turkey is obliged to harmonize its national law with such as, EU at the regional level and UN at the international level.

Chapter 6 aims at drawing a framework to reshape the state policy of Turkey on work and family which takes women as dependents and primary caregivers, by considering right to reconcile work and family as a specific fundamental human right and by emphasizing Turkey's responsibility to grant this right to its citizens. In this chapter, I discuss the compatibility of existing and prospective legislations in Turkey with international law and *acquis communitaire*, and I also criticize these regulations due to their inadequacy to transform the structure of both the family and the labor market. Turkey's obligation, which arise from the international law and Copenhagen Criteria, to take measures in order to ensure reconciliation of work and family responsibilities is taken as a basis to these discussions and criticism.

Chapter 7 includes conclusions of the thesis.

CHAPTER 2
CONCEPTUAL UNDERPINNINGS OF THE THESIS

2.1. Gender division of labor

The basic distinction in the feminist theory is the difference between sex and gender. Sex is what is ascribed by biology, anatomy, hormones and physiology, while gender is constructed through psychological, cultural and social means. Gender is achieved within the context of the division of labor, formation of gender identities and the social subordination of women by men (West and Zimmerman, 1991). Gender is constructed because it is established within a patriarchal system which is hierarchical and entails unequal relations between women and men. Walby states: *"I shall define patriarchy as a system of social structures and practices, in which men dominate, oppress and exploit women."* (Walby, 1990)

It is crucial for this study to distinguish gender from sex to distort Freudian notion that "anatomy is destiny" (Lorber, 1994). Seeking for a just world where people are not subordinated to each other, it is vital to take each role attributed to men and women as a gender role, namely a socially constructed division of labor in order to motivate change in the structure of the society as a whole. According to Kay (1985), the only specialty which distinguishes women from men is women's biologic reproductive ability, which is a temporarily relevant difference deserves consideration only when a pregnancy comes into being. However, the biological fact that only women have the capacity to become pregnant has been used historically to define women as different from men along social, psychological and emotional dimensions. Those default differences have been used to justify the legal, political and economic exclusion of women from the public world which is dominated by men (Kay, 1985). Thus, reproductive capacity of women has been treated as an evidence for women to be the primary caregiver, which have been defined as women's by-nature role and is enriched with altruistic approaches to motherhood. This idealized frame of "woman nature" has been drawn with emotionality, irrationality and incapacity for the requirements of men's public sphere. Moreover,

it is difficult to discover how gender is constructed within the society since we take it for granted natural, biological state. Such a view strengthens the idea that differences between women and men are self-evident and inevitable, i.e. they would occur whether there is the effect of social institutions or not.

In this manner, the social order reflecting these so-called "natural differences" becomes a powerful reinforcer and legitimator of hierarchical arrangements. Actually claiming that differences of females and males procreatively come from physiology is the legitimizing tool of gendering through Western society's values. Haraway (1989) suggests that "for humans, the social is the natural" which emphasizes the relation of human beings with nature the best. The change of naturally given biological specifities requires a million-year evolution which is to happen by accident. In this sense, changeability of socially constructed homemaker/ caregiver role of women rather than natural specialties such as childbearing capacity are what I prefer to emphasize since change in the gender roles would be motivated through societal acknowledgement which is possible to eventuate by affirmative manipulation.

Aristotle emphasized the vital point that destiny was determined by one's place in the social order contrary to Freud's claim that anatomy is destiny (Lorber, 1994). Cockburn brings the social process through which anatomy determines the cultural destiny[20]:

> "Females are born a little smaller than males. This difference is exaggerated by upbringing, so that women grow into adults who are less physically strong and competent than they could be. They are then excluded from a range of manual occupations and, by extension from the control of technology. The effect spills over into everyday life; ultimately women have become dependent on men to change the wheel of a car, reglaze a broken window or replace a smashed roof slate. Worse, women are physically harassed and violated by men: women are first rendered relatively weak; the weakness is transformed to vulnerability; and vulnerability opens the way to intimidation and exploitation." (Cockburn, 1983, 204)

Once women are subordinated to men within the society and femaleness is devaluated, maleness becomes the universal norm of being human. Walby (1990) also emphasizes the relative importance of the labor market as against the family in

[20] "The paradox of human nature is that it is always a manifestation of cultural meanings, social relationships and power politics; "not biology, but culture, becomes destiny" (J. Butler, 1990)

shaping women's employment patterns. She demonstrates that women's own expressed beliefs in relation with the reasons of their over-concentrated responsibility for domestic duties show the significance of cultural values. Then it is vital that, one who aims at offering a change in the distribution of paid and unpaid work between women and men should firstly distort strict boundaries between genders, the attributed roles and responsibilities to each and the valuation processes of them[21]. Beginning to do so, I take Garber's conclusion as a basis to this study that genders are not attached to a biological substratum so that socially constructed gender boundaries are breachable (Garber, 1992).

We live in a hierarchically organized society including gender hierarchy where women despite their class position have a common subordinate position. According to Hartmann (1990), roots of women's present inferior social status lies in the gender division of labor.

Lorber (1994) defines gendered division of labor as follows:

> "…the assignment of productive and domestic works to members of different gender statuses. The work assigned to those of different gender statuses strengthens the society's evaluation of those statuses- the higher the status, the more prestigious and valued the work and the greater its rewards." (Lorber, 1994, p.30)

Several reasons have been suggested for gender division of labor in terms of biology, psychology or mode of production as will be indicated below. However, almost all of these suggestions intersect in an event which is to be told as the creation of separate spheres for each sex. Thus, somehow in the history we know that the worlds of women and men got separated and a fundamental division of labor between women and men was installed according to this separation. Through this doctrine of separate spheres, men were confined to public sphere which is the world of commerce, paid work and politics; women were confined to private sphere of home where unpaid reproductive work is performed (Kreimer, 2004). Today, deep rooted prejudices are still in effect which justify women's compatibility for care oriented reproductive work and men's compatibility for leading positions and for jobs requiring physical strength and technical knowledge. These assumptions

[21] This will for distortion does not refer to seek for an androgynous society but for a just world where biology does not determine the social status and boundaries of its members.

reshape the gender division in work tasks and organizational positions (Gonäs and Karlsson, 2006).

Most writings on gender division of labor further seek to understand the roots of this division which based on the separation of public and private spheres and confinement of each sex to one. According to the writers' point of view, the answer to the starting point of this division differs.

In her article on job-segregation by sex, Hartmann (1990) presents anthropologic studies and historical evidences to prove that the division was not always a hierarchical one. She suggests three anthropologic schools of thought namely; universalists, feminist revisionists and variationists. The universalist school is mostly based on Lévi-Strauss's theory which suggests that culture begins with the exchange of women by men to cement bonds between the families-thereby creating the *society*. According to Lévi-Strauss, division of labor between sexes is the source of the reciprocal state of dependency between sexes. He concludes with suggesting division of labor between sexes is a hierarchical one because it is men who exchange women and women who are exchanged (Hartmann, 1990). Hartmann also introduces Nancy Chodorow, Rosaldo and Ortner as members of Universalist school. Ortner emphasizes inferiority of nature to culture and finds the reason to devaluation of women's jobs in women's orientation to nature; Rosaldo also emphasizes the public-private split. Nancy Chodorow suggests that patriarchy's universality derives from women's universal mothering role and takes women's mothering role as a basis to women's confinement to domestic sphere (Hartmann, 1990). Regrettably, this conceptualization fails to explain men's role as main beneficiaries in the creation and also perpetuation of women's subordination via patriarchy.

The other two anthropological schools reject the universality of gender division of labor. Feminist revisionist school, which is to be culturally relativist, argues that gender division of labor would not be male supremacist from the beginning, there would be a separate but equal division of labor between sexes. They put the bias of the observers in the centre which makes comparisons impossible and suggest that it is not possible to know if it was equal somehow in the history. On the other hand, variationist school seeks to compare societies in order to isolate variable that coincide with greater or lesser autonomy of women (Hartmann, 1990). I think the

most effective challenge to the universality and so-called by-nature structure of gender division of labor comes from the findings of this school of thought. For example, Draper's[22] findings based on her research on the !Kung which is a hunting and gathering people in South-west Africa (Namibia) brings strong evidences to reject universality of gender division of labor and to find out how an egalitarian division became to be an oppressive one[23]. The !Kung experienced some change in their social structure with beginning of some !Kung to settle villages where men deal with herding and women agriculture. Agricultural work started to take more time of women than gathering had taken and this made women to become closer to home. On the other hand men had the chance to keep their interconnectedness with the outside world and to have access to politics, wage work and advanced knowledge. With the effects of the Western world, women's and men's worlds get separated over the time and the public sphere of men has begun to worth more than women's private sphere (Hartmann, 1990). Such like Ester Boserup[24] and Rwoy Leavitt[25] emphasized the role of Western culture came with colonial on the perceptions of gender division of labor in third world countries. Leavitt gives examples from Africa and Southeast Asia where women have a great economic activity and control over their lives (Hartmann, 1990). Thereby, from this kind of cultural variation feminists argue that the gendered division of labor is a social invention that might be changed rather than natural or necessary forms of life (DeVault, 1991).

Apart from reviewed anthropologic studies, there is a range of studies suggesting a historical overview of separate spheres and gender division of labor which emphasize the importance of economic power, class and mode of production. From the Marxist point of view, Engels (1940) considers the basis of women's oppression was to be found in the family. Engels suggests that the class which

[22] See also, Patricia Draper, "!Kung Women: Contrasts in Sexual Egalitarianism in Foraging and Sedentary Contexts" in Reiter, Toward an Anthropology of Women

[23] Women of the !Kung were supplying 60-80 per cent of the community's food and had control over its distribution, hunting men and gathering women were absent for equal terms from the camp which shows women were not dependent on men for protection, there was a flexible division of labor between the sexes, there was no physical aggression, living groups were small-sized offering a flexible membership, there was a public settlement arrangement (Hartmann, 1990).

[24] See, Women in Economic Development, London: Allen &Unwin, 1970

[25] See, "Women in other Cultures"

controlled the surpluses sought to impose sexual monogamy on their wives in order to ensure that the heirs were their own biological sons (Hartmann, 1990). Here, Engels puts private property in the centre of power politics, even though it does not explain why men preferred their biological heirs to pass their property. However, it is not certain whether such an event ever occurred in the history or not.

When the known history of the Western world is examined, formation of the state brings the end of tribal society and feudal society begins. Privatization of family life and men's power strengthens within the family with the institutional support of church and the state in this feudal society (Hartmann, 1990). However, the most important impact on gender division of labor is made by the Industrial Revolution. In this period, farmers who do not own their own land were employed in the factories with all of the family members including women and small children. Thus, the productive work, which has been done within the household before industrialization, has moved to the public sphere.

Alice Clark (1963) argues that with the separation of work from the home men became less dependent on women for industrial production, while women became more dependent on men economically. Men increased their control over technology, production and marketing as they excluded women from industry, education and political organization (Hartmann, 1990). Through this suggestion, Walby (1990b) suggests that writers are divided into two groups according to where they locate capitalism's role in gender division of labor. Tilly and Scott(1978), Zaretsky(1976), Oakley(1976), Davidoff and Hall(1987) have argued that with women's confinement to domestic sphere, capitalism led to the separation of home and work and created the role of housewife. On the other hand; there were Middleton (1981) and Hartmann (1979) including Walby herself, who argued that there was already a marked gender division of labor long before capitalism and so, it did not lead to such separation. Then, Walby points out that the rise of capitalism was a factor in the development of a new form of patriarchy but not in changing its basic structures (Walby, 1990b).

Another of the Marxist accounts is the so-called family wage discussion. Humphries (1977) argues that women's situation as full-time homemakers which also leads to their alienation within the paid employment constitutes a victory for the working class by enabling working-class families to raise their standard of living at the opposite of the capitalists' demand. However, Barret and McIntosh

(1980) criticized Humphries account considerably by referring to amount of men who receive a so-called family wage and the amount of single mothers without a family wage supporting their children in the border of poverty. So they figure out that family wage is an ideology rather than a reality justifying higher wages for men (Walby, 1990).

Another theory which justifies lower wages of women is 'human capital theory'. This theory takes gender division of labor as given without criticizing the reason of it and catches the consequence of women's confinement to domestic duties from the side of employers. Human capital theory which is a functionalist analysis of paid work is based on person's human capital which is the total of their abilities that they can sell to an employer. Human capital theorists argue that women have less human capital then men due to their position within the family. Women as primary carers for children spent actual time on this task and this situation forces them to leave labor market for several years. So that, differently than men, women miss the chance for acquisition of professional qualifications and labor force experience (Walby, 1990).

Walby (1990) concludes by suggesting that Marxist accounts of gender relations are in paid work are important in contextualizing these inequalities within the relations between capital and labor. However, she criticizes these accounts in failing by overemphasizing capital- labor relation and ignoring gender as an independent source of inequality. In other words, they miss the role of patriarchy as a core reason for women's subordination.

According to Walby, rise of capitalism and separation of home and work just led to a shift from private patriarchy to public patriarchy. She argues that in private patriarchy women's exploitation in the household is maintained by their non-admission to the public sphere. In the public patriarchy women's exploitation maintains in all levels; despite they are not formally excluded from any, they are disadvantaged in each institution. She justifies the importance of patriarchy in women's exclusion from labor market with the experience of Islamic populations, where women's confinement to private sphere is not related directly with the mode of production but religious beliefs, as the further development of private

patriarchy[26] (Walby, 1990). This thesis admits that the gender division of labor remains more or less as it has always been (Crompton, 2006) from Third World to Scandinavian Countries and it seeks for legal reform that encourages change in this unjust division.

2.2. Women's Work

2.2.1. Women's Reproductive Work

Women's domestic labor was one of the major areas of political activity among first wave feminists who identified the exploitation of women in the privatized context of home as a major source of problems during the 1960s and 1970s (Walby, 1990; Crompton, 2006). The trend during this period was theorizing domestic labor with Marxist concepts by rendering women as a class within capitalist relations of production. Along with these debates, reasons of women's oppression and its beneficiaries were under question. Some argued that men were benefiting from women's service within the household; others argued that capitalism primarily benefits from unpaid domestic labor (Crompton, 2006).

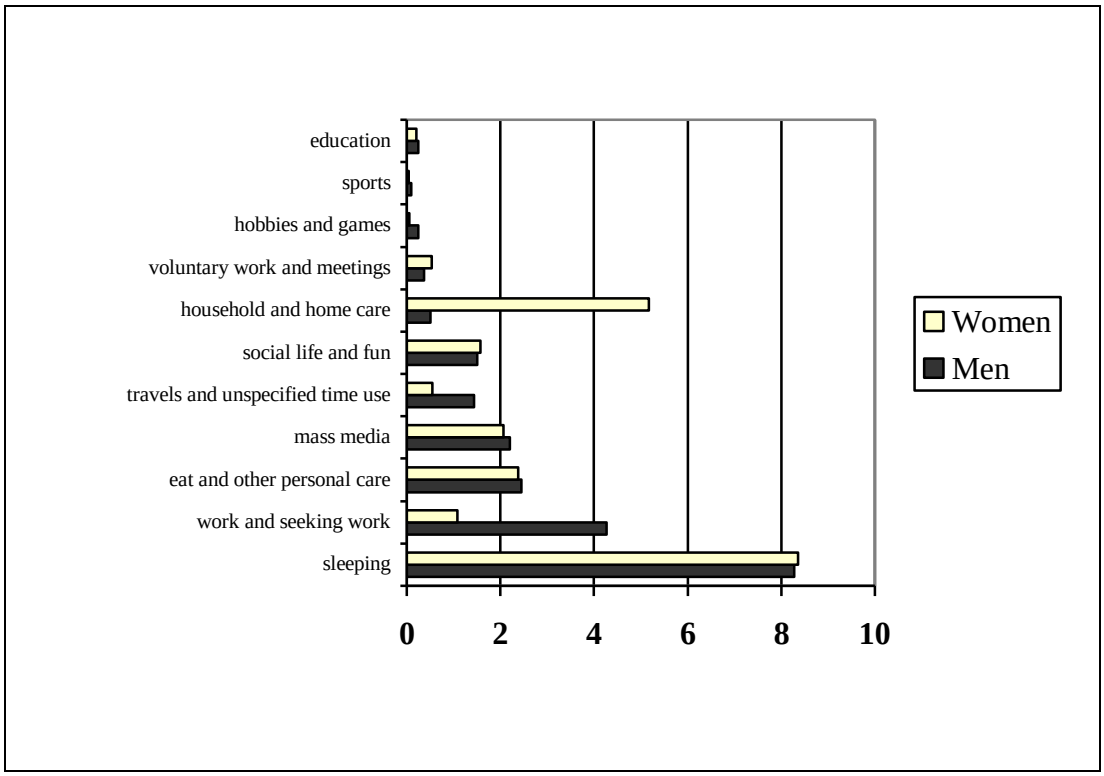
On the other hand, the neo-classical literature called New Household Economics as well, used an analysis of the household production in order to understand the gender division of labor and the participation of men and women in the paid labor force. From the feminist wing of this thought, social construction of gender roles and the extent to which it results in gender discrimination have been emphasized (Beneria, 2001).

Many writers asked whether the entry of women to paid work merely gives them a double burden (Walby, 1990; Bryson, 1992). Walby bases the problem upon the experience of women in Eastern Europe who have paid work with a minimal reduction of their domestic work and without political and social equality (Walby, 1990). Briar (1997) argues that promoting women's "dual role" as a postwar policy has had results such like separate spheres. Kreimer (2004) draws attention to the

[26] It is effective among the upper classes since lower classes in the countryside could not afford for women not to work outside the home (Walby, 1990).

economic dimension of the difficulty in eliminating gender division of labor, which is also very understandable that men are not willing to leave their privileges and take on the "double burden".

Similarly, Figure 1 shows that in Turkey women spent most of their lives in the domestic sphere doing housework and caring for the household members, while men are more likely to work outside.



Source: State Institute of Statistics (SIS)- Time Use Survey 2006

Figure 1- Time Use Statistics – Turkey, 2006

Beneria (2001) gives a list of purposes to measure unpaid work: 1) bringing the issue into the light and render it socially appreciated, 2) establishing indicators of the contribution of unpaid work to social well-being and the reproduction of human resources, providing basis for revising GNP (Gross National Product) and labor force statistics to that end, 3) analyzing the extent to which both paid and unpaid work is shared equally at household and society levels, 4) providing information on how time is allocated to paid and unpaid work and to leisure, 5) giving a gender dimension to budgets in order to make explicit that hey are nor neutral tools of resource allocation, 6) from a practical side, using in litigation and

in estimating monetary compensation in divorce cases, 7) analyzing tendencies and trends in the share of paid and unpaid work over time, 8) helping governments and other institutions to design policy and action more effectively (p. 95). Unpaid domestic work of women is an invisible work but it can be brought under light through measurement. Subsequently, if it is recognized by the state via mechanisms such as parental leave in Sweden and family benefits in France, this brings significant advantages to women of the given country (Lewis, 1993).

2.2.1.1. Housework

Many feminists conceptualize housework as reproduction; which means the dependence of production on women's unpaid work to reproduce the labor-force apart from bearing and rearing children (Allen & Wolkowitz; 1998) such as cooking, ironing, cleaning etc… DeVault (1991) takes mothering in the center of household effect by suggesting that socially organized practice and discourse of mothering undermines sharing which is the ideal of equality and will of mothers to reduce their household work as a material interest.

There is also an unequal gender division of domestic labor inside the household which is explained by the gendered nature of care, by women's commitment to the care of dependent children and elderly, and by the lack of social support for care. However, a significant proportion of all households consist of women who serve their male partners with or without other care relationships (Gardiner, 2000). A wife does housework five times more than her spouse under optimal conditions (Dowd, 1996). From the point of economics, the story that GNP decreases when a man marries his housekeeper is widely known. In this case, although the housekeeper-turned-wife does the same amount (or perhaps more) of the housework, the wife is not paid a wage because her work is not for the market and not economically considered, namely it is invisible (Beneria, 2001).

After recognizing the importance of unpaid domestic work in maintenance of capitalist economy, discussions on valuing domestic labor and conceptualizing the function of the household leads to the domestic labor debate. On the one hand, Secombe (1974) argues that domestic labor creates value but it is not surplus value. On the other hand, James and Dalla Costa (1973) bring economical dimension and

material profit of the housework for the capital into argument against conceptions of the family as an ideological unit. According to them, capitalism could not function without women cooking, cleaning and keeping the house. Therefore, domestic labor must create value, women must be central to capitalism, and feminism must be central to socialist strategy. There is also a view that rejects these economist analyses and focuses on the importance of ideological function of the family in the construction of gender (Walby, 1990)[27].

Dual systems theory, in general, suggests that both men (namely male workers) at home and capitalist employers in the labor market benefit from women's unpaid domestic labor. It is very certain that since the beginning of domestic-labor debate in western countries in 1970s there is a wide acceptance for unpaid domestic work to be a major source of women's oppression (Gardiner, 2000).

Women's additional work within the household is taken as a basis for women's inferior position within the labor market by human capital theorists. They argue that women get paid less than men because they have less experience and professional qualifications than men as a consequence of "their decision" to spend more time in the household tasks (Walby, 1990).

Jean Gardiner (2000) criticizes feminist writers such as Walby and Hartmann for overemphasizing the role of the labor market in causing gender inequality and thereby locating the inequality outside the household. She criticizes such suggestions by asking "What about human reproduction and child-rearing?"[28]

Kreimer (2004) accepts the unpaid perception of housework by conceptualizing it within gender division of labor and separate spheres emerging with the rise of capitalism by quoting that:

> "A gender division of labor has always been a fact in human development. But in the form of the division of family life and working life it is a historically relatively new fact, which is connected with the development of the capitalist market economy (Kreckel, 1993) and follows from the impossibility of organizing human reproduction as a

[27] It is mentioned by Walby (1990), Barret is a follower of this view point.

[28] Beechey (1987) had pointed before to the same problem while criticizing Segmented Labor Market Theory. According to him, Segmented Labor Market Theory ignores the importance of the gender division of labor and the role of the family in structuring sexual inequality (Beechey, 1987). See, Ben Fine (1987) for a discussion of Segmented Labor Market Theory.

> profitable production process. Therefore, reproduction had to be organized unpaid and outside the market." (p. 227)

Gender division of labor is the key concept which leads to women's confinement to this unpaid, non-recognized, non-status and heavy work and also which affects the inequality and oppression in other social relations outside the home. Palmer (1989) conceptualizes housework as the "dirty work" and explains white men's (people at the top of the social hierarchy) nonattendance into this work with their superior status. He suggests that the most inferior group does it in the society such as poor women of color (Lorber & Farrell, 1991) even when it is to be paid. Indeed, there are men who do housework, however, as DeVault (1991) points out that doing housework is perceived as exceptional for men rather than natural so that they refuse to participate in family work easily or limit sharply the nature and extent of their participation. However, when it comes to women doing housework seems like an expression of love and personality and the force of this cultural expectation limits the freedom of choice of women, especially when they claim to assert individual projects it is usually perceived as a selfish demand. Thence, the work must be perceived separable from the one who does it in order to promote change in the division of reproductive work.

Walby (1990) suggests that women who also do paid work spend fewer hours on housework than their full-time counterparts (Walby, 1990). The most recent time use survey in Turkey reveals similar patterns (SIS, 2006). Against the data which shows technology enables women to do less housework, by considering that technology makes it possible for women to combine housework with employment instead of making men to share these tasks, as introduced by Gardiner (2000), Cockburn and Ormrod points out that technology may freeze social relations. On the other hand, there are no exact evidences showing that technological changes reduce the amount of time people spent on housework, but many analysts agree that technological developments altered the types of housework required to support families rather than in the total work burden (DeVault, 1991). In this sense, increased use of domestic technology in housework reduced the time spent for housework such as cooking, cleaning, washing clothes and dishes etc. However as a new pedagogical trend, it is suggested to parents but especially mothers that the relation of parents namely mothers to be closer with their children is crucial for the

well-being of children. Research prove that today, mothers spent more time with their children than it was the case before (Coward, 1992; Gardiner, 2000; Crompton, 2006).

As a result of the importance of caring, which is the most time consuming one among other household tasks today for women and which also constitutes the reason of other reproductive activity to be assigned to women; and because of the aim to limit the scope of the study, I take caring as a basis to the discussions regarding women's family responsibilities.

2.2.1.2. Caring

Someone has to do the care job for the sake of the continuity of humankind since humans born as vulnerable creatures who are depended on the care of others. Determining these others creates the culture of gender relations too as indicated before. Once the caring is designated to be performed unpaid within the heterosexual family, the gendered power politics determine the carer through the gender division of labor. The unpaid nature and devaluation of the caring, also the state's insistence on male-breadwinner model makes it a job outside the domain of men who are the advantaged group in gender relations.

According to Gardiner (2000), *"women's and men's relationships to the responsibility for caring for dependent children and adults are central feature of the gendered nature of work within and outside the household." (p.100)*

DeVault (1991) addresses two important questions regarding the perception of care-giving work under women's responsibility: "Why women 'choose' to do most of the society's caring work, because of deeply rooted moral or psychological predispositions? Or do women care because they are less powerful than men and must exchange caring for material support?" (p.10) The first question brings the argument of difference and the second one brings the argument of dominance.

From the point of the first argument, it is true that women feel more responsible for the well-being of children. However, attention on the well-being of children does not come to women naturally but through both loving concern and societal prescription that mothers are responsible for their children's well-being (DeVault, 1991).

In Turkey, one of the most recent decisions of the Constitutional Court[29] reflects the dominance argument. Labor Code no.1475 is ceased to be effective since 2003, however the provision which regulates severance pay is still in effect (art.14). According to this provision, women workers are entitled for severance pay in case they decide to terminate their employment contract within one year after they get married. The case was brought before the Constitutional Court by the İzmir 6th Labor Court on its own initiative that it is contrary to gender equality principles and reinforces traditional gender roles in the family. More over, the first instance court argued that the provision has no legal basis anymore after the amendment of the Civil Code no. 743 included a provision which regulated that the husband is the head of the household and decides the domicile of the family with the new Civil Code in 2001 and after the annulment of the Civil Code no. 743 provision by the Constitutional Court which regulated that the wife should take the husband's permission in order to work outside the home (art. 159). The first instance court stated in its application to the Constitutional Court that it is the reality in the Turkish society that the male partner is more dominant than the female partner in conjugal community due to the continuous inequality in the household and the traditional sex roles in the family due to false traditions in rearing of the girl child despite recent efforts in legislation to achieve gender equality. According to the first instance court, enabling only women workers to receive severance pay due to marital reasons causes partners to choose the female partner when one of them has to resign due to familial reasons. The first instance court also argued that the law should shape the conduct of the society in a progressive way instead of false exercises in the society to shape the law. However the Constitutional Court rejected the application of the first instance court by arguing that it does not violate equality principle since it considers special conditions of women workers. At the end, the Court held that some social realities necessitate the existence of this provision and it protects the conjugal community and the female partner, who has to resign due to marital reasons, by considering the amount and importance of duties born by each partner within the conjugal community. On this account, in Turkey, it is confirmed by the Constitutional Court that women bear family responsibilities and depend on

[29] E. 2006/156, K. 2008/125 dated 19.6.2008.

their husbands for a living due to their weaker bargaining position within the family.

From another point of view, Hartmann (1990) places men's contribution to women's exclusion and segregation within the labor market in the centre. Being agreed with Smelser (1959), she states that whole families were often employed by the same factory for the same length of working day in textile factories. However, male factory operatives started to struggle for legislative restriction for limiting child's hours of work but not adults' and they reached success. As referred by Hartman (1990), Smelser suggests that this legislative achievement led to a conflict in families arising from the difficulty they experienced in training and supervising their children. In this sense, male workers along with middle and upper classes began to recommend women to be removed from the factories in order to be able to deal with household responsibilities and childcare. Upper-class men especially ones who are associated with the larger firms also had an interest like working-class men in exclusionary legislation on grounds of elimination of unfair competition (Smelser, 1959)[30]. It has been established above that the division of labor goes beyond industrial revolution and surely traditional sex-roles have impacts on women's lesser participation in the labor-market.

Even in 1970s, legislation in Western countries continued to reinforce traditional gender division of labor such as the case in Britain. An allowance regulated in Britain for the housework and unpaid work of caring for infirm dependants within the social security system however married women's access to this allowance was denied on the grounds that caring was one of their "normal" duties (Lewis, 1993; Jackson, 1993).

Indeed, the nature of caring work confuses efforts paid for measuring unpaid caring work and making it visible. Caring as an equivocal concept includes many

[30] This hypothesis of exclusion explains low-levels of female labor-market participation by the dual effects of (male) trade union action and discriminatory protective legislation. As it is discussed in the following chapters of the thesis, this exclusion hypothesis criticized by many writers suggesting male protective legislation did not have effect on job segregation by sex (Brenner and Ramas, 1984), men as trade unionists and citizens were not able to exert a strong influence to exclude women from employment (Fine, 1992). All these suggestions came from the Western world where the industrial revolution occurred, however, for example Turkey has not experienced an industrial revolution as in Western countries but still has a little participation of women in the labor market. Thus, overemphasizing men's role in exclusion, neglects many other deep rooted aspects of women's subordination both in the market and the household. In addition, the exclusion hypothesis does not fit historical realities and evidences (Fine, 1992).

activities in terms of physical and emotional care. First aspect of caring work refers to an independent relation between the carer and the person cared for. Second one is that the performer of the caring work is inseparable from the care given (Beneria, 2001). It is put by Beneria (2001) that caring work is based on love and affection, a sense of responsibility, respect, intrinsic enjoyment, altruism or informal quid pro quo expectations (p. 102) whether it is paid or unpaid. Because of all this set of emotional aspects of caring, it is harder than the housework to be measured. Moreover, care offered by a loving family member is always a higher quality service than offered by a professional (Beneria, 2001). On this account, instead of calculating the economic value of caring, the sense of feeling responsible for dependent persons should be spread out to whole society including men.

According to Gardiner (2000) domestic technology enables adult self-servicing; however care-giving work becomes an increasingly significant component of the industrialized economies. Coward (1992) adds that there is a rise in emotional and educational aspects of parenting instead of physical care and this puts additional pressures on women to focus on their childcare responsibilities (Gardiner, 2000). It is clear that somehow women are manipulated into caring as paraphrased by Crompton (2006) that caring seems to be gender-coded instead of being gendered in an essentialist way. In this sense women's domesticity continues through caring.

2.2.2. Women's Paid Work

2.2.2.1. Exclusion and Segregation

Hartmann (1990) suggests that when women enter into wage labor, they have a limited position because of patriarchy as well as capitalism. According to her, women have three disadvantages relative to men, when they enter into the wage labor, which are:

1. The already determined tradition of lower wages for women in agriculture
2. Women's lack of training which leads them to obtain less desirable jobs
3. Being not so well organized as men (Hartmann, 1990).

Eisenstein, who was listed among the representatives of dual-systems theory by Walby (1990), suggests the corporate activity of patriarchy and capitalism together in the creation of the conflict for women between paid (work) and unpaid work (family). Walby (1990) summarizes Eisenstein's account as follows:

> "Patriarchy provides a system of control and law and order, while capitalism provides a system of economy, in the pursuit of profit. Changes in one part of this capitalist- patriarchal system will cause changes in another part, as when the increase in women's paid work, due to capitalist expansion, sets up a pressure for political change, as a result of the increasing contradictions in the position of women who are both housewives and wage laborers." (1990, p. 5)

Therefore, entrance of women in the labor market in more egalitarian terms and recognition of their breadwinner-status may lead to change in their subordinated position within the family. Similarly, decrease in their overburden in reproductive work may lead to change in their worker status.

Taking domestic responsibilities into account results with treating women as "other" or "atypical workers" and this perception results with atypical wages for women since men are considered as the norm. Then this wage gap between women and men is represented as a consequence of nature or biology without in need of any further explanation. Therefore, naturalism attaches childbearing not only with childcare but also with community care including care for the elderly, sick and disabled and healthy adult men by women (Briar, 1997).

To conclude, according to Walby (1990):

> "1. The labor market is more important and the family less important as the determinant of women's labor force participation than is conventionally assumed
>
> 2. Women's lesser participation in paid work is a result of material constraints rather than a matter of 'choice' or of cultural values, as is frequently argued
>
> 3. Politics and the state are much more important in the structuring of the sexual division of labor than is often recognized; we need an analysis in terms not merely of economy, but of political economy"

In this regard, here it is discussed that women's overloaded responsibilities within the household are determinative in a negative way for their labor market participation. Since the patriarchal state, employers and individual men benefit from women's reproductive work, such an overburden for women is encouraged through

law, which is the primary tool of state policies, and through the male workers (especially trade unions) and employers in the labor market. In general, such an encouragement is justified through women's choices and cultural values attached to womanhood, motherhood and the family.

2.2.2.1.1. Exclusion

Ben Fine (1992) criticizes materialist feminists[31] such as Hartman and Walby because they place great emphasis upon the role played by male workers in controlling the labor-market and women's labor. According to Fine, for Hartmann the reason of women's confinement to home at times is to work for their husbands. For Walby, women are excluded or secluded by male workers as potential competitors in the labor market. Fine also emphasizes the focus of these writers on the capital's interest point to treating all labor equally. In this case male workers appear to be primarily responsible for disadvantaging women through exclusion in the workplace and dominance within the home.

Fine (1992) further argues that:

> "…the evolution of protective labor legislation was both motivated and caused by a number of factors which were by no means limited to the exclusion of female labor to enhance the labor market position of men and patriarchal ideology to confine women to domesticity." (p. 61)

Kreimer (2004) argues that as long as women were the exclusively responsible ones for the care of small children, special regulations to protect pregnant women and mothers were necessary. However these regulations led women's exclusion from the labor market (Kreimer, 2004).

This paternalistic language of law derives from the legitimization arises when it is required to protect persons or groups defined as vulnerable from making uninformed choices. As quoted by Morris and Nott (1991), Gerald Dworkin suggests that these paternalistic legislations are justified in following circumstances: To prevent these persons from making decisions which are first, far-reaching potentially dangerous and irreversible; secondly, reached under extreme psychological and

[31] See Briar (1997) who conceptualizes theories from dual systems to patriarchal capitalism as materialist feminism for more information on materialist feminism.

sociological pressures and not capable of being reversed; lastly, capable to include dangers which are either not sufficiently understood or appreciated correctly by the person involved.

In 19th Century Europe, working conditions were very hard and many trade unions including feminists struggled for protective legislation. However, protective legislation passed only for women and children and it did not spread to men. Liberal feminists argued that any derogation from equality with men in all respects is not acceptable. On the other hand, some philosophers such as John Stuart Mill and Henry Fawcett stated that protective legislation excluded women from essential means of livelihood (Fredman, 1997).

These kind of inconsistencies of health and safety regulations are strictly connected to the male breadwinner model (Kreimer, 2004), namely traditional gender division of labor. One example comes out from discussions in Britain earlier of this century while Britain was refusing to ratify ILO Washington Convention provision for six weeks paid maternity leave. The agreed concern of male and female trade unionists and middle-class women social reformers was minimizing women's labor market participation on grounds of its detriment to the welfare of children and stability of the family while emphasizing a father's obligation to support his family (Lewis, 1993).

Throughout the history, law both in theory and practice has played a crucial role as a tool for perpetuating those patriarchal inequalities. Throughout, women's struggle against eliminating these presumptions, which led to their subordinated position in the society, at the end of the 19th Century and in earlier decades of 20th Century, horrifying reasoning of the judges in order to exclude women from the public sphere were witnessed in the courtrooms. One of them was brought out in *"Jex-Blake v. Senatus of Edinburgh University"* in order to justify the denial of Sophia Jex-Blake and her female colleagues from entering Edinburgh University Medical school.

The court claims that there is only one distinction between male and female students on grounds of an abstract right which is that males have a right to university education and females have none, since the university education was designed for men. The paternalistic language was used then, while suggesting that women are different from (not inferior to) men and regretting that they become

subject to severe and incessant work. It was suggested by the court that more time has to be spent by women to acquire knowledge of household affairs and family duties which tend to social refinement and domestic happiness. The bold, honest and courteous in the extreme women of the Scotland are the absolute mistresses of their houses and even of their husbands in all things concerning the administration of their property, income, or expenditure. However, they should be aware of that their proper place is at home, learning to rule their husbands, and bring up their children with those happy results of which Scotland is proud of. The court finds it enough for these prided women to receive the benefits of University indirectly when it makes their fathers, brothers, husbands, and sons better qualified (Bridgeman & Millns; 1998).

Similarly in 1930, at the end of the jurisdiction of the "Edwards v. Att. - Gen. of Canada" case, the Supreme Court of Canada held that women should be protected from the demands of the public world not due to their inferiority but as a consequence of respecting to their nature. Therefore, the Supreme Court denied women's eligibility for appointment to the Canadian Senate (Bridgeman & Millns; 1998). On the other hand, Mossman (1985) argues the problem in these legal grounding from the sight of legal method while examining the reasoning in Bradwell v. Illinois Case held by the U.S. Supreme Court in 1873. The court claims that men should be women's protector and defender since the natural delicacy and timidity of women unfits with many occupations, on the contrary the divine rule and the nature of the things indicates to functions of womanhood belongs properly to the domestic sphere. What Mossman criticizes here is the lack of evidence to suggest women's inadequacy for the public realm, also there is no authorities cited to divine law and no scientific data were referred while reaching the conclusion. It was too obvious to prove with adequate evidences to legal grounding that women's place is at home.

Through these kind of judicial acceptance the idea that women are not proper for the public sphere activities gained legal authority. This authorization aroused from accepting sex roles built upon separate spheres as a result of natural and complementary differences (Bridgeman & Millns; 1998). In the modern western societies, a more recent example to the justifications of courts, which led to women's exclusion from the labor market, is the U.S. Supreme court decision on

Phillips *v. Martin Marietta Corp*[32] (Scales, 1985). The company was hiring men with pre-school aged children but not women with children in the same age. Then the court decided that women with children in that age have greater responsibilities than men so they are less suitable for the jobs in question.

As indicated before, biologic difference and confinement of women to domestic responsibilities as a consequence of the mothering role constitute the legal grounds of protective and exclusionary legal rules since early years of women's struggle for employment rights. Indeed, there have been many women working outside the home, while middle-class and upper-class Victorian men who had the privilege to perform adjudicative duty were discussing in courts that women are not proper for working outside the home (Sachs and Wilson, 1978). According to these men, most of the women were not actually women since they did not fit with the womanhood description they made in the courts, despite the reality that those women were working severely as domestic servants to clean and cook, as farm workers to milk and reap and as factory workers to spin even in their houses or establishments. On the contrary, middle class women were house keepers who run their houses produce the next generation and maintain the esteem of the family's class. So, it was suggested that these exclusionary decisions were targeting middle-class women and the reason lying beneath them was the benefits of their husbands from their house-keeping activity, who are judges or law makers (Sachs & Wilson, 1978).

2.2.2.1.2. Segregation

Occupational segregation is another strategy which is more recently used to explain women's subordination within the labor market all over the world. There are two types of occupational segregation: 1) *"Horizontal Segregation"* refers to the tendency for women and men to be employed in different occupations, 2) *"Vertical Segregation"* refers to the tendency for women and men to be employed in different

[32] U.S. Supreme Court *PHILLIPS v. MARTIN MARIETTA CORP*., 400 U.S. 542 (1971)

positions within the same occupation or occupational group (Melkas and Anker, 1997; p. 342).

Ben Fine (1992) argues that this strategy is inspired by the idea that women's lives are defined as much by paid work as by family and reproduction, is provided by the labor processes literature derived from Marxist theory. This leads to that there is a conflict between the labor and the capital, capitalism has a tendency to deskill and degrade jobs, the definition of skill is socially-constructed and dependent upon conflict and negotiation over what shall be defined as higher or lower grades and since all of these steps are gendered it creates both a gender division of labor and skills (Fine, 1992).

Walby (1990b) distinguishes exclusion strategy and segregation strategy from each other. In doing so, she conceptualizes the exclusionary strategy suggesting that it was based upon a private form of patriarchy in which women were controlled by excluding them from the public sphere, especially from paid work. On the other hand she defines segregation strategy was based upon a public form of patriarchy in which women were controlled within all spheres, not by excluding some of them. For example, the gender wage gap, which results with women's economic dependency on men and even with poverty, is also a consequence of gender segregation as estimated through many empirical studies (Gonäs and Karlsson, 2006).

Table 1- Pay gap between women and men in unadjusted form in EU Member States - 2006 (Difference between men's and women's average gross hourly earnings as a percentage of men's average gross hourly earnings)

	2006 (1)
EU (27 countries)	15
Belgium	7
Bulgaria	14
Czech Republic	18
Denmark	18
Germany	22
Estonia	25
Ireland	8
Greece	10
Spain	13
France	11

Table 1- Continued

	2006 (1)
Italy	9
Cyprus	24
Latvia	16
Lithuania	15
Luxembourg	14
Hungary	11
Malta	3
Netherlands	18
Austria	20
Poland	12
Portugal	9
Romania	10
Slovenia	8
Slovakia	22
Finland	20
Sweden	16
United Kingdom	20

Source: Eurostat. Administrative data are used for LU, Labour Force Survey for FR and MT. Provisional results of EU-SILC (Statistics on Income and Living Conditions) are used for BE, IE, EL, ES, IT, AT, PT, and UK. All other sources are national surveys. EU27, BE, IE, EL, ES, FR, CY and SI: Provisional results. Exception to the reference year: (1) 2005: DK, DE, EE, IT, LT, NL, PT and UK. NB: EU27 estimates are population weighted-averages of the latest available values. CZ: calculations based on the median earnings. (EU Report on Equality Between Women and Men (EUREWM), 2008)

Moreover, the fact that women showed their ability to do almost all men's jobs during the First World War, brought the need to legitimization of differential valuation of women's and men's jobs in consideration. Kreimer continues by disclosing the solution's name as segregation:

> "Although scientifically proven biological and ideological-political justifications for the devaluation of the female work were still quite popular, it was no longer possible to treat men and women who did the same work and had similar private conditions (families) differently…The solution to this dilemma was patterned after the former exclusion strategy: prevent women from working side by side with men and veil the fact of equal work. In other words: the solution was the installation of a sex-segregated labor market." (Kreimer, 2004; p.228)

Thus, feminist theorists pay a mere attention on occupational segregation by sex in labor market analysis. Walby emphasizes this account by suggesting that the explanation of occupational segregation is critical to the explanation of gender

inequalities in paid work (Walby, 1990). Hartmann suggests that male dominance in the wage-labor market is maintained by sex-ordered job segregation and men played an active role in this process.

> "Men acted to enforce job segregation in the labor market; they utilized trade union associations and strengthened the domestic division of labor, which required women to do housework, childcare, and related chores. Women's subordinate position in the labor market reinforced their subordinate position in the family, and that in return reinforced their labor market position." (Hartmann, 1990, p. 158)

According to Walby, women get less paid than men not primarily due to their human capital deficiency but because they are concentrated in low-paying industries and occupations (Walby, 1990). On the contrary, many writers (England,1992; Hersch and Stratton, 1997, 2002; Stratton, 1995) namely efficiency-based analysts configure women to be paid less upon their unproductiveness which is a consequence of their less work experience due to their childbearing and rearing or to attention divided between duties in the workplace and home (Tilly, 2006). Dowd (1996) claims to emphasize the scale of occupational segregation by sex that in order to equalize the gender division of labor roughly 60-70 % of females or males have to change their occupations.

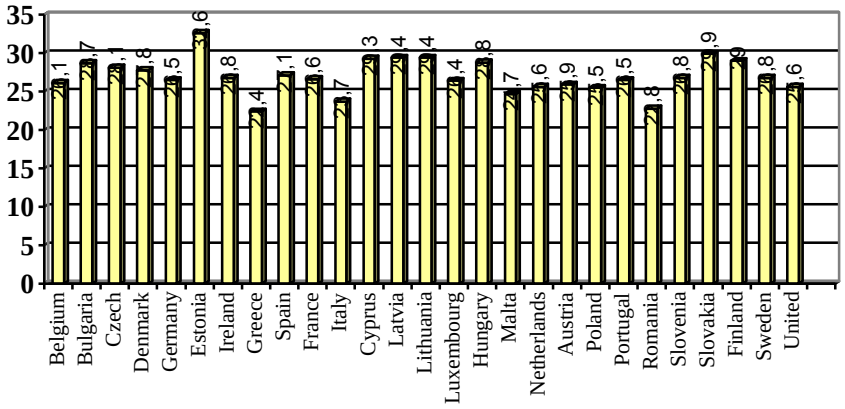


Figure 2- Gender Segregation in occupations in EU Member States, in 2006

Eurostat, Labour Force Survey (LFS) – Spring data. FR : Provisional value. Exception to the reference year for occupations: LU: 2005 (annual average)[33]

[33] Gender segregation in occupations is calculated as the average national share of employment for women and men applied to each occupation; differences are added up to produce the total amount of gender imbalance expressed as a proportion of total employment (ISCO classification). (EUREWM, 2008; p.26)

Kreimer (2004) presents availability for the labor market as the most important criterion for this segmentation and she suggests that the level of availability is grounded on the division of labor in the family. Women who desire to participate in the labor market but are not fully available are drawn into flexible and atypical working relations where there is no adequate income and social security (Kreimer, 2004). Gonäs and Karlsson (2006) specify that part-time jobs, temporary jobs and short-term contracts by temporary agents are the characteristics of female labor force all over the world. Despite differences among countries the outcome of higher education, distribution of the well-paid jobs and career possibilities are distributed in a non-egalitarian way to the disadvantage of women. Some argue that these patterns are not the results of discrimination but the choice of women which misses the role of conflict of occupational time or career demands with family responsibilities and priorities (Dowd, 1996).

Walby and Hartmann, by repeatedly holding men responsible for women's subordination, here bring a discussion that women's increasing participation in the wage labor in more egalitarian terms leads to a decline in men's authority within the household unit, thus the gender segregation of jobs commence to be the primary means for ensuring women's economic dependence in the patriarchal family (Gardiner, 2000).

According to Kreimer (2004), labor market segregation enabled to maintain a gender hierarchy throughout the society. Since gender division of labor is the constant behind all developments from exclusion strategy to today's segregation strategy, Kreimer (2004) suggests that it should be the starting point for any policy aims at reducing labor market segregation.

When vertical segregation is examined, the role of segregation in perpetuating the subordination of women to men gets clear. The figure demonstrates distribution of managers by sex in EU member states.

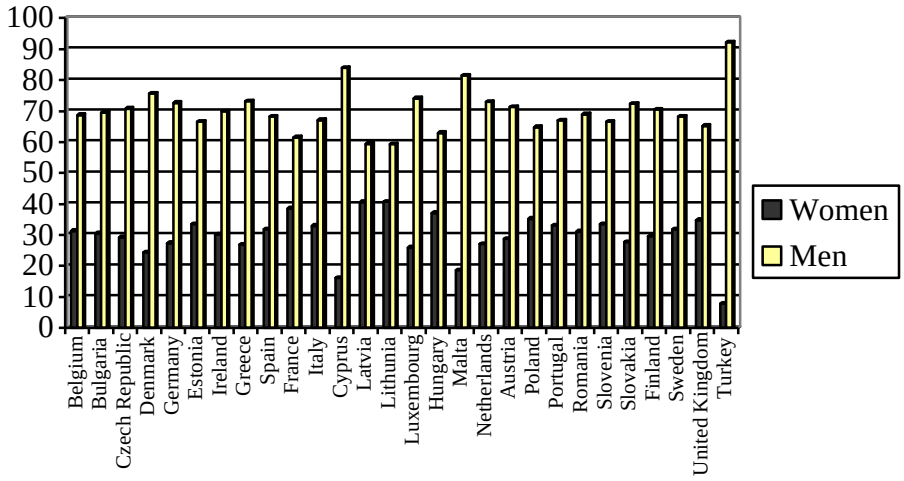


Figure 3- Distribution of Managers by Sex in EU Member States 2006

Source for EU member states: Eurostat, Labour Force Survey (LFS). (1) EU aggregate for 2001 is the value for EU-25 and not EU-27.
NB: Managers are persons classified in ISCO 12 and 13.
For MT and CY: data lack reliability due to small sample size
For IT: Change of data collection method. No data for RO in 2001.
Source for Turkey: LFS 2006. For FYROM. (EUREWM, 2008)

Family responsibilities are incompatible with the expectations of the workplace which are shaped through experiences of male workers. The ideal worker who deserves promotion has an uninterrupted career, is available everyday in a full-time basis and always for travels at any time. This ideal worker has definitely no family responsibilities and he is presumably supported by a wife who doesn't work and is a full-time mother. Therefore, even if women enter the labor market in greater numbers and approximately in same numbers with men as it is the case for example in Denmark, Sweden and Finland; women mostly fail to fulfill expectations for being such an ideal worker. In Denmark 73,4 % of women are employed however only 24,3 % of women employees are in managerial positions. It is 31,8 % to 70,7 % in Sweden and 29,5 % to 67,3 % in Finland.

Job segregation within the labor market also constitutes a sufficient answer to claims which insist on that women are capturing all positions in the labor market and men experience more competition. Feminization of labor market is identified in a brilliant book called "Myths at Work" (Bradley, Erickson, Stephenson &

Williams; 2000) as the proportion of women in employment is increasing comparatively to the proportion of men (p.74)

Bradley et. al. (2000) identifies feminization myth in labor and employment in three concepts. According to them, *"feminization of the labor market"* means that the proportion of women in employment is increasing comparatively to the proportion of men; *"feminization of occupations"* is the trend for women to move into occupations which were formerly dominated by men; *"feminization of work"* is whereby the very nature of jobs, tasks and skills is changed in ways said to make them more suitable for women.

When the labor force statistics are indicated, it seems that we are very far from the feminization of the labor market in general (tuik.gov.tr).

When feminization of occupations is indicated, trends do not always lead to a positive understanding of feminization. For example, clerical work was feminized in the nineteenth century as new technology and bureaucratic development transformed and deskilled the tasks of clerks (Bradley et. al. 2000) and deskilling resulted with the decrease of wages. Here the case is that feminization of a work namely deskilling motivates feminization of the occupation within which that deskilled work is crucial.

Feminization of work is the most common way of feminization and it is the one with most negative effects on women's work. Walby points out that the capitalists' preference for female labor in the post-war period is a consequence of patriarchal practices which depress women's wage rates since they make women cheaper to employ in the same level of skill (Walby, 1990). Along with the assumptions for women workers that they are more easy-to-control, unorganized and ready to accept cheaper works because their work is perceived as secondary for the household; the gender division of labor also brings a conceptualization of women's jobs as deskilled. This situation derives from the classification of skill in a patriarchal manner. Here, the case is that women's skills are conceptualized as natural and gained without any efforts, thus these skills need not to be extra valued in the distribution of wages (KSGM, 1999). For example, as a consequence of their duties within the household such as sewing, women gain some skills. Sewing becomes useful in the garment industry; however employers do not perceive this as skill when it is done by women since it is assumed that women use their natural

capabilities. However, these skills which are invisible when performed by women become visible and are valued when they are performed by men. This deskilling and women's position within the society results with employing the required labor force cheaper (KSGM, 1999).

On the other hand, from a rights-based point of view Elson (2002) discusses the *feminization of employment* as a consequence of reorganization of jobs as being more flexible in order to cope with unemployment increased with displacement by cheaper imports, or recession, or financial crisis. There has been an increase in women's share of overall paid employment along with deterioration of men's jobs to become similar to the work typically assumed as being women's work. This led to the widening of the informal sector which offers jobs without the basic social rights such as security of employment, rights against unfair dismissal, pension rights, health insurance rights, and maternity rights. Therefore, this feminization which increases the number of women in paid employment along with deregulation of the labor market may not be understood as women have free choice of employment since the choices of poor women are constrained by the pressure of poverty, so they consent to any job despite the lack of any social gains (Elson, 2002) such as homeworking.

In its recent position, feminization is moving the exploitation of women's unpaid domestic work within the household with all negative meanings attached to it into the labor market, the realm of paid work. Moreover, more women than men condense in flexible works which offer deficiency in employment and social security rights, wages and promotion opportunities. This also perpetuates hierarchical representation of patriarchal gender relations in the labor market through vertical segregation. Consequently, it is hard to talk about a positive feminization of labor without state intervention in order to transform patriarchal gender relations determining responsibilities of women and men both in the market and in the home, and eliminate women's inferior position in the paid employment.

2.2.2.1. Market- driven strategies for Inclusion of Women in Labor Market

Flexibility is suggested as being central to a gendered workforce. The largest group of the numerically flexible workforce is women, since part-time workers are

the biggest category of workers not on permanent, direct, full-time contracts (Hakim, 1987; Walby, 1989, Walby, 1990). Analyses of these "flexible employees" show that their incomes are relatively low and risks connected with these forms of employment are higher than those of standard employment. Part-time work and homeworking have collectively come to be called as flexible work and employers turned to these works increasingly in 1980s (Phizacklea& Wolkowitz; 1995). Bryson (1992) attaches the effects of part-time work and low rates of pay to the intermittent nature of women's working life which is obviously a consequence of women's domestic role.

Despite the concerns in the literature arguing negative effects of flexibilization on women, Kreimer (2004) distinguishes positive effects of flexibilization from its negative effects. She admits that flexibilization leads to a weakening but also in some cases to an elimination of restrictions and barriers for women. In addition, Kreimer takes "the erosion of standard working"[34] which also distorts men's career paths as a positive effect of flexibilization. Rosemary Crompton also shares the pessimism of some writers against flexible working models by focusing on standard jobs issue which is characterized within the male breadwinner model. She suggests that the reason to be against flexibility was led by the worry to loose protections such as seniority rules that gave security as well as prospects for the future, employment associated benefits such as pension schemes, sick pay and paid holidays, a predictable income and the possibility of lifelong employment (Crompton,2006). On another account, Eser (1997) suggests that informal sector which mostly consists of flexible employment relations, enables women to survive when there is no adequate paid employment.

On the other hand, it was suggested as an advantage of flexible employment that it enables paid employment to be combined with domestic labor (Yeandle, 1984; Eser, 1997). Crompton (2006) urges a critique of this view by defending that concentration of women's paid work in flexible service employment would result with broadening of the gender division of labor by strengthened men's male breadwinner role and overburden women with caring work. However, Kreimer concedes that importance of availability within the labor market is led by

[34] See Winker, Gabriele "New Perspectives for Women Through Flexible Working Arrangements in the Information Society" ,1998.

flexibilization mostly. Therefore, women whose domestic responsibilities no longer prevents them from entering the labor force face with the problem of availability in space and time as well as mobility if they have family obligations (Kreimer,2004). So that the form of women's participation within flexible employment relations differs from men and the segregation within the labor market continues through these new working patterns. While men mostly participate in shift and night-working, self-employment and subcontracting, women are concentrated in less attractive forms of non-standard work as part-timers, home or family workers and temporary employees (Drew & Emerek, 1998).

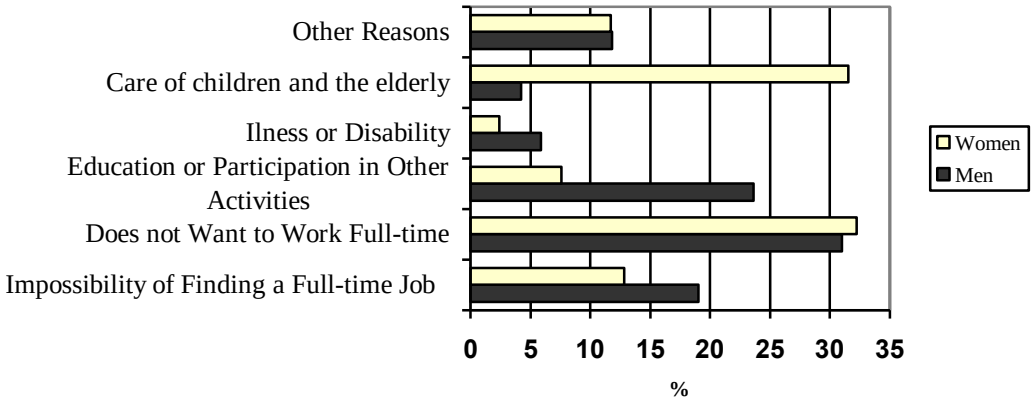
The perception of women as economically dependent housewives supported by a male breadwinner continues to dominate working patterns of women. Women are paid less and concentrated in part-time work or homeworking because of their domestic duties and because their income is perceived as secondary in the name of 'contribution to the family' (Allen & Wolfowitz, 1987; p.17). According to Eser (1997), in Turkey where women's work is usually perceived in the contribution to the family concept and permission of the husband before enter in the labor market is perceived as required in the society; it does not gain importance for women to accept working whether full-time or part-time, in formal sector or in informal sector. Somehow, women's work is derived from poverty and therefore it is temporary and secondary.

Here, through this study, I examine part-time work and homeworking because they are the non-standard and flexible employment types in which mostly women are employed and which emphasize the continuing of women's domestic role through flexible employment at the very best. Both f the also shows how women are forced to depend on a man during their lives due to the low wage rates and difficulty in access to social security and pension rights.

2.2.2.2.1. Part-time work

Part-time work is a working pattern used in developed economies in order to compensate labor force deficiencies. On the other hand, part-time work is perceived as a way to remedy the conflict between women's domestic responsibilities and

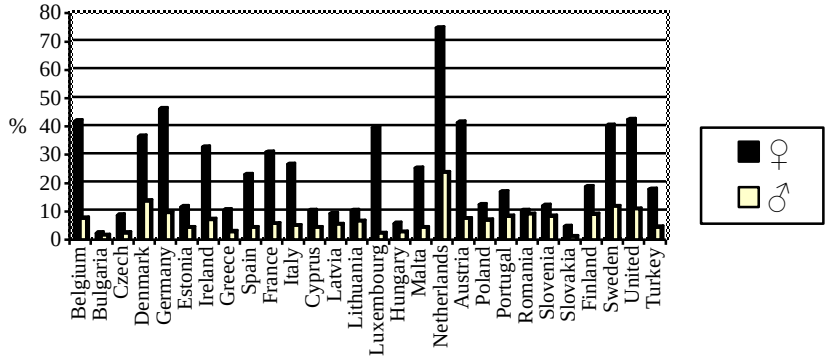
paid employment outside the home which constitute a barrier against women's access to labor market.



Source: Eurostat LFS, 2002 (Kuşaksız, 2006 ; p. 23)

Figure 4- Main Reasons of Preffering Part-time Work for Women and Men in EU Member States (15) in 2002

In Turkey, this notion of part-time work took part as a suggestion in the 7th Five-year Development Plan by the Special Commission of Women (State Planning Organization) and the need for adequate legislation while promoting part-time work (Eser, 1997). The new labor code in Turkey which came into effect in 2004 included an article defining part-time work in accordance with ILO Convention 175 on Part-time Work and Council Directive 97/81/EC**.** The adequacy of this legislation will be discussed in the fifth part of this study. All over the world, part-time women workers are usually employed in the public sector. Eser (1997) argues that in Turkey, impression of the public sector shows that it is possible for part-time working pattern of women to take root in the public sector since public sector is intensified in jobs usually done by women.



Source: Eurostat, Labor Force Survey (LFS) - Spring results for EU member states and LFS 2006 for Turkey (published in EUREWM, 2008)

Figure 5- Share of Part-time Workers in Total Employment, in EU Member States (2007) and Turkey (2006)

Briar (1997) simply points out to my conception on part-time employment suggesting that women's part-time employment reinforces women's domestic role. Lois Bryson (1992) suggests that the working patterns of men and non-married women are significantly different from that of married women since they are more likely to work part-time instead of full-time. According to Bryson the increase in the proportion of part-time employment of married women steams from the desire of them to combine child-care and paid employment. She offers to take state policy and wider economic forces into account in order to explain this inclination satisfactorily. To emphasize the importance of state policy she claims that there is evidence which indicates to women's preference to work longer hours in many countries if child-care which they consider appropriate was available. Bryson, lastly, emphasizes the wider economic forces with the suggestion of Smith for the U.S. that the trend towards part-time work must be seen as part of a larger puzzle in which employers are striving for a cheap exploitable labor force and she concludes this focus by suggesting that married women become a pawn in this game. Since women's vulnerability to poverty is the case all over the world, research of Cass (1985) suggests that full-year, full-time work is the best defense against poverty.

In my opinion, Walby (1990) summarizes the paradox of part-time work of women very simply in her famous book "Theorizing Patriarchy". Britain has the second (now the third) highest proportion of part-time women workers in Europe.

Taking this data as the starting point, Walby explains this situation with the most extreme differentiation between the full-time and part-time workers than many other countries based on Manley and Sawbridge's study (1980). According to Walby, this situation attracts British employers to employ part-time workers, on the other hand Martin & Roberts (1984) indicates to women's will to work part-time in order to combine their domestic responsibilities with their paid work as shown clearly by the results of the Women in Employment survey (Walby, 1990). Hakim (1996, 2000) suggests that despite the measure to remove the barriers before women's economic participation, in many countries such as in the UK, women prefer to work part-time in order to give priority to their domestic lives (Crompton, 2006). Phizacklea & Wolkowitz (1995) criticizes to conceptualize part-time work as women's preference on the grounds that 'women are not really interested in a career, they'll just leave to start a family". They point out to this partial truth by disclosing that, Britain is one of the countries in Europe with the most part-time women workers along with Netherlands and Germany, since the worst preschool childcare services in Europe are in Britain and women have no choice rather than leave their full-time works in order to take care of their children.

Gardiner (2000) also suggests that concentration of married women in part-time and men in full-time employment supports traditional gender relations based on the unequal gender division of labor in which women serve male partners whether they need care or not. Tálos (1999) suggests that part-time work is one of the factors behind the segregation tendency because the part-time sector is highly segmented (80 percent of part-time workers are women) and concentrated (part-time jobs are offered in few sectors) (Kreimer, 2004). In the Danish case, strong trade unionism safeguarded part-time working women from being marginalized within the labor market by securing same social rights for those working 30 hours a week (Siim, 1993). However, a wide range of studies as pointed out by Crompton (2006) demonstrates that flexible employment and part-time employment in particular is detrimental to promotion prospects and that managerial employment is almost invariably full-time (Crompton and Birkelund, 2000; Rubery et al.; 1994; Perrons 1999) This clearly discloses how domestic confinement of women makes them vulnerable within the labor-market and dependent to equal rights legislation. The point is that part-time work facilitates women to take care of domestic

responsibilities which men avoid to share. Part-time work as a characteristic of women's paid work justifies that domestic work is women's job and maintains women's confinement to home, dependence to marriage or state and vulnerability within capitalist work relations.

2.2.2.2.2. Homeworking

Homeworking is a form of commodity production was defined by Allen and Wolkowitz (1987) as follows:

> "…waged employment carried at home for export or domestic industries. The homeworker, almost invariably a woman, does not sell the product but is paid at piece-rates by a supplier, working to a design determined by him with materials he supplies." (1987, p. 24)

Homeworking is suggested by Eser (1997) as a competed working pattern with part-time work since both of them are seen to be a strategy to adjust women's family responsibilities to a professional life. In Turkey, because of economic crisis and competition with China, especially employers in textile sector seek women workers who will work for them in their homes. Harmful effects of women's home production are no job security, social insurance, low wages (Ecevit, 1995) and long working hours since household work and paid work are combined (Ertürk & Dayıoğlu, 2004). In deed, homeworking has been something to remain ignorant or not to consider irrelevant for those who wrote about social welfare or made decisions on social policy. It was taken for granted as something women just did (Allen & Wolkowitz, 1987). Concern of Ecevit on the effects of homeworking derives from this invisibility.

According to Allen and Wolkowitz (1987), homeworking is invisible because it is women's work. Devaluation of the women's work is a universal issue as indicated thoroughly above. With industrialization the locus of work moved outside the home, work came to encompass only activities remunerated through the wage relation, but the perception of the centrality of the wage relation has been accompanied by an ideological construction of the division of labor which domesticates women. Through the breadwinner model and the so-called family wage, state policies justify women as non-workers dependent to their husbands or

fathers. Such a construction leads to create inequalities between family members and between their roles in the maintenance of the family. In the case of homeworking, the gender division of labor is not a division between economically dependent housewives and male breadwinners, but a division between women's need to fit paid work into the unpaid work such as looking after their households and dependents and men's relative freedom from these responsibilities (Allen & Wolkowitz, 1987).

According to Eser (1997), homeworking enables women to perpetuate their traditional roles attributed to women by the society while earning some money to survive. Therefore, the social acceptation that women's place is at home stays not challenged when women work at home and male relatives especially husbands do not perceive women's work valuable for the survival of the household. Günseli Berik's research on carpet-weaving work indicates to the importance of working outside the home in order to gain expectations from paid employment for women such as being perceived as valuable for the family and gain a comparable power within the family (1995). While the carpet-weaver at home is seen as weaving in her spare time, carpet-weaver working in the workshop face with pressure from the male family members to work for longer hours. Most of these rural workers are unpaid family workers who constitute a large proportion of informal sector in Turkey (Eser, 1997).

On the other hand, the legislation regulating the maximum hours for the work-day as eight hours in general does not fit with the housework done by women which spreads to all day. For homeworking women, there are no separate times for housework and wage work, the line that separates both is an artificial one. Sometimes women work until very late hours in order to overtake an upcoming order but the wage-limit legislation does not cover these extra hours (Allen & Wolkowitz, 1987). Findings of Allen and Wolkowitz from their research on homeworkers in West Yorkshire in the UK, show that 58 % of their sample stated that there had been times they had been wanting to work but no work was available, and half said that there had been more work than they could comfortably manage. Homeworkers' low pay and lack of job security is confirmed by the primacy of their family responsibilities and the secondary importance of their paid work. Also holidays or sick leaves which are usually paid are unpaid for homeworkers (Allen &

Wolkowitz 1986). Thus, the work of homeworkers is not considered as real work (Phizacklea & Wolkowitz; 1995), so they are not covered by labor laws and they have no access to state benefits provided for the employees.

It has been suggested that homeworking is a suitable job for women not only because it enables them to continue performing their domestic duties, but also it eludes factors introduced by human capital theorists as barriers against women's access into the labor market and wage differentials within it such as experience, training and skill. In 1980s the 'discovery' of the home-based work was interpreted in official and some political circles as representing a viable future pattern of work and as source of economic regeneration (Allen & Wolkowitz, 1987). However, homeworking is more likely to be the discovery of a new way to confine women to the domestic sphere and exclude them from the desired waged work while continuing the exploitation over their labor both as domestic workers and producers of commodity. Allen and Wolkowitz (1986) point out that even if they are at home in order to take care of their small children, homeworkers are not able to give their full attention to their children and have the same worries as women working outside the home such as feeling guilty because they give inadequate care to their children. In Turkey, the research of KSGM on women working in ready-made clothing/ garment industry in Istanbul, shows that homeworking women are usually between the ages of 31 and 50, either their children are grown up or the care of the children is done by relatives (KSGM, 1999).

The dichotomy of homeworking was interpreted in terms of constraint and choice. Some argued that these homeworking women, who are trapped at home because they bear all the responsibility for the daily care and supervision of their small children, are highly vulnerable to exploitation of the suppliers of homework. On the contrary, some argued that many homeworkers are women who forgo the higher wages to be earned outside the home in order to have the opportunity to be with their children when they are small. However, even if we ignore the expectancy from women to serve their husbands, rear the children and run their houses or the lack of adequate and affordable childcare services, the number of women who stay at home to look after elderly or handicapped dependents is greater than those looking after normal children. Homeworking is the only way to earn money for these women (Allen & Wolkowitz; 1987). Moreover, the sex-based division of

labor is in effect from childhood of girls and determines what duties girls perform in the household which directly impacts the decision of the families to keep girls at home with double burden of housework and school or without schooling (Ertürk & Dayıoğlu, 2004). This early socialization of the girl child and impediments derive from this leads to another objection to conceptualize homework as a womanly working pattern based upon free choice. It is argued that women often report greater satisfaction from family than from work to justify this choice criterion as the basis of women's preference to be primary carers. Dowd (1996) rejects this justification by pointing out that it is because women suffer more conflict in the work than in the home as a consequence of the social role given to them as homemakers and carers. Also, cultural bias and barriers are in effect as the research on Istanbul garment industry points out that 79 % of homeworking women in this industry are veiled while only 29, 1% of women working outside the home are veiled. This is suggested as the result of the negative belief against women's work outside the home in conservative families (KSGM, 1999). As it has been discussed above under the subtitle of part-time work, we can talk about a free choice only when it is decided in an environment free from the economic, social and cultural barriers around women. One example may be given to cultural barriers from the work of Allen and Wolkowitz (1987) that Pakistani homeworkers in the UK were more likely to say that their husbands would not allow or permit them to work outside the home. The will of husbands of homeworking women is very important in their decision to stay at home for their children and housework. This situation indicates to the taken-for-granted ideological expectations of the gender division of labor regarding women's priorities (Allen & Wolkowitz; 1986).

Allen and Wolkowitz (1987) introduce characteristics of homeworkers by captures from newspapers in UK. According to those, homeworkers are usually women whose husbands are out of work, or who are mothers of large families with five or seven children or immigrant women kept at home by language difficulties or cultural restrictions or restricted by their illegal immigrant status from seeking employment in the formal sector.

However, the research of KSGM on working women in Istanbul garment industry, points out that in the Turkish case, employers prefer small workshops namely informal employment relations rater than homeworking. This is because

workers consent to work without social security, therefore it is not necessary to decrease wages by homeworking, they are at minimum already. Also, married women with family responsibilities or women's childbearing capability are not considered as crucial problems, which prevent employers from employing women, since women have no access to benefits in case of pregnancy and giving birth as in the formal sector. The children are cared by relatives within the family (KSGM, 1999). On the other hand Eser (1997) points out that women perceive homeworking as a hobby and they are reluctant to report that they are homeworkers due to the fact that nonparticipation in the paid employment still indicates to a higher status in many regions. Then many of the enumerations based on research on households on the city basis are misleading to show real proportion of homeworkers. This absence of homeworkers from being involved in the labor inspection system leads to the vulnerability of homeworkers and increase the risk involved in such work (Dayıoğlu & Ertürk, 2004).

2.2.2.1. Equality-driven Strategies for Inclusion of Women in Labor Market

States have been facilitated the exploitation of the labor force, especially women workers with the policies they implement usually as a consequence of the pressure from employer side. For example, employers have been aided by the British state during the 1980s as government policy, in their search for ways to maximize the exploitation of labor. The lack of childcare facilities have been shown as one of the major reasons for increased proportion of part-time work, which provides a profound basis for exploitation, among women in Britain where part-time work of women is the most common among European countries (Phizacklea & Wolkowitz, 1995). Similarly, in Turkey, the general Labor Code 4857 does not include most of the homeworkers and excludes informal sector from the protection from unreasonable dismissals, also the lack of control mechanisms lead to the perpetuation of these informal employment relations. Thus employers act free from the burden of social rights and maximize the exploitation of the labor force, especially women, as it was indicated above relying upon the research on garment industry in Istanbul. This research shows that women in the informal sector in

garment industry usually work 9-10 hours a day and five days a week, however 24,8 % of them work six days a week and 6,9% work seven days. In addition to this enormous working schedule, women have responsibilities in their houses. Since 52% of them do all the housework at home by their own, they usually spent their weekends or evenings for doing housework. Childcare is arranged mostly within the kinship relations and performed by either older or younger but in particular other women in the family who do not work. Moreover, 48,4 % of the total employees have no social security in the informal sector (KSGM, 1999). The equal distribution of social rights and state intervention against exploitation through its employment policies is crucial to reduce the participation of women mostly in highly exploitative informal sector which has little effect on the empowerment of them.

When the case is formal sector, there is evidence that good quality and affordable childcare motivates the employment of women. EU tried to encourage the development of childcare facilities among its member states with the childcare recommendation in 1992. Also leave arrangements were introduced as an effective way to eliminate the burden of childbearing and childrearing to be solely on women. With this respect, paternity leaves aims at encouraging fathers to involve in the process to raise their children. Similarly, parental leave is now at the gender equality agenda of EU with the Parental Leave Directive (1996) which is an encouragement for women to stay in employment. There is the possibility to encourage fathers to become involved by focusing on the care of their children instead of being solely breadwinners (Dulk & Doorne-Huiskes; 2007). The affect of having children on employment rates of both women and men is shown in table 2 and it demonstrates that having children has a negative effect on women and a positive effect on men in all EU member states and in Turkey. In other words, it seems like having children sharpens the gender division of labor and the stereotypical roles of women and men as fathers are responsible for breadwinning and mothers are responsible for caring.

Table 2. Employment rates of women and men (aged 25-49), depending on whether they have children (under 12) – 2006

	Without children		With children	
	Women	Men	Women	Men
EU-27	76.0	80.8	62.4	91.4
Belgium	75.5	81.7	69.3	92.2
Bulgaria	74.7	76.6	61.5	81.2
Czech Republic	83.2	87.1	53.4	93.9
Germany	80.3	80.6	62.7	91.4
Estonia	82.7	86.9	66.7	92.4
Greece	64.1	82.5	57.0	96.8
Spain	75.5	84.3	58.8	93.2
France	73.7	76.6	65.9	91.1
Italy	66.7	80.7	54.6	93.8
Cyprus	82.1	87.8	70.8	95.7
Latvia	82.1	80.9	68.4	91.2
Lithuania	81.5	78.9	77.2	89.7
Luxembourg	80.2	90.3	65.0	95.7
Hungary	76.1	79.1	49.8	86.1
Malta	68.7	88.6	32.6	94.0
Netherlands	83.8	87.9	72.7	94.5
Austria	83.6	87.7	68.5	92.9
Poland	69.9	71.5	60.8	88.0
Portugal	77.3	82.7	76.4	94.2
Romania	70.7	76.9	66.3	85.4
Slovenia	77.1	82.7	84.8	95.3
Slovakia	79.0	79.5	54.2	88.2
Finland	78.9	79.5	70.6	92.7
United Kingdom	82.9	84.1	63.1	91.0
Turkey	40.8	76.4	22.3	88.0

Source: Eurostat, European Labor Force Survey, annual averages.
Notes: No data for DK, IE and SE.
For Turkey, Source: LFS 2006.

On this account, Crompton (2006) stresses the brilliant term "contra modernization theory" in order to show the importance of regulation since the deepest changes within the organization of the society will not change by their own. She indicates to an example from the Norwegian State that a four-weeks paid leave for fathers was introduced as the paternity quota that is not transferable to the mother and forfeited if not taken up (p. 142). Here, we discuss the possibility of transforming unequal gender division of labor and eliminating its negative effects on women's lives through parental leave and childcare arrangements.

2.2.2.3.1. Parental Leave

Without designating to do so, Walby finds out some reasons to suggest parental leave as one of the most effective ways in achieving a progress into gender equality[35]

> "While in female-headed households women escape the duties of serving their husbands, they also loose access to the income such a man might have brought. Women without men usually live in poverty. Lone mothers with pre-school children are likely to live on social security payments. Even when in employment many women will not earn much more than a poverty level wage if they have children. Women typically have custody of children after divorce and in practice look after them during separation. The absence of a husband does not mean that women are freed from the work, responsibilities and cost of child care. They still produce the next generation." (Walby, 1990, p. 197)

What I understand from this given situation is that it necessitates pressurizing men to perform the requirements of childcare both in terms of financial support and physical existence in order to protect women from being sole bearers of negative effects of child rearing. McGlynn (2006) confirms the role of equal parenting in the pre-divorce period to be crucial to achieve such an equal parenting in the post-divorce period. During a marriage the best measure that considers responsibility of men in childcare is parental leave.

Crompton (2006) suggests that even men who want to bear family responsibilities such as childcare would face problems while promoting to managerial positions and she quotes from Wacjman: "Men's careers are underpinned by the domestic labor of their wives" (1998, p.141)

Thus, parental leave comes into account since it establishes the primacy of parental obligations to care for children over the demands of the workplace. Legislation regulating parental leave includes fathers as well as mothers; therefore parental leave interlinks the concepts of worker and carer (Leira, 1993) by distorting the male norm which idealizes a fully available worker. For example, a generous maternity leave in connection with giving birth is crucial for mother's recovery, nevertheless such long term absences disadvantage women in the labor market.

[35] This proposition is valid when assumed that we do not target a distortion in heterosexual intercourses or in the concept of family by suggesting socialist communes.

Table.3 Leave provisions which can be used by new fathers in Europe

Country	Examples of leave provisions for fathers in national legislation
Denmark	14 days' paid paternity leave + 2weeks' paid parental leave
Estonia	14 calendars days
Finland	18 days' paid paternity leave
France	2 weeks' paid paternity leave
Hungary	5 days' paternity leave
Iceland	3 months' paid paternity leave
Italy	2 weeks' paid paternity leave
Latvia	10 calendar days
Norway	2 weeks unpaid paternity leave + 4 weeks' paid parental leave reserved for the father
Portugal	5 days' paternity leave
Romania	5 days' paid paternity leave
Slovenia	90 days' paid paternity leave
Sweden	10 days' paid paternity leave + 2 months' paid parental leave
Turkey	3 days' paternity leave in the public sector
United Kingdom	2 weeks' paid paternity leave
Note: leave provisions shown are those reserved for fathers and do not include leave provisions which may be shared.	

Source: ILO, Conditions of Work and Employment Database (Hein, 2005; p.121).

Therefore, in Norway and Sweden, the concern which shows the public recognition that prolonged leave of absences impedes women's opportunities in the labor market if it is taken only by women (Leira, 1993) leads to justify parental leave.

Thus, parental leave has the capacity to lead preventing men from escaping childcare duties both within and out of marriages and enjoying privileges of being full-time workers in the labor market. In spite of the situation that taking parental leave has become the norm for fathers (Carlsson, 1995) and they reduce their working hours in order to perform their parenthood duties was suggested as the case, Bekkengen (2006) argues that "this notion fails to correspond with current parental leave statistics (see Riksföräkringsverket, 2003), and part-time work for men as a result of parenthood is principally non-existent (Flood and Gråsjö, 1997; Hörnqvist, 1997; SOU, 1998, p.6)" (p.159). Nevertheless, once a man in a workplace takes parental leave and makes his parenthood visible by taking the responsibility, this would transform into a pattern (Bekkengen, 2006).

Furthermore, equal treatment feminists who support parental leave faced some critiques within the feminist literature. It was argued that such effort to challenge

stereotypical assumptions that impede or structure women's employment differently to men's in order to get greater access into the workplace has nothing to do for women who do conform to these assumptions (Bridgeman & Millns; 1998).

It is very obvious that parental leave is not capable solely to overcome gender inequality arising from the distribution of domestic duties unevenly. However, Lisbeth Bekkengen (2006) summarizes why I see parental leave as an effective instrument for change very clearly so that I convey her accounts without any change as my conclusion to this part.

> "…parental leave which is more evenly divided may be a key to equality in many spheres. When men take more parental leave and women less, one would expect the domestic work and child care to be more evenly shared. Men as well as women should be regarded as parents from a labor market point of view and women's periods of absence from work could become shorter. Taken together this might promote an upward trend in women's wages and increase their possibilities of pursuing a career." (p.149)

2.2.2.3.2. Childcare Services

One of the main worries of workers with family responsibilities is the need for a care arrangement to deal with their dependents when they are away from the home. Bryson (1992) refers to effects of the lack of child-care services that day-care utilized by working parents has been largely sought through informal, kin or friendship networks or on a private commercial basis. However, with the increase of women employees in the labor market, especially women workers employed by the state, public organization of caring work and the parallel changes in the political culture have made the organization of and policies in relation to caring work a crucial political issue in 1980s and 1990s especially in social democratic welfare states (Lewis, 1993). Today, there is a wide range of categories of care arrangements: 1) informal unpaid care (usually family), 2) household employees (nannies, maids, au pairs, cooks, cleaning ladies), 3) formal paid care (care centers, paid care in someone else's home, domiciliary services) (Hein, 2005: p.75).

Table 4. Care of working women's children in Turkey

Mother Herself	Husband/ partner	Older Girl child/ daughter	Mother of the wife	Mother-in-law	Older Son	Other family members	Paid Babysitter	Institutional care	Not working since she gave birth
37,1	2,5	10,4	9,0	21,3	1,1	6,5	4,0	4,6	2,6
% distribution as to the person who cares for dependent children younger than 6 when mother is at work									

Source:[36] HÜNEE, Population and Health Research, 2006

To start with informal care arrangements, it should be noted that even in countries with the most active policies for formal care, free and informal care provided by a family member is the most common care arrangement in all over the world (Hein, 2005). As it was discussed before, this tendency derives from the belief that a loving relative will provide a higher quality care service and is more trustworthy than a stranger. However, as it is clearly seen above in table 4, it is primarily the female relatives who bear the childcare responsibility when informal care is preferred. In this way, men, state and the employers stay immune from bearing the responsibility for the care of children, therefore, no structural change is achieved.

Care provided by paid domestic workers is a very common care arrangement both in developing and developed countries (Hein, 2005). However, domestic workers who provide childcare are mostly women again, especially migrant women in Europe. Parrenas (2001) explains this new trend with two terms, first the "racial division of labor" that refers to the situation in developed countries that white western women who gained economic and social rights and took place in the employment outside the domestic sphere need someone to take their place in the reproductive labor in the household. Migrated women of color take their place in the domestic sphere, very often without enjoying any security rights. The second one is "international division of labor" which refers to a new system that makes the developing countries become reproductive labor force of developed countries.

[36] T.C. Başbakanlık Kadının Statüsü Genel Müdürlüğü, İletişim Dokümantasyon ve Yayın Daire Başkanlığı (Turkish Republic Prime Ministry General Directorate On The Status Of Women, Chairmanship of Communication Documentation and Publication Department); http://www .ksgm.gov.tr/tcg/12.pdf, 14/08/2008

These new divisions of labor between third and first world women are problematic because of their deficiency in motivating structural change in the patriarchal society and because they perpetuate inequalities in the society.

I examine, here, care centers among formal care arrangements for under school age children such as crèches, day-care centers, pre-schools and kindergartens. The most important issue in such formal care services is the schedule of the care service to be compatible with working hours of parents. First of all, pre-schools is the most problematic among all, since they usually follow the school day and school holiday schedule and working hours of parents so often extend beyond these schedules. On this account, additional care arrangements are required. Crèches and day-care centers offer longer hours of care service however they do not comply with the working day of parents exactly, especially when parents are employed in works with atypical or irregular hours of working. Furthermore, such centers do not accept children when they are ill, therefore they again require additional arrangements for the care of the child. Even the children become school-age, parents still need caring arrangements since school day extend their working hours and parents usually work during school holidays such as the summer time. Care arrangements for school-age children are before-school-hours care, school meals, after-school programs, transport services, day camps and holiday camps (Hein, 2005).

In order to motivate employer involvement in childcare, legislations in several countries oblige employers to establish childcare facilities. Employers usually refrain from fulfilling such obligations; however, there are some multi-site companies in need of a wide range of workers which consider facilitating child-care arrangements for their workers is in their interest. They sometimes find a suitable independent care center and sometimes subsidize the fees of a crèche rather than having an on-site facility (Hein, 2005). However, Hein (2005) suggests that on-site crèches are the best solution for parents in terms of keeping their mind in peace since they can see their children during the day, facilitating breastfeeding which can enable mother to return work after giving birth and eliminating problems arising from longer hours of work than the open hours of care facilities outside the establishment.

Involvement of the state in childcare apart from obliging employers to provide childcare facilities occurs within a wide range of measures such as controlling quality and ensuring minimum standards, directly providing preschools or kindergartens, and providing subsidies to care providers or income-based allowances to parents in order to make childcare more affordable (Hein, 2005). Siim (1993) emphasizes the positive effect of public organization of caring work and the new norms and values regarding motherhood and childcare in terms of power along with welfare of women; since women are available for the labor market even when they have small children. She carries the argument one step forward by suggesting that these new politics of reproduction creates a new form of social citizenship empowering women through new welfare and participative rights as citizens over against the state.

Fredman (1997) puts that there is a positive correlation between availability of childcare services and women's participation in paid work. In countries where there are low rates of childcare provision, there are also low rates of women's participation. Therefore, she argues that provision of good quality childcare fully or partially funded by the state should be central to policies of any government aiming at ensuring equal opportunities for men and women without any reservations. However, policy-makers often use the argument that not increasing child-care provision derives from lack of resources[37]. She further argues that even if full (100 %) subsidy is provided for child-care the fiscal revenue from the woman's extra earnings compensate the costs of providing child-care. I suggest that the further research on the possibility of public organization of childcare is urgently needed in order to prove that organizing childcare is not that much an expensive policy.

[37] In Turkey, state released itself from the childcare provision through a provision included in the "Preparation of Investment Program Guide for the Period of 2007-2009" which reads as: Any investments of social facilities such as public housing, house of civil servants, camp, crèche, and guesthouse shall not be initiated in 2007 unless there is absolute necessity in terms of security reasons and operation of the work. Any subsidies shall not be allocated to maintenance and repair of existing facilities unless there is very absolute necessity.

2.3. Work- Family Conflict and Reconciliation

After the World War II women in Europe entered in the labor market in increasing numbers.[38] Especially, in the 1960s and 1970s married women's work became the norm; they started to enter the labor market once their children reached the school age. It has gone a step forward by the 1980s and 1990s, even women with small children have begun to stay within the paid employment (Crompton, Lewis and Lyonette; 2007). Furthermore, the invention of the pill and the rise in women's consciousness on fertility control enabled women to decide whether to have children or when to have them (Fredman, 1997). Thereby, throughout Europe, two facts made its mark on the conflict between work and family since 1965: Declining birth rates and increase in women's participation in the labor force (Fagnani, 2007).

Although the number of women in the labor market increases, women's family responsibilities in the home remained almost the same. Women's obligations in the domestic sphere such as housework and childcare have been used to justify lower wages and lower status jobs for women (Fredman, 1997). This point of view, such like human capital theory, does not question why workers without family commitments and childbearing capacity are idealized in the labor market. Such an approach proves women's incompatibility to the labor market by defining womanhood by socially attributed roles on woman as a gender.

However, when women's entrance in the labor market in increasing numbers and social actors' reluctance in sharing women's obligations within the family are examined together, a significant decrease in marriage and fertility rates of women is observed. As Fagnani (2007) puts it, high proportion of mothers in the labor force and high fertility rates are strongly correlated with the support of public policy to maternal employment. Considering the exceptional experience of Scandinavian countries, there is a significant decline in fertility rates especially in the last two decades. It is seen that fertility rates in Scandinavian social democratic regimes, where all social actors' take responsibility for childcare through equality- driven public policies, are more than in the Mediterranean European states, where

[38] Women had filled jobs left from men who are in military service and some of them refused to go back to home when men has come from the fronts.

childcare is performed within the family through kinship relations without state responsibility (Fagnani, 2007; Moreno, 2006; Ferrera, 2006). When measures to combine work and family responsibilities of employees are not taken by states, it is observed that women, who are willing to be economically independent, have to choose their careers instead of having a family (Fagnani, 2007). Such decisions derive from the enduring conflict between work and family.

Apart from women's overburden within the family which conflicts with the demands of work, one another reason for work- family conflict is the change in families. There is an increase in the number of dual earner families and lone parents due to the changing economic environment and cultural changes. This means that the female-caregiver / male-breadwinner model which constitutes the basis of work is facing with distortion in its structure. Today it does not secure an enough livelihood for a family to depend on a male breadwinner solely while the female party is dealing with reproductive work within the household. Thus, women share the breadwinner role now and men's willingness to modify work for family increases as a consequence of men's increasing family involvement in new generations (Lewis, 1996). However, in many households women's participation in the productive work does not change the gender division of labor in their households and they are overburdened by both family and work commitments which at last constitutes conflict in their lives. On the other hand, there are many women who prefer to have children out of the wedlock or to finish unwanted marriages even when they have small children. These lone mothers usually live in poverty if they have no chance to access adequate and affordable childcare in order to have a well-paid job. Lack of proper childcare services sharpens the effect of the conflict between work and family for them.

All these types of conflict are strongly interlinked with the traditional work structure which is based on the assumption that workers are male who are supported by a non-worker female partner and therefore have uninterrupted careers, have no family commitments and are always available full-time at work. This definition of the ideal worker has to be changed since it takes men as the norm and it is very hard for every woman to fulfill its demands without experiencing conflict between their work and family lives because women are socialized different from this idealization. On the other hand, in some dual earner families men also take family

responsibilities and fail to fulfill the requirements of the ideal worker. The global competitive business today demands too much from workers and this makes it more difficult for both men and women to harmonize paid work with the other parts of life. Especially lone mothers and women in dual earner families experience more conflict because of the double burden of paid and unpaid work (Gambles, Lewis and Rapoport; 2007). It has been observed that problems in harmonizing work and life or work and family cause decline in job efficiency. When this efficiency problem gets together with anxieties for the future that derive from ageing of population due to declining birth rates, the market and market-driven public policies started to promote flexible work arrangements. Flexibility of the labor market suggested as an additional solution for parents to combine their work and family responsibilities. However, as it is discussed below, flexible work does not change the structure of work and gender division of labor within the family (Gambles, Lewis and Rapoport; 2007), if it is not supported by equality driven policies. If the structure of labor market and the relation between parents within the family does not change, family-friendly initiatives such as part-time work or career breaks only perpetuate and exacerbate inequalities in all spheres (Lewis, 1996). Kreimer (2004) argues that promotion of flexible work distorts traditional structure of labor market which has been a feminist target. However, the fact that women's proportion among part-time workers is more than men in all European countries indicates to the danger of promoting flexible working patterns to harmonize work and family.

Seeking solutions for the conflict between work and family varies according to the welfare regime, economic and social policies of a state along with cultural specialties. Solutions targeting work/ life balance in order to increase job efficiency and to cut down the stress of employees reach flexible working arrangements such like part-time work or homeworking. However, if these solution efforts are not covered by equality-driven public policy and legislation, they are not capable to meet the long-term needs for a stable and coordinated workforce (Cooper, 1996). Another solution is public policy and intervention of the state. There are two terms which are used for addressing these efforts with different implications: Family-friendly policies and reconciliation policies. Moss (1996) criticizes the term "family-friendly" to be used for policies which aim at harmonizing work and family

responsibilities. According to him, this term reflects the assumption that all individual needs and interests can be covered within the family unit.

The European Commission argues that economy should go in hand in hand with social progress. Reconciliation policy best fits to this aim and it is the preferred term by the EU (Moss, 1996). Some criticize the term reconciliation by arguing that it is a critique of working women since it implies that the harmony between work and family is distorted with their entrance in the labor market. They find an implication within the term that it aims at restoration of women's duties within the family. Moss (1996) answers these critiques as follows:

> "The term reconciliation implies the need to seek accommodation between various needs and interests – of employers, but also children, other 'cared for' groups, women, men and society- and as such indicates a more differentiated and interactional approach than 'family-friendly'." (p.23)

Moreover, Moss (1996) argues that reconciliation is a dynamic process which aims at constituting a perfect balance between all interest groups. This study also seeks this balance between all interest groups through state policies and legal measures. Therefore, I prefer to use the term reconciliation in this study, while addressing the conflict between productive and reproductive work in order to emphasize that this is not only a problem of women but the whole society.

CHAPTER 4
THE LAW AND THE STATE

A Feminist Critique of State

Policies of the state inevitably have effects on people of any given society and usually these effects are expected ones. Any state follows a chosen ideology for its continuity and this ideology is determined by the power politics concerning the governance style of the country. In the state of the modern world, ideology adopted by the state authorities is implemented by the law of that state, which has implications for all spheres of life, including the care of dependents in private life. In this part of this study, the dominant ideology of the modern state of the Western world, which is shaped mostly by the liberal thought, towards motherhood, family and the market is introduced within the context of childcare and state intervention in it.

The divide between the public and the private is central to feminist jurisprudence. The roots of this divide in modern law systems should be found in the divide between the family and the market. Economy policies shape principles in law and they both reflect the ideology of the state. Olsen (1983) attributes the roots of the dichotomy between the family and the market in the early 19th century to the separation of work and home, where men are associated with the former and women the latter. The mythical perception of the family and the home arises in this period which defines home as a shelter which protects moral and spiritual values from the attack of commercial and critical spirits. Through this dichotomy women are discouraged from being strong and autonomous while being encouraged to be generous and nurturant (Olsen, 1983).

Olsen (1983) draws attention to the existence of two different dichotomies. In the first one, family refers to the private and the market refers to the public. The second considers state as the public and the civil society as the private which includes market and family. The following table shows these dichotomies and the place of every institution.

Table. 5- Structure of the public-private dichotomy

PUBLIC	**PRIVATE**
Market	Family
State	Market

Here as it becomes clear in the table 5, state always represents the public and family represents the private. However, the market can be placed both in the private and the public. The market represents the public in its relation with the family because it is located in the public sphere and more open to intervention of the state than the family. However, it represents the private society in its relation with the state because it consists of relations between non-state actors. The laissez faire arguments, which are against state regulation of the free market, constitute the basis of the classical economic theory. In a parallel way, they also constitute a basis for state's nonintervention in the family (Olsen, 1983).

Feminist legal theorists have been complaining about the failure of the mainstream works to take institutions of intimacy such as family or motherhood. However, assumptions about family which are taken as a basis by these works directly affect theories on market and the state or the nature of the individual. The relation between the market and the state is the focus point of economic or other important public policy discussions while the family is degraded to the private sphere. On the other hand, these theorists' vision of the world determines the common belief that the family is primarily responsible for dependency (Fineman, 2005).

4.1.1. Market

Olsen (1983) introduces the "lag theory" in order to show the relation between the market and the family. According to this theory, *"changes in the family reproduce but lag behind those in the market".* Olsen lists the historical stages of the market. In the feudal period, as long as the state observes the hierarchy, which

was believed to be God given, state intervention is not perceived as undermining freedom, therefore law is deemed to be legitimate. Second stage is the emergence of free market where the state becomes something against civil society. The role of law was to protect rights of citizens with a claim of universality and equality for all. Within the context of laissez-faire economy, inequalities in wealth are perceived as the outcome of personal attributes of individuals and transactions among individuals are governed by the law of supply and demand. This perspective ignores the diverse power relations within the society and justifies the wealth of the strongest members. Finally, the welfare state occurs as the third stage as a result of the acknowledgment that state regulation of economic activity is necessary to curtail the negative distributional tendencies of the free market and provide special treatment to the disadvantaged segments of the society. In this stage, actual inequalities have been acknowledged and legislation is used as a tool to reach de facto equality. Thus, the criterion for legitimacy of the state became its redistributive capacity (Olsen, 1983).

However, the laissez faire which was the principle of the classical economy has reemerged to shape state policies and social life since 1980s through neo-liberal policies. According to the laissez-faire theory, the market is natural because it reflects actual supply and demand, and it is autonomous because it was not created by the state and has the ability to function independently. Thus, laissez-faire theory and neoliberal policies of today again advocate for state neutrality (Olsen, 1983). Then the dominance of neo-liberal policies in today's politics on work and family may be marked as the fifth stage of the market.

4.1.2. Family

The relation between the state and the family is negative within the liberal context. This negative relation arises from two sources: First, it derives from laissez-faire economics and reflects the parallelism of market-state relation based upon non-regulation. Second, it is the result of privacy claims and arguments on state's non-intervention to the private lives of individuals. This private family argument is quite similar with the free market argument (Olsen, 1983).

It is important to examine the stages of family as introduced by Olsen (1983) to understand the relation between market, state and the family in a historical

context. The first period was feudality in which both family and the society were hierarchical. Civil society was separated from the state and the family was separated from the market through complex regulation by law and rules. Later, the notion of separate spheres provided women some space between traditional hierarchy and judicial equality. In other words, women did not achieve judicial equality but they started to participate in social life more than they did in the feudal stage. For example, women started to be responsible for external relations of the family which was men's job formerly. In this period women were perceived as different rather than inferior by the state and the law. The third stage can be called as the liberalization of the family which has continued to present. The liberalization of the family occurs when it adopts the characteristics associated with the free market and the non-intervention of the state. While equal juridical rights become more common, women continue to be subordinated to men and the children to parents. The next stage of the family aroused while the liberalization stage continues and is called as the regulated family. The concept of regulation here refers to divorce and custody law which have been regulating the marital life since 19th century. The latest stage of the family has parallels with the last stage of the market, where by the beginning of the 20th century the welfare state policies consider particular groups for special treatment. Transition into this stage is marked with the child labor legislation and compulsory school laws which reduced parents' control over their children (Olsen, 1983).

Olsen (1983) defines the private family as a combination of hierarchical ideology with an altruistic ethic. The concept of ethic here refers to an ethic of care when simplified. All humans are born as dependents that need nurturing and protection. The primary unit responsible for this process is usually the family, which consists of either two parents or a single parent. Fineman (2005) defines the family as *"a specific ideological construct with a particular population and a gendered form that allow us to privatize individual dependency, pretending that it is not a public problem"* (p.179). Fineman also argues that the family affects the success of the policies produced for the market or the state.

There is an ongoing debate on family and family values which constitute the basis of state policies. Olsen (1983) divides the debate into two. The first argument is that the family is an ultraconservative institution and the primary source of

women's oppression. Second argument glorifies the sharing within the family and claims that family values support democratic and progressive goals.

In this context, Olsen (1983) suggests that the family is perceived as a unit which serves the good of all family members through sacrifice of some members for the well-being of others, instead of the well-being of every individual member. Husband or father is expected to have power on other family members, children and wife are expected to obey the rule of this male head of the family and also parents are expected to sacrifice from their own well-being for the sake of their children. In general, state is expected to enable family members to sacrifice and share through legislation. The status quo within the family is taken as natural and outside of the state responsibility such is the case for inequality and domination within the free market. Both the market and the family are taken as private matters not created by the state therefore cannot be changed by the state.

Olsen (1983) refers to another economic theory called the durable market theory which affects approaches to relations within the family. According to this theory, it has been argued that protecting the weaker member of the family from the abuse of the stronger is not an effective solution because this is a natural aspect of real relations and it is going to be repeated inevitably. Therefore, state's non-interference in the family is justified through its uselessness. Such an approach inevitably reinforces men's domination within the family over women and children. Since 19th century this has been the subject of the feminist struggle, which holds the state responsible for creating inequality by supporting the gender division within the family and not interfering in male supremacy.

For instance, even today in most countries, social security systems do not cover homeworkers (who are usually women) except as dependents of someone (usually a breadwinner man) who has social security. Therefore, states contribute to the perpetuation of the male breadwinner /female caregiver model within the family and impede women from leaving unwanted marriages (Silbaugh, 2005). In Turkey, the recent Social Security Act (social security reform) has been criticized from a similar point of view. Savran (2008) argues that in Turkey, women usually fail to fulfill the male norm to qualify for social security such as pension rights, since the bill of Social Security Act (social security reform) is based upon a formal equality

concept which ignores different life patterns of women such as pregnancy, breastfeeding and childcare.

4.1.3. Motherhood

The privatized responsibility of the family in coping with care of its dependents is shaped by altruism and became the gendered role of the mother (or other female relatives who play a mothering role). However, taking care of the dependents within the family is an unpaid work and it also impedes the opportunity of wage work (or well-paid jobs) for these who perform it which in turn makes them become dependents too. Fineman (2005) conceptualizes these women's position as derivative dependency which as a consequence of the dominant ideologies such as capitalism and patriarchy, stereotypically assigns women within the family by assuming that it is their by-nature duty. The concept of motherhood includes love, altruism and the duty of caregiving as its elements apart from its dictionary meaning: "the kinship relation between an offspring and the mother". The ideological script of the motherhood insists on these elements and mothers inevitably 'choose' this pathway in order to answer the necessities of idealized motherhood. Therefore, Fineman argues, it relieves the rest of the society from responsibility of care of any child that has a mother (or other female relatives). In the liberal context, 'individual choice' is promoted in general and motherhood is also taken as a result of individual choice of a free person. This allows other members of the society including the state, employers or tax-payers to avoid feeling responsible for the well-being of any child, therefore justifies maintenance of the status quo that assigns families namely mothers for childcare.

State policies, such as granting long maternity leaves but not paternity leave, paying severance pay only to women workers if they resign upon a marriage, allowing only mothers to receive childcare allowances from the state if they stay at home due to childcare responsibilities, encourage women to stay at home and devote themselves to their children facilitate it for mothers to bear the cost of childcare. However, they do not show the same interest in facilitating mothers to harmonize their labor market activity with motherhood. For instance, quoted by McCluskey (2005), journalist Ann Crittendenc argues that women are forced to

sacrifice their economic well-being to raise children by economic and legal systems in U.S. According to a survey on American people's opinions regarding welfare, mothers of young children should be able to refrain from wage work (McCluskey, 2005). In responding to a criticism of the main opposition party in Turkey, the Republican People's Party (CHP); Ali Babacan, the Minister of Foreign Affairs said that women who had to work previously, began to choose to stay at home because of the increase in their husband's salaries as the result of Justice and Development Party's (AKP) economic policies (Hürriyet, 2003). Moreover, since the beginning of 2008 the Prime Minister R.T. Erdoğan has been suggesting that women should have three children (Radikal, 2008). The Prime Minister is criticized because of this suggestion in terms of economic inadequacy of many families in Turkey to afford care expenses of three children and inevitable result of such family policies that is the confinement of women to the domestic sphere due to hostility of the market to women workers with children and lack of childcare policy in Turkey which is capable to enable women with three children to work outside. Many women deputies and activists interpreted this declaration of the Prime Minister as the encoded version of telling that women, especially mothers, should stay at home. They also argued that as a consequence of the government's project to keep women at home, recent legislation such as the social security reform and employment package reduces women's social rights and leaves the caregiving job largely on women (Kazete, 2008). Moreover, it has been argued by many feminists that the legal system in Turkey foresees caretaking costs to be born by homemaking wives and their children and not the breadwinning husbands. In this respect, divorce laws most often do not acknowledge the value of women's caretaking work, therefore fail to compensate it adequately (McCluskey, 2005). Recent social policy in Turkey also reflects similar trends. The primary responsibility in caring remains on families because of the family-centered social policy approach of the AKP (Buğra and Keyder, 2006). Taking family as the primary caring unit inevitably means assigning women with care and restricting women's gestures in other aspects of life.

Women's unpaid labor, including childcare is not perceived as an activity with economic value because of the assumption that childbearing creates an emotional bond with child and mother. Thus, the unpaid childrearing labor is attached to the anticommodification project which is based upon the public-private divide whereby

things feminine are non-market (Silbaugh, 2005). Silbaugh indicates to Reva Siegel's work[39] that romanticisation of women's home labor is a mechanism for maintaining gender stratification and avoiding social transformation. This is also a consequence of the general perception which justifies that caregiving is women's natural duty. Through this perception law fails to regulate unequal distribution of nurturing responsibilities as sex discrimination.

4.2. Feminist Jurisprudence

4.2.1. Public- Private dichotomy[40]

The gender division of labor and its effects on the formation of separate roles for women and men which led to women's confinement to private sphere and men's to public was examined above. The struggle to alter this separation of the spheres and its results is crucial for feminism. Moreover, Carol Pateman goes one step forward by suggesting that the dichotomy between the public and the private is what the feminist movement is all about (Beveridge& Mullally, 1995). In this part, the interplay between law and patriarchy through separation of public and private spheres is introduced. It must be acknowledged first that there is not any innate inferiority in the domestic role however it has been treated like that in all societies during the history. The presumption that women have to take primarily the responsibility for domestic and caring arrangements led to women's confinement to the private sphere. On the other hand, men have been ruling the public sphere where more importance attributed activities take place (Bridgeman & Millns; 1998).

It is unjust enough to legitimize the uneven gender division of labor in the courtroom as the nature of the things as it was discussed above however the worse part comes after. This public/private divide does not only determine the proper

[39] *See* Reva B. Siegel. "Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880." I03 Yale Law Journal 1994.

[40] A "dichotomy" exists when a significant aspect of experience is divided sharply between two categories that are mutually exclusive but together account fort he entire aspect (Olsen, 1983. p. 1498. supranote 1.).

places and sexes for several activities,[41] but also it determines the scope of legal regulation as the law should intrude public sphere and should not the private. In the realm of employment, the output of this organization is that the state is not expected to restrain individual choices on grounds of contractual liberty which leads to the oppression of disadvantaged groups of working-class such as women (Bridgeman & Millns; 1998). On the other hand, it is not only claimed that the private sphere was beyond state interference but it was also to be protected from the interference of the state on behalf of right to privacy (Olsen, 1984). Thus the division of the spheres into public and private resulted with the formation of an unregulated area of life to where women were confined. It was suggested by Katherine O'Donovan (1985) that as it always has been when there is no legal regulation other mechanisms of control arise. Thus, the separation of the public and private spheres resulted with men to be in control as a consequence of their greater economic power gained through their supported active role in the public sphere of paid-work and trade. The state left the control of family members to men through its indirect intervention in the private sphere which shapes the authority structure within the family through legislation such as determining the head of the household as the husband.

So, as Finley (1986) summarizes, the fact that, women bear children and man do not has been the major barrier against women's labor market participation and childbearing became the basis for discriminatory treatment of women in the workplace and the maintenance of the separate spheres ideology. This results with many women to be forced out of the workplace and into home when they give birth or they are deprived of many economic opportunities because of their prospective childbearing possibility. This shows that home and workplace are incompatible worlds. Actually, this incompatibility derives from the structuring of the work and workplace according to the needs and life patterns of men from the beginning of the separation work from the home within the public-private context. Feminists agree on the fact that it is crucial to deconstruct the workplace to become proper for pregnancy and parenting needs in order to eradicate women's economic and social subordination to men. Regrettably, agreeing on the problem does not bring its solution, on the contrary it emerges new debates among feminists. While some

[41] For instance, finance, education, government and the professions take place in the public sphere; reproduction and sexuality are in the private sphere.

feminists focus on the elimination of the biases that pregnant women face, others suggest a reasonable degree of economic security in pregnancy and during earlier months of a newborn child. Both sides of the debate agree that one way of reconciling separate spheres of home and work is to support legislative initiatives to make parental leave available for both women and men (Finley, 1986). Today the argument includes all the period that children are somehow dependent on the care of their families, as indicated before EU acquis regulates parental leave for both parents until children are 8 years old. As Finley (1986) concludes this debate on how to deconstruct work in accordance with women's needs, is called as the "equal treatment-special treatment debate": the first emphasizes sameness of women and men, and the latter focuses on the differences of women from men.

4.2.2. Equal treatment- special treatment Debate and Beyond

Women's first legal struggle was to be recognized as individual legal persons who are not under custody of their fathers and husbands and capable to exercise their civic rights. Extension of the concept of rights to include women was relatively an easier but worthy struggle. It was easier because rights claims are always loaded by being associated with the foundations of democracy and freedom, thus it is hard to be against rights because any opposition to human rights are now perceived as an opposition to virtue of all humans (Bridgeman & Millns; 1998). So, as it was suggested by MacKinnon (1987) it is worthy because claiming that an issue is a matter of rights is to give the claim legitimacy. Also quoted in Beveridge and Mullally (1995), Olsen, Minow and Herman recognize the potential of rights discourse since it is capable to alter its traditional meanings through communal dialogue and become a strong tool in supporting campaigns to motivate important social changes. On the contrary, some feminists such as Carol Smart (1989) argued that liberal legal world is antipathetic to feminist concerns, therefore rights discourse misleads the struggle of equality by leading false hopes and also sometimes the discourse itself becomes detrimental for the realization of women's rights. The second stage in women's struggle in the legal realm came with seeking for rights to equal treatment in order to remedy the legally-sanctioned discrimination against women (Bridgeman & Millns; 1998).

The liberal feminists of 1980s suggested that equal treatment depends on the recognition of biological differences as politically irrelevant. This leads to the necessity that women to emphasize their similarity to men since 'gender neutrality' of norms is constructed upon the male standard (Jamieson, 2001). However the debate on sameness - difference emerges from the deficiency of this liberal approach in explaining the case of pregnancy which is purely different from men. Maleness to be the norm of being human is expressed as "not pregnant" in case of pregnancy. In this respect, being pregnant comes out as difference of women not as men's deficiency (Eisenstein, 1988).

4.2.2.1. Concept of Equality in Legal Theory

Hence, first of all, an equality definition should be made to continue seeking for real equality. For example, should women emphasize their similarity to or difference from men? There would be several strategies to promote equality such as equal treatment, equal opportunities and equal outcomes.

Patricia Smith (1993) offers three distinct conceptualizations of equality as material equality, moral equality, and Aristotelian notion of equality. *Material (factual) equality* refers to identical, same and interchangeable things, so that it is actually not for humans because no two human beings are ever identical. However this definition of equality has been used by the courts to emphasize the differences between women and men, and to justify differential treatment against women on grounds of this unchangeable, by-nature, biological difference. *Moral equality,* on the other hand, refers to the equality concept of human rights declarations which declare that every human life have the same intrinsic value. However, this notion of intrinsic sameness is not that clear while facilitating differences between races, nationalities and sexes to be justified in these texts through flexible provisions. Lastly, *Aristotelian notion (formal equality)* of procedural justice comes out as the judicial tongue twister which is "to treat like cases alike" and unlike cases differently in proportion of their differences. Finley(1986) argues that this notion of equality has been useful while women struggle for gaining access into traditionally male privileges in the public sphere and it may still help to guide assimilation of women into male institutions when it is the goal. However, it is almost impossible

to distinguish alike cases free of the cultural bias. This strengthens the rejection of women to have equal rights with men since they are not the same both because no two people are alike and they have different roles historically ascribed to them (Bridgeman & Millns; 1998).

Smith (1993) argues that women were treated like men in law, politics and in economic activities because they started their struggle for equal rights from claiming they are same with men, in other words it was women who determined the male as norm. Bridgeman and Millns (1998) encapsulate shortcomings of this approach:

> "i) The standard of comparison is the male norm…
> ii) Women are starting from an unequal position (because they have in the past been excluded) and are not competing in the same basis (because social norms require women to be also primarily responsible for running the home)
> iii) Where the male is the norm, it may be impossible for equal treatment to be attained in those areas of women's lives, such as pregnancy, which are not experienced by men…To recognize the difference is to perpetuate discrimination against women because of their capacity for childbearing." (p. 40)

According to Kessler (2005) the Aristotelian notion of equality namely formal equality which suggests like things to be treated alike underlies the liberal legal system and is also the primary source of law's failure to answer the conflict between women's work and family responsibilities.

4.2.2.2. The Wollstonecraft dilemma

This dilemma, which constitutes the basis of the equal treatment / special treatment debate, summarized by Lombardo (2003) that it represents two routes in feminist struggle for a full citizenship. The first asks for extension of rights enjoyed by men to women on an equal basis. In the second route, specific capacities, interests and needs of women are emphasized and a differential citizenship is demanded. The result of following the first route is inclusion of women in citizenship as they are equal to men. However, this means acceptation of the patriarchal citizenship which treats women as "inferior men" as a consequence of being based on male characteristics. This is because the lack of citizenship concept to include socio-historical experiences of women as well as that of men. On the

other hand, while subordination of women and unequal division of labor between sexes continues in the patriarchal society, recognition of women's differences results with including women to citizenship as members in need of special legal treatment instead of full citizens (Lombardo, 2003). Women's relationship with law is criticized that it is either based on the concept of equality or the need for special rights (MacKinnon, 1987), however in both cases women are disadvantaged since they either aim at or remunerated for achieving the male life patterns as the norm (Lombardo, 2003). According to Lombardo (2003), the question rises from the Wollstonecraft dilemma is as follows: should women struggle for equality even if it means to assimilate to men's rights or should they struggle for special rights by ignoring the risk of stigmatization of their difference from the male norm?

Gender as a social construct will not disappear, gender as the primary determinant of the roles at work and within the family should be eliminated (Dowd, 1996). According to Smart (1992), the desired result of feminism is not a culture without gender which is some form of androgyny. Thus, eradication of discrimination does not mean eradication of differences. However, it was law which led to some form of androgyny on grounds of the gender-neutral, namely objective nature of law. However, in reality, it is obvious with the words of Palmer (1995) that "men and women cannot compete if the gender-neutral rules are established to suit the apparent interests and needs of a men's world".

4.2.2.3. Arguments on Special Treatment

Therefore, contrary to the design of equal treatment proponents to regulate pregnancy and childrearing like other physical conditions of employees, special treatment proponents insist on the uniqueness of pregnancy which is different from any other human condition. So they claim special rights for this different situation of a group of individuals in order to reach an ultimate outcome between different individuals to be same. This special treatment namely affirmative action project is based on a group-based antidiscrimination theory. It also suggests a way out of the trap that always locates (Finley, 1986).

To begin with, Sylvia Law (1984) suggests a distinction between differences of women deriving from cultural stereotyping and real differences deriving from

reproductive biology of women. Cultural stereotyping requires a comparative equal treatment analysis while real differences necessitate an impact analysis. When maternity leave is the case, the equal treatment model would lead to act in the same manner as any other disability which retain a worker from work temporarily, difference advocates support some form of maternity leave separate and distinct from any other disability benefits which may be available to women worker (Majury, 1987). Similarly, Kay (1993) discusses that the case of pregnancy requires episodic analysis which takes specifically reproductive differences are legally relevant only when reproduction itself is at issue (p.36). Kay offers the acknowledgement of pregnancy in order to ensure equality of opportunity and not to disadvantage women, who are usually like men but during pregnancy become unlike men, because of their reproductive capabilities (Bridgeman & Millns; 1998).

MacKinnon (1983) presents a powerful argument in favor of substantive rather than merely formal equality for women by offering an "inequalities" approach to sex discrimination as an alternative to the more conventional approach, which she names the "differences" approach. According to her, this approach focuses on the relationship between a gender-based difference and the state's purpose for classifying it. Here the issue of inequality is the accuracy of the classifications. Scales (1985) support MacKinnon's inequalities approach by arguing that the classifications designed to address women's real problems, such as in the case of pregnancy legislation, they serve to reinforce the stereotypes about women's place. The stereotypical differentiation between women and men does not convert into injustice when it is only recognized but when these differences transformed into social and economic deprivation. Than, she discloses the two feminist discomforts behind MacKinnon's inequalities approach. First, there is need to a reliable approach to generalizations which are usually true whether as a consequence of biology or highly successful socialization.[42] Second, is the need to distinguish between beneficial and burdensome legislation. It is obvious that inequalities approach necessitates different standards for women and men in many cases (Scales, 1985). Whereas, Nadine Taub (1993) interprets her inequalities analysis as an argument in favor of special treatment and warns that this analysis is

[42] See. *PHILLIPS v. MARTIN MARIETTA CORP.*

likely to deteriorate into a new form of "detrimental protectionism." Olsen adds rightfully by asking that as Taub (1993) argues, if a male dominated legal system cannot be trusted to apply an inequalities approach, what reason is there to believe that it can be trusted to apply the differences approach? I also have some reservations regarding the celebration of differences between women and men since this approach justifies the notion that if they are essentially different than it is not necessary to have same obligations and rights in the family (Bekkengen, 2006).

4.2.2.4. The male norm- male comparator

The fundamental objection to equal treatment approach is that it inevitably accepts the male norms of the workplace (Finley, 1986). According to Sohrab (1993) equality and difference are part of a political contest regarding the resolution of some social problems instead of being concrete descriptions of some empirical reality. Since many women enter in the labor market in different terms than men, both protection or protective legislation and equality or equal opportunities reinforce women's inferior position in the labor market (Sohrab, 1993). As long as equal treatment depends on claiming similarity to the white male standard and difference from this norm justifies unequal treatment to people it is not possible to reach equal outcomes (Jamieson, 2001).

Catherine Mackinnon describes the male norm as follows:

> "…virtually every quality that distinguishes men from women is already affirmatively compensated in this society. Men's physiology defines most sports, their needs define auto and health insurance coverage, their socially defined biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military service defines citizenship, their presence defines family, their inability to get along with each other- their wars and relationships- define history, their image defines god, and their genitals define sex. For each of their differences from women, what amounts to an affirmative action plan is in effect…" (Mackinnon, 1987)

To link the discussion to gender equality legislation, Briar (1997) discloses the main problem of antidiscrimination law by suggesting:

> "Being equal is, under current legislation and employment practice, usually interpreted as meaning that women have to be more like men in order to obtain same rewards." (p. 180-181)

Similarly, discrimination analysis of Dowd (1996) is based upon the argument that these analysis focus on biological sex instead of socially constructed gender which lies beneath the work-family conflict. According to her, firstly both sexes suffer from gender constructs because roles, characteristics and choices are determined on the basis of sexes. Secondly, gender constructs are inevitably in relation with the other social constructs in the society which makes it impossible to analyze a single role separate from each other. Than Dowd lists several questions regarding the difficulty in identifying the evil, which are: "is it that since there is no biological basis for the division of work and family responsibilities, any characteristic of the structure which reinforces a gender division of those responsibilities is discriminatory?" ; "is it that any structure which only incorporates the male standard is discriminatory because it fails to permit the female role to exist on an equal basis, with equal consequences?" ; "Should employers be allowed to discriminate on that basis when the effect is to adopt a sex specific model (male) for the workplace?" ; "Should such decisions be condemned because they adopt a 'male' structure, because they exclude certain individuals on the basis of socially constructed gender?"(Dowd, 1996: p.562).

From another angle, Finley (1986) points out that special treatment approach is a double-edged sword, its results are the increase in the cost of women for the employers along with the acquisition of desired benefits such as longer maternity leaves and the justification of paternalistic policies against women. On this account, equal treatment proponents argue that these additional costs deriving from special treatment to women's differences would cause employers to become reluctant to employ women who are likely to get pregnant. However, equal treatment approach also has no remedies against this problem (Finley, 1986). All these concerns bring the structure of the work and the workplace which designated according to the male norm into account again. Claiming special treatment is to emphasize your difference and what you are different from is the male norm. Thus, considering pregnancy as the subject of the 'special' rights claim for women is also considering that pregnancy as a women's problem.

In other words, claiming equality always necessitates an appropriate comparator[43] by bringing the question "equal to what?" Since the standard norm is the life patterns of men in every aspects of life and since the comparator in gender equality claims is inevitably a male one, discrimination based on sex is easily justified. Majury (1987) proposes a remedy to avoid from male norm as the basis of any comparison that is to stress women's specifities instead of their differences. On this account, while "women's differences" refers to the acceptance of male as the norm, the use of term "women's specifities" circumvents the acceptance of male norm. As suggested by Ann Scales (1981) women are recognized as having different rights from men when completely unique to women aspects are relevant such as childbearing and childrearing namely pregnancy and breastfeeding. Now, there seems to be an agreement between feminist scholars and activists that a complicated and contextual notion of fairness should be used to define equality (Jamieson, 2001).

On this account, Jamieson (2001) suggests that equality should be attached to a real value such as liberty. It is suggested that liberty claim for women should come after equality because without equality there is no chance for women to experience a real liberty (Jamieson, 2001). Moreover, all it is discussed under discrimination analysis is paid work. These analyses do not value, encourage and provide economic independence of caregivers (Dowd, 1996). Women's lives are based upon connectedness with and responsibility for others aroused from their mothering role and its socially constructed requirements. Therefore, women feel responsible for the care of their children even after the period of breastfeeding and men still do not feel that responsibility because of the autonomous and disconnected designation of the ideal men. Expectations of employers and responsibilities of women are in conflict since the work is structured in accordance

[43] Equality is the sameness relation between at least two things. In this respect, ensuring equality between two people necessitates a comparison on the sameness of their conditions. A gender equality claim, therefore, is a demand for a comparison between a man and a woman or between femaleness and maleness. In other words, when a gender equality claim is at issue, courts inevitably seek for the opposite of the claimant in order to make a comparison between them. This is called the comparator in that case. This comparator is in the same conditions with the claimant but from the other sex. Thus, speaking of gender inequality between a woman and a man in a specific case necessitates the existence of an appropriate comparator from the other sex who is in the same conditions. When there is no such comparator, there is no discrimination based on sex. For example, if the appropriate comparator is necessary in all cases, discrimination due to pregnancy shall not constitute discrimination based on sex due to lack of an appropriate male comparator.

with the male standard and childcare responsibility of women conflicts with this structure. After equating responsibilities of mother and father as well as family and the state women's liberty in the workplace becomes to be the goal. Here women have a socially constructed difference or specifity which disadvantages them in the labor market. Since, producing the next generation is the interest of all members of any society and overburdening women with this responsibility in a way to impede their individuality and freedom; it is beyond a claim of equality with men, it is a problem of human rights since this confinement to the domestic sphere and the care of others constitutes a barrier against women's access to fundamental rights and freedoms as free and autonomous individuals.

4.2.3. Intervention of the State and Neo-liberal Policies

The liberal and neoclassical economic theories dominate current legal systems in most parts of the Western World (Kessler, 2005). Neo-liberal ideology derives from the neoclassical economics which distinguishes economic growth from social equity and prefers the first one. Neo-liberal policy tries to maximize the gain gathered from the scarce resources within a free market economy. Neo-liberal policies blame the social welfare spending as the cause of the unaffordable public expenditure (McCluskey, 2005).

Kessler (2005) suggests that the liberal concepts of autonomy, equality and rationality are taken as a basis to western law including antidiscrimination law. According to her, neoliberalism threats against women's search for reconciliation of family and work responsibilities or transforming the gender division of labor within the family, since it constructs women's caregiving as an autonomous rational choice undeserving of public support or legal protection.

4.2.3.1. Autonomy and Rational choice

In the liberal theory, rationality has two dimensions. First, rationality refers to one's own self-interest and conception of the good. This has another understanding that subordinates altruism to egoism which may lead to a society where no one cares for children. Secondly, the altruism needed for unpaid childcare duty is

suggested to have a relation with emotions. This refers to mind-body dualism and the assumption on women's lack of rationality. Such perception has been the reason for denying many rights for women. For example, the paternalistic legislation which are based upon irrational choices of workers in need of a livelihood,[44] results with women's exclusion from some sectors in order to protect them from hazardous work instead of regulating the source of the hazard (Fredman, 1997).

On the other hand, autonomy refers to a person without any social bonds on which also the ideal worker is based. This ideal worker is identified by Joan Williams[45] as an individual unencumbered by childcare or other nurturing responsibilities (Kessler, 2005).

Kessler (2005) points out that rational choice theory hypothesizes that human beings who are utility maximizers are motivated by self-interest and all human behavior is a result of rational decision making (p. 384) which is a process that individuals choose to engage only in actions which are in their self-interest. Rational choice theory perceives pregnancy and childcare duty, which is a result of it, as chosen. In this case, women who chose to get pregnant have to be individually responsible from their rational choice. Thence the opponents of social welfare programs and workplace regulation ask why they have to subsidize other individuals' private choice to have children. However, personal preferences are not always the case in pregnancy. Thus, rational choice theory offers a little to recognize women's biological differences (Kessler, 2005). On the other hand, women are socialized to carry an ethic of care and feel responsible for dependents. If caregiving is taken as a personal choice of individual women, women's cultural differences, which cause inequality in all parts of the society in general and the labor market in particular, are left untouched.

Kessler (2005) distinguishes the feminist responses to autonomy and rationality into two scripts. First script is the "story of biology" which argues that women are not fully autonomous and rational because their biology force women to be more disposed to give care. The latter is called as the "gender socialization

[44] Here, the irrationality of the choice of workers in accepting hazardous working conditions derives from their economic hardness. In this case, workers would refuse the hazardous work but they accept it because they need a livelihood.

[45] *See* Joan Williams. "Deconstructing Gender." 87 Mich. L. J. 1989. 797-822.

story" which bases the same answer on women's differential socialization than men. In both cases women do not make rational choices as understood by liberal and economic theories, even if they seem like 'choosing' to take care of their children. Actually women are answering to the expectations and impositions of the society based upon their nature, to take the caregiver role. According to Kessler, gender socialization story fails to challenge problems arising from work-family conflicts because of the legal system's failure to address socially constructed (cultural) differences between women and men and also between women from different cultural backgrounds (ethnicity, race, class etc.).

Kessler also refers to Joan Williams[46] who argues that social forces such as lack of adequate and affordable childcare services, employers' expectation for the fulfillment of the ideal worker concept and fathers' entitlement to this ideal worker make women seem or feel like its their choice to devote themselves to caregiving rather than wage work. Kessler argues that the concepts of autonomy, rational choice and equality make women's caregiving responsibilities nearly invisible in the current legislation in many countries. According to her assuming that humans are autonomous, unencumbered actors has caused to the creation of the current structure of the workplace which is modeled on a worker who has no caring responsibilities.

4.2.3.2. Individualism

In the liberal thought, individual is taken as the primary unit of the society. Fredman (1997) criticizes this perception, on the grounds that: first, it ignores the role of socialization of women's choices and ascribed role as primary caretakers. Secondly, individualism fails to acknowledge the role of the family in women's oppression. Individualism considers the wellbeing of the head of household instead of focusing on all members as separate individuals, in other words families are treated as individuals in the state policies. For instance, social security is granted to the head of household and other members of the society benefit from it through a dependent beneficiary status. Thirdly, since legal rights are attached generally to the

[46] *See* Nancy E. Dowd. "Work and Family: The Gender Paradox and the Limitations of Discrimiantion in Restructuring the Workplace. 1989. 24 Harv. C. R. – C. L. L. Rev. 79. 89-90.

individual, individualism impedes law to address group wrongs as it is the case in discrimination by sex, race, ethnicity etc. In these cases, discrimination results from a status or a group membership.

Individualism also constitutes a basis for equality in liberal thought which derives from the universality principle of human rights and its claim for equality that all humans are naturally born as equal. However, as indicated above, equality which is attached to individuals has failed to address group wrongs that impede the individual's access to rights. This failure has led to the production of affirmative action policies in order to eliminate any de facto condition which impedes the chance to succeed for disadvantaged groups (Acuner, 1999). Regrettably, despite many efforts to achieve substantive equality through affirmative action programs within the EU such as parental leave, child-care services, flexible work arrangements, tax reductions etc., the jurisdiction of the ECJ is still trapped within the Wollstonecraft dilemma. While hearing equal pay cases, ECJ seeks for an adequate male comparator in order to compare individuals. Moreover, while considering indirect discrimination which may be called as an acceptance of group rights, ECJ seeks an adequate group in order to reach decision through comparison. In indirect discrimination cases if the claim is based upon gender discrimination, courts usually take gender statistics to be able to make comparison (Fredman, 1997).[47] When the case is gender discrimination, courts still seek for an adequate comparator to determine the existence of the inequality, instead of addressing the societal background of the inequality.

4.2.3.3. Capabilities Approach

The capabilities approach has been produced by Amartya Sen within the context of development economics. Martha Nussbaum recognizes that her thought based upon Aristotle scholarship is very similar to Sen's after their collaboration at the World Institute for Development Economics Research beginning in 1986.

According to Nussbaum, the idea at the background of capabilities approach has two dimensions. The first idea is that the presence or absence of these

[47] See, Chapter 6 for mor detailed information.

capabilities is similar to presence or absence of humanity. The second idea is that these functions should be done in a truly human way not merely animal way (this is also what Marx found in Aristotle). Nussbaum (2000) argues that the most important principle is treating every person as an end in themselves. Both Marx and philosophers from the opposite view, have also declared that it is wrong to subordinate the ends of some individuals to others. However, this is what happens to women historically since *they are treated as mere instruments of the ends of others as being reproducers, caregivers, sexual outlets, agents of a family's general prosperity* (Nussbaum, 2000. p. 2).

Women face with discrimination everyday as being less nourished, less healthy, more vulnerable to physical violence and sexual abuse, less literate, less able to exercise their rights, less represented in politics and employment etc. (Nussbaum, 2002). The double burden of work and family responsibilities over women is also addressed by Nussbaum as one of the barriers against women's social and political circumstances to be equal which is crucial to have equal human capabilities with men.

However the universalism claim in this approach may face several objections from advocates of culture and diversities who would take universal measures for equality as Western dictate of life. Also, this approach has to face with challenges from opponents of paternalism who may argue that assuming their own choices are not the best for them is treating people as children (Nussbaum, 2002). From a distinct perspective Nussbaum (2000) argues that any system of law is paternalistic including all Human Rights documents and national legislation because people are refrained from things they want to do by all of these legislations. Moreover, when there is a considerable inequality between the parties of any contract or intercourse, law has already a paternalistic voice in appearance such as in protecting renters to owners or consumers to manufacturers and sellers or employees to employers etc[48]. These choices of the law derives from the assumption that one party is weaker, for example, employees accept hazardous working conditions in an environment full of unemployment and poverty in order to not loose their jobs. In this case assuming that workers have the right to resign if working conditions endanger their health is not

[48] However, in reality, we see that courts reach many decisions which justify the oppression of the weaker party despite the disclosed aim of lawmakers in the legal grounds of the laws.

relevant since this kind of a choice necessitates economic circumstances to be appropriate. In many cases, if there is no sufficient job supply and unemployment insurance, workers will continue "choosing" to work in those conditions.

Therefore Nussbaum (2002) argues that preferences are interconnected with economic and social conditions. When the case is women, they often have no preference for economic dependence since even they do not perceive themselves as equal citizens with rights, they are not encouraged to exercise their rights and believe in their equal worth from the childhood. They believe some great human goods are not for them such as political participation or education, and they consent to a lower living standard. When it comes to men, they too are surrounded by the social traditions of privilege and subordination which leads them to depend on their wives to do all the housework and childcare sometimes in addition to an eight-hour working day. Capabilities approach, in this sense, questions for every individual case "What is she actually to do and to be?" Nussbaum (2002) then lists Central Human Functional Capabilities which are for each person instead of groups or families or states or corporate bodies, as 1) life, 2) bodily health, 3) bodily integrity, 4) senses, 5) imagination and thought, 6) emotions, 7) practical reason, 8) affiliation, 9) other species, 10) play, and 11) control over one's environment. For example, women are not capable to play, namely to enjoy leisure time activities, in all over the world because of the double burden of work and care. Actually Nussbaum (2000) makes a classification of capabilities which distinguishes them into three. First, there are basic capabilities such as hearing and seeing, which are natural instruments of humans to develop more progressed capabilities. Secondly, there are internal capabilities which are defined as adequate conditions for exercising essential functions, a state of readiness which are learned or developed unless an external negative intervention comes from the outside world. For example, female genital mutilation damages the internal capability of having sexual pleasure despite the ability of all adequately grown up humans have the basic capability for that. However, Nussbaum argues that internal capabilities need support from the surrounding environment to function. Third group of capabilities are combined

capabilities which constitute capabilities in the list done by Nussbaum.[49] In these capabilities internal capabilities are combined with appropriate conditions for the exercise of the function. Nussbaum continues with the female genital mutilation (FGM) example by suggesting that a woman who is not genitally mutilated but widowed at a very early age and forbidden to remarry still lacks capability of sexual pleasure. Lack of combined capabilities is also the case when women's economic dependency is considered. For example, all women unless they have some disability, have the basic capability to work by virtue of having two hands and legs etc., with the necessary education or training they can acquire the ability to perform the requirements of a specific job in the future. However, many girl children do not have access to education because expectations of their families from girls are the performance of unpaid domestic activities especially caregiving both when they are child and in the future, instead of bearing the breadwinning responsibility (Özbay, 1995). Another impediment against the access of girl children to education is a practical preference of families among their children to be boys if the family is in poverty and does not have the ability to afford education of all children. On the other hand, a woman who may have had access to education and even a university degree, may be prevented from employment by her husband, as was the case in the former Turkish Civil Code which included a provision (article. 159) requiring the permission of the husband in order for a woman to engage in wage work.[50] Nussbaum (2000) gives another example that women are not capable to play, namely to enjoy leisure time activities, because maximum-hour protections fail, gender division of labor within the household is untouched and women suffer from the shift of the double day.

Caregiving is an area where women experience great inequalities as this is perceived in most societies as part of women's unpaid household responsibility. The long and invisible hours of caring activities result in curtailing women's ability and time for engaging in employment, citizenship, leisure and self-expression, in other words, limiting their life chores. Therefore, lack of opportunities to reconcile

[49] The list of central human capabilities of Nussbaum : 1) life, 2) bodily health, 3) bodily integrity, 4) senses, imagination, and thought, 5) emotions, 6) practical reason, 7) affiliation, 8) other species, 9) play, 10) control over one's environment. See Nussbaum (2000) pp. 78-70 for details.

[50] This provision was canceled by the Constitutional Court in 1990 long before the alteration of that Civil Code with the recent one in 2001.

work and family responsibilities, along with other inequalities, may result in poverty and deprivations, which in turn prevents the realization of central human capabilities. Thus, the capabilities approach gains greater importance to claim reconciliation rights in developing countries where women experience multiple disadvantages.

4.2.4. Rights Discourse

As it is discussed above, it has been hard for women to change the perceptions of law makers and lawyers. Thus, the State's position continued to be patriarchally biased when the case is women's problems. Women have used the moral and substantive equality terms, to which male politicians and adjudicators were familiar and claimed rights based on equality. However, all the time their demands faced with the liberal perceptions of rights discourse and the male standard as the comparator of their rights. Here, we seek for another solution in order to refer reconciliation of work and family responsibilities as a demand of women from the State authorities.

First of all, feminists criticize the conceptualization of the self of the liberal view on which the rights discourse is based (Beveridge and Mullaly, 1995). Beveridge and Mullaly (1995) suggest that in rights discourse, rights are under individual property and it is necessary to accord priority to conflicting rights, powers and privileges. Therefore, before claiming a right, one must identify herself/ himself within the category recognized as being in possession of the claimed right and argue that in the particular case her/ his right or privilege should be given priority to the conflicting claims of others (Beveridge & Mullaly;1995). However, this procedure for claiming a right was criticized in the feminist literature since it is predicated of a society of free-willed individuals, motivated by self-interest, perpetually seeking prioritization of their own claims. This idealized individual misrepresents the way in which women in particular operate. The individualistic concept of the self suggests that it is free only if it is capable of holding its socially given roles and relationships at a distance and judging them according to dictates of reason. However, this view ignores the fact that the self is embedded or situated in social practices and it is not possible always to opt out of

those roles and relationships especially when the case is mothering or other caring activities for the elderly, disabled or sick people etc. Through this free-individual-based rights discourse the self is not only abstracted from its social, economic and cultural context but also from the physical body of the subject herself. This unacceptable conceptualization of the self is interpreted variously to include "right to choose" which is used in many cases to ignore women's need to legal regulation and state interference (Beveridge & Mullally; 1995).

Secondly the powerful liberal argument that assumes the society consists of free individuals with free choices in exercising their rights under the name of democracy has to be challenged. When a working woman demands some benefits from the welfare state or protection against unfair dismissal of the work contract because of her caring responsibilities the word of 'choice' comes out. To exemplify the problem roughly, it is possible to justify any rejection against this woman by arguing that it was her right to choose between work and family, if she has chosen to have a family and also to work she has to deal with the problems arising from this personal decision. However, women are not able to 'choose' easily between their self interests and the ones, for whose care they feel responsible both because of their biology and socially-attributed roles. As West (1988) argues, women are interconnected with the other human beings more than men especially when they are fetuses and infants. Thence, women's moral voice is one of responsibility, duty and care for those who are first physically attached, then physically dependent, and then emotionally interdependent. On this account, Martin (1994) criticizes the positivistic notion of law as a science based upon the values of neutrality, autonomy and rationality and he suggests an alternative model for fairness and justice which is not based upon rights but on responsibilities and the reduction of the conflict in the society. In order to address women's problems in reconciling work and family responsibilities, such a responsibilities approach should constitute the basis of rights discourse, instead of an interpretation of rights within the liberal context. In this way, life patterns of women, who usually think in terms of the needs of others rather than rights of others since they are materially and psychically provide for others' needs, can be included in rights discourse. It should be always in mind that people living under societal rules and perceptions are not always objectively and freely reasoning individuals. As a result of their socialization,

especially women live in a subjective way by valuing intimacy, developing a capacity of nurturance and an ethic of care for the connected other (West;1988). These patterns of women are true human conduct and rights should ensure all individuals including both women and men to be capable to develop such an ethic of care and responsibility for others, instead of encouraging them to be selfish individuals. Socializing women with a sense of responsibility and altruism for others and men with a sense of competition with others and selfishness; then punishing the former while rewarding the latter in the access of employment or some state beneficiaries lies beneath the discrimination of women and should be regarded in any effort to eliminate gender discrimination arising from women's domestic responsibilities.

Thirdly, justifying grounds of the State regarding noninterference in the private sphere should be challenged. Therefore, another problem which is highly criticized within the feminist literature is interconnectedness of the public-private distinction with the critique of so-called first generation rights namely civil and political rights. Civil and political rights such as the right to life, the right to freedom of expression, the right to bodily integrity and the right to a fair trial have been outweighed in traditional declarations of rights and subjected to better protection through more effective legal instruments. However, they are criticized by feminists because of their inadequacy to be applied in the private sphere. The limitation of rights to the public sphere by designating the private world of the family as a place where individuals realize their diverse goals free from state interference was criticized by feminists since within this hidden private place it is more likely that men realize themselves while women and children mostly face oppression. Palmer (1995) argues that social and economic rights such as the right to housing, adequate food and a minimum standard of living often implicate the private sphere, so they are more related with the women's concerns.

In my opinion the capabilities approach[51] (Sen, 1979; Nussbaum, 2002) which covers both first-generation and second-generation rights (Nussbaum, 2002), combines all of these challenges on a basis for demands from the state. Nussbaum

[51] What people are actually to do and to be…(Nussbaum, 2002; p.49)

(2002) firstly lists the inequalities and disadvantages women face all over the world which limit their capabilities.

The critique of Nussbaum (2002) against the traditional rights discourse draws the framework of the challenge:

> "…the rights framework is shaky in several respects. First, it is intellectually contested…Freedom from state interference primarily, or also a certain positive level of well-being and opportunity? ... Second, the language of rights has been associated historically with political and civil liberties, and only more recently with economic and social entitlements…A woman who has no opportunities to work outside the home does not have the same freedom of association as one who does… Third, (…) it has also typically ignored urgent issues of justice within the family: its distribution of resources and opportunities among its members, the recognition of women's work as work. Fourth, the historical association of the rights framework with the influential Western tradition of 'negative liberty' suggests to many users of the idea that rights are primarily protections against the state interference rather than generating positive obligations for state action supporting human well-being… Fifth, (…) the rights approach is often criticized for being merely Western, and for being insensitive to Non-Western traditions of thought…" (p.48)

Therefore, there is a need for regulations transforming mainstream rights discourse to respond to women's experiences of rights violations. On this account, central human capabilities of Nussbaum which include women's experiences are appropriate tools in setting standards for transforming mainstream rights discourse. After determining standards to be achieved, determining bearers of responsibility is crucial. Recently, women's movement and international bodies use the due diligence mechanism especially while combating with violence against women for ensuring that the state bears responsibility. Ertürk (2006) suggests that "the concept of due diligence provides a framework for action while at the same time it is a criteria by which to determine whether a state has met or failed to meet its obligations to combat violence against women" (p.27). The scope of due diligence standard may expand to all human rights of women to demand state action. Indeed, seeking for positive interference of the state is not a new fact; it was argued even in the Liberal wing by J. S. Mill and T.H. Green that the creation of material and institutional preconditions of freedom through positive state intervention is required (Nussbaum, 2002).

Nussbaum (2002) argues that the liberty is not just having rights on the paper but being in a material position to exercise those rights. Similarly, Elson (2002)

argues that all human rights require resources for their fulfillment. For example, exercising the positive freedom of education necessitates well-resourced educational systems financed by taxation.[52] However, the neo-liberal policies based upon adult freedom of contract and become dominant in the world policy since 1980s, 'presumes that to give substance to human rights is to reduce the role of the state, liberate entrepreneurial energy, achieve economic efficiency and promote economic growth'(Elson, 2002; p.80-81). Social costs are not taken as relevant in budgeting or in fiscal policies. Nussbaum argues that women's interests are usually subordinated to those of men in the name of reaching to the larger goals. For example, economic growth of a region offers nothing to women if husbands have the control over the household. Therefore, considering the distribution of resources and opportunities to each person instead of a region or families is vital for women's access to development (Nussbaum, 2002). Neo-liberal objectives necessitates privatization in almost all areas of social service and production in order to reduce poverty through market participation and provide social safety nets for people who are not included in this private wealth system (Elson, 2002). The reluctance of neo-liberal policies for additional costs lead to the privatization of care by transferring its costs from the public sector to households and communities, even it is less visible. Nevertheless, the public objectives are based upon the invisible safety nets based upon women's unpaid work. While women dedicate themselves to take care of the children, sick and elderly and create survival strategies within the households to cope with poverty away from the eyes of the public, it becomes easier to reduce public expenditures for the neo-liberal state policy.

Although care is one of the most important human needs since we all begin our lives as helpless children and we become dependent on care in sicknesses and when we get old, it is ignored in public policies and viewed as a womanly responsibility. However this perception of care impedes women to reach their central human capabilities. Thus, there is the necessity to provide care in a way without injuring the capability for self-respect of the receiver and also without exploiting and discriminating against the caregiver on grounds of that role which means providing care services for the dependent to enable women to realize important human

[52] The same situation is valid in claiming another positive right, women's right to work which necessitates well-resourced childcare systems financed by taxation.

capabilities (Nussbaum, 2002). Thus, capabilities approach emphasizes the importance of creating an area for people to claim their real choices. According to Nussbaum (2002) rights discourse shouldn't be ignored since claiming rights draw strong normative conclusions from the fact of the basic capabilities, rights guaranteed by the state leads to a justified claim on not to deprive those capabilities in virtue of being human, lastly rights language has value because of the emphasis it places on people's choices and freedom. Than, rights language and capabilities approach are not conflicting in many ways. It is not the rights discourse in total which facilitates the perpetuation of inequalities, but the perception of the market as the provider of the liberty on grounds of the first-generation rights derived from liberal view which connect noninterference of the state to liberty of people's choices. Market is profit driven, therefore fails in providing equal health or education services which enable people to reach their real capabilities, so the affirmative state action is required. In the era of rapid economic globalization it becomes crucial to use rights language with capabilities language in order to create a just world for each person (Nussbaum, 2002). To conclude with conclusive accounts of Nussbaum (2002) to create a ground for the following discussion in this study:

> "Women all over the world have lacked support for central human functions, and that lack of support is to some extent caused by their being women. But women, like men- and unlike rocks and trees and even horses and dogs- have the potential to become capable of these human functions, given sufficient nutrition, education and other support. That is why their unequal failure in capability is a problem of justice." (p. 73)

Consequently, we are able to demand from states to bear responsibilities in order to enable women to become capable of exercising their rights mentioned in HR documents. This capabilities language is more useful than the equality claims since it does not necessitate any comparator. As Elson (2002: p.87) puts clear that 'equity objectives may be treated as optional, but respect for human rights is obligatory'. Each person has different capabilities along with a standard of human capability which are not determined by sex in general but by the will of that person in particular. Capabilities approach forces states to enhance people's abilities and to increase the options available for their choice. When this approach is used along with human rights language, states become responsible to regulate a just substructure

which rights and capabilities of humans are going to be based upon. Human rights language provides a more authoritative and urgent discourse than welfare discourses and conceptualizes being human as being active claimants of rights and potential agents of social change (Elson, 2002). Also, where rights are an entitlement for every person –i.e. rights bearer- the state by definition becomes a rights provider. It is this understanding of the human rights discourse that gives us to make demands on the state.

4.3. Social Policies Regarding Caring Among EU Member States

4.3.1. The Welfare State in Europe

The origin of the welfare state appears to be the disintegration of the mid-twentieth century bargain between capital and labor (Walby, 1990). The welfare state is a phenomenon of mid 20th century lasting well into the 1970s for most states. The demand of the labor force resulted with the acquisition of social rights of workers in Europe in this period. The realization of these social rights necessitates the social policy of the state which now constitutes an area that clearly reflects the nature of state-society relations and the content of citizenship in a given country. Social and economic citizenship of the people which includes the distribution of welfare benefits and the elimination of poverty constitute the crucial part of the concerns (Buğra, 2007).

The distribution of welfare benefits indicates to a political decision of the State and the limits of distribution are determined by the economic conditions of the given State. The decision for the distribution of welfare benefits also reflects the social structure of the country and in many cases this structure is highly patriarchal. Jane Lewis (1993) argues that the family has been the main provider of welfare in all European countries despite some differences in practice. In this case the burden of care services is over the shoulders of women such as the care of the elderly, sick, disabled and the children in terms of cutting public expenditure for these and releasing states from these responsibilities. The presupposition that these are women's duty and performed for free is an essential condition which has served

to exclude this apparently natural basis of all welfare production from the social-political debate (Gerhard & Knijn & Weckwert, 2005).

In Turkey alleviation of poverty is recognized as a state responsibility now. However, AKP, the ruling conservative liberal political party, emphasizes the role of charity in alleviating the burden of social spending on the public budget (Buğra, 2007). Similarly, during 1980s, conservative governments of Britain stressed their commitment to reduce public expenditure and the size of the government which means emphasizing the market, family and voluntary sector as alternative providers to state. This brings to draw a straight boundary between public and private and also defines family in terms of privacy and responsibility which leads to leave family members on their own to create individual solutions to combine paid and unpaid work (Lewis, 1993). At the end of the 20th century, social researchers, philanthropists and policy-makers were agreed on vitality of the traditional division of labor between adult family members for the social stability and personal welfare (Lewis, 1991).

The social democratic welfare state practice of Scandinavian countries is quite different from the liberal state policies of Britain. Goals of social democratic reforms in the former were to achieve universal and solidaristic social rights, to equalize the status of workers, farmers and salaried strata; to secure good benefits and remove various eligibility conditions and to promote a major income distribution through flat-rate benefits and progressively financed taxes (Esping Andersen, 1985). Taking Denmark as an example, Siim (1993) conceptualizes this early form of social democratic welfare state as the "first stage" and argues that it did not have a gender dimension, therefore resulted with the continuity of traditional gender division of labor. The "second stage" of the welfare state takes the increase in public production of services, especially childcare and other services for children, young people and the elderly as its keystone. This interplay between the state and the family in the institutional level brought a new conception of equality and altered women's relation with the state. Women's right to waged work and the public organization of caring work were crucial for this change from oppression to partnership (Siim, 1993). Therborn (1987) emphasizes the importance of a strong women's movement in Scandinavian countries and argued that the women are a new force to promote the creation of a more democratic

welfare state such like working-class movement and peasant movement did in the past (Siim,1993).

4.3.2. Welfare Regimes in Europe

The term "welfare regime" has become a key concept for comparative work on social policies. By the use of this term, cultural aspects which characterize different welfare policies are highlighted. The term regime includes asset of rules and norms which design expectations in the society and impact social practices, thus it is an attractive term (Gerhard& Knijn & Weckwert; 2005). The most famous typology of welfare regimes was introduced by Esping-Andersen that makes a distinction between liberal, corporatist and social-democratic regimes. This typology is criticized because it devotes little attention to the role of the family, gender and unpaid activities in welfare states. Most recently, two regimes which are the Mediterranean model and the post-communist regime is added to this typology in the literature. When policy instruments and their impact on work/life balance is indicated generally taxation policies, childcare facilities, leave arrangements such as maternity leave, paternity leave and parental leave, the availability of part-time work opportunities and other flexible working arrangements are considered in the literature (Dulk & Doorne-Huiskes; 2007).

To commence with the most developed, *the social democratic welfare state regime* which is observed in Sweden, Denmark, Norway and Finland, is characterized by a complicated system of public work and family policies aiming at reconciling work and family responsibilities to be performed in accordance. There is an individualized tax system and the state is the main provider of the welfare. The state is the biggest employer and employs women in high proportions. All the states involved in this regime have publicly funded childcare services since professional care is acknowledged as beneficial for children. Long paid leaves for both parents accompany these childcare arrangements. Gender equality and well-being of children are important goals which are not sacrificed for the sake of the other. Parental leave serves to encourage men in the equal division of care responsibilities between women and men, 'daddy quotas' which regulate a nontransferable leave period for fathers. However, in all four countries fathers take

less parental leave than mothers (Crompton & Lewis & Lyonette; 2007). There is a long way to eliminate the patriarchal culture, bias within the society and actions of the capitalist market which reinforce inequalities; but states under this regime are relatively closer to an equal gender division of labor and gender equality in general.

The most effective attack to the social democratic welfare state comes from neoliberalism since they argue that welfare state takes away both individual freedom and individual responsibility. Neo-liberal policies bring replacement of public institutions, services and cash transfers with community care, reductions in the social wage and more stringently tested benefits. These neo-liberal policies are resulting in disadvantaged ways for ability of low income groups such as women to exercise individual freedom and choice. When freedom to competitive individuals in the public sphere is allowed, women face the hidden costs occurring in the non-market family unit. This is a result of the reality that individual responsibilities are not undertaken by the same individuals who enjoy their freedom (Briar, 1997).

Therefore, it is meaningful to discuss *the liberal welfare state regime* in this stage. Liberals handle servicing as an individual responsibility to be performed as a market activity. Thus, the development of work and family arrangements is left to market forces through limited government involvement and national regulations. UK and Ireland are the representatives of this regime within the EU. As a consequence of the orientation of this regime to the well-being of the market, the Parental Leave Directive of the EU applies at minimum in the UK as 13 weeks and unsurprisingly unpaid (Crompton & Lewis & Lyonette; 2007).

The third regime defined by Esping-Andersen is *the conservative corporatist welfare state regime* represented by Germany, Austria, the Netherlands, France and Belgium within the EU. Contrary to liberals, conservatives insist on perceiving servicing as the prerogative of families. France and Belgium are vague cases and will be examined below while discussing childcare regimes in Europe. For now, it is possible to suggest that France considers childcare while Germany and the Netherlands emphasis the role of parental care. As a consequence of this, in France part-time work among women is almost not existing while in Germany and the Netherlands large numbers of women work part-time in order to combine work and family life (Crompton & Lewis & Lyonette; 2007).

Post-communist welfare regime is suggested to identify the welfare regime generally observed in post- communist countries such as Poland, Slovenia, the Czech Republic, Bulgaria and Hungary. Under the socialism, a family model with two full-time earners was accepted. However, equal share of housework and care between the family members was not debated as in the social democratic regime despite the labor market participation of women in high proportions. So the perception of gender division of labor remained traditional. After the transition into the market economy, the role of the state decreased however state provisions are substantial when compared to conservative and liberal regimes (Crompton & Lewis & Lyonette; 2007).

The Mediterranean regime is represented by Portugal, Spain, Italy and Greece within the EU context (Crompton & Lewis & Lyonette; 2007), however Ian Gough (2006) locates Turkey also in this model. These countries have fewer public provisions and they also do not support the breadwinner family model. In this regime, the cost of bringing solutions to the hard conditions of the market economy and the competition in this framework is born by the family rather than social policies. In reality, these social costs are born by the individual women in the families through performance of unpaid domestic work (Acuner, 2008). As it is put by Moreno (2006), while men enjoy the authority in the family as a result of being the primary breadwinner, women are delegated to caring and housework. In this regard, Italy is the only country that offers fathers an incentive of one month extra parental leave if the father takes at least three months parental leave (Crompton & Lewis & Lyonette; 2007).

Today, even the writers, who argue that the era of the nation state is over with the rise of globalization; stress the need for state action (Crompton, 2006). For example; Beck (2000) argues that there is a strong need for powerful states with the capability to make transnational market regulation both within and out of the frontiers in the opposite way of the neo-liberal suggestions for deconstruction in the power of nation states. This market regulation should include elimination of informal sector and the equal distribution of economic and social rights and benefits. On this account, EU should work on the approximation of the national legislation of different member states with different welfare regimes in order to reach unification of social and economic rights of EU citizens. While doing so,

Scandinavian regime should be considered especially when childcare services are at the target.

4.3.3. Childcare Regimes in Europe

Within the EU, the general trend for today is a shift in childcare responsibilities from family to collective. Historical and cultural developments in the society along with the struggle of women and other social actors such as trade unions and family organizations for public support to childcare has led to several values and norms related to public support to childcare called as childcare regimes to be introduced in different countries. These diverse regimes are identified in different forms of regulation and share between family, state and the market or the company (Letablier & Jönsson; 2005). Here below the classification of Letablier and Jönsson (2005):

The Nordic Childcare Regime is based upon two characteristic responsibilities of the State which are gender equality and childcare. Long before its EU membership Sweden and the other Nordic countries realized a transition from male breadwinner model to dual-earner model consisting of two equal partners. Gender equality has been integrated into social policy, family policy and the labor market policy (Letablier & Jönsson; 2005). According to Eser (1997), there are two motivations behind this policy. First one is the responsibility of the society for its own children. Secondly, social services are considered as a complementary part of the required substructure for economic growth. Both approaches are directed to the aim which is to create equal opportunities for women (Eser, 1997). When creating a universal breadwinner model is at the target, it becomes crucial to introduce diverse opportunities which facilitate to reconcile work and family life in equal terms. Therefore, in Nordic countries public childcare, parental leave including an encouragement for fathers to participate in childcare and flexible working hours for parents were provided. Making a part of this parental leave non-transferable for fathers occurs as a strategy to alleviate the proportion of fathers who take parental leave and to equate it to mothers (Letablier & Jönsson; 2005). Parents have the equal rights and responsibilities for the children and they continue even in case of divorce and having other relationships for both parents. Since the end of the 20th

Century, childcare services have become universal available even for unemployed and those on parental leave, in Nordic regimes (Letablier & Jönsson; 2005).

Taking *childcare as a family policy issue* is the regime which applies in France where State intervenes to childcare as the result of social and political consensus upon the necessity of early socialization for children. In France there are two sorts of preschool childcare opportunities. 'Créche' is the term used for the public service for the dual-earner parents with children under three years old. 'L'ecole maternelle' is the school which provides preparation for children between 3-6 years old. It is very important for parents however that only 10 % of the children have the chance to have a place in crèches. 'L'Etat paternalist' is a conception of the state in France, which refers to the role of the state as protector of mothers and motherhood irrespective of their working status. Parental leave and part-time work are highly opposed in France by considering that these are impediments before women's employment because they are much gendered. The perception in France is that the State should bear the responsibility of childcare if a woman wants to continue her career along with mothering. In this case, providing paid leave and childcare facilities gain importance. On the other hand, state's interference in the childcare is conceptualized in terms of equal opportunities and protection of children. Yet in 1990s, when France had a Socialist government, gender equality came into account in state's approach to childcare. Reduction of working hours and paternity leave introduced in this period in order to reconcile work and family issues. Also, at least one year of parental leave which is linked to employment rights, offered to parents (Letablier & Jönsson; 2005).

Childcare as a private responsibility is the regime in UK where liberal welfare regime and male breadwinner model are very strongly in effect. Here, state interference in childcare is at minimal only in the local level and only for children at risk, handicapped or with handicapped parents. Private sector, voluntary sector and families are the main providers of the child and adult care. According to Eser (1997), for the liberal state tradition, less importance is paid to promote gender equality than perpetuating the holiness of the market. It was not before 1990s that UK government addressed any policies in order to eliminate the problem that childcare to be unaffordable is the impediment before mothers' labor market participation. In 1996, the legislation regulating tax deduction from childcare for

working parents encouraged lone mothers to enter into the labor market. In 1997, with a consideration on education as a right for children instead of care, all parents with 4-year-old children entitled to have vouchers covering an education settlement. In 1998, this voucher scheme was abandoned and the new childcare regime based upon the goals which are encouraging the employment, combating the social exclusion, decreasing poverty, ensuring young children to be prepared in order to take their places in the work force of the tomorrow and enabling mothers to reconcile work and family lives. However, tool was chosen as childcare tax credit which shows that privatization of childcare which compels parents to buy childcare from the market continues and childcare is considered as in families' responsibility. In 1999, UK and Ireland stopped rejecting to EU directives on Maternity leave and Parental Leave and now UK provides an unpaid parental leave covering 13 weeks. In 1998, a new policy developed which offers after school care for children inside the schools which aim at enabling families (especially women) to reconcile work and family lives. However, state intervention in childcare is still limited due to the lack of feminist voices in the grassroots and mainstream political institutions (Letablier & Jönsson; 2005).

Considering *childcare as a mother's responsibility* is the childcare regime in Germany linked to conservative welfare regime and institutionalized division of labor between women and men (Letablier & Jönsson; 2005). According to Eser (1997), with the effect of the Church, protection of the traditional family life is promoted and mothering is encouraged, so that the daycare services for children are not developed. This leads to the rise of a large informal childcare market. Besides, programs which offer material aid to mothers would be explained with policies which prevent them to participate in the labor market (Eser, 1997). This child-raising benefit is for maximum two years depending on the income of the partner, also a three-year parental leave is available for parents. Mothers are encouraged to take parental leave and work part-time as a way to reconcile work and family due to the understanding that considers children's socialization to be in the family and relation between mother and child to be the basis for a good education. Parental leave is not considered as a strategy to facilitate women to stay in the labor market but an opportunity for women to give care to their children. Employment and mothering are not perceived as compatible unless the mother works on a part-time

basis and encouraging this kind of flexible work for women is the present labor market policy in Germany (Letablier & Jönsson; 2005), the second after Netherlands with the most part-time women workers among the EU member states.

In *The Mediterranean Childcare Regime,* childcare is perceived as a family and kin issue. Traditionally, families consist of several generations within which socialization and care of children take place. On this account, responsibility of childcare is on the women of the family including mothers and grandmothers. The State only intervenes when the family is unable to cope with its duties. In Spain, nowadays, men and women are participating in the labor market in equal terms and there is an increase in both women's participation rates in the labor market and their income. However, only a part of childcare for children younger than 3 years old is performed by the state, so what enables mothers to participate in the labor market is the help of mothers and sisters in childcare or the opportunity to hire babysitters if the mother has sufficient income. As in many other European countries childcare services for older children aims at improving education instead of enabling mothers to continue their careers as professionals (Letablier & Jönsson; 2005).

Both welfare and childcare regimes of Turkey are in the Mediterranean regime, childcare problem of working mothers is organized within traditional family relations by mothers/mother-in-laws, neighbors, and babysitters (Eser, 1997) as it was demonstrated in the previous chapter with table 4.

The proportion of the institutional care is very low as seen in the table 4. Regrettably, the unpaid institutional care is lower. Full-time education, which keeps children at the school while parents are at work and facilitates reconciliation of work and family, hasn't been realized yet in Turkey and state intervention in the public childcare services is not adequate. The unpaid public childcare service is provided by private crèches and preschools offering daycare which are subject to the permission of Social Services and Child Protection Institution (SSCPI). These private enterprises have to offer the service on an unpaid basis to 5% of the children who are younger than 6 years old and who are from poor families, whose parents are death and cared by a relative, whose mother or father is dead and the other parent is working, whose parents are divorced and in necessity of work, whose mothers stay in the shelter of SSCPI and whose mothers are in prison. With the most recent numbers only 877 children benefit from this service in Turkey (SSCPI-

official website, 2008). Eser (1997) points out that, in Turkey, policies regarding women's problems take women as separate from their family and childcare responsibilities. Even it is accepted that it is required to increase childcare opportunities in order to provide more education and working opportunities to women, it is discussed in terms of protecting children and indirectly the family instead of emphasizing that the lack of adequate childcare services is a crucial impediment against the increase in women's employment. It displays the reality that increasing childcare opportunities is not perceived as an effective factor to shape the labor market and increase women's employment by the State. In other words, childcare is located among the problems arising from employment of mothers, it is not perceived as a tool to increase women's participation in working life and women's employment (Eser, 1997)[53]. Consequently, there are no sufficient policies and measures in Turkey to eliminate the negative impact of family responsibilities on women's employment especially the childcare responsibilities.

However, taking any measures –i.e. secured leave arrangements especially parental leave, childcare services part-time work opportunities- to encourage women's employment and equal participation of family responsibilities between women and men. Here, I would like to introduce these measures in some EU member states. I depend on the article of Limoncuoğlu (2008) by adding the Turkish legislation to his research on family-friendly legislation in some EU member states each representing a different regime. First of all Sweden (70.7 % of women are in employment) represents the Nordic model as introduced above and it has the highest labor market participation among women among EU member states after Denmark (73.4 %). Secondly, Italy and Turkey are indicated as representatives of the Mediterranean childcare regime and also the low female participation in the labor market according to the most EU member and candidate states. In Germany (62.2 % of women are in employment) and Netherlands where the conservative welfare regime is dominant, childcare is taken as a mother's responsibility. Moreover, Netherlands constitutes a differentiated case since it has the highest rate among EU member states in part-time work (74.9 %). France (57.7 % of women

[53] Because of the decrease in birth-rates, the population is aging and elderly care services also gain ground as a determining factor for women's participation in the labor market (Eser, 1997) however there is no state policy yet on this issue in Turkey.

are in employment) is also a distinct case in childcare as being the representative of the childcare regime that takes childcare as a family policy issue. Finally, United Kingdom (65.8 % of women are in employment) is the last sample which represents the liberal welfare regime and unique in taking childcare as a private responsibility[54].

Table 6. Comparison of Family-friendly Measures in some EU member states and in Turkey

	Sweden	France	Netherlands	Germany	United Kingdom	Italy	Turkey
Maternity Leave	Total of 480 days, two months prior to birth.	16-week leave paid by Social Security System. 6 weeks before- 10 weeks after the birth for the first pregnancy. From the 2nd child extends to 24 weeks. It is longer in pregnancies for multiple births.	16 -week paid leave. 6 weeks before the birth (applicable only to full workers who work more than 12 hours per week. Unemployment insurance fund pays. No employer responsibility. Self-employed have the right to 16 weeks of benefits, depending on their earnings.	Paid, fully compensated and compulsory. 6 weeks before and 8 weeks after the birth. Social security system pays 390 € and the rest is paid by the employer.	52- week leave paid leave. The first 2 weeks after the birth, or the first 4 weeks are obligatory for factory workers. During Ordinary Maternity Leave, the worker earns all of her rights as if she continues working. During 26 weeks long Additional Maternity Leave, employment contract is pending, no right shall be born on worker.	21 weeks paid leave starting from 1 month before the birth. During the leave period mother is paid 80 % of her previous wage by her health insurance.	16-week unpaid leave- 8 weeks before and 8 weeks after the birth. In multiple pregnancies, 2 additional weeks before the birth (disability allowance up to 2/3 of the worker's wage is paid if 120 days of maternity insurance premium is paid before the birth) Workers may work until 3 weeks prior to birth if they wish and a physician Approves. The rest is added to the leave after the birth. Max. 6-month unpaid leave after the expiry of 16 (18) weeks compulsory leave.

[54] The numbers in this paragraph are taken from the EUREWM (2008).

Table 6- Continued

Paternity Leave	10- day paid leave a minimum 80 % of father' s last wage to be used within the first two months after the birth.	11- day (18 in multiple pregnancies) paid leave. Social Security System pays. The leave must be taken within four months after the birth.	2-day paid leave. The employer pays. Taken any time during the first month after the birth.	No separate paternity leave	2 -week leave can be used during the first 56 days after the birth. Paid to 90 % of the father's wage if he works for the same employer for at least 26 weeks	Available only when mother is sick or he is granted as a lone parent to be deducted from mother's maternity leave. (No separate paternity leave.)	3- day paid leave only available in the public sector.
Parental Leave	480 days starting 2 months before birth. Paid to at least 80 % of the last wage during the first 360-day. A fixed daily pay for the rest. Part-time use is available until the kid is 8. Untransferable 2-month leave compulsory for the father and 2-month for the mother. Each parent should have worked with the same employer during the last 6 months or at least 12 months in the last two years. Paid sick leave to minimum 80% of the wage, 60 days per year until the child is 12.	3 -year unpaid (social security system pays compensation) take. Parents shoul have worked with the same employer at least one year. Can be taken in three different ways 1- not working for a maximum of three years, 2- working part time (between 16 and 32 hours per week over the same period), 3- taking a training course.	3- month leave. Taken until the child is 8. 6-month leave in case of part-time use. Unpaid for private sector workers in full-time. In public sector, it is paid to 75 % of the previous income. 2-day emergency leave for each event and 10-day care leave per year. They are paid to 70 % of worker's wage.	3-year paid leave up to 67% of the net income of parents not being under 300€ and above 1800€. 2-month additional leave, in case the other partner demands to take leave. It can be part-time, working 15 – 30 hours per week. Can be partially postponed until the child is 8. 10- day sick leave for parents with one child and 20- day for more children.	13- week unpaid leave until the child is 5. It is 18 weeks if the child is handicapped and available until the child is 18. Parents should have worked for the same employer at least 1 year. The leave have to be used partially for a maximum of 4 weeks in a year. No limitations for the parents of handicapped child.	10 months unpaid leave until the child is 9. It is doubled in case of multiple births. An additional 1 month leave is granted if at least 3 months of the leave is taken by the father. Additional 5- day unpaid leave per year in health problems of children. Two times one-hour resting time per day for mothers during the first year after the birth.	Draft Statute on Parental Leave is prepared by the KSGM and waits in the commission in the Parliament to be enacted.

Table 6- Continued

Job security	Full job security both in private and public sectors during all leave periods.	Both parents have job security on leave periods. The employer has to offer the same job or a similar one with same rights to the previous work of parents when they return. The employer also has to offer education to parent whose job has changed due to technological advancement.	Both parents have full job security on mentioned leaves.	No annulments starting from pregnancy until the end of the forth month after the birth. Bankruptcy of the employing organization, severe breaches of duty by the pregnant woman, or the smallness of the firm are exceptions to job security. Security continues during the parental leave.	There is job security for all leaves mentioned. The employer must give the same job to the employee who returns to work after or within Ordinary Maternity Leave. After this time employer is only obliged to offer a similar job.	There is job security for all leaves mentioned.	Employees have the right to demand compensation up her 4 months' wages, if discrimination in the conclusion, conditions, execution and termination of an employment contract. Dismissals due to family responsibilities or pregnancy are not allowed. (The employee should have worked for an indefinite period, in an establishment with 30 or more workers and meets a 6-month seniority.) Capacity or conduct of the employee or the operational requirements of the establishment or service are exceptions.
Part-time Work	Parents may chose not to work or to work part-time during their parental leave.	Part-time working (16-32 hours a week) on the full 3- year period of parental leave. The payment made by the social security system reduces in this case.	Parents have the right to work part-time during their parental leave. Apart from that they have also flexibility to use such leave partially.	The employer who employs more than 15 workers is obliged to accept part-time work request of the employee unless there exists an acceptable reason arising from business or workplace.	The employers are obliged to consider requests of employees with a child less than 6 or a handicapped child less than 18 can work part-time.	There is no right to work part-time during family related leaves.	There is no right to work part-time during leave periods concerning maternity. Differential treatment against part-time workers is forbidden.

Table 6- Continued

Child care Provision	Each municipality is responsible for providing child-care to children between 1-12. Families' application for a place for their children should be met within 3 – 4 months. A big proportion of children has access to public childcare	The state is responsible in the care service for children of at least 2,5 and all families have the right to enjoy public kindergarden service. The service is free for low budget families and government subsidy is at least 85 % for wealthy families.	Going to school is obligatory for children over 4. Tax refund system to covers the childcare expenses of families instead of previous direct payments. Since 2007, employers are obliged to provide financial support of at least 1/3 of all childcare expenses of families.	For children between 3- 5, families have a reserve in kindergarden. Kindergarden expenses are paid by the state.	The employers are obliged to consider requests of employees with a child under 6 or a handicapped child less than 18, to work part-time.	Public childcare services for children under age 3 are limited. There is no subsidy for private investments. For children after 3 years old, there are subsidies for kindergardens which are not guaranteed for every child.	Private enterprises subject to the permit of SSCPI have to offer childcare service on an unpaid basis to 5% of the children under 6 and with special family problems. Obligation to open lactation room for establishments with 100-150 women employer With the last amendment, now employers have the opportunity to purchase the service from outside the establishment.

4.3.4. Organizational Change

4.3.4.1. Towards a Universal Caregiver Model

Methods which determine to whom and how to distribute welfare benefits are conceptualized as the work/welfare dichotomy by Briar (1997). According to her, in English speaking countries since 1830s welfare benefits have not been paid to people who are in employment in order to give male workers incentives to enter in the labor force and become independent workers. On the other hand, because the State perceives women as dependent to men, State welfare have been paid directly, with a minor exception, to mothers without a male provider (Briar, 1997). If the welfare system is strongly connected to the labor market such as in Austria, only

workers in standard employment (not informal and) have full access to the social security system as a far-reaching consequence of the patriarchal gender roles and the division of labor deriving from them (Kreimer, 2004). It is far from argument that women, who are a marginalized group within the labor market as a consequence of their domestic responsibilities and differences such as pregnancy, are mostly not available to fulfill the concept of the standard worker.

It is argued that labor market has to be challenged from the beginning instead of demanding equal rights to enter into it. Since the problematic issue is the structure of the employment market which is based upon a stereotypical male worker who needs a family wage because of his family responsibilities but does not participate personally in childrearing or caring work (Bridgeman & Millns; 1998). Occupational patterns are designated to adjust the family life of a single individual or a worker who is supported by a nonworking spouse (Dowd, 1996).

Kreimer (2004) refers to the effect of modernized male breadwinner model within the segregated labor market by arguing that it provides an ideal background for the flexible and atypical employment of women which do not provide sufficient income and social security. However, women's employment on these conditions continues since there is no need to alter them while there are male breadwinners (Kreimer, 2004).

At this point, Nancy Fraser (1997) suggests three different ideal models to promote gender equality in different degrees and through varying solutions. The first model is a universal breadwinner model which is designed to enable men and women to participate equally as paid workers and in which care services are commodified and available to all. The second model called a caregiver parity model in which leaves and part-time working are made available especially for women and rewarded sufficiently to render care costless. However, Fraser argues that both two models are problematic since they do not target the change in men's behavior and this makes them fail to address the structural and cultural barriers which continue women's lack of time for life and workplace marginalization. Forasmuch as, the former necessitates women to adopt a male working standard and this would cause emergence of a double-burden on women due to lack of time for childcare even if care services are available. The latter is problematic too, because it enables women to participate in paid work lesser than men, so it reinforces presuppositions about

gender differences and maintains the necessity for women to adjust themselves to the ideal male worker. The third model developed by Fraser is the universal caregiver model in which both women and men are expected to perform paid and unpaid activities. The policies to be produced through this model would be reducing working hours both for women and men in order to enable them to perform the unpaid work as well as supporting them in care activities. This model brings that workers with care responsibilities to be the norm rather than being unusual in the labor market which is an effort directly targeting change in the structure of the labor market, family, culture and the society as a whole (Gambles, R & Lewis, S. & Rapoport, R.; 2007).

4.3.4.2. Possibility of a Woman-friendly State

Walby discusses a shift from private to public patriarchy based on opinions of many writers (such as Dworkin-1983, Carol Brown-1981, Hernes-1994) and argues that women's dependence upon their husbands (private patriarchy) decreased however their dependence upon the state both as employees of the state and clients receiving state services (public patriarchy) increases (Walby,1990). Such thought of feminists who define women's relation with the welfare state in terms of patriarchy (e.g. Eisenstein,1979; Wilson,1977; Brown, 1981) or suggest a shift from private to public patriarchy (e.g. Hernes, 1987; Borchorst & Siim, 1987; Walby,1990) was the trend in 1970s and early 1980s actually, however, from the end of 1980s an opposite view of the state emerged through some feminists (e.g. Hernes, 1984; Siim,1984) who conceptualize this relationship as an alliance (Leira,1993) in the context of Scandinavian welfare states around new terms which are "women-friendly state" and "modernized gender system"(Siim, 1991).

Despite the claim of policy-makers that governments do not have the power or the resources to alter the basic facts of working women's relative poverty and lowly status, Briar (1997) argues which I agree with that in reality the state has enormous powers to intervene in market and non-market work. Briar takes regulations of the British state during times of national emergency as a basis to her argument of states' ability to translate social structures. She concludes by suggesting that it is not inevitable for the capitalist State to be patriarchal, it has been so because of the

combination of patriarchal forces acting upon it. I agree with Briar on this account, especially when she suggests that there is more scope for improving conditions of working women via the State than the market.

Regrettably, not all the women experience Scandinavian practices with the welfare State. On the other hand in many countries including Scandinavian states, even women have entered the public sphere, it was not on equal terms with men (Walby, 1990; Leira, 1993) unless they behave like men with respect to work and family obligations. Leira (1993) displays this situation by arguing that even if the welfare state established a partnership with women, women have been the junior partners. They are subordinated in paid work, the state and public cultural institutions as well as in the domestic division of labor, sexual practices, and as receivers of male violence (Walby, 1990). On this account, Bryson (1992) emphasizes the segregation in the labor market while criticizing the women's welfare state in the same line with Walby by suggesting that it has most effectively delivered women into the proletariat and into the secondary labor market. Leira (1993) betrays three elements of the welfare state as the causes of women's junior partnership in the state and subordinated position in the labor market.

> -The importance accorded to paid work over other forms of work
> -The definition of essential parts of social reproduction as a private responsibility and private concern, and
> -The division of labor by gender, which ascribes the greater part of time-consuming unpaid care to women.(p.68-69)

Thus, overvaluation of market work compared to domestic work, state's non-intervention in the childcare on grounds of taking it as a private issue, and the gender division of labor which overburdens women by considering them as sole caregivers and secondary breadwinners are facts which should be altered. This means that there is a need to structural change and transformation in order to deal with gender inequality and states should take responsibility on transforming these highly gendered structures if a state of gender equality will emerge.

4.3.4.3. Equality Policies and the Role of Law

Surely, the impetus behind enhancement of social policies was not solely to achieve gender equality but to cover the need for more children on account of a

labor market shortage (Siim, 1993). However, gender equality policies became crucial to recruit women into labor market in order to fight against decreasing fertility rates of women especially in rapidly aging Europe. When the point of origin of social policies is not securing equality; social policies which are presented as equality policies do not obstruct the maintaining of the patriarchal state tradition along with policies to reduce its negative effects.

Celia Briar (1997) argues that both equality and difference are encouraged by government policy as both resulting in ways that disadvantage women. She exemplifies this contribution by pointing out that being "equal" in the workplace means working hours incompatible with childcare and being "different" means part-time employment and the lack of prospects or a living wage. According to Briar, this opposition between equality and difference is misleading since the opposite of equality is inequality and nothing else.

According to Bryson (1992), the legislation enacted in many countries to address women's multiple disadvantages regarding employment in particular, highlights that women and men experience a different welfare state. She continues by defining equality policies as "a Scandinavian collective term" which neatly encapsulates the focus of a cluster of policies which are referred to elsewhere by a variety of terms[55] including anti-discrimination, equal employment opportunity and affirmative action[56].

Briar (1997) exemplifies how equality policies do not reach their targets in the British case that policies to promote equal treatment between women and men at work still produce unequal results since equal opportunities legislation ignores domestic responsibilities of women. Policy makers perceive caring responsibility of parents by referring it to mothers because they agree that it is mostly expected for men to work longer hours incompatible with parenting (Briar, 1997). Gonäs and Karlsson (2006) present the data of Swedish Ministry of Finance regarding "the division of economic resources between women and men" to prove the costs for

[55] These terms will be indicated deeply under the subtitle of feminist jurisprudence.

[56] It was the first time that the term "affirmative action" used when President Kennedy issued an Executive Order, which required that Federal contractors take affirmative action to ensure that employees and applicants for employment were treated without regard for their race, creed, color or national origin, in 1961 as a response to civil action by Blacks (Bryson, 1992).

women of having a family and children. According to data (Prop.,2002/03:1), in the year 2000 Swedish women, who are cohabiting with a partner, had 66 percent of men's incomes and if they have children this amount decreases to 57 percent. These women with children aged 7-17 had 64 percent of men's incomes however this was lower than single women with the children in the same age who had 68 percent (Gonäs and Karlsson, 2006). These data from Sweden, one of the best practice countries in Europe in reconciling work and family responsibilities, clearly shows that if legislation do not aim at creating a universal caregiver model, in other words do not aim at changing the structure of the market and the family, results will occur as women's confinement to a marginal and subordinated worker status.

Moreover, accepting the male model prevents us from looking at the structure of the labor market and to get closer to achieve equal results. To decrease the gender inequality within the labor market, first of all it must be acknowledged that workers from both sexes have home lives and personal needs as well as work commitments. Not even all men fit the prototype which assumes the existence of an ideal worker who is independent, unconnected to others, abstracted from messy realities. Nevertheless, equality policies promoting equal treatment are not inherently empty however the interpretation of equality by courts or public bodies which reflect a political decision mainly privilege the male standard (Bridgeman & Millns; 1998).

Similarly, Bryson (1992) paraphrases the ineffectiveness of sanctions regarding anti-discrimination and affirmative action with that the law-makers mostly have been white and healthy (not disabled or ill) men to the date. Along with law-makers, adjudicators are also white, male and middle class people and this is the reason to the ascription of formally equal rights instead of promoting substantive equality, which are more capable to eliminate the historical subordination of women, will secure the rights of these privileged people whose rights are already protected. Within the rights discourse, women's concerns are marginalized and such discourse does not allow women to address fundamental issues of inequality, questions of the feminization of the poverty, inequality in earnings and the organization of the childcare (Palmer, 1995).

Mary Joe Frug (1979)[57] suggests that traditional work schedule is not flexible for primary caretakers and women compromise their employment opportunities to accommodate childrearing. She further argues that to achieve equality for working mothers, legislation is necessary. However, conceding a right is not enough to guarantee it, if the state refuses to fund, in our case, for example childcare services (Bridgeman & Millns; 1998). Elisabeth Kingdom (1991) suggests some responses against the argument that equal treatment strategies are too limited to eliminate these problems. According to her, the focus on equality should be maintained, campaigns should focus on non-legal strategies, difference between the law and its effects should be considered in order to identify scope for change, and equal rights should be combined with special rights.

Consequently, adequate state policy is crucial to promote equality between women and men especially when positive interference of the state is required by-nature of the claimed rights such as economic and social rights. Therefore, in the next chapter, I introduce right to reconcile work and family responsibilities, which is located in economic and social rights, within the context of human rights regimes. The argument has two objectives which are to claim reconciliation to be a fundamental right and to disclose the obligation of the state in general and Turkey in particular to grant, protect and finance this right.

[57] The first feminist legal theorist claimed that labor market is hostile to working mothers.

CHAPTER 5
THE NORMATIVE FRAMEWORK FOR THE RIGHT TO RECONCILE WORK AND FAMILY RESPONSIBILITIES

All people need to be cared by others, be connected to others, leisure time, opportunities for realizing their dreams, for economic independence, travel etc. In this regard reconciliation of work and family responsibilities arises as a need of humanly needs, therefore it should be guaranteed by law. As introduced before, one of the main arguments of this thesis is first, there is a right to reconcile work and family lives and this is a fundamental human right for both women and men. Second, right to reconcile should be perceived as a human standard, in other words as a tool for the functioning of central human capabilities of persons that states should take any measures in order to create opportunities for all people to reach it. This is also a result of states' obligations under human rights documents and a requirement of fulfilling their obligation to respect and protect human rights as a whole.

In this chapter, the normative framework regarding reconciliation of work and family responsibilities at both international and regional levels will be introduced.

5.1. The United Nations

5.1.1. Twin Conventions: ICCPR and ICESCR

Since women are affected mostly by poverty and social and cultural marginalization, economic, social and cultural rights have crucial importance for the functioning of their central human capabilities. In this regard, rights mentioned in ICCPR should always be taken as a condition for the availability of rights included in the ICESCR and vice versa. Just as the rights included in the ICCPR, rights included in the ICESCR shall be guaranteed on the basis of non-discrimination (Article 2/2) and gender equality (Article 3) by member states.

> "Article 2/2: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> Article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant."[58]

The distinction between these articles is that in the former states are under a negative obligation requiring them to refrain from discriminatory action; however the latter necessitates states parties to take positive action in order to promote gender equality between women and men by ensuring equal outcomes and ameliorate the past effects of discrimination This interpretation encourages the notion that anti-discrimination has to be considered immediately while achieving gender equality necessitates a progressive period as long as economic resources allow (Otto, 2002). Article 7/a-1 of the Covenant constitutes the equal pay for equal work clause and Article 10/2 of the Covenant covers the protection for mothers including social benefits and paid leave. However, these articles have a very patriarchal and paternalistic language which requires a gender sensitive interpretation in their application. Protective rights are inconsistent with women's equality, a rights approach should be preferred (Otto, 2002).

According to Otto (2002), social norms and cultural traditions that legitimize women's inequality, the failure to take account of women's historical disadvantage or their strict experiences and women's unequal status in their families constitute the structural impediments to women's equal enjoyment of economic, social and cultural rights.

Otto points out three obligations of the states parties under this Covenant which may be listed as respect, protect and fulfill.

> "First, the duty to "respect" women's equal enjoyment of covenant rights requires that states parties refrain from action that results in unequal outcomes for women and rescind any existing laws and policies that have an unequal effect. Second, the duty to "protect" requires the establishment of appropriate regulatory frameworks and laws that restrain third-parties (non-state actors), including in the domestic sphere, from actions that lead to inequality in women's enjoyment of Covenant rights. Third, the duty to "fulfill" requires states

[58] The full text of the covenant is downloadable at http://www.unhchr.ch/html/menu3/b/a_cescr.htm (9 December 2008)

> parties to take positive action including legislative, administrative, judicial, budgetary, educative and promotional measures to ensure that women's equal enjoyment of Covenant rights is realized in substance."(Otto, 2002; p. 46)

On this account, it should be noted that even if the ICESCR does not include a specific reconciliation right availability of the rights included in it such as right to work, right to the enjoyment of just and favorable conditions of work, right to an adequate standard of living, right to social security require that state parties should respect women's equal enjoyment of these rights by refraining from actions and rescind policies and laws which limit women's labor market participation or economic independence. States parties should protect these rights by preventing employers and the family members from actions, which limits women's equal enjoyment of these rights, through regulatory and statutory frameworks. Finally, fulfillment of these rights by the states parties in substance necessitates positive action such as childcare provision, a net of public child-care facilities……

Turkey signed both the ICCPR and the ICESCR on 15 August 2000, twin conventions will come into force after their ratification in the Turkish parliament.

5.1.2. CEDAW

Convention on the Elimination of All forms of Discrimination against Women as the international bill of rights for women, entered into force in 1981 and is ratified by 185 countries. Turkey ratified the CEDAW with reservations in 1985 placed on Article 15 (par. 2 and 4) and Article 16 (par. 1 c, d, f, g). All reservations were removed on 20 September 1999 as a step forward in implementation of the Convention (Levin, 2007).

The CEDAW calls for the adoption of special temporary measures in order to eliminate the effects of long-term patterns of inequality. General recommendation 5 of CEDAW urges the state parties to use temporary special measures to promote de facto equality for women in education, politics and employment by introducing positive action, preferential treatment or quota systems.

Article 11/2 of CEDAW specifies the measures to be taken with respect to employment and childrearing responsibilities:

> "In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
>
> (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
>
> (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
>
> (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
>
> (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them (un.org.)"

As Article 11/2 clearly shows, CEDAW targets to eliminate the impediments against women's enjoyment of right to work which necessitates plenty of measures to be taken. Kardam states that CEDAW relies on states to ensure that human capabilities[59] are developed and to create an enabling policy environment for the application of women's social and economic rights (2005: p.35).[60]

5.1.3. Beijing Declaration and the Platform for Action

Strategic objective F.6. 'promote harmonization of work and family responsibilities for women and men' of the Beijing Platform for Action (BPfA) aims at promoting harmonization of work and family responsibilities for women and men. Actions to be taken by Governments are as follows:

a.Adopt policies to ensure the appropriate protection of labour laws and social security benefits for part-time, temporary, seasonal and home-based workers;

[59] See Nussbaum (2002) and Elson (2002).

[60] The Optional Protocol of CEDAW (1999) constitutes a large step forward in the search for advancement in international women's human rights since it strengthens the existing enforcement mechanism of the Convention by offering two new mechanisms. First, communication procedure provides the right to lodge complaints with Committee on the Elimination of Discrimination against Women, to individuals and groups with the claim that a state party which ratified the optional protocol violates the terms of the Convention. Second, the inquiry procedure enables the Committee to prepare inquiry reports if there is adequate evidence that State Party to the optional protocol seriously and systematically violates the rights guaranteed with the Convention (Hoq, 2000).

promote career development based on work conditions that harmonize work and family responsibilities;

b. Ensure that full and part-time work can be freely chosen by women and men on an equal basis, and consider appropriate protection for atypical workers in terms of access to employment, working conditions and social security;

c. Ensure, through legislation, incentives and/or encouragement, opportunities for women and men to take job-protected parental leave and to have parental benefits; promote the equal sharing of responsibilities for the family by men and women, including through appropriate legislation, incentives and/or encouragement, and also promote the facilitation of breast-feeding for working mothers;

d. Examine a range of policies and programmes, including social security legislation and taxation systems, in accordance with national priorities and policies, to determine how to promote gender equality and flexibility in the way people divide their time between and derive benefits from education and training, paid employment, family responsibilities, volunteer activity and other socially useful forms of work, rest and leisure.

Actions to be taken by Governments, the private sector and non-governmental organizations, trade unions and the United Nations with respect to the objective of this study are as follows:

a. To adopt appropriate measures involving relevant governmental bodies and employers' and employees' associations so that women and men are able to take temporary leave from employment, have transferable employment and retirement benefits and make arrangements to modify work hours without sacrificing their prospects for development and advancement at work and in their careers;

b. To provide support services and facilities, such as on-site child care at workplaces and flexible working arrangements;

5.1.4. ILO

The ILO which became the first specialized agency of the UN in 1946 was founded in 1919 through Versailles Peace Treaty, to pursue a vision based on the premise that universal, lasting peace can be established only if it is based upon decent treatment of working people. The ILO is the global body responsible for drawing up and overseeing international labor standards. Gender equality is one of the organization's four strategic goals which is recognized not only as a basic human right, but intrinsic to the global aim of Decent Work for All Women and Men (www.ilo.org).

In order to perform its standard setting mission the ILO adopted over 180 Conventions which need ratification of national legislative authorities to become binding over the member states. Nonratification of the conventions is not subject to any sanctions and member states are usually not bound with time limitations to ratify conventions, ratification take place on a voluntary basis.[61] On the other hand, even conventions are ratified; the ILO is not competent to force state parties in order to comply with the convention through economic sanctions and coercive measures (Boockman, 2001). However, these conventions provide a framework for trade unions and labor rights and women's rights activists to pressurize the member states to ratify these conventions and to comply with the established standards for decent work.

In its first decades of establishment, ILO had a protective approach to women workers. First of all, prohibition of night work for women was regulated in the Berne Convention in 1906 and became one of the first ILO Conventions (Convention no. 31). Later, in 1935 Convention no 45 which has prohibited underground work by women in mines. Committee of Experts and workers' representatives continued to argue that protective legislation is necessary in order to prevent exploitation of women and to relieve their double load. However, Fredman (2007) argues that the core reasons lying beneath this emphasis on protecting women were twofold. First, workers' representatives actually aim at protecting men from competition with women. Secondly, Egypt and Senegal articulated in ILO debates that to uphold the family structure and values of their society's protection

[61] This principle applies to all treaties including CEDAW.

for women was important (Fredman, 1997). However the new night- work convention which was introduced in 1990, applies to both women and men upon the recognition of that night-work have negative effects on both health and family obligations of all workers. Thereupon, it is regulated by the Convention that special measures should be taken to protect night-workers' health even at minimum and enable them to meet family and social responsibilities (Fredman, 1997).

Work and family responsibilities has been in the agenda of the ILO since the Maternity protection Convention (No.3) was adopted in 1919. In this early Convention, it was argued that leaving the burden of the pay during this period on the employers may cause them to act reluctant while employing women. Thus, ILO insisted on maternity benefits to be paid by the state in order to enable maternity leave to function in full capacity (Fredman, 1997).

In 1965, Recommendation on Women with Family Responsibilities (No.123) was adopted. However, with the recognition of that the measures introduced with this recommendation were reinforcing women's domestic role as well as strengthening the perception that men are immune from family responsibilities, the Workers with Family Responsibilities Convention (No.156) and Workers with Family Responsibilities Recommendation (No.165) were adopted in 1981 (Hein, 2005). These advancements led to the introduction of several policies and legislations all around the world in order to cope with the recognized problem. To summarize, the origins of this problem are the separation of home and workplace, increasing labor force participation of women, increasing care needs of the elderly due to declining fertility rates which is a consequence of the lack of adequate childcare services, the burden over the women because of the traditional division of labor by sex which takes caring and housework as women's duty, the increasing need for women's work as a survival strategy in order to cope with poverty.

Several strategies and measures have been suggested in order to cope with this problem however I examine the conventions respecting measures within the scope of this study. On this account the revised Maternity Protection Convention (No.191) which was adopted in 2000 and regulates parental leave, the Home Work Convention (No.177) and the Part-time Work Convention (No.175) will also be considered in this section along with above mentioned legislation of the organization. Strategies promoted with these conventions will be criticized through

a consideration over the danger argued in the ILO report Time for equality at work (2003) that work-family policies which are oriented solely to women may lead to reinforcement of the stereotype of women as secondary earners who primarily carries family responsibilities and to double burden of women to be increased. Also such legislation assuming that only women have family commitments may disadvantage women within the labor market since employers would prefer employees dedicated solely to their work. Similarly with Turkish case, employers in Brazil, Chile and Egypt reported that they prefer keeping the number of women under amount determined by the legislation which regulates the responsibility of employers for financing childcare rooms or nursery as to the number of women employees. These social benefits should be either provided by the state or by employers through measures covering both sexes with children (Hein, 2005). As Bakırcı (2007) points out, not surprisingly, Turkey has not ratified yet the ILO Conventions 156, 175, 177 and 183 which are examined here.

Here, the ILO legislation regarding the core strategies to cope with work-family conflict chosen as childcare services, parental leave, part-time work and homeworking is indicated.

5.1.4.1. Market-driven reconciliation strategies

5.1.4.1.1. Convention on Homeworking

Whether because of the constraints on their movement outside the home or because of their family responsibilities, homeworking has been a way for women to earn income while staying at home. Along with its failure to motivate any change on the women's status as the sole carer and the homemaker, it also constitutes the most vulnerable category among strategies for workers to cope with family responsibilities due to the inadequate legal protection, their isolation and the weak bargaining position. Most of the legal protection in national laws as it will be indicated below while examining the Turkish case, refers to workers subject to a work contract which is not the case in homeworking since most of the homeworkers are subcontractors with no employment relation namely they are not recognized as workers (Hein, 2005). On this account Home Work Convention No.177 brings measures to be taken

for providing “quality home work” on a basis of equal treatment in Article 4 paragraph 2:

> “Equality of treatment shall be promoted, in particular, in relation to:
> (a) the homeworkers' right to establish or join organizations of their own choosing and to participate in the activities of such organizations;
> (b) protection against discrimination in employment and occupation;
> (c) protection in the field of occupational safety and health;
> (d) remuneration;
> (e) statutory social security protection;
> (f) access to training;
> (g) minimum age for admission to employment or work; and
> (h) maternity protection.”(ilo.org/ilolex)

Even the risk of women’s confinement to the domestic sphere and persistence of family responsibilities to stay on women is ignored, how to implement these measures is subject to any inquiries since homeworkers are invisible, working without work contracts, usually illiterate or have a low degree of education, and even they do not consider their work as work.

5.1.4.1.2. Convention on Part-time work

Since the most common reason of work and family incompatibility seems long working hours which results with women to avoid entering many of the jobs to be available for family responsibilities and employers to prefer male workers who comply with the necessities of long working hours in any patriarchal culture where gender division of labor is in effect, reducing the time at work foreseen as a strategy to cope with this problem mainly experienced by women (Hein, 2005). Similarly, Recommendation No. 165 states that measures should be taken to reduce daily hours of work and the overtime. On this account, part-time work arises as a strategy, not surprisingly most of the part-time workers are women.

Here, part-time work as a two-edge sword should be considered once more that when part-time work is not available many women remain outside the labor market involuntarily because of family commitments but unfavorable conditions of part-time work compared to full-time work in terms of wage, fringe benefits and social insurance coverage and less opportunities for training and career development leads

part-time work to become a marginalized women's work. This fact augments the wage gap between women and men and reinforces the male breadwinner model as well, thus women assigned to a secondary role in the labor market and continue to be sole bearer of family responsibilities (Hein, 2005). Recommendation No.165 paragraph 21 offers a model which secures the terms and conditions of employment including social security coverage to extent equivalent to full-time workers and these entitlements may be calculated on a pro rata basis. Also the recommendation includes opportunities to be open for part-time workers to return full-time employment. However all of these regulations take the standard work as full-time work, so they are not capable to turn the position of part-time work from being marginal as women's working pattern to a standard working pattern attracting both sexes in order to have time to spend with their families while being economically active.

Influenced by the Dutch approach to part-time work that provides same employment rights such as statutory minimum wage, holiday pay and social security legislation irrespective of the working hours of the worker, the ILO introduced the Part-time Work Convention No.175 in 1994 by referring specifically workers with family responsibilities (Hein, 2005). Hein (2005) summarizes that on which grounds part-time workers access to equivalent conditions with the 'comparable' full-time worker through the Convention No.175 as occupational safety and health, preventing discrimination in employment and occupation, basic hourly wages, access to statutory social security schemes, maternity leave, termination of employment, paid annual leave, and paid public holiday and sick leave. However, it is allowed to determine pecuniary entitlements in proportion to hours of work or earnings with article 7 of the same Convention, this reduced income offering is likely to effect the decision of male workers to work part-time and aggregation of women workers in this working pattern continues.

5.1.4.2. Equality-driven reconciliation strategies

5.1.4.2.1. Workers with Family Responsibilities Convention and Recommendation

In efforts to reconcile work and family responsibilities, care facilities play a key role (Hein, 2005) as it will be indicated below both in the ILO legislation and EU acquis[62]. First of all, Article 5 of the Convention No.156 regulates that the needs of workers with family responsibilities to be taken into account in community planning and community services whether public or private such as childcare and family services and facilities to be developed or promoted.

Article 4 of the Convention No.156 states that:

> "… all measures compatible with national conditions and possibilities shall be taken to enable workers with family responsibilities to exercise their right to free choice of employment; and to take account of their needs in terms and conditions of employment and in social security."

It is obvious that the first quote of the article which refers to the dependency on national conditions and possibilities limits the scope of measures to be taken especially within the developing countries where these measures to be taken is the most important but states may easily assert that their sources are limited. On the other hand, in many countries both industrialized and developing, support for family care responsibilities are covered by social security, however in developing countries many people work outside the scope of social security schemes (Hein, 2005).

One policy is lightening the burden driving from the family responsibilities of workers through public and private action as recommended in the paragraph 32 of the Recommendation No.165. An example for this policy may be given from Germany where primary school hours were extended (Hein, 2005) to comply with standard working hours in order to keep children cared while their parents are at work.

[62] The good and bad practices regarding the childcare services available in European welfare regimes were introduced in Chapter IV.

5.1.4.2.2. Leave Arrangements as ILO Standards including Parental Leave

Leave arrangements have crucial importance to facilitate workers to reconcile their family responsibilities with paid employment. Most of the workers employed in the informal economy or self-employed do not benefit from leave entitlements (Hein, 2005).

Maternity leave has been regulated with Convention No.3 since the early times of the ILO and today most of the countries have legislation regarding a paid leave for women workers in the case of pregnancy which is necessary to protect the health of both the mother and the child. Along with the paid maternity leave, guarantee to return to the previous job after the leave should be provided in order to enable women to exercise this right. On the other hand the possibility for young women to become pregnant retains employers from hiring them, also many women loose their jobs as a consequence of pregnancy especially in developing countries (Hein, 2005).

Convention no.183 which was adopted in 2000 in order to be replaced with the previous Maternity leave convention No.3 enacts a maternity leave of not less than 14 weeks of which six weeks are compulsory after the childbirth. The convention No.183 applies to all dependent women workers including those employed in atypical working forms. However, in many developing countries women work in the informal sector and do not benefit from the provisions of this convention. Also maternity leave arrangements do not cover some working relationships such as casual workers, part-time workers with short hours or temporary workers which are the types of work significantly filled by women (Hein, 2005). The convention No.183 article 6 states an adequate level of cash benefits during the maternity leave to be paid to women workers on a level which enables her to provide proper conditions of health and a suitable standard of living for herself and her baby. According to the article, such benefits shall not be less than the two thirds of the previous earning of the worker on maternity leave. Inevitably, if these benefits are compulsory to be provided by employers, it results in the decision not to employ women in the age of childbearing in many countries (Hein, 2005). Thus, the convention No.183 article 6 indicates to this problem as “In order to protect the

situation of women in the labor market, benefits in respect of the leave referred to article 4 and 5 shall be provided through compulsory social insurance or public funds or in a manner determined by national law and practice". Through this regulation financial burden of the maternity is not put on the employers of women and discrimination against women based on the higher costs of employing women is tried to be eliminated (Hein, 2005). The Recommendation on Maternity Protection No.191 which was also introduced in 2000, similarly recommends to member states that determination of any contribution due to compulsory social insurance providing maternity benefits and any tax based on payrolls which is raised for the purpose of providing such benefits and should be based on the total number of male and female workers without any distinction of sex. Beyond preventing women from discrimination based on sex, these regulations have the capacity to reach a recognition that childbearing and childrearing are not only women's responsibility, but also all the society including all men and women and the market and the state are responsible in production of the next generation.

Similarly, the convention No.183 article 10 mentions that lactation breaks or a daily reduction of working hours shall be provided to each woman worker who recently has given birth on grounds of right to breastfeeding. Determining conditions of this right are left to the national regulations. However, these breaks or reduced hours of the daily work shall be counted as working time and remunerated accordingly.

Another leave arrangement is paternity leave which becomes more common in national regulations recently despite the lack of existence of any international standards on this issue. Paternity leave refers to a benefit which is provided solely to fathers around the time of the birth. Paternity leaves in the national regulations are relatively shorter than maternity leaves given after the birth. As discussed widely that since both of these leaves are provided in order to childrearing responsibilities to be performed easily, a standard paternity leave should be determined similar to maternity leave.

Parental leave is the most effective strategy in the recognition of that fathers, namely male workers, have family responsibilities too. However, it is only recommended with the Recommendation no.165 that either parent should have the possibility of obtaining leave of absence namely parental leave within a period

immediately following maternity leave during which job security is provided and rights resulting from employment are safeguarded. This advice refers to national regulations not necessarily to be laws for example in many countries right to parental leave gained by collective bargaining agreements or voluntary employer policy (Hein, 2005). According to Hein (2005), different types of implementations of parental leave reflect the wider concerns within that society in relation to child development, fertility, labor supply, and gender equity and income distribution. In many countries take-up by fathers is lower than mothers so foreseeing regulations by law on an untransferable basis between parents is crucial in order to push fathers to take parental leave. Part-time parental leave and the ability to split the parental leave period come up as the strategies to cope with negative effects of being absent from work for long terms resulting with lower incomes (Hein, 2005) and interruptions in the career routes.

Turkey hangs back of the global agenda of reconciling work and family responsibilities as well as any other gender equality issues. However, ILO conventions which aim at reconciling work and family responsibilities and regulating the responsibility of both sexes in child-care are not ratified by Turkey such as Workers with Family obligations Convention numbered 156 (1981) which also regulates parental-leave, Part-time Work Convention numbered 175 (1994) which is now possible to be ratified by Turkey since part-time work is regulated in new Labor Code numbered 4857 as a statutory working pattern, Maternity Protection Convention numbered 183 (2000) which regulates applying disease aid to the women after giving birth and prohibition of terminating the labor contract of women by virtue of pregnancy and giving birth (Soysal, 2006). Turkey should ratify these conventions immediately in order to catch up on the global agenda in eliminating a core reason in women's subordination in the society and through that in the labor market. The European Union integration process due to the candidate status of Turkey already plays a mandatory role to force Turkey to enact laws and generate new policies to get closer with the Lisbon Strategy of Action that puts the target for 2010 as 60% of women to enter in the labor market. Also, EU acquis includes UN, ILO and European Council Conventions since several documents refer to these conventions (Bakırcı, 2007).

5.2. The European Union

Gender equality is the most highly developed area in European social policy which is acknowledged as being also a fundamental right. The European Court of Justice (ECJ) decision held in the Defrenne III, stated that 'fundamental personal human rights are guaranteed in the community legal order (Costello, 2003).

Resolution of the Council and of the Ministers for Employment and Social Policy (2000/C 218/02), on the balanced participation of women and men in family and working life was adopted in 29 June 2000 which states that

> "the principle of equality between men and women makes it essential to offset the disadvantage faced by women with regard to conditions for access to and participation in the labor market and the disadvantage faced by men with regard to participating in family life, arising from social practices which still presuppose that women are chiefly responsible for unpaid work related to looking after a family and men chiefly responsible for paid work derived from an economic activity…"

and states that all women and men have a right to reconcile family and working life. Although this statement of the European Council shows its inclination to an aim of altering traditional gender division of labor which seems very feminist, it explores the core aim lying beneath equality target explicitly in another paragraph:

> "The Lisbon European Council of 23 and 24 March 2000 recognized the importance of furthering all aspects of equal opportunities, including reducing occupational segregation, and making it easier to reconcile working life and family life, and considered that one of the overall aims of active employment policies should be to increase the number of women in employment to more than 60 % by 2010"(Official Journal of the European Communities C 218 , 31/07/2000 p. 0005 – 0007)[63]

It should be noted that this resolution has no binding force for the member states. The effectiveness of the EU acquis in motivating national legislation will be discussed later; however its success in promoting social change should be considered here. According to Acuner (2008), when social policy and equality policies are on the stage, EU authorities and powers do not show the same political stability and commitment that is given to regulating economic policies. She states

[63] Available at "www.eur-lex.europa.eu"

that one of the core reasons to this fact is the subsidiarity principle through which EU delegates the formulation of social policies and the implementation of the social standards set by the acquis to the authority and therefore domestic legislations of the individual member states. Therefore, standards set by EU are in place, implementation of these standards is rather slow since competent bodies in implementation are member states (Acuner, 2008).

5.2.1. Reconciliation as a Fundamental Right in the EU Law

5.2.1.1. European Revised Social Charter

The Charter regulates right of workers with family responsibilities to equal opportunities and equal treatment in Article 27 which reads as follows:

> "With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:
>
> 1. to take appropriate measures:
> a. to enable workers with family responsibilities to enter and remain in employment, as well as to reenter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
> b. to take account of their needs in terms of conditions of employment and social security;
> c. to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
> 2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
> 3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment." (conventions.coe.int)

Nevertheless, Appendix of the Charter (Revised) determines the scope of the Charter (Revised) in terms of people protected. According to the Appendix, it is understood that the article 27 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. It should be known that Turkey is bound by the Charter (Revised) by having ratified it on 21 December 2006 and put into effect in 1 February 2007 (conventions.coe.int).

5.2.1.2. European Union Charter of Fundamental Rights (EUCFR)

The Charter which is the result of the will of European Union agents to make rights more visible may have an impact on gender equality acquis of EU according to Costello (2003). She summarizes this prospective impact in terms of strengthening the fundamental rights orientation of gender equality in order to overcome the critiques against its market orientation, reinforcement of the weaker aspects of the acquis and the possibility of the transformation of the gender equality acquis as being contextualized in a broader rights context. However, the status and the future of the Charter are uncertain since it is not legally binding and integrated into the Treaties yet. Babayev (2006) argues that the Charter is on the way to acquire the status of soft law as a part of acquis communautaire (p.68).

Gender equality is regulated under article 23 of the Charter which states the ground for positive action in its second paragraph as it has been the case since Amsterdam Treaty Article 141/2.

> "Article 23/2 of the EUCFR: The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favor of the under-represented sex." (Official Journal of the European Communities C 364/1)
>
> "Article 141/2 of Amsterdam Treaty: 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." (eurotreaties.com)

However, Costello argues that EUCFR suggests more advantageous provisions in order to promote positive action. First, Article 23/2 of the EUCFR

refers to specific advantages without making any specifications; however Article 141/2 of Amsterdam Treaty limits the type of these positive actions with those for pursuing a vocational activity or preventing disadvantages in professional careers. Second, Article 141/2 of Amsterdam Treaty limits the scope of positive action with working life while, Article 23/2 of the EUCFR includes no such limitation, namely it is applicable in every aspect of life including the private sphere of home (Costello, 2003).

EUCFR deserves a mere attention because of the possibility for it to widen the scope of positive action in EU acquis to include measure to be taken for reconciliation of family and work responsibilities as Marzia Barbera (2003) suggests that the Charter brings family to be an autonomous legal entity within EU law. On this account the most important aspect of the Article 33 of the EUCFR is that it takes all the efforts in reconciliation in EU acquis one step forward by allowing reconciliation rights to be reconceptualized within the context of fundamental rights. Barbera draws the framework of the Article 33 of EUCFR within the broader context of EU acquis. Pregnancy and Maternity Directive, Parental Leave Directive, European Social Charter Article 8 which regulates protection of maternity and Article 27 of Revised European Social Charter 1996 which regulates the right of workers with family responsibilities to equal opportunities and equal treatment constitute the basis of Article 33 of EUCFR (Barbera, 2003).

Article 33 of the EUCFR which is regulated under the title of 'Family and professional life' reads as follows:

> 1. The family shall enjoy legal, economic and social protection.
> 2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child." (Official Journal of the European Communities C 364/1)

Barbera (2003) interprets from the Article that it does not give priority to any specific family model but includes all such as the breadwinner family model through maternity leave provisions and dual breadwinner family model through more egalitarian parental leave provisions. The Article does not consider whether

the family is based on marriage or free-union, whether it is a dual-parent family or single parent family, whether based on natural filiation or adoption.

Article 24 of the EUCFR:

> 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
>
> 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.(Official Journal of the European Communities C 364/14)

Costello, reports that Article 24 and 33 of EUCFR regulate competing rights and interests by exemplifying the problem through Lommers case that Mr. Lommers was denied access to subsidized childcare on grounds of his gender. Cathryn Costello (2003) puts it explicitly that this problem derives from the perception of childcare benefits as only a way to enable women to progress in the workplace, than considering allocations of childcare through this perception. On this account, children are seen as barriers to women's careers and nothing else. Here, she argues that if Article 24, along with the equal treatment directive were considered, gender of the parent would not be relevant in the decision of the court (Costello, 2003). However, in my opinion there would be still the risk that the use of Article 24 is interpreted by ECJ to reinforce the primary role of the mother in childcare by referring to the connectedness of infants to their mothers rather than fathers.

5.2.2. Reconciliation in Primary Sources of EU Law

Treaty of Rome which establishes European Community includes the first sex equality provision in the EC acquis. Article 119 known as the spiritual parent of all sex equality law and policies of the EU. Due to its higher constitutional status that derives from its inclusion in the original treaty, the Community based its sex equality regime on this article and the framework of the sex equality law emerged. The core reason beneath this article was the insistence of France on an equal pay clause since its national law includes one due to the activism of French feminists in 1940s and this would decrease competitiveness of France with other member states

(McGlynn, 2001). It was based on economic concerns not surprisingly since the foundation of the EC also was based on economy.

However, for a long time gender equality in acquis communautaire cultivated from the Article 119 EEC such as the Equal Pay Directive, Equal Treatment Directive and the Social Security Directive. Barbera (2003) argues that all of these directives were based upon the presumption that takes women as secondary in the labor market since their guiding principle was formal equality which seeks to correct market imperfections generating gender discrimination, by assuming that women and men are equal in all relevant aspects. However, as it has been discussed from the beginning of this study men and women are different in many respects because of the roles attributed to them through the traditional gender division of labor which determines women's role in life as carers and determines their role in the workplace through that as a marginalized and secondary labor force (Barbera, 2003). This conception of formal equality is not capable to solve the problem of how to distribute the social costs of pregnancy and child-bearing between individual employers, female workers or society as a whole. Barbera puts out that as a consequence of these statements, equality approach failed to deal with the problem of re-balancing the traditional division of sex roles within the family and the market and the focus shifted to equitable treatment rather than equal treatment. Therefore, fundamental choices of economic distribution in making the decision on how to spread the social cost of bearing children has begun to be regarded instead of claiming a so-called equality right depends on the conduct of a comparable men on a reality of women's lives which is impossible to compare with any men (Barbera, 2003). Based on this background, reconciliation to be regarded as a right and community policy started in 1990s with the declining birth rates and women's increasing participation in the labor market. Also the Article 13 of the Amsterdam Treaty and the Goods and Services Directive which enables EU equality principles to be widened to the areas apart from employment facilitates the demands regarding reconciliation to be realized (Acuner, 2008).

Concerning the core subject of this study; EU directives and ECJ decisions, which are secondary sources of EU law, are determining. Before indicating them it is worth to introduce relevant directives and articles of EC Treaty on which they are based. The most recent consolidating directive 2006/54, which replaces previous

directives on equal pay, equal treatment, occupational social security and the burden of proof, is based on article 141. The Social Security Directive 79/7 is based on Article 308 EC, the pregnancy directive is based on 138. The recent action programs and framework strategy on gender equality, and also the Goods and Services Directive 2004/113 are based on Article 13 EC. Finally, the relevant legal basis for Parental Leave and Part-time directives is article 137 EC (Craig and de Búrca, 2008).

Craig and Búrca (2008) draw attention on Article 141 EC as the representative of the EU sex-discrimination law to be part of the social policy apart from being an instrument of the economic policy. Furthermore, the 141/4 EC enables member states to enact positive action measures in order to ensure gender equality without breaching the equality principle. The paragraph reads as follows:

> "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."

As mentioned by Craig and Búrca (2008), in *Schröder,* ECJ puts its position as regards to Article 141 by reading the article in the light of its case law on fundamental human rights and gives priority to its social aim instead of its economic rationale.

5.2.3. Reconciliation in Secondary Sources of EU Law

5.2.3.1. Market- driven reconciliation strategies in the EU Law

5.2.3.1.1. Part-time work

Part-time workers are mostly women within the EU to be evidenced with 2007 statistics, 31.4% of women were part-timers in EU-27 while only 7.8 % of them were men (EUREWM, 2008). In this sense, women part-time workers have claimed sex-discrimination in case of differential treatment to part-time workers by relying on indirect discrimination provisions. Since part-time workers had no rights per se,

a rule or a practice constitutes indirect discrimination even if they are not explicitly mentioned to apply to only one sex, however have a disadvantaging effect on one sex. The definition for indirect discrimination in Directive 2006/54, Article 2(1)(b) is as follows:

> "…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." (Official Journal of the EU, 2006)

Therefore, in Craig and Búrca (2008) it is possible to justify any indirectly discriminatory measure if it answers the "real need" of the employer, measures are appropriate to achieve objectives they pursue and measures are necessary to achieve those objectives (p. 889). This test offered by the ECJ is called proportionality test. Thus, in *Bilka* the ECJ left this test to the national court to apply, in order to decide whether encouraging full-time workers is a policy that justifies pay disadvantage to women, after ruling that it is an acceptable policy.

The Part-time work directive (97/81/EC) was adopted in 1997 as the result of seeking for a strategy which facilitates women's access to the labor market by fulfilling their wishes and requirements of competition. In fact, the directive aims at preventing discrimination against part-time workers who consist of women mostly, just because they work part-time. However, as McGlynn (2001) puts forward, it attaches importance to facilitating women's access to labor market through being available to reconcile their family and work responsibilities. This directive has criticized on the basis of its lacking of attention on the poor working standards and acute job insecurity which would lead the exploitation of women workers, while overemphasizing on the opportunity of reconciliation. This directive is an outcome of flexibilization trend despite the worker's rights rhetoric (McGlynn, 2001).

The rising demand for flexibility without a decline in social rights led Council of Ministers for Employment, Social Policy, Health and Consumer Affairs adopted a set of principles on flexicurity at its meeting in turn of year 2007 by linking the issue to Lisbon Strategy as referenced in 'Guideline 21' of the Integrated Guidelines under the employment strand (EWL, 2008). EWL reports that they reject flexicurity since it fails to address the fundamental and persistent obstacles to

women's full participation in economic life, commitments set out in the Gender Pact and the Commission's Roadmap on equality between women and men to achieve the economic independence of women. Therefore, EWL concludes that flexicurity model does not seize the opportunity to challenge the dominant male-model approach to employment by failing to engage men in their share of unpaid work particularly in the area of care and it seeks to promote the two-income family model in which women are regulated to the 'additional, (half) income' status (EWL, 2008).

5.2.3.1.2. Homeworking

It has been argued that homeworking is an old-fashioned form of employment and will be vanished in modern societies. However, homeworking among European Union members is increasing. Such a trend arises from the decentralization of the production of many manufacturing industries through the use of subcontracting chains. Many of these subcontractors use homeworkers and they prefer Eastern and Central Europe where wage rates are lower than those in Western Europe. Nevertheless, homeworkers are also making clothing in Britain, France, Spain, Germany, Austria, and the Netherlands. In addition, homeworking is women's work such as part-time work. In Germany, Greece, Ireland, Italy, the UK and the Netherlands 95% of known homeworkers were women, this was 84% in France and 75% in Spain in 1996 (McCormick and Schmitz, 2001).

McCormick and Schmitz (2001) suggest that as a result of the recognition of the increase of homeworking within the EU, in May 1998, the European Commission adopted a recommendation calling on all European Union governments to ratify the International Labour Organisation (ILO) Convention and Recommendation on Homework.

Commission refers to the proportion of women among homeworkers and states that:

> "…they choose homeworking as a way to combine earning a wage needed for the household with taking care of dependants, most commonly young children; whereas this choice made by women is often a result of external factors such as limited job opportunities or lack of

> childcare or other supporting facilities."(Official Journal of the EC, paragraph 12)

By this recognition EU Commission refers to the protection of homeworkers as a gender equality and reconciliation issue. However, it is a soft law instrument which refers to an international agreement without the competence to force state parties.

5.2.3.2. Equality- driven reconciliation strategies in the EU Law

5.2.3.2.1. Parental Leave

Emanating from the Social Action Program of 1974 through which the necessity of reconciliation in achieving gender equality mentioned first. Equal opportunities action programs of the 1980s led to the parental leave directive to be proposed in the early 1980s which states a three months period of leave both for mothers and fathers which is untransferable between parents and unpaid. However, the strong resistance of the member states, especially U.K., resulted with this early form of parental leave provision to be shelved in 1986 (McGlynn, 2001). The Pregnancy and Maternity directive adopted in 1992, regulated rights of women in case of childbearing in detail. However, the approach of this directive to pregnancy and motherhood represents a traditional conception since it does not address father's role while regulating considerable rights and entitlement for women (McGlynn, 2001). A sole maternity leave in this sense which is in relation with childrearing within the scope of men's capability represents the traditional perception of connectedness between pregnancy and parenting. McGlynn (2001) concludes her critiques on this directive that it is a return from the equal parenting approach maintaining many stereotypes concerning pregnant women.

Indicating the importance attributed to the problem, adoption of parental leave directive after, in 1996, was the first time the Community introduced binding measures in the area previously regulated by soft law instruments. The directive determines a minimum level of parental leave up to three months for both parents until the child is eight years old. Parents who use this right are protected against dismissal and guaranteed to have the same or an equivalent job when they return to

work. Rights accrued by the employee stand until the end of the leave. Finally, to encourage fathers to take parental leave, it is designed to be untransferable between parents which means if the father does not take the leave the right is lost (Fredman, 1997). However, the directive has been criticized as being symbolically important but theoretically meaningless. On the one hand, it leaves the decision to states on how to distribute the cost of parental leave between workers and employers or to cover the burden by the state. On the other hand access in right to remuneration or social security benefits were not eligible in many states, which led parental leave to be taken by women more than men in almost every member state (Barbera, 2003). It has also been criticized in terms of maintaining the attribution of the primary responsibility of care to women and failure on challenging the cult of idealized motherhood and female domesticity while providing gender-neutral measures (McGlynn, 2001). Really, it is evidenced that when the parental leave is full paid fathers are more likely to take the leave. Otherwise, the less paid partner takes the leave who is more likely to be the female one due to women's low wage rates all over the world (Fredman, 1997).

Fredman (1997) distinguishes three limitations of the directive:

1. The combined period of six months is relatively short even when it is added to the fourteen weeks of maternity leave. The child will be still vulnerable at the end of the leave.

2. The directive allows Member States to impose a qualifying condition of up to one year's service.

3. Directive permits Member States or the social partners to define the circumstances in which an employer is allowed to postpone the granting of the parental leave for justifiable reasons relating to the operation of the undertaking (p. 220).

As argued by Fredman (1997) this creates a risk that employers do not grant parental leave by using the advantage of the imbalance in power between the two sides of work relation. On the other hand, many employers report that paid parental leave increases productivity by giving workers the chance to stay at home after the birth of a child while still in relation with the labor market. As mentioned by Fredman (1997), Swedish employers report that they are able to reap a higher return

of their investment in human capital if they do not lose their trained staff on childbirth (p. 222).

Another regulation included in the Parental Leave Directive is the right to be absent at work for limited periods of time, which is available in cases of 'force majeure' namely urgent need of anyone in a worker's family to her/his care due to sickness or accident (Fredman, 1997).

5.2.3.2.2. Childcare

The importance of childcare provision is recognized first in the council Resolution on the balanced participation of the women and men in private and working life and in the Council Recommendation on Childcare (EWL, 2006). The Childcare Recommendation which was adopted in 1992 is a non-binding instrument. It suggests that childcare services should be accessible and affordable to all children and parents, and that subsidies should be encouraged but it does not insist on state subsidy (Fredman, 1997). However, McGlynn (2001) claims that it has symbolic importance since it has stressed the importance of participation in childcare for men and states as a reconciliation objective. It calls for the development of public childcare services and change in the behavior of men. This constitutes the recognition of gender division of labor in the domestic sphere by addressing measures to be taken by member states in order to alter this uneven division. The recommendation is the first EC equality measure that targets male behavior. However, the Commission and the Council of Europe deal with women's access to labor market more than men's participation in caring. This focus on merely women reinforces many impediments at the target to be eliminated (McGlynn, 2001).

Subsequently, European Council of Barcelona set the childcare targets in the EU agenda by confirming that "Member States should remove disincentives for female labor force participation and strive, in line with national patterns of provision, to provide childcare by 2010 to at least 90% of children between 3 years old and the mandatory school age and at least 33% of children under 3 years of age". Again, in a 2005 Green Paper which mostly deals with strategies to cope with aging in the EU member states, the European Commission refers to declining birth

rates across Europe and suggests that "If Europe is to reverse this demographic decline, families must be further encouraged by public policies that allow women and men to reconcile family life and work" (Commission of the European Communities, 2005). The 2006 Report from the European Commission on equality between women and men indicates to the requirement of delivering accessible, affordable and good quality care facilities for children and other dependents. The same requirement is also mentioned in the refocused Lisbon Strategy Growth and Jobs agenda the "Integrated guidelines for Growth and Jobs" targeting the period between 2005 and 2008. Thereafter, the European Pact for Gender Equality evoked the commitment of Member States to Barcelona childcare targets, and also reminded that they are committed to improve provision of care facilities for other dependents and to promote parental leave between women and men. Finally, the European Roadmap targeting the period between 2006 and 2010 highlights the importance of reconciliation of work and family lives of women and men. The Roadmap indicates the requirement of flexible work arrangements, increasing care facilities and better reconciliation policies both for women and men (EWL, 2006).

However, despite many policy and soft law instruments there are no binding rules namely hard law instruments to pressurize member states to provide childcare services and homeworking. "Soft law" is a very general term used to refer to a variety of processes with one commonality which is that while all have normative content they are not formally binding. In recent years there has been an increase in interest in soft law in the EU; however, the use of soft law in various settings has faced significant attacks, rather than receiving a uniform support (Trubek & Cottrell& Nance; 2005). Trubek & Cottrell& Nance (2005) lists the objections to the use of soft law in the EU as follows:

> "• It lacks the clarity and precision needed to provide predictability and a reliable framework for action;
> • The EU treaties include hard provisions that enshrine market principles and these can only be offset if equally hard provisions are added to promote social objectives;
> • Soft law cannot forestall races to the bottom in social policy within the EU;
> • Soft law cannot really have any effect but it is a covert tactic to enlarge the Union's legislative hard law competence;
> • Soft law is a device that is used to have an effect but it by-passes normal systems of accountability;

• Soft law undermines EU legitimacy because it creates expectations but cannot bring about change." (p.2)

Acuner (2008) interprets the soft law status of the Childcare Recommendation as official confirmation of care services to be women's duty. According to her, this recommendation continues to hold women responsible for caregiving, just as it is the case in Turkey; because implementation of EU recommendations is left to the good will of the states similar to the UN recommendations. In other words, this recommendation has no binding force. This is especially because the childcare policy which can be listed among major policies which lead to strong resistance from the market forces. Another reason to the soft law regulation for the childcare provision is that the public-private dichotomy is an immutable element within the EU. Acuner (2008) suggests that despite all of these negativities, even the recommendation on the childcare is an evidence of the transformative approach of the EU.

5.2.3.3. ECJ Decisions

It is stated by McGlynn (2001) that ECJ perpetuates the traditional understandings of the social and parental roles of women and men while interpreting acquis communitaire.

Since its decision in Gillespie through which it concluded that maternity pay must not be so low as to undermine the purpose of maternity leave but adequate, the Court assigns women on maternity leave to a special position afforded to special protection not comparable with any position of whether a male or female worker at work. In this case, the Court ignores the male norm as term of reference; however it transforms women's position on maternity leave to a non-worker status incomparable to anyone at work (Barbera, 2003).

Similarly, in early 1980s, the Court held in the Commission v. Italy case that the Italian legislation granting a right to leave only to women workers in case of adoption was not contrary to the equal treatment provisions in acquis. This decision assigned the breadwinner role to men while reinforcing the gender division of labor which takes caring to be in women's sole responsibility.

Another decision of the ECJ that maintains the status quo was the result of *Hofmann* case that a German father argued that German legislation providing an

optional eight week leave period only for the mother after birth was for childcare purposes and should therefore be available to fathers as well. The defense of the German government was a conservative one which states that this leave was provided for mothers to enable them to devote themselves to their babies without the constraints of the work. However, this approach was espoused by the Court on grounds that the Community law is not designed to settle questions relating to the organization of family or to alter the division of responsibility between parents. The idea was justified that because of being the bearers of children women are automatically responsible for rearing them (McGlynn, 2001). On the other hand, Court legitimized reserving maternity leave only to mothers by arguing that this leave also aims at protecting the special relation between the mother and child after the birth. Fredman (1997) criticizes such a statement because it emphasizes that women's childcare obligation is natural and therefore unchangeable.

In the *Lommers* case, rejection of Mr. Lommers's access to subsidized nursery places which are limited for the female workers only, for his baby derived from the aim of the Court to tackle extensive under-representation of women in the workplace. Here, Court's decision relies on its commitment on the assumption that care is mother's role. This has been suggested as a representative of the dilemma which arises from questioning how reconciliation policies will facilitate women's access to employment serve to increase equality and leave the division of labor and care within the household unalterated (Barbera, 2003).

Surprisingly, the ECJ changed its position in Commission v. France in 1986 by holding that special rights granted only to women such as the leave when a child is ill, the grant of additional day's holiday in respect of each child, granting of time off work on Mother's Day and payments of allowances to mothers for childcare expenses, breaches the equal treatment directive as these are rights related to parenthood which cover both women and men. Here, the Court links to the argument that supports special rights and special treatment to be in effect only in pregnancy related issues since pregnancy is the only real difference of women from men (Kay, 1993).

Similarly, in *Dekker*, ECJ ruled that applying child-bearing or the capacity of childbearing, which are characteristics of the female sex, as the criterion of dismissal or refusal to employ constitutes direct discrimination (Fredman, 1997).

In *Danfoss* the Court held that mobility, training and length of service may be the factors determining the pay criteria. For example, mobility which is a neutral term describing enthusiasm and initiative according to ECJ, unless it is misapplied by the employer. However, if mobility is interpreted by the employer to describe adaptability to hours and places of work, then it constitutes indirect discrimination because it could be discriminative for women who are more likely to not comply with it due to family and household duties mostly born by them (Craig and Burca, 2008).

The most recent ECJ case is Bernadette Cadman's fight against her employer, the Health and Safety Executive, begins after she discovered she was paid less than the average salary of male colleagues on the same grade. When service-related pay is analyzed women are often clustered at the lower parts of the pay band. This is because statistically women on average have shorter service, often due to children or other care responsibilities. The increase of women entrants to traditionally male dominated professions also raises questions over seniority-based pay. Cadman discussed her case within the equal pay principle since she discovered she was paid approximately 20.000 € less than her male colleagues doing the same job (Kamu-sen, 2006). However, in line with their earlier ruling in the Danfoss case (in 1989), the ECJ ruled that an employer does not generally have to produce specific proof that paying experienced workers more money is justified because they perform their duties better. So in general they allow employers freedom to use length of service as a criterion in pay scales without fear of sex discrimination claims although women generally have shorter service with an employer than men. ECJ's decision is a gender-blind decision which overlooks the women's burden of reproduction on the basis of a sameness argument. As suggested by Craig and Burca (2008), ECJ takes criteria of seniority and length of service as presumably justifiable reasons for indirect discrimination.

CHAPTER 6
RECONCILING WORK AND FAMILY IN TURKISH LAW

As stated above, reconciling work and family responsibilities should be acknowledged to be a fundamental right which enables women to exercise both their economic- social rights and civil- political rights. Right to reconciliation has both economic and social dimensions with respect to the aim of granting it. The former refers to the full employment targets which necessitates augmentation in women's employment. The latter refers to the social inclusion and equality targets. In order to realize both targets, a structural change in gender division of labor both in family and the labor market is required since it is not possible to employ more women without structural change especially in care responsibilities and requirements of work. It was argued before that affordable and adequate childcare services and paid and untransferable parental leave are important tools in realizing this structural change. On the other hand, as a consequence of the global competition in trade which pushes firms to reach cheapest labor in the entire world there have been an increase in non-standard working types and the informal sector. Thus, the combination of globalization in economy with the dominance of neoliberalism in public policies all over the world, erosion in both employment and social security rights of employees occurred. Women who have to cope with poverty but are not able to have a formal sector job due to family responsibilities, deficiencies in human capital and hostility of employers against women employees, intensify in non-standard work which are usually non-standard work such as part-time work and homeworking. Moreover, homework mostly and part-time work usually take place in the informal sector where social security and job security and health and safety conditions do not apply. As discussed before these types of work reinforces women's caregiver role and confines them to the domestic sphere. However, the most important problem is deficiencies in employment and social security rights in these types of work.

In this chapter, first of all, development of employment related rights of women in Turkey is discussed. Secondly, commitments of Turkey within the

normative framework of the right to reconcile women's employment and family responsibilities at both international and regional levels are examined. Finally, social security rights in the current legal system in Turkey are introduced and criticized in terms of equality driven and market-driven strategies for reconciling work and family responsibilities.

6.1. Historical Overview of Political, Demographic and Legislative Changes

The latter period of the Ottoman Empire as well as the Turkish Republic that followed it have adopted the Western model of rights, democracy and economy. Reform movements in Ottoman Empire changed the structure of the society living in the big cities. After the 1st World War, the new Turkish Republic has been established as a modern nation state. Thus, republican revolution came with the aim to change the Islamic and closed structure of the country. Upon the economic crisis of 1970s, a new world order appeared after 1980s due to technological changes and globalization. In December 1999, Turkey accepted to be a candidate for full membership of the European Union, 40 years after its application for membership. With the acceleration effect of the membership, Turkey realized crucial constitutional and legislative changes. All of these changes affected women's situation in the society and economic structure very deeply.

Before a critical analysis of the current situation is done, it is necessary to understand the past. Therefore in this part of the study, I examine demographic changes and how women's rights and economic conditions were affected from these changes through a historical overview among three periods in Turkey: 1) The Ottoman Period, 2) The Period of Republic, and 3) The Post-1980 Period.

6.1.1. The Ottoman Period

Dinçkol-Vural (1998) abstracts this period shortly that in the Ottoman Empire women were excluded from the society in towns. On the other hand, they were more independent and dominant in rural areas. In rural areas women contributed to the production process and economy so that they were more independent than

women residing in bigger cities. From the 16th and 17th centuries some imperial edicts restricting women's actions appeared. Women were not allowed to go outside the domestic sphere namely it was forbidden for women to enter the public sphere during the period of Sultan Mustafa IV (1612- 1640). Prior to the start of reform movements, Islamic Law was applied in marriage, divorce and inheritance issues (Dinçkol-Vural, 1998).

Movement of westernization was started by Selim III (1761-1808) (Vural-Dinçkol, 1998) under the influence of industrial and French revolutions (Gündüz-Hoşgör and Smits, 2008). The reforms aimed to protect the integrity of the empire were related to education, justice and administration. Mandatory primary education for girls was prescribed by the regulation of "Maarifi Umumiye Nizamnamesi." Midwife school (ebe mektebi) 1842, kız rüştiyeleri 1858, industry school for girls 1870 (kız sanayi mektepleri), darulmuallimat 1870 were established. During the second Constitutional Monarchy the first university for girls "inas darülfinunu" was established. Furthermore, a decree named, Hukuk- i Aile Kararnamesi, was enacted in the period of the second Constitutional Monarchy. This decree was enacted under the circumstances where most men went to the front and women replaced them in social and economic life (Vural-Dinçkol, 1998).

This process of westernization caused relaxation of the religious criticism which perpetuates the strictness of separation of spheres into public and private. In the late 19th century, women's political activism gained visibility after such transformations (Özbilgin, 2002). In other words, first stage of women's movement appeared in Turkey in the second Constitutional period of Ottoman Empire which was also known as a Westernization movement. This movement aimed not only to criticize the traditional role that was given to women in Ottoman society, but also to try to raise the participation of women into public life (Çaha, 1996).

6.1.2. The Period of Republic

As mentioned by Kalan (1998) in this period, economic, legal and cultural environment that enables women to participate in the labor force in a more frequent and intensive way has started to be created. Many women employees participated in the Economy Congress which took place between the 17 February 1923 and 4

March 1923. In this Congress, suggestion for legalizing 8 weeks of paid leave before and after giving birth and besides providing three days of paid leave every month to women employees was unanimously accepted. Employing women in the mines was prohibited. This was adopted in principle previously for the field of Ereğli with the code dated as 1921 and numbered 151. Moreover, obligation of employers to open lactation rooms within their establishments was adopted. Principle of "equal pay for equal work" and prohibition of women employees to be employed in the night shifts were not accepted. However, legislations remained behind the decisions taken in the Congress (Kalan, 1998).

According to Kalan (1998) the first intervention of the state in the market for the protection of women employees in Turkey was with the adoption of Law of General Hygiene (Umumi Hıfzısıhha Kanunu) in 1930. State's comprehensive intervention to the working life has started with the first Labor Code no. 3008 in 1936. According to Özdemir and Yücesan- Özdemir (2005), when this code was prepared, a distinct Turkish bourgeoisie and working class in Turkey had not yet emerged and the conflict-limiting potential of populism and statism was used to control the development of labor organizations (p. 69). Effects of International regulations have also started to be realized in these years. The "Law of Work Accidents and Occupational Diseases and Insurance for Motherhood"[64] in 1945 is the first insurance law that came into effect and for the first time a social guarantee was provided to women.

State reforms such as the Civil Code reform in 1926 and the suffrage reform in 1934, and following reforms in education, clothing and political rights of women also occurred in this period (Çaha, 1996) which overlaps the period of state feminism in Turkey (Gürkan, 1998). State feminism is a term used to criticize the women policy of Turkey during the early republican period; however, Gürkan (1998) suggests that this period prepared the social and political environment in Turkey which enabled the emergence of the feminist movements in 1970s and 1980s.

In cities, Kemalist ideology encouraged women's education in the same level with men and their participation in non-agricultural production as a result of the

[64] İş Kazaları ile Meslek Hastalıkları ve Analık Sigortası Yasası.

need for female labor force due to the deficiency of male labor. Thus, an increasing number of both white and blue collar women workers were employed in cities. Many women started to work as civil servants or teachers which were higher status intellectual work, however society did not consider these white-collar women as "women" and the higher status of these women workers derived from their education (Özbay, 1995). On this account, women's participation in the labor market in cities did not change the gender roles in the society.

So many women's organizations were emerged that gave the priority to protect their ascribed rights and secular state, in the late 1940s and in the 1950s and 1960s. These women considered the secular state and its reforms as the only way to prevent going back to the Islamic tradition; so they concentrated on the defense of the reforms and with the illusion of being "emancipated" by these reforms and of being beyond the old patriarchal system, they ignored the patriarchal features of the reforms (Çaha, 1996).

According to Özbay (1995) positive effects of these reforms introduced by above mentioned legislations were not able to reach small and isolated villages. She puts that in this pre-1950 period 80 % of the population lived in rural areas. In rural families, in which three generations live together, decisions made by the elder and fertility considered important, 'classical patriarchy' was dominant. Small family enterprises, in agriculture, used traditional methods and produced enough for their substances. In this period domination of women by men was perceived as by-nature, therefore it was seen as unchanging and was not questioned. However, there was not a certain gender division of labor between productive and reproductive activities yet, in other words women participated in production as well as men they were responsible for the reproduction of the male labor. On the other hand, women considered most of their production activities as a part of their role as housewives namely they were not paid for these activities (Özbay, 1995).

The period between 1950 and 1980 is marked by two factors: migration and education. There are several reasons suggested in the literature to explain the ongoing migration from rural to the urban. According to Ertürk (1996), the green

revolution[65] experience played a significant role in the roots of the migration phenomenon in Turkey such as in many third world countries. Ertürk (1998) argues that with the increase in output per unit and replacement of subsistence crops with high cash value crops, overall integration of Turkish agriculture with market economy has accelerated and brought many inequalities. Özbay (1995) refers to the decline in the death rate without an accompanying decrease in the birth rate. There was no need for all male members in the agricultural production anymore and this led to some problems in the division of labor within the family, therefore towards the end of the 1940s sons started to leave home.

Continuing the father's work and having lots of children were left to be indicators of social status and expectancies expanded to enlarging the father's business or having own business. On this account, education gained importance, however education of boys had priority due to the belief that investment to girls becomes useless when they get married. Migration from the village to cities was an indicator of social status in its own right (Özbay, 1995).

It has been difficult for Turkish governments to yield priority to the gender equality agenda over the macro economic concerns due to economic recession since 1960s. Moreover, a gendered effect of recession aroused in Turkey that number of economically active women is continuously declining relative to men. After the economic recessions, the most remarkable phenomenon since 1970s is the ongoing migration from rural to urban areas (Özbilgin, 2002).

Women gained higher status by means of migration from rural to the urban; however, unlike men women's acquisition of status was depending on not participation in the production. The quantity of male labor and deficiency of agricultural work in the cities is suggested as the cause of this phenomenon. A nationwide survey, yet in 1973, demonstrated that the majority of married women workers in childbearing age employed in the public sector were not happy with being working due to their double workload (Özbay, 1995). Despite the existence of many intellectual white-collar working women in cities, marriage continued to be the primary indicator of women's social status due to the common belief that they

[65] In Turkey, the green revolution experience was realized mainly through the introduction of the tractor, expansion of land under cultivation and adoption of technological innovations in agricultural production, such as, high yielding seeds, fertilizers, pesticides and the like (Ertürk, 1998: p. 110)

cannot exist by themselves outside the family. Social mobility of rural women in this period was possible mainly through marriage and Özbay (1995) explains that this dependence on marriage enabled classical patriarchal system to overlap with capitalism and domination of women by men to be adapted to new conditions without too many changes. Furthermore, deskilling and social exclusion for the migrant population has become the case (Özbilgin, 2002).

In 1971, second Labor Code numbered 1475, which was prepared in accordance with the principles in the very libertarian and leftist Constitution dated 1961, came into effect (Kalan, 1998). This code covered similar matters to the previous labor code but it had a rather social democratic discourse. The women's movement belonged to the 1970s was also affected by leftist politics including debates of inequalities, injustices, and class exploitation and so on. The feminist movement in this period allied itself with Marxism. However, the military coup in 1980 affected both the Marxists and Marxist feminists in a very negative way (Özbilgin, 2002).

6.1.3. The Post-1980 Period

In the 1980s, after the Military Coup in 12 September 1980, civil society experienced a stagnation process in Turkey and the women's movement came out as the first democratic movement in this period (Çaha, 1996). The military coup was ended and with the new Constitution, Turkish democracy was restored in 1982 (Özbilgin, 2002).

In this period after the military coup, the first government applied laissez-faire policies. Özbay (1995) discusses those economic policies promoted foreign trade and tourism instead of development of paid employment which had been the main aim of the previous period by promoting migration and education. As a result of integration with capitalist thought, having money began to bring in higher social status to men than education. Another difference of this period from the previous one is the decrease in the status of housewife and complaints concerning the double workload of working women. In this period, wage work becomes compulsory for more women due to the inflation that makes newcomers to cities to face worse conditions than the ones migrated before.

Kalan (1998) claims that the process of transforming the Turkish economy to low wages and the Turkish market to be integrated in the imperialist global market, started with 24th January decisions in 1980. This process named as "Stability and Structural Adjustment Program" led to many changes related to women's rights. Although women participate in the labor market, the problem arises from this process is that they can not benefit from the provisions of the legislations aiming at gender equality which are discussed below on their adequacy. Women started to be employed mostly in works which are outside the scope and field of application of labor law namely in the informal sector. Economic policies applied in post-1980s extended the situation more against women. The results of these economic policies are unemployment or working in the marginal sectors out of the scope of legislations. Working in these sectors means competition with other employees within the conditions of common unemployment, having no social security and job security, lower wages, ways to seek remedy to be closed, behaving organized and collective to get harder (Kalan, 1998). In 2003, a new Labor Code numbered 4857, which was presented as being more flexible and egalitarian, came into force. Özdemir and Yücesan- Özdemir (2005) argue that this code compliance of the individual labor law in Turkey with a neo-liberal conceptualization and imagination of capital- labor relations through de-regulation and re-regulation. In this regard, labor looses its social meaning and is perceived as an ordinary commodity calculable in terms of production costs (2005: p. 69).

According to Ecevit (2008), migration from the rural areas to cities continues and there are less women now in the rural areas than in the cities, in contrast to the situation in the 1930s. She emphasizes that migrated women do not participate in the labor market involuntarily. In the rural regions agricultural sector and in the urban regions services sector employ most of the women. However, employment rates of women in the cities are very low and most of the women working in the agricultural sector are unpaid domestic workers. There is a significant vertical segregation in the labor market and one of the reasons to women's scarcity in managerial positions as offered by Ecevit (2008) is that the institutional measures to enable women to reconcile work and family lives are limited. She also draws attention to unemployment of young women (under the age of 35) and suggests that this fact may be arising from family responsibilities of these women due to

marriage and childcare. She also claims that almost 70 % of women under employment work in hazardous work conditions and without social security in the informal sector.

6.2. Commitments of Turkey

Turkey is a member of UN since 1945 and of ILO since its membership to League of Nations in 1932 which are the standard-setters in the global arena including economic and social rights of workers and citizens. On the other hand, Turkey is a candidate State destined to join the EU since The Helsinki European Council held in December 1999. Turkey's candidacy means Turkey will benefit from a pre-accession strategy to stimulate and support reforms while adjusting its national legislations and policies to the acquis. Thence, The Accession Partnership was formally adopted by the European Council on March 8, 2001 (Süral, 2003). Acuner (2008) draws attention to the efforts of women's movement in Turkey while referring to the rapid change in several legislations such as the Constitution, the Civil Code, The Labor Code and the Criminal Code since they used conditionality principle of the EU integration process strategically to push these changes.

6.2.1. Turkish Constitution Article 90/5

Article 90 of the Turkish Constitution determines the relation between international law and Turkish law. The first sentence of Turkish Constitution article 90/5 states that '*international agreements duly put into effect bear the force of law'.*[66] The status of the international agreements within the constitutional normative hierarchy is problematic in Turkish law. However, before addressing this problem, it should be noted that the above mentioned statement indicates that

[66] The relation between international law and domestic law is shown through a division into two models which are 'dualist model' and 'monist model'. In dualist model, international law and domestic law are taken as two separate systems. International law should be transmitted into the domestic law through a distinct rule (acceptance norm) in order to be able to influence domestic law. The status of the international law within the norm hierarchy of domestic law is contingent on the order of acceptance norm's value. On the other hand, in monism which is the model adopted by Turkey, there are no distinctions between international law and domestic law.

international agreements have binding force from the moment they are duly put into effect and that they are directly applicable (Kaboğlu, 2006).

Article 90/5 of the Turkish Constitution is an indicator of Turkey's commitment to apply International law domestically. Article 90/5 reads as follows:

> "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 the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."

Kaboğlu (2006) interprets the second sentence of the Article 90/5 as a rule which places international law above domestic laws.

However, the interpretation of this article continues to be controversial, which has moved to another sphere after the 2004 amendment. The debate is whether international agreements in the area of fundamental rights and freedoms are at the same hierarchic level with the constitution or laws.

In his study which draws a framework to the debate, Akkutay (2007) presents Mümtaz Soysal (1985) and Edip Çelik (1988) as advocates of the view that international agreements are superior to laws, even before the 2004 amendment which brought the additional last sentence of Article 90/5. Soysal (quoted in Akkutay, 2007: p. 113) suggests that the constitution should be interpreted together with international agreements since it is not possible to claim that they are unconstitutional. On the other hand, Gülmez (1998) argues that international agreements are superior to the Constitution. Yüzbaşıoğlu (quoted in Akkutay, 2007: p.116) claims that supranational agreements which are in the area of fundamental rights and which are directly enforceable such as European Convention on Human Rights (ECHR) and also the EU law bear the force of the constitution or superior to it. Yüzbaşıoğlu bases his argument on the Turkish Constitution Article 2 which defines Republic of Turkey as a state which respects to human rights (Altundiş, 2006). As quoted by Altundiş (2006) Akkutay (2007) also indicates to the view of Ergun Özbudun, Rona Aybay and Sevin Toluner who argues that international agreements bear the force of law, therefore the *lex posterior derogate legi priori* principle applies. In other words, the posterior agreement abrogates previous legal rules in the domestic law. In this debate, Kemal Gözler argues that there is no

hierarchy between laws and international agreements because the validity of international agreements is not subject to the Constitution and vice versa (Altundiş, 2006).

According to Altundiş (2006) the last sentence of Article 90/5, which was added to the article on 7th May 2004, international agreements has gained a supranational quality within the Turkish legal system. He refers to Gözler who suggests that international agreements are superior to laws in Turkish normative hierarchy; therefore they functionally have constitutional value. Thus, as it is shown below in the figure 5, Altundiş (2006) and Kaboğlu (2006) suggest that a new level is added to the Turkish normative hierarchy between the Constitution and laws with this recent amendment.

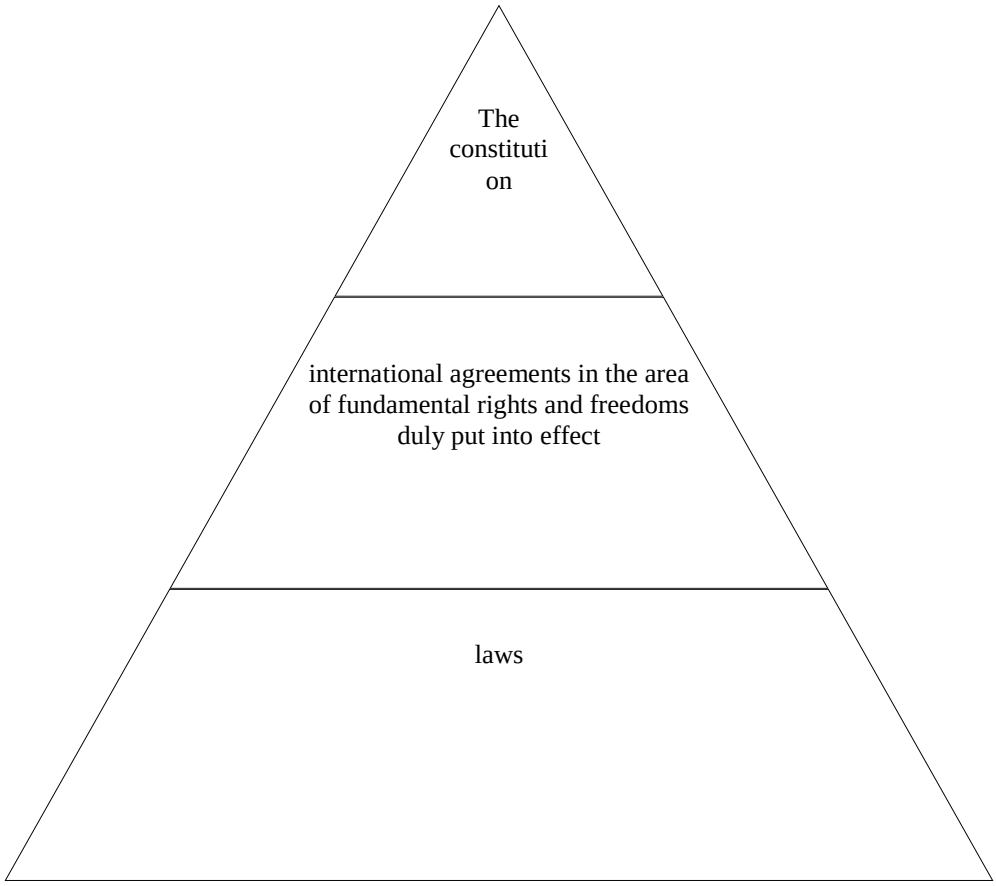


Figure 5. Place of international agreements in Turkish normative hierarchy

Finally it is clear that whether they represent a higher status or not, Article 90/5 shows the Turkish State's commitment to international human rights law and a constitutional promise to transform domestic law in accordance with its principles and standards. Therefore, the Turkish State is obligated under the conventions of UN, ILO and Council of Europe, which they ratified. The international agreements in the area of fundamental rights and freedoms inevitably call for the positive action of the state for their implementation. Furthermore, all apparatuses of the state, including the legislative, executive, judicial, administrative authorities, other institutions and persons are bound with these international agreements (Bakırcı, 2007).

In this regard, Altundiş (2006) lists four possibilities of conflict and their possible solutions after the 2004 amendment. First possibility is conflict in the area which is regulated by the international agreement but not by the constitution. In fact, in this possibility there is no conflict and the relevant provisions of the international agreement apply to the legal problem. In the second possibility, provisions of international agreement comply with the constitution but conflicts with laws. The domestic court may hold that the law is contrary to both the constitution and the international agreement. Thus, the 'international agreement in the area of fundamental rights and freedoms duly put into effect' applies instead of the law which is contrary to the constitution. The third possibility is the conflict between provisions of international agreement and the law in an area which is not regulated by the constitution. In this scenario, the last sentence of the article 90/5 is appropriate and the court applies the provisions of the 'international agreement in the area of fundamental rights and freedoms duly put into effect'. Finally, it is possible that provisions of the international agreement conflicts with the provisions of the constitution. Altundiş (2006) refers to a court decision[67] held by the The Supreme Administrative Court of Military which states that even they are contrary to the international agreement; provisions of the constitution shall prevail. It should be noted here that according to the article 148 of the Constitution, which regulates functions and powers of the Constitutional Court, it shall examine the constitutionality of laws, decrees having the force of law, and the Rules of

[67] AYİM, 1.D.E.1997/147,K.1998/200.

Procedure of the Turkish Grand National Assembly. Therefore, the Constitutional Court has no authority to examine the compliance of laws and international agreements (Akkutay, 2007). However, Turkish supreme courts apply or at least refer to international agreements duly put into effect in their decisions as it is indicated below. Before examining those decisions, the effect and status of the EU acquis on Turkish law is addressed through the conditionality principle and Copenhagen Criteria.

6.2.2. Conditionality Principle and Copenhagen Criteria

As it was mentioned before, Turkey has officially a candidate status for EU accession. Some conditions should be fulfilled by candidate states in order to gain member status. In this regard the candidate must have a stable democracy and competitive market economy, and must demonstrate willingness and ability to take on all EU policies present and future. Democratic and market economy conditions are mentioned for the first time for membership applications of CEE (Central & Eastern Europe) countries[68] which are subject to the conditions set out at the Copenhagen European Council in 1993 (Grabbe, 2002). Turkey is also subject to these conditions called as Copenhagen Criteria and read as follows:

> "1. Membership requires that candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities.
> 2. Membership requires the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.
> 3. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union." (Grabbe, 2002; p. 251).

Grabbe (2002) suggests that the third condition refers to the acquis communautaire which consists of the whole body of EU rules, political principles and judicial decisions and keeps growing as long as the EU develops new policies, issues new directives, declarations and jurisprudence. It is important to note that the candidate also have to take on soft law instruments of the EU such as resolutions and recommendations.

[68] Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovakia, Slovenia, Yugoslavia (Serbia and Montenegro).

Babayev (2006) mentions that human rights clause constitutes a core area in EU conditionality for candidate states. The basis for the EU membership of Central and East European (CEE) states is articles 6 and 49 of the TEU (Treaty establishing the EU). In this regard, by including the whole of fundamental human rights that constitute the principle in the Article 6 TEU, the EUCFR plays an important role in the EU conditionality policy. Babayev (2006) refers to the democratic progress in CEE countries will be repeated in the case of Turkey. The legal reasoning of the 2004 amendment of Article 90 also refers to the Copenhagen Criteria and Turkey's obligation to undertake EU acquis as a candidate state. The reason for the amendment reads as *"the requirement for regulation in our laws to the end that on the one hand to comply with the EUCFR and the new democratic expansions recently developing in the world and on the other hand that to promote fundamental rights and freedoms to the level of universally admitted standards and norms as well as European Union criteria in accordance with these expansions; led to the indispensability to make amendments in our Constitution which is our foundation law"* (The Republic of Turkey Official Gazette, 24.07.2003).

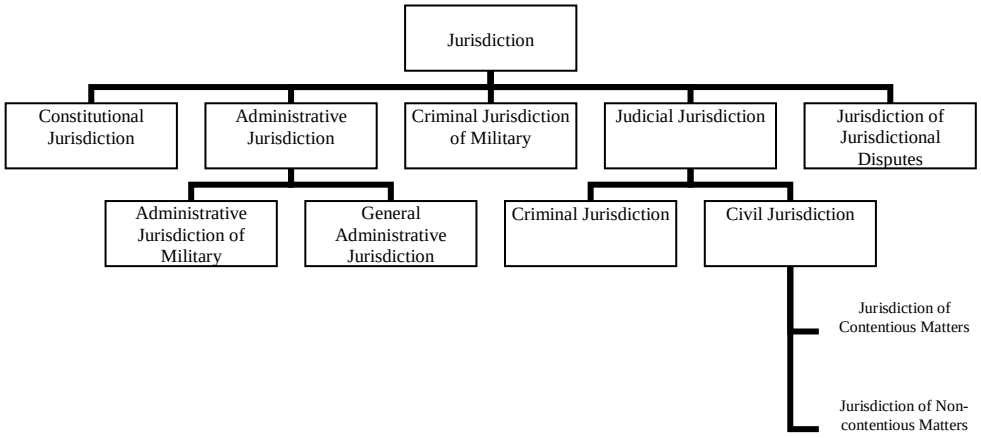
Along with international law instruments with respect to Turkey, EU conditionality is the most coercive one, which necessitates Turkey to comply with fundamental rights and standards included within the EU acquis. As mentioned above, reconciling work and family responsibilities is a core area within the labor strategy of the EU and granted as a fundamental right. Reconciling work and family responsibilities combines both the social and economic aims of the Union and it is embedded in all areas of EU policies from gender equality principles to economic targets. In this regard, Turkey is obliged to grant reconciliation as a fundamental right and to take any measure and to produce policies in order to fulfill its commitments as a candidate state. However, the conditionality principle is an effective tool for Turkey's engagement to reconciliation rights and policies as long as Turkey is constant in its will for full membership to the EU. In order to harmonize its domestic law with the acquis communautaire, Turkey has been amending its laws with acceleration since 2001. Even if the legislating body mentions the will for full EU membership in legal groundings of them, adapting legislation have been criticized by diverse members of the society. The relevant ones of these legislation and critiques directed to them are considered in the next

chapter. Before considering them, it should be noted that apart from the will of legislating body, jurisdiction has a crucial role to ensure the enforcement of fundamental rights and international standards in Turkey. In the following section the approach of Turkish supreme courts to the relation of international law and domestic law is examined.

6.2.3. Supreme Court Decisions

According to the Article 9 of the Turkish Constitution, "*judicial power shall be exercised by independent courts on behalf of the Turkish Nation*". In this regard Kuru, Arslan and Yılmaz (2007) define the jurisdiction as implementation of objective law (rules of substantive law) to be apply to a certain case by independent judges (courts).

Legal systems consist of jurisdiction branches which are determined as to the legal quality of cases they deal with. In other words, judicial works which are similar with regard to their legal quality are embodied under a branch of jurisdiction and the type of jurisdiction which is peculiar to that type applies (Kuru, Arslan and Yılmaz, 2007). Branches of jurisdiction in Turkish legal system are shown in the figure 5.



(Source: Kuru, Arslan and Yılmaz, 2007)

Figure 6 - Branches of Jurisdiction in Turkey

On this account, Gözler (2004) states that in Turkey, judicial body is divided into branches of jurisdiction, each representing a supreme court. Thus, a branch of jurisdiction may also be defined as a system consists of courts that decisions of which are appealed to the same Supreme Court.

Branch of Jurisdiction	Constitutional Jurisdiction	Judicial Jurisdiction	Administrative Jurisdiction	Criminal Jurisdiction of the Military	Administrative Jurisdiction of the Military	Jurisdiction of Jurisdictional Disputes
Supreme Court	Constitutional Court	The High Court of Appeals	Council of State Administrative Circuit Court	Military High Court of Appeals	High Military Administrative Court of Appeals	Court of Jurisdictional Disputes
Courts of First Instance		Civil (civil court of peace, civil court of first instance) Criminal (criminal court of peace, criminal court of first instance, high criminal court)	Administrative Court Tax court	Court of honor Military court		

(Source: Gözler, 2004)

Figure 7- The Courts According to Branches of Jurisdiction in Turkey

Turkish Constitutional Court examines the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly as stated in Article 148. As mentioned above, international agreements duly put into effect shall not be brought before the Constitutional Court on grounds they are unconstitutional.

The supervisory function of the Constitutional Court is divided in two sorts of mechanisms. The first mechanism is "abstract norm examination" namely "annulment action" as it is said in the Constitution Article 150 that refers to the jurisdiction of the Constitutional comes into effect when President of the Republic, parliamentary groups of the party in power and of the main opposition party or a minimum of one-fifth of the total number of members of the Turkish Grand National Assembly apply for annulment of a law or a decree having the force of law. The appeal should be made within sixty days after publication in the Official Gazette of the contested law or the decree having the force of law.

The second mechanism is the "concrete norm examination" namely "exceptio" as called in the doctrine which is regulated by the Article 152. The article is summarized by Gözler (2004) as follows:

1. In order to initiate the concrete norm examination, first of all, there should be a case before a court.
2. Only a court shall apply to the Constitutional Court through the mechanism of concrete norm examination.
3. Concrete norm examination may operate regarding only the law or the decree having the force of law to be applied in a case.
4. In order to initiate the concrete norm examination either the court should find that the law or the decree having the force of law to be applied is unconstitutional or that should be convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties.

This mechanism of the Constitutional Court is rather similar to preliminary rulings[69] of the ECJ that most of the case law of the ECJ on sex equality, as examined above, consists of such rulings.

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[69] "The Court of Justice cooperates with all the courts of the Member States, which are the ordinary courts in matters of Community law. The national courts may, and sometimes must, refer to the Court of Justice and ask it to clarify a point concerning the interpretation of Community law, so that they may ascertain, for example, whether their national legislation complies with that law. A reference for a preliminary ruling may also seek the review of the validity of an act of Community law. It is thus through references for preliminary rulings that any European citizen can seek clarification of the Community rules which affect him. Although such a reference can be made only by a national court, all the parties to the proceedings before that court, the Member States and the European institutions may take part in the proceedings before the Court of Justice. In that way, several important principles of Community law have been established by preliminary rulings,

According to Article 158/3 of the Constitution "*decisions of the Constitutional Court shall take precedence in jurisdictional disputes between the Constitutional Court and other courts.*"

At this point, it should be noted that, in Turkish legal system, only mechanism available for citizens to demand annulment of laws on grounds of their unconstitutionality is concrete norm examination. Other supreme courts shown in table 7 has no authorization to annul laws, however they adjudicate whether decisions of the first instance courts are constitutional and statutory. On the other hand, these supreme courts have a crucial role to create the Turkish case law which determines how to interpret and apply legal texts when a concrete dispute arises. Supreme Court decisions on reconciliation of work and family are presented below in the 6th chapter; here I discuss the approaches of supreme courts of Turkey with respect to international agreements duly put into effect.

The most important decision of the Constitutional Court is the one that the Court annulled the Article 159 of the preceding Civil Code on grounds that it was unconstitutional. The annulled article was regulating that the wife should have the permission of her husband in order to have a waged work. In this case, the Court examined the article in point of international agreements despite there was no will of the İzmir Civil Court of Peace which brought the article before the Constitutional Court. The Court referred to the Universal Declaration of Human Rights, CEDAW and European Social Charter in its decision however; it did not mention that the article 159 is annulled because it is contrary to these agreements. By stating that the article 159 is annulled on grounds of its unconstitutionality, the Court has taken international agreements as "supportive measuring norm". In other words the Court did not place international agreements to a superior status than laws but strengthened its decision by using the equality principles set out by those international agreements (Akkutay, 2007).

The High Court of Appeals is also agreed that international agreements are at the same status with laws. After the 2004 amendment in the article 90 of the Constitutional Court, Court of Appeals for the 7th Criminal Circuit held that the

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sometimes in reply to questions referred by national courts of first instance." (http://curia.europa.eu/en/instit/presentationfr/index_cje.htm)

provision of Act no. 2253 Article 41, which defines the minor as person who is under 15 years at the commitment date of the crime, becomes void by being contrary to UN Convention on the Rights of the Child Article 1, which states that a child means every human being below the age of eighteen years. Thence, it held that the convention abrogates the domestic law (Akkutay, 2007).

In 1989, Commission of Council of State responsible for the Consolidation of Case Law held that ECHR is a part of our domestic law, even if it conflicts with the Constitution, it should apply regardless of whether laws in domestic law are prior or posterior.[70] It also stated with the same decision that the ECHR is superior to laws in domestic law and therefore laws can not amend the Convention (Akkutay, 2007). In another decision, Council of State for the 5th Circuit held that the provision of the Constitution; which states that no appeal to the Constitutional Court shall be made with regard to international agreements, on the grounds that they are unconstitutional, shows that superiority of international agreements to domestic law is adopted as a principle.[71]

Akkutay (2007) introduces the first case to be held after the 2004 amendment in the Constitution that was brought before the Constitutional Court by claiming stay of enforcement and annulment of several provisions in Social Insurances and Public Health Insurance Act no. 5510[72]. The claim was based on unconstitutionality of these provisions by virtue of being contrary to UN Universal Declaration of Human Rights Article 22 and 25 and consequently to Article 90 of the Constitution. At the end of its examination, the Constitutional Court held that these rules have no relation with the Article 90. Akkutay (2007) argues that the Court is right with this decision since claiming unconstitutionality of provisions of a law on grounds they conflict with article 90 means that claiming examination of the Constitutional Court on the compliance of laws with international relations. However, such an examination is outside of the scope of Article 148 which states that The Constitutional Court shall examine the constitutionality of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly.

[70] E. 1988/6, K. 1989/4 dated 7 December 1989.

[71] E. 1986/1723, K. 1991/1933 dated 22 May 1991.

[72] E. 2006/111, K. 2006/112 dated 30 December 2006.

Then it means that international agreements shall deem as the same status with Constitution, if the Constitutional Court examines conflicts between provisions of domestic law and international agreements. Such an inference is contrary to both article 148 and 90 of the Constitution. The reason for being contrary to article 148 is explained above, it is also contrary to Article 90 provision which states that international agreements duly put into effect bear the force of law, *not the Constitution (my italics)*.

In this sense, provisions of international agreements duly put into effect and acquis communautaire which are examined in this chapter may encounter the difficulties in their implementation as discussed in this chapter. However, despite it is not possible today to claim amendment of provisions of the Constitution on grounds they are contrary to international agreements, it is certain that they have the force of law in Turkish domestic law and they are capable to be claimed before the Courts. As discussed above, the Constitutional Court does not consider conflict of laws with international agreements directly but it refers to principles set by international agreements. On the other hand, as it is stated by the High Court of Appeals when an international agreement duly put into effect in the area of fundamental rights regulates an issue, it derogates provisions in domestic laws conflicting with it, thus the international agreement applies. Consequently, regulations discussed in this chapter have the capacity to be claimed before Turkish Courts when the dispute is brought before the courts that necessitates a law which is contrary to reconciliation rights granted in international agreements put duly into effect or in acquis communautaire to be applied. As a result of the attribution in the legal ground of 2004 amendment to the need of complying domestic law with International Law and acquis communautaire, such a claim should be considered by the relevant Court.

6.3. Reconciliation in Turkish Law

Ecevit (2008) attributes the role of gender division of labor and caring responsibilities of women as one of the major impediments against women's participation in the labor market. According to her, deficiency in the institutionalization of childcare and lack of adequate childcare facilities effect

women's working lives directly contrary to men. Karadeniz and Yılmaz (2007) list 3 major reasons which lead women to quit their jobs as low wages, children and marriage. Thus, realizing reconciliation of work and family life arises as a crucial impediment against women's enjoyment of their right to work. The deficiencies in the Turkish legislation are discussed below to identify a clue for the existence of right of reconciling work and family responsibilities within the scope of the study. In this regard opportunities of Turkish women employees to reconcile their work and family responsibilities and legal risks arising from these opportunities are examined. This examination includes rights of homeworkers and part-time employees as well as availability of leave arrangements including parental leave and also accessibility of childcare services for women employees in Turkey.

6.3.1. Legal Basis for Reconciliation

Before beginning to consider the right to reconciliation of work and family responsibilities in Turkey, the basis of gender equality in Turkish Law should be examined.

First of all, the Turkish Constitution (art. 10) guarantees equality before the law, namely formal equality between women and men. The article was amended in 2004 to corporate the positive responsibility of the state in ensuring equality, however, affirmative action measures in the form of temporary positive discrimination was not included in this article despite the strong pressure from the women's movement.

Currently, Article 10 of the Constitution is as follows:

> "All individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations.
>
> Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice".

According to Süral (2003), this equal treatment principle may be interpreted as implying the absence of either direct or indirect discrimination based on sex but it does not prevent the maintenance or adoption of measures providing for specific advantages in favor of the underrepresented sex; and she suggests that a constitutional provision stating these specific advantages and defining direct and

indirect discrimination explicitly would serve to reach equality in practice a lot better.

On the other hand, Bakırcı (2007) draws attention to the paternalist language of the Constitution. Article 41 regulates the 'protection' of the family with a paternalistic tone by emphasizing that only women and children are in need of protection of law. This article was discussed by the Constitutional Court upon the application of the Ankara Execution Court of 11th Circuit with the demand of annulment of Article 169 of the amended Civil Code by being contrary to Article 10 of the Constitution in 1998. This provision was foreseeing that a wife should take the permission of the court in order to be able to go bail for her husband. The Constitutional Court held[73] that the equality principle adopted by Article 10 of the Turkish Constitution addresses a formal equality approach permitting differential treatment to persons who are in different conditions (An Aristotelian notion of equality: treating likes alike). The aim of the Article 169 is to protect the wife from incurring liability as being unaware of the scope and results of the debt. This provision protects the economic strength of the family by impeding the wife from bearing debts of the husband by remaining under pressure. According to the Constitutional Court, protecting the family is in public interest and in compliance with the Article 41 of the Constitution. As it was argued in the dissenting opinion of this decision, there are no adequate grounds in Turkish law for limiting the capacity of women in transactions with her husband upon a presumption that women are not rational enough to avoid from the harms of a legal transaction.

> "Article 41: The family is the foundation of the Turkish society and based on the equality between the spouses.
>
> The state shall take the necessary measures and establish the necessary organization 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."

The first sentence of the Article added in 2001 however, it is not capable to prevent the Turkish Courts to justify differential treatment to women on grounds of

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[73] E.1997/27, K.1998/43, dated 30.6.1998.

protecting the family. It should be noted that equality between the partners of the family may be achieved only through transforming the stereotypical assumption that women are in need of protection. What women need is the elimination of past discrimination through temporary positive action measures and distribution of responsibilities in and out of the family equally between women and men.

Similarly, Bakırcı (2007) argues that The Constitution (art. 50) does not treat women as equal individuals but includes them into the category of persons who are incapacitated, helpless, vulnerable and in need of protection, such as minors and persons with physical or mental disabilities. Article 50 reads as follows:

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

In this point, Bakırcı (2007) suggests that the second paragraph of Article 50 should be amended with a new paragraph which underlies that women are entitled to equal rights with working men and they shall be protected only because of reasons arising from biology of women or the requirements of the work. Such an amendment would make the article in line with the EU acquis, since in the EU acquis employees are subject to equal treatment and protection comes into force only in case of pregnancy. As suggested before by Kay (1993), the term biology of women disadvantages women when it is used even when women's biology is not relevant to justify women's subordination and segregation in the labor market. On the other hand, word "protection" refers to the paternalistic language of law which is a major cause of women's exclusion from many well-paid professions. Therefore, it would be better here to suggest taking special measures targeting women workers only during pregnancy.

Article 65 of the Constitution regulates the extent of social and economic duties of the state only in terms of social and economic rights and duties. This kind of an extension justifies nonparticipation of the state for example in childcare.[74] The article 65 reads as follows:

> "The State shall fulfill its duties as laid down in the Constitution in the social and economic fields within the capacity of its financial

[74] Such a provision is also included in ICESCR.

resources, taking into consideration the priorities appropriate with the aims of these duties."

Süral (2003) argues that assuming women to be dependent on the wage of a male breadwinner constitutes the basis for social policies which do not target any change in the gender division of labor since they take it as natural. According to Süral, Turkey has historically followed a male breadwinner model which had been perpetuated by the book on family law of the Turkish Civil Code. She also provides a comparison between the regulations in the previous Civil Code and the current code which challenges the male breadwinner model. Her analysis is reproduced below without any change.

Table. 7 Major amendments in the family law from paternalist approach to equality between the spouses (Süral, 2003)

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 maintenance of the family.
The husband represents the conjugal union. The wife has, for the purpose of providing the current necessaries 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.
The regular matrimonial property regime is the separation of property.	The regular matrimonial property regime is 'participation in acquisitions'.
The husband chooses the conjugal home.	The spouses determine the conjugal home jointly.
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.

Despite these positive changes in the legislation that promote equality in the family and economic and social independence of women; unless they are supported with paid and untransferable parental leave opportunities and childcare services and unless the male norm as the standard of all employees is altered, they will not

convert the male breadwinner model into a dual-caregiver model. Therefore, labor and social security legislation in Turkey is examined below with the view to identifying reconciliation norms which may be transformative for the structure of both work and family.

6.3.2. In Search of Reconciliation Rights in Labor and Social Security Legislation

In Turkey, employees are categorized into three groups, which are, civil servants, and contract personal who work in the public sector, employees who work as being dependent to an employer. While rights of all of these categories of employees have been regulated under specific labor codes, each group may also be covered in the scope of the diverse codes in Turkish labor law (Bakırcı, 2007). Due to the limits of the scope of this study, I examine the employees within the scope of the most recent Labor Code 4857 which regulates the terms and conditions of work of these who are engaged with a labor contract and listed in Article 4. Moreover, I prefer to limit the study with the scope of Labor Code 4857 because the legal ground of this code is to comply with International law and integration with EU acquis as set in its legal grounds, also it is the most recent labor law in Turkey and finally it is the general code for employees engaged with a labor contract. Furthermore, women employed in the employee status constitute the largest group among women; this also justifies paying a special attention to this code.

Under the heading "Equal Treatment", paragraph (1) under article 5, it states that no discrimination shall be made on the basis of sex. According to the second paragraph of the article, unless "reasonable grounds exist" employers cannot treat part-time employees differently than "full time employees". The third paragraph provides that "unless biological or other reasons associated with the nature of work justify", employers cannot engage directly or indirectly in different practices on the basis of gender or such situations as pregnancy while acting, setting the terms of, implementing and terminating labor contracts. However, this paragraph has been criticized widely by women (Bakırcı, 2007; Toksöz, 2007) since it does not include the recruitment period within the scope of equal treatment protection. In deed, the recruitment process is crucial for women since Turkish legislations which assign all

the burden of childbearing, childrearing and other family responsibilities on women leads to the reluctance of employers while employing women employees as it is mentioned in the legal ground of draft statute regulating parental leave in Turkey.

Another point to be criticized is that the equal treatment provisions are quite flexible by always leaving some grounds for justifying differential treatment by using specific sayings such as "…unless reasonable grounds exist…" or "…unless biological or other reasons associated with the nature of work justify…"

6.3.2.1. Market-driven Reconciliation Strategies in Turkish Law

6.3.2.1.1. Part-time Work

Part-time work is an employment type which is defined as working less than normal statutory working hours. As discussed before, it is a type of work in which generally women are employed. However, in Turkey, the part-time employment rate of women is determined as 9 % by the year 2003. However, Reconciliation of Work and Family Life Workgroup Report (RWFLWR) suggests that the promotion of part-time work by the Labor Code 4857 may lead to increase in this rate (2007). Indeed, the proportion of part-time women workers was increased to 17,8 % by the year 2006 (EUREWM, 2008). The Article 13 of the Labor Code 4857 which regulates that an employee working under a part-time labor 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.

First of all, in this article full-time work is taken as the standard working type and part-time employees engage with their employment related rights and benefits compared to a comparable full-time employee. As mentioned before, full-time work is a work type designed by considering men's life patterns that are supported by housewives, than taking full time work as the comparator marginalizes part-time work which is more in harmony with women's life patterns. This would also lead to gender segregation as it is the case in many countries including Nordic countries that women work part-time and conceived as secondary breadwinners and men

work full-time as real breadwinners and paid more than women which also leads to a wage gap.

Secondly, the last paragraph of the Article 13 provides that the employees' requests to move into full-time from part-time jobs or vice versa shall be taken into consideration if there are vacant positions suited to the qualifications of employees working in the establishment. Bakırcı (2007) suggests that it should be added to this paragraph that the requests of employees' with family responsibilities such as child, elderly, sick and disabled care; to move into part-time from full-time jobs shall be taken into consideration too.

On the other hand, there is no definition of indirect discrimination in Turkish law. As it was discussed before, any discrimination of part-time workers may be deemed as discrimination based on sex in the EU law due to the domination of women workers in part-time works. Lack of indirect discrimination provisions in Turkish law constraints the scope of discrimination claims of part-time workers since almost every differentiated conduct of the employers may be justified on the reduced working hours.

As it is argued in Kadın Emeği ve İstihdamı Girişimi (KEİG) Report (2008) dependence of social security benefits on the number of days in work and on the payment of premiums makes access o part-time workers in the social security almost impossible. A more complex discussion on social security of flexible workers is made below while examining the access of homeworkers.

In this regard, part-time work is one of the new working types supported by the new labor policy in Turkey. However, promoting this flexible working type is risky for working women, since it becomes widespread among women in all European countries which promoted it. Women's condensation in part-time employment shall perpetuate their confinement in the private sphere. This shall keep the domestic duties of part-time working women invisible. On this account, limited wage rates and limited chance to access in social security perpetuate their dependence on a male breadwinner. Promoting part-time work, especially with the current legislation in Turkey, means that women's confinement to the family and domestic responsibilities.

6.3.2.1.2. Homeworking

Even the proportion of homeworkers in Turkey is relatively low; the RWFLWR (2007) briefly puts the situation in Turkey by referring to the increase in the proportion of homeworking since 1996 and the proportion of women homeworkers to be 97 % among them. This women intensive type of work requires consideration since it represents informality, insecurity, long working hours and low salaries as a result of factors debilitating organization and bargaining powers of them (RWFLWR, 2007: p. 157). In this regard, the increase in the proportion of homeworkers is determined as a negative trend by RWFLWR (2007) when women's social strengthened through wage work is considered.

It is regulated by ILO that only the workers employed by an employee within the homeworking system shall be considered as homeworkers. This approach excludes the group consisting of ones working on their accounts at homes. However, most of the employers prefer to represent homeworkers working for them as self-employed (RWFLWR, 2007), in order to refrain from the costs of social benefits. It is suggested by the RWFLWR (2007) that any policies targeting homeworking should cover both groups.

As discussed in the previous chapters, the primary problem of homeworkers is their invisibility. The reflection of this problem in legal systems is the problem in determining the status of homeworkers as employees. Bakırcı (2002) introduces the discussion on whether homeworkers are employees, or self employed, or a sui generis group.

Dependence relation between employee and employer is the element which determines the original character of the labor contract. This dependency is a personal (legal) concept which refers to the employee to be under management and supervision of the employer (Bakırcı, 2002). First of all, principally the employer is not able to regulate execution of the work and working manner of the employee during working hours. Employer is only able to determine the start and the expiration of the job. Secondly, it is problematic that the homeworker, who receives piece rate wage, is held responsible for the result of the work done by her. In many cases they are paid as to the feature and quality of the output. Also this character of the piece work contract confuses the status of homeworkers, since it is not possible

to ascribe another duty on employees working under a labor contract apart from the duty of care, such as holding them responsible for the output to be in quality and to be free from defects (Bakırcı, 2002). Because of these facts there is a view in the doctrine which introduces homeworking as freelance contract or attorney contract (Güngör, 2002).

As a result of the problems in the application of dependence criterion to new flexible employees, adjudicative bodies all over the world began to seek solutions for that. For instance, as it is examined by Bakırcı (2002), the High Court of Belgium has begun to interpret the concept of dependence broader in order to avoid exclusion of homeworkers.

Güngör (2002) suggests a set of solution offers for homeworking. The first solution is judicial dependency which divides into two. "To work under the authority of the employer" is similar to the jurisdiction of the High Court of Belgium that broadens the scope of dependency principle. "To work within the work organization of the employer" was brought by jurisdiction and the doctrine that is replacing the criterion of "doing job at the establishment" with the criterion of "work or service organization". According to this criterion, it should be examined whether the employee works within the work organization of the employer. However, work or service organization again necessitates the ability of the employer to organize the work, in other words the dependency relation is still required. Since the employer's management and supervision on the employee is not definite in homeworking, criterion of "work or service organization" is not sufficient. Determination of the home as establishment is not adequate for dependency (Bakırcı, 2002).

Unlikely, Keskin (2002) argues that in Turkish labor law, "dependency" criterion is one of the principles that establish the labor contract but "performing job at the establishment" is not. The general legal ground of the Labor Code 4857 refers to the rise of computer technology and flexible working models as the cause of regulating flexible working models in the Labor Code 4857. The legal ground states that the definition of the employee as a person who is employed at the establishment of the employer by being dependent to the employer and receiving pay in return, is not capable to cover all employees at the present such as homeworkers. The legal ground of the Labor Code 4857 Article 2 emphasizes that being employed under the

labor contract is sufficient for establishment of employment relation, criteria of to be employed in a specific work and paid in return. The Labor Code 4857 (art .2) defines the establishment as the unit wherein the employees and material and immaterial elements are organized with a view to ensure the production of goods and services by the employer and an integrated organizational entity within the meaning of the annexed and adjunct facilities and vehicles. By doing this definition the legislator aims at harmonizing the labor law with EU acquis and international agreements and answering the problems in practice. Through this definition the concept of establishment gains a broader meaning and the organization of the employer takes priority instead of a definite place while determining the establishment. This provision enables homeworkers who are not counted within exceptions (art. 4) to benefit from the protection of the Labor Code 4857.

The economic dependency criterion refers to the weaker position of the employee which makes her dependent on the employer in order to reach the means of production. In homeworking tools and raw materials are principally supplied by the employer. The means of production are to be possessed by the employer that also causes economic dependency of the homeworker (Güngör, 2002).

Another criterion seeks for an answer to the question who supplies the product and the service to the market or consumer. If the homeworker is not the supplier, it should be acknowledged that she works under a labor contract (Güngör, 2002)

If the employee has no power of disposition on the design of product made by the employee and also she has to act not contrary to the restraint of trade, such relation may prove the existence of a labor contract between parties (Güngör, 2002).

Finally, if the relation between the homeworker and the provider overlaps the continuity and time criterion, there is a labor contract between the parties.

After, homeworking is acknowledged to be an employment relation which is subject to the Labor Code 4857 the problem to control application of rights granted by the Labor Code 4857 arises as a major problem for homeworkers such as maximum working hours per week or day, right to rest and leisure, and a minimum wage. Furthermore, Keskin (2002) suggests that it is important for homeworkers to determine the minimum and maximum work to be assigned to the homeworker since the amount of assigned work shall determine the minimum wage and maximum working hours of the homeworker. In Turkish law, it is regulated in Code

of Obligations that a worker who is employed at a piece or job rate exclusively for an employer has a right to demand an ample amount of work to be assigned per day during labor contract is in effect (art. 324). If the employer does not supply work at a piece or job rate, employer has to compensate the loss of the worker unless s/he proves that no fault shall be attributed to her/him (art. 324/2). However, such a provision should be included in the Labor Code 4857 with the purpose of protecting right to rest and leisure of homeworkers which is granted in the Constitution (art. 50) and by aiming at guaranteeing an adequate livelihood for them which also refers to a universal right known as "right to an adequate standard of living". Keskin (2002) also refers to the requirement for special regulation which prohibits performance of some kinds of work and usage of some materials in homeworking in order to prevent risks on account of safety and health at work.

It is argued in the doctrine (Bakırcı, 2002; Keskin, 2002) that argues that protecting homeworkers from hazardous work conditions and low wages necessitates control, regular auditing and supervision of the state authorities in houses wherein homeworking is performed. It is not realistic to claim that by broadening the scope of the establishment makes homeworkers to be subject to the Labor Code 4857 due to hardness of their implementation. First of all, homeworking generally stays in the informal sector all over the world. Secondly, labor inspectors and other civil servants have no authority to enter in a private domicile as a result of legislations which protect the privacy of home.

It is emphasized by Bakırcı (2002) that it is necessary to obtain the status of employee in order to be able to have a right for social security. Thence, homeworkers have no chance for social security unless they are deemed as employees.

As mentioned before Turkey has not ratified the ILO Convention No. 177 on Homeworking yet which accepts that homeworkers are employees. However, in Turkish law the Code of Obligations (art. 322) grant homeworkers the employee status. Even the article states that provisions of attorney contract comparatively apply to employment at a piece or job rate, according to Güngör (2002) parties of the contract are the homeworker and the employer as a result of the attribution to homeworker as employee in the text of the article. This article applies homeworking by taking it as an atypical labor contract. Another provision in Turkish law

regulating homeworking is Labor Code 4857 4/1-d determines that provisions of the Labor Code 4857 shall not apply to the activities and employment relationships in works and handicrafts performed in the home without any outside help by members of the family or close relatives up to 3rd degree (3rd degree included). The Code of Obligations applies to employees who work outside the scope of the Labor Code 4857 (Güngör, 2002).

On the other hand, Güngör (2002) argues that activities and employment relationships performed in handicrafts and in the home are within the scope of the Labor Code 4857 since they are not listed among exceptions. In this sense, employers performing works counted as handicrafts such as weaving, embroidery, and carpet business in the home and without contribution of persons outside the family stay outside the scope of the Labor Code 4857; employers performing works not counted as handicrafts such as ready-made garment, toy manufacturing, shelling, packing shall stay within the scope of the Labor Code 4857. On this account, these homeworkers are subject to the same regulations with other employees within the scope of the Labor Code 4857. Turkey has ratified the ILO Minimum Wage-Fixing Machinery Convention (no. 26) and according to this convention a minimum wage shall be fixed for the homeworkers. However, Turkey violates this provision since ratification of the ILO Convention no. 26.

In principal, homeworkers were outside the scope of social security legislation when Social Insurance Act no. 506 was in effect (Güngör, 2002). With the new reform in social insurance in Turkey, if they are not employed in the informal sector, homeworkers are within the scope of compulsory social insurance for the days they are employed in an employee status as determined by the Labor Code 4857. They are subject to short-term and long-term branches of social insurance during these days. However, the most important problem from the point of homeworkers is pointed out by the KEİG Report (2008) that the New Social Insurance Act ignores the possibility of multiple employments for homeworking women. Women who perform contract manufacturing at home may also work as self-employed in purpose of making their income continuous due to low wage rates, unstability and discontinuity of the job. This overlap of services is not considered in the New Social Insurance Act and these women employees are covered by social

insurance either as employees or self-employed. Therefore, they face crucial loss of their social insurance rights.

Although the new Social Insurance Act gives a chance to employees in flexible work to loan for periods during which they are not able to earn a livelihood, however it is argued that this is not a realistic solution to cover flexible employees (KEİG, 2008).

Another problem in flexible employees' social insurance is pension. Since receiving pension pays is bound to the employee status and payment of premiums as well as fulfillment of a minimum age limit. In this sense, flexible employees seem to be subject to partial pension pay and it is expected them to fulfill the conditions to have the access to such pension pay. According to these conditions,

1. An additional three years added to the pension ages required for the first type age limits to be fulfilled (61 for women and 63 for men), and
2. Payment of disablement, old age and death insurances' premiums for 5400 days,

are required to have a right to partial pension pay. These conditions are criticized by the KEİG report (2008) with regard to the impossibility of their fulfillment by flexible employees. Even if these conditions are fulfilled, pension pays are far from providing a sufficient livelihood.

I draw a framework of the situation of homeworkers in Turkey. The core problem in the legislation regarding homeworkers is the deeply embedded aim of the law-makers to keep the labor of women unpaid and perpetuate the male control over them.

6.3.2.2. Equality-driven Reconciliation Strategies in Turkish Law

6.3.2.2.1. Childcare services

Many writers (Bakırcı, 2007; Ecevit, 2008) refer to the importance of providing childcare services in Turkey since its inadequacy leads to nonparticipation of women in the labor market in two ways. Firstly, absence of institution where they can entrust in appropriate conditions effect their decision to

work in waged work in a negative way. Secondly, the seek work places which they can reach daily childcare facilities if they decide to work (RWFLWR, 2007).

"By-law on Pregnant and Breastfeeding Women" (art. 15), which is issued due to Turkish Labor Code 4857, states that employers, who employ 100-150 women, are obliged to open a lactation room within or maximum 250 meters away from the establishment. If the number of women employees is more than 150 in the establishment, employer should open a crèche and a daycare center outside the establishment for the care of children between the ages of 0 and 6. According to the paragraph 3 of this article, diverse employers may act together to open these crèche and daycare facilities collectively. However this provision have been criticized by many women writers since its enactment because it locates the responsibility of childcare only on mothers and make employment of women to cost more than male employees for the employers. Ecevit (2008) quotes an employer representative who discloses that they keep the number of women workers under 150 in order to avoid obligation of opening crèches and daycare facilities.

RWFLWR (2007) puts that there are problems in the insufficiency of childcare facilities in the private sector establishments, especially for small children physical environment of caring rooms and day nurseries are not appropriate (p. 162). In Turkey, working women mostly depend on the help of their female relatives, especially their mothers and mother-in-laws, in coping with childcare. This fact is determined as having negative effects on these working women with children. Firstly, the help of female relatives reinforces dependency of these women on the patriarchal family. Secondly, claiming that most women have access to the care service of female relatives may affect policies and decisions of employers on providing childcare services in a negative way (RWFLWR, 2007).

Ministry of National Education and Social Services and Child Protection Institution are the most important institutions responsible for the early childhood education. Nursery schools aiming to educate 4-6 year of children, nursery schools inside the formal and mass education institutions for the early education of 5-6 year of children and applied nursery schools and nursery classes for 4-6 year old children are affiliated to Ministry of National Education. Nursery schools affiliated to Social Services and Child Protection Institution provides services for 0-12 year old children in need of protection, day nurseries for 0-3 age group, day dispensaries

provide for 4-6 age group. Moreover, the private sector nurseries for 0-6 year's old children are affiliated to Social Services and Child Protection Institution (RWFLWR, 2007: p. 165). The early childhood education is not sufficient and there is disparity in presentation of services in Turkey. Firstly, only 16 % of children in the preschool age have the access to the childcare services. In the 8th five-year development plan Turkey, inclusion of 25% of children aged 4-6 in the early childhood education was at target, however the rate of inclusion for these children was 16% in 2005. Secondly, children in the age group of 4-6 years are mainly aimed at including in the early childhood education; children in small age groups are ignored (RWFLWR, 2007).

Childcare provisions in Turkey are included in several legislations which are Preschool Institutions Regulation of Ministry of National Education, Social Services and Child Protection Institution Act, State Personal Law and By-law on pregnant and breastfeeding women. This diversity of legislation and institutions lead to confusion in determining the authority responsible for the childcare services in Turkey (RWFLWR, 2007).

It is argued in the RWFLWR (2007) that most of the institutions excluding nursery schools are intensified in the big cities. On this account, the families which need these services the most as a result of their economic and social conditions are kept away from these services. Most of the costs of childcare services in Turkey are born by the government. However, the expenditure on childcare is not adequate because of the restraint in public resources. Both from education budget and general budget, a share is allocated to early childhood services; however, it has always been very limited. Here, it should be remembered that a right mentioned in legislation does not exist unless it is financed by the public budget.

Bakırcı (2007) suggests plenty of ways to make childcare services become widespread by pointing out that some changes in the laws which determine the duties and responsibilities of Municipalities, in the Trade Unions Act, and in the Turkish Union of Chambers and Commodity Exchanges Act would hold them responsible from providing childcare services. This way seems possible since all these public bodies and institutions have provisions as regards providing social services such as establishing training or education institutions, social facilities or sports centers in their formation acts. Childcare would become widespread if these

formation acts include establishment of childcare facilities including both daycare centers, nursery schools and elderly day-care (Bakırcı, 2007). Bakırcı (2007) suggests that The Act of Industrial Zones should include an obligation to open crèche, daycare, elderly and disabled persons care facilities in paragraph 1 (art. 20) without limiting this obligation with the number of employees. Recommendations of Bakırcı (2007) hit the need for the responsibility of all social partners in taking the responsibility for childcare. However, institutionalization of childcare under the authority of one institution and within the scope of a specific legislation shall be a better strategy in coping with problems such as disparity in presentation of services, condensation of services in big cities and the cost of services.

6.3.2.2.2. Parental Leave

Parental leave has not been granted yet in Turkey, however the "Draft Statute for Amending Civil Servants' Act and Labor Code" prepared by the KSGM since many years, mainly since 1999 and its legal grounds are sent to the Speaker of the Turkish Parliament on 14 January 2005. However, the draft was not negotiated during that legislative period and Standing Orders of the Turkish Grand National Assembly Article 77 applied. According to the article, draft statutes and notice of motions which are not concluded during a legislative period shall be deemed as void however they can be renewed by the Government or by members of the Turkish Parliament. Later, in 24 January 2008 the draft statute on parental leave was renewed by the Government. The draft is still in the commission of the Turkish Grand National Assembly.[75]

The first paragraph of the draft statute refers to the decrease in women's employment rates from 34 % in 1990 to 27.7 % in 2004. According to the writers of the draft, there is no discrimination against women in legislation, therefore this fact arises from the behavior of employers and concludes that there are two crucial reasons of women's low employment rates in Turkey. The first one is that both the public sector and private sector employers do not prefer women employees in recruitment processes. The second reason is the common perception in the Turkish

[75] www.tbmm.gov.tr – 29 November 2008

society that women are primarily responsible for childbearing and rearing. In the second paragraph of the general legal ground of the draft statute, it is concluded that mother, father and the state namely all parties are responsible for nurturing, nutrition, caring and education of children, and this responsibility should be shared between all of them. The last paragraph of the general grounding states the aim of the draft statute as the elimination of separate gender roles, preventing unjust treatment against working women due to childbirth, sharing the responsibility equally between the mother, the father and the State or the employer, within 12 months after the birth of a child or from the date of the temporary care contract made for the purpose of adopting a child.

In the general legal ground of the draft statute it is argued that "affirmative action" measure are required to be taken in order to enable women to exercise all of their rights equally with men and to participate equally in the societal development. In this regard, it refers to the Act no. 811 (published in the Official Gazette in 22 December 1966) which assents the ILO Convention no.111 by putting that the Convention is in our domestic law and therefore parental leave given to the mother and the father after the delivery of a child and legal regulations regarding the economic content of this shall not be deemed as discrimination. "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 employees and employees who have recently given birth or are breastfeeding" and "Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC" are also referred by the general legal ground of the draft statute as one of the priority subjects in harmonization process of Turkish law with acquis communautaire.

The general legal ground of the draft also refers to the European Social Charter but it specially cites article 8, however citation of article 27 of the Charter which specially sets the rights of employees with family responsibilities, would be also appropriate when the aim of the draft statute is considered. The general ground also refers to CEDAW, Article 5 and 11 which include reconciliation rights. It is emphasized that women are obviously preferred lastly in recruitment and dismissed first as a consequence of right to maternal leave to be granted only to mothers in Turkish Labor Law. Additionally, the 1998 study of Human Rights Coordinator

Supreme Council of Prime Ministry titled “Solution Offers Having Priority to Human Rights Problems of Women” and the report of the Parliamentary Inquiry Commission, established which was established for the determination of measure to be taken in order to realize the CEDAW suggested that unpaid leave given after the birth should be granted also to the father as parental leave.

Articles of the draft statute amending the Labor Code 4857 with respect to the Article 18 that regulates job security is reads as “absence from work during maternity leave when female employees must not be engaged in work, as foreseen in Article 74” shall not constitute a valid reason for termination. The amendment brought with the draft states that absence of female employees during the leave given in case of temporary care contract is made for the purpose of adopting a child and absence of male employees during leave also shall not constitute a valid reason for termination. Here, it should be noted that the text of Article 18 was anyhow problematic since it was enacted, because of the requirement for justification of termination with a valid reason is bound to some conditions which exclude many employees from the scope of job security. There are three conditions to be fulfilled by the employee that:

1. S/he should be engaged for an indefinite period,
2. S/he should be employed in an establishment with thirty or more employees
3. S/he should meet a minimum seniority of six months.

In other words, labor contracts of employees who want to use leave for familial needs but do not fulfill these conditions may be terminated after noticing the employee as to the periods mentioned in the article 17 of the Labor Code 4857. Şafak (2005) argues that in 2004 there were 850.928 establishments in Turkey but only 32.019 establishments employed more than 30 employees. Moreover, there were 6.281.251 insured employees but 2.967.119 employees were employed in establishments which employ less than 30 employees. According to this data 47 % of the insured employees are excluded from the scope of job security. When it is considered that a large part of employees work in the informal sector (52%) in Turkey (Şafak, 2005), it is acknowledged that this job security provision is practically meaningless.

According to the Labor Code 4857 Article 25, in cases of pregnancy or confinement the employer is entitled to terminate the contract on just cause if

recovery from the illness or injury continues for more than six weeks which shall begin at the end of the period stipulated in Article 74. The Article 4 of the draft amends this provision by adding absence of the female and male employees during the fulfillment of temporary care contract in adoption of a child. However, the last sentence of the paragraph remains untouched that no wages are to be paid for these periods. Hardy and Adnett (2002) emphasize the importance of parental leave to be paid in order to encourage fathers to take it. They draw attention to the Norwegian case where 80 % of fathers take parental leave. What distinguishes Norway from the EU is that employees on parental leave receive full-pay from welfare benefits. During 42 weeks employees receive 100 % of their normal wage and 80 % for an additional 10 weeks period. Thereupon, Hardy and Adnett (2002) puts that parental leave measures are able to promote equality only if they are not highly compensated for employees and if fathers have a higher take up rate than mothers. Hence, granting parental leave with full pay, with the guarantee to have the same or a similar job when return to work and on an untransferable basis between mother and the father is crucial.

The Labor Code 4857 Article 74 regulates paid pregnancy leave and unpaid maternal leave. It is forbidden to engage women employees in work for a total 16 weeks (eight weeks before and eight weeks after the delivery in principle), in case of multiple pregnancies it is 18 weeks and compulsory period for pregnancy leave is paid. According to the will of the female employee she shall be granted an unpaid leave of up to six months after the expiry of the sixteen weeks, or in the case multiple pregnancies, after the expiry of the eighteen weeks. In this regard, article 5 of the draft, firstly enables both male and female employees who made a temporary care contract in purpose of adopting a child to take up the paid leave up to eight weeks. The article also brings an opportunity to take up the unpaid leave up to 6 months both for parents who made a temporary care contract in purpose of adopting a child and for parents after the birth of a child to start at the end of the paid leave periods. Here, in case of the childbirth father has no right to take up leave during the 16 weeks period of mother's paid and compulsory leave.

In my opinion, both because of being unpaid and preferentially to be used and also because of the weak protection against termination, employees especially fathers will not prefer to take up parental leave after the paid period available only

for mothers. Therefore, although the draft statute on parental leave is one step forward in Turkish legal system, it is not capable to reach its aims stated in its legal ground that elimination of separate gender roles, preventing unjust treatment against working women due to childbirth, sharing the responsibility equally between the mother, the father and the State or the employer and also increasing women's participation rate in employment.

CHAPTER 7
CONCLUSION

In this thesis, the strategies suggested for reconciling work and family responsibilities in the EU and its member states are examined to determine the potential for transforming the patriarchal gender division of labor. In this respect, market driven strategies, which are flexible work arrangements such as homeworking and part-time work, and equality driven measures within the EU equality policy framework, most importantly parental leave and child-care services, are revised. Reconciliation of work and family responsibilities, which is defined as a fundamental human right in this study is related to other fundamental rights especially for women. In this respect, realization of this right this right is a state responsibility. The role of patriarchy, market, state, and law are examined in addressing the effectiveness of the alternative reconciliation strategies in transforming patriarchal gender division of labor.

Flexible working models may have the capacity to facilitate women's participation in the labor market, however, since women are employed in certain types of flexible work such as homeworking and part-time work, such works tend to reinforce women's domesticity and dependency. Furthermore, they lead to a segmented labor market in which women are subordinated to men by being employed both in the low-paid jobs and in jobs with fewer opportunities for upward mobility in particular for managerial positions. They also facilitate exploitation of women's unpaid domestic labor and wage labor. In this regard, the flexible work model is contrary to the logic of reconciliation as a fundamental right which foresees expanding opportunities of both male and female employees while in their lives. While part-time work and homeworking may be a strategy for reconciling work and family lives, the fact that they create structural biases However, they should not create any deficiency in employment status and rights and are preferred mainly by women result in the perpetuation of patriarchal power the patriarchal power relations both in the home and in the market.

Efforts such as untransferable and compulsory parental leave or publicly funded child-care facilities, on the other hand, may have the potenial to transform the patriarchal gender relations and lead to a universal care-giver model. This can be realized through encouraging men to bear domestic responsibilities and by facilitating women's wage work which necessitates state intervention. However, the state is patriarchal in essence and is under the attack of neo-liberal policies today. Moreover, it should be noted that patriarchy is deeply embedded in all societal relations and it is not possible to break the patriarchal power relations in the family through employment strategies which target only women's participation in the labor market. States should promote and ensure gender equality in all both the public authorities and the private spheres of life. From budgeting public services to regulating the mass media, school curriculum etc. all state actions should be gender sensitive with the view to transform in equal gender structures. Care-giving should be normalized as a humanly activity which is performed by all human beings without any distinction according to sex and is in the responsibility of all public and private bodies including both real and legal persons. Only within the context of such transformation project in all aspects of life, right to reconcile work and family responsibilities may have the capacity to transform the patriarchal gender order. It should be noted that apart from women's participation in the labor market, men's responsibility in domestic duties needs to be a target of state policies.

Entrance of women in the labor market under more egalitarian terms and recognition of their breadwinner status are a prerequisite to changing their subordinated position within the family. Reducing women's domestic responsibilities can have a positive impact on changing their worker status to some extent. However, the studies show that even in the states with a strong will in realizing gender equality and a less strict patriarchal culture, unequal power relations between women and men and women's subordination to men continue in legal, economic and social terms. This arises firstly from invisibility of women's unpaid domestic labor (reproductive activities) which is not considered in producing welfare policies and employment strategies and secondly, how the public-private dichotomy in jurisprudence. Policy-makers and law-makers who acknowledge women's overburden in the domestic sphere and aim to eliminate women's disadvantaged position in the labor market due to this dichotomy in

jurisprudence tend to produce strategies targeting the market activity instead of targeting inside of the household. Moreover, especially in the liberal and neo-liberal policies, the dominant thought is that market and family are not created by the state therefore cannot be changed by the state. The important point is that the more or the less women bear the costs of caring in all countries but at different levels.

Securing women's equality and their equal access to social and economic rights, which is also a condition in realization of civil and political rights, depends on equality policies. These equality policies should target transformation in domestic responsibilities of both women and men instead of targeting arrangements that leave women with free time and space to combine their productive and reproductive activities. Conventional human rights law is premised on male experience and men as the standard of humanity, therefore is based on the principles of universality and neutrality. Such abstract universalism, by overlooking unequal power and undermine women's enjoyment of their rights. Similarly, childbearing capacity of women should not be used to justify discrimination against women especially in the labor market. Special treatment rights, to be granted only to women, emphasize women's difference from the male norm which represents the standard in the labor market. Granting special rights only for women in the case of pregnancy and the delivery of a child is to consider biological reproduction as a women's problem. Feminist jurisprudence by redefining mainstream human rights theory and practices from the perspectives of experiences of women places the development of central human capabilities at the center of the debate. Even pregnancy should be reinterpreted and acknowledged as a concern of the whole humankind. In this respect, human rights norms included in the CEDAW constitute a good example.

The right to reconcile work and family lives and several other rights, which aim at reconciling work and family responsibilities, are mentioned in many of the conventions on fundamental rights and in policy documents, which explain the implementation of these rights. This fact shows that "right to reconcile work and family life" is recognized as a fundamental right at the global and regional levels. Especially in the EU, reconciliation of work and family responsibilities is central to both economic and social policies.

However, the motive behind reconciliation policies of the EU is market-driven. It is developed to cope with decreasing birth-rates namely costs of an aging society which arises as a conflict area with the increasing labor market participation rates of women. A part-time directive and a recommendation on adopting the homeworkers' agreement of ILO are adopted by the EU. However, they both represent a trend in flexibilization of the labor market which inevitably leads to deficiencies in workers' rights even if the new flexicurity policy applies. On this account, men's caring responsibility is not emphasized and it promotes a two-income family model in which women represent an additional half-income status. On the other hand, even if the ILO Convention on homeworking adopts some measures protecting homeworkers and provides measures for them to engage in social security, the recommendation of the EU is a soft law instrument which refers to this international agreement without the competence to force state parties to implement its provisions.

The parental leave directive of the EU is not adequate to transform the gender division of labor because it doesn't cover the entire dependency of a child, it allows member states to tie this right to one year service condition and it allows employers to postpone the granting of this right. Furthermore, childcare provisions and policies of the EU are soft law instruments and they are not directly applicable in the legal systems of member states.

Finally, ECJ perpetuates the traditional understandings of the social and parental roles of women and men while interpreting acquis communautaire. ECJ had a motivating effect in the development of the EU gender equality principles. However, when it comes to transforming gender division of labor in an egalitarian way, ECJ insists on its decision in Hoffman case: Community law is not designed to settle questions relating to the organization of family or to alter the division of responsibility between parents. In this regard, despite increasing labor market participation of women, it may be argued that the EU is far from transforming the patriarchal gender code. Women's subordination to men in the labor market and exploitation of women's unpaid domestic labor continues among the EU member states.

Turkey is obliged to take measures in order to grant and enable the enjoyment of reconciliation rights as for the international agreements it has ratified and put

duly into effect by the provision of Article 90/5 of the Turkish Constitution. Also, there are reconciliation rights in the EU acquis and Turkey has to regulate its domestic law in line with them due to the conditionality principle of the EU, which binds Turkey as a candidate State for the EU membership.

Turkey best fits the "mediterranean welfare regime" as it relies on kinship relations for childcare and also reinforces the subordinated and stereotypical role of women in the family and in the economy by following neoliberal path. Turkey adopts a market-driven approach, which can hardly qualify as reconciliation policy. However, when individual provisions are examined, even if they do not necessarily aim at reconciling work and family responsibilities, it is possible to consider as reflecting market-driven reconciliation staretegies.

The traditional gender division of labor and women's confinement in the domestic sphere is supported by the state policy and legislations in Turkey. The Constitution, The Labor Code 4857 and other labor legislation have a paternalistic and exclusionary stance against working women. They locate women's work in a secondary and marginal non-worker status which is justified on grounds of women's reproductive capacity and mothering role. The Constitution of Turkey categorizes women as persons who are incapacitated, helpless, and vulnerable and in need of protection, such as minors and persons with physical or mental disabilities. Here women are taken as being not capable to make rational choices (art. 41, 50) and this situation is justified with their reproductivity.

The general equality provision in the Labor Code 4857 (art. 5) does not include the recruitment period within the scope of equal treatment protection. Besides, these equal treatment provisions are quite flexible that they always leave some grounds for justifying differential treatment by using specific phases such as "…unless reasonable grounds exist…" or "…unless biological or other reasons associated with the nature of work justify…"

The unpaid public childcare service is provided by private crèches and preschools which offer daycare and are subject to the permission of Social Services and Child Protection Institution (SSCPI). These are private enterprises which have a statutory obligation to provide 5% of their service capacity without pay to some groups of children determined in the law. Similarly, private employers are obliged to provide childcare service to their employees according to the "By-law on

Pregnant and Breastfeeding Women" (art. 15). However it locates the responsibility of childcare only on mothers and makes employment of women more costly than male employees for the employers. With the last employment package, employers are enabled to take the childcare service from outside the establishment however conditions of this provision are not determined yet. In Turkey, state released itself from childcare provision through in the "Preparation of Investment Program Guide for the Period of 2007-2009" by stating that any investments of crèches shall not be initiated in 2007 and any subsidies shall not be allocated to maintenance and repair of existing facilities. This framework of childcare provision in Turkey demonstrates that mothers and private enterprises are responsible in providing unpaid childcare service; state does not take direct responsibility in childcare through public budgeting.

In my opinion, employees, especially men, will not prefer to take the optional unpaid parental leave after the paid period available only for mothers. Furthermore, the protection provision in the laws against termination during parental leave is weak. Therefore, although the draft statute on parental leave is one step forward in Turkish legal system, it is not capable to reach its aims; elimination of the separate gender roles, preventing unjust treatment against working women due to childbirth, sharing the responsibility equally between the mother, the father and the State or the employer, and increasing women's participation rate in employment.

In the provision which regulates part-time work in the Labor Code 4857 (art.13), full-time work is taken as the standard and part-time employees engage with their employment related rights and benefits compared to a comparable full-time employee. The requests of employees' with family responsibilities such as child, elderly, sick and disabled care; to move into part-time from full-time jobs shall be taken into consideration too, since its opposite is granted. When the case is childcare, this option should be available for both parents during the compulsory and untransferable parental leave. If such a part-time work option granted in case of familial responsibilities is used only by female workers, such a reconciliation strategy may turn into a strategy for confining women into a primary caregiver and a half-income winner status.

The most problematic issue in homeworking is the legal status of this job. In Turkish labor law, the concept of establishment has gained a broader meaning and

the organization of the employer has been given priority to a definite place while determining the establishment. This provision enables homeworkers who are not counted within exceptions (art. 4) to benefit from the protection of the Labor Code 4857 now. One of these exceptions regulate the activities and employment relationships in works and handicrafts performed in the home without any outside help by members of the family or close relatives up to 3rd degree (3rd degree included) to be outside the scope of labor law. Such regulations reinforce the unpaid family worker status of women. Unpaid family workers have no authority in the family, they have no economic independence, and they do not have control over their lives despite long hours of working by doing both productive and reproductive work.

In Turkish law the Code of Obligations grant homeworkers the employee status. The Code of Obligations applies to employees who work outside the scope of the Labor Code 4857. According to the regulation in Code of Obligations, homeworkers have the right to demand job or compensation if the employer does not supply work. However, such a provision should be included in the Labor Code 4857 with the purpose of protecting right to rest and leisure of homeworkers, which is granted in the Constitution (art. 50) and guaranteeing an adequate livelihood for them, which also refers to a universal right known as "right to an adequate standard of living". Also there is need for special regulation which prohibits performance of some kinds of work and usage of some materials in homeworking in order to prevent risks on account of safety and health at work. It should be noted that the Code of Obligations is based upon the principle of contractual liberty and such provisions granting social rights of workers do not apply to homeworkers within the scope of this code. Employers performing works not counted as handicrafts such as ready-made garment, toy manufacturing, shelling, packing shall stay within the scope of the Labor Code 4857. However, performance of such work within the hidden domestic sphere keeps homeworking to be outside the scope of the state supervision and to be a women intensive type of work.

The New Social Insurance Act ignores the possibility of multiple employments for homeworking women. Overlap of services is not considered in the new social insurance flexible employees (mostly women) are covered by social insurance either as employees or self-employed. Therefore, they face crucial loss of

their social insurance rights. Although the new Social Insurance Act gives a chance to employees in flexible work to loan for periods during which they are not able to earn a livelihood, it is argued that this is not a realistic solution to cover flexible employees. Receiving pension pays is bound to the employee status and payment of premiums as well as fulfillment of a minimum age limit. These conditions are impossible to be fulfilled by most of the flexible employees. Even if these conditions are fulfilled, pensions for which they are qualified, are far from providing a sufficient livelihood.

With the completion of my research as summarized above, I have reached a list of reconciliation strategies from least effective to the most in order to transform the gender division of labor and enable women to have numerous opportunities in their lives:

a. Homeworking is the least effective strategy to be suggested as a reconciliation policy. Almost all homeworkers around the world are women and they experience deficiency in all employment and social security rights as well as experiencing one of the most hazardous work conditions among all workers in flexible employment relations. Moreover, it keeps both the productive and reproductive work of these women invisible. It also increases women's double burden and reinforces their domestication. In homeworking both patriarchy and capitalism benefit from exploitation of women's labor. However, homeworker women benefit from almost none of the advantages of having a wage job.

b. Part-time work is also a woman's working phenomenon. It is relatively a better strategy in reconciliation since it enables women to be in the public sphere and in relation with other workers. They are also more visible as workers and despite many deficiencies in their job security and social security rights, at least occupational safety provisions apply to them. In other words, their wage work is visible. However, it still reinforces the stereotypical assumption that housework and childcare are in women's responsibility and that women are secondary breadwinners. The best way of justifying part-time work is regulating leave arrangements especially parental leave as part-time being subject to the preference of employees. This facilitates the return of employees to work after long leaves on familial reasons and also it may encourage male workers to take parental leave.

Most importantly, both of these flexible working arrangements force women to depend on a male partner since they are not adequate for a living. Also, they reinforce the dependence of women on their fathers or husbands to access in healthcare or social security benefits since they do not enable women to pay their premiums and have an adequate standard of living.

c. Parental leave is a strategy which is capable to change the patriarchal gender order in the society. However, this leave should be granted on a paid basis, it should not cause any deficiencies in access to social and employment related rights during this period and it should be compulsory for fathers without granting an opportunity to transfer it to the mother. When it is not paid in the same amount of the worker's previous wage, it is not taken by male workers as demonstrated by many researchers. In other words, it loses its transformative force and becomes a tool in reinforcing women's non-worker status and makes employers to choose male workers instead of female workers in recruitment processes. On this account, I also suggest that the length of paternity leave to be extended and fathers' part in parental leave to be longer than mothers' in order to compensate mothers' absence during maternity leave.

d. A network of childcare facilities is the best strategy in reconciling work and family responsibilities and transforming the gendered structure of the society. The best solution is the childcare facilities located within the establishment. These facilities should be subsidized by the state, local governments, employers and parents. Even if it is not located within the establishment, the services provided by these facilities should be adequate, affordable, compatible with working hours and available for all male and female citizens with children regardless of their employment status, seniority, marital status, pay of some premiums etc.

Regrettably, even the most adequate childcare facilities to promote equality between women and men may only enable women to enter in the labor market and gain economic independence if they have no other constraints apart from childcare responsibilities. Male violence arising from the aim of control of women's bodies and reproductivity lies beneath confinement of many women in the domestic sphere. It is obvious that such expressions of patriarchal control over women cannot be eliminated through reconciliation strategies. However, it should be noted that if women are equipped with necessary tools such as education and economic

independence they can be able to revolt against oppression. Right to reconcile work and family responsibilities offers a start point in equipping women in this way and it tackles the roots of patriarchy by challenging the patriarchal gender division of labor, undervaluation of motherhood and reproductive work.

It is not only the legislation or the attitude of the state and market to the caring responsibility what should be changed; it is patriarchy and patriarchal configurations of human life. In this regard, caring responsibility and women's positioning in bearing this responsibility constitutes a small part of the problem. Exploitation of women both by their families and the market and the role of the state in it cannot be changed in the short-run. From women's sexuality to the organization of work, from power relations between family members to the perceptions of adjudicators with respect to human relations, all aspects of the social and economic order should be reinterpreted in order to be able to motivate some change. Even if all states take the whole responsibility in childcare, full job security and social security is granted for all workers and social security is granted for all citizens, all the legislation are transformed according to the suggestions of the women's movement, there is no guarantee that all men will easily leave their privileges and supremacy within their families. This struggle for reinterpreting dependency and care is a human rights struggle. Furthermore, caring for others should be marked as the standard of the adult conduct for all humans. Struggling for such a huge transformation to be resulted in the long run requires targets in the short run.

In my opinion, first, the length of paternity leave has to be extended in order to emphasize the necessity of the bound between father and the child from the birth. Secondly, untransferable, paid and compulsory parental leave rights should be granted to both parents but the length of fathers' part should be more than mothers' in order to compensate absence of mothers during maternity leave. It must be in preference of employees to decide on whether taking full-time or part-time parental leave. Affordable, available and adequate childcare services with the participation of parents, employers, state and local governments and strict job security measures which do not leave room for any justifications for dismissals should accompany these leave arrangements. Home-working and part-time work should not be taken into consideration as strategies for workers with family responsibilities until one

day comes that men's caregiver responsibility becomes the standard along with women's and all society needs such opportunities to reconcile their work and family lives. Consequently, I suggest that once the ethic of care is internalized by men, it will be easier to shake the patriarchal gender relations.

REFERENCES

Acuner, S. "Avrupa Birliği Kadın Erkek Eşitliği Politikaları ve Türkiye." Türkiye'de Toplumsal Cinsiyet Eşitliği: Sorunlar, Öncelikler ve Çözüm Önerileri. İstanbul: TÜSİAD-KAGİDER, 2008.

Akkutay, A. İ. Uluslar arası Antlaşmaların İç Hukuka Etkisi. Ankara Üniversitesi Sosyal Bilimler Enstitüsü Kamu Hukuku (Uluslar arası Kamu Hukuku) Anabilim Dalı (Unpublished Master Thesis). Ankara: 2007.

Allen, S. and Wolkowitz, C. "Homeworking and The Control of Women's Work." Waged Work: A Reader. Femist Review. London: Virago. 1986. pp. 209-219,

Allen, S. Wolkowitz, C. Homeworking: Myths and Realities. Hong Kong: Macmillan Education, 1987.

Althusser, L. Lenin and Philosophy and Other Essays. London: New Left Books, 1971.

Altundiş, M. "Anayasanın 90. Maddesinin Son Fıkrasına Eklenen Hükümle Birlikte Anayasa ile Yargı Denetimi Dışında Tutulan İşlemlere Karşı Yargı Yolu Açılabilir mi?" Yasama. Sayı:2. Temmuz-Ağustos- Eylül 2006. 75–91.

An Introduction to Social Policy. <http://www2.rgu.ac.uk/publicpolicy/introduction/wstate.htm> Access date: 21.06.2007.

Arı Hareketi, İngiltere Büyükelçiliği ve KA-DER. Avrupa Sosyal Politikası ve Kadın Hakları, 2005.

Babayev, R. R. "EU Charter of Fundamental Rights: What is the Legal Impact of Being Chartered?" Romanian Journal of European Affairs. Vol.6. No.4. 2006.

Bakırcı, K. "Dünyada Evde Çalışmada Hukuksal Koruma Sistemleri ve Mevzuatı." İktisat Dergisi. S. 430. Ekim 2002. 63-69.

Bakırcı, K. "Kadının İşgücüne Katılımının Artmasını Sağlayacak Hukuki Düzenlemeler." İş Dünyasında Kadın. TÜRKONFED. İstanbul: 2007. 79- 95.

Balbo, L. "Crazy quilts: rethinking the welfare state from a woman's point of view." Women and the State. Ed. Sassoon, S. London: Unwin Hyman,1987.

Barbera, M. "The Unsolved Conflict: Reshaping Work and Market Work in the EU Legal Order." Economic and Social Rights under the EU Charter of Fundamental Rights- A Legal Perspective. Eds. Hervey, T.K. Kenner, J. Oxford-Portland Oregon: Hart Publishing, 2003.

Barret, M. Women's Oppression Today: Problems in Marxist Feminist Analysis. London: Verso, 1980.

Barrett, M. McIntosh, M. "The Family Wage: Some Problems for Socialists and Feminists." Capital and Class. 11. 1980: 51–72.

Beck, U. The Brave New World of Work. Cambridge: Polity Press, 2000.

Beechey, V. Unequal Work. Verso Books, 1987.

Bekkengen, L. "Men's Parental Leave: A Manifestation of Gender Equality or Child-orientation" Gender Segregation: Divisions of Work in Post-Industrial Welfare States. Eds. Gonäs, L. Karlsson, J. Ashgate, 2006.

Beneria, L. "The Enduring Debate over Unpaid Labor." Women, Gender and Work: What is Equality and How Do We Get There? Ed. Loutfi, M. F. Geneva: International Labor Office, 2001.

Berik, G. "Towards an Understanding of Gender Hierarchy in Turkey: A Comparative Analysis of Carpet-Viewing Villages." Women in Modern Turkish Society: A reader. Ed. Tekeli, Ş. New Jersey: Zed Boks Ltd, 1995.

Beveridge,F. Mullally,S. "International Human Rights and Body Politics" Law and Body Politics: Regulating the Female Body. Eds. Bridgeman, J. Millns, S. Aldershot: Dartmouth, 1995.

Bolak, H. C. "Towards a conceptualization of marital power dynamics: Women breadwinner and working-class households in Turkey." Women in modern Turkish Society: A reader. Ed. Tekeli, Ş. New Jersey: Zed Boks Ltd, 1995.

Boockman, B.; "The Ratificaiton of ILO Conventions: A Hazard Rate Analysis" Economics and Politics Vol. 13, No. 3 November. Blackwell: 2001. 281-309.

Bradley et. al. Myths at Work. Oxford: Polity Press, 2000.

Brah, A. "Difference, Diversity and Differentiation." Race, Culture and Difference. Eds. J. Donald and A. Rattansi. London: Sage, 1992.

Briar, C. Working for Women? Gendered Work and Welfare Policies in Twentieth-Century Britain. London: UCL Press, 1997.

Bridgeman, J. and Millns, S. Feminist Perspectives on Law: Law's Engagement with the Female Body. London: Sweet& Maxwell, 1998.

Brown, C. "Mothers, fathers, and children:from privat to public patriarchy." Women and revolution: the unhappy mariage of marxism and feminism. Ed. Sargent, L. London: Pluto Press, 1981.

Bryson, L. Welfare and the State: Who Benefits? Basingstoke, Hampshire: Macmillan Press, 1992.

Buğra, A. "Poverty and Citizenship: An overview of the social-policy environment in the Republican Turkey." International Journal of Middle East Studies, 39. USA: 2007. 33-52

Buğra, A. and Keyder, Ç. "The Turkish Welfare Regime in Transformation." Journal of European Social Policy. 16. 2006. pp. 211-228.

Butler, J. "Melancholy Gender-refused Identification." Psychoanalitic Dialogues 5. 1990. 165-180.

Chodorow, N. The Reproduction of Mothering. Berkely: University of California Press, 1978.

Clark, A. "Working Life of Women: Pinchbeck, Women Workers." The Making of the English Working-class. Ed. E. P. Thompson. New York: Vintage Books, 1963.

Cockburn, C. and Ormrod, S. Gender and Technology in the Making. London: Sage, 1993.

Cockburn, C. Brothers: Male Dominance and Technological Change. London: Pluto Press, 1983.

Commission of the European Communities Green Paper "Confronting demographic change: a new solidarity between the generations" 2005, downloadable at www. ec.europa.eu/employment_social/news/2005/mar/comm2005-94_en. Pdf

Cooper, C. L. "Corporate Relocation Policies." The Work-Family Challenge. Eds. Lewis, S. and Jeremy, L. London: Sage Publications Ltd. 93-167.

Costello, C.; " Gender Equalities and the Charter of Fundamental Rights of the European Union." Economic and Social Rights under the EU Charter of Fundamental Rights- A Legal Perspective. Eds. Hervey, T.K. Kenner, J. Oxford-Portland Oregon: Hart Publishing, 2003.

Council of Europe
http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=163&CM=7&DF=26/10/2008&CL=ENG> Access date: 29 Novemner 2008

Council of Europe. Official website. <www.conventions.coe.int> Access date: 31.08.2008

Coward, R. Our treacherous hearts: why women let men get their way. London: Faber and Faber, 1992.

Craig, P. and de Búrca G. EU Law: Text, Cases and Materials. Oxford University Pres, 2008. 874-948.

Crompton, R. "Employment, Flexible Working and the Family." Divisions of Work in Post-industrial Welfare States. Eds. Gonäs, Lena and Karlsson, Jan. Ashgate, 2006.

Crompton, R. "Employment, Flexible Working and the Family." Gender Segregation: Divisions of Work in Post-industrial Welfare States. Eds. Gonäs, L. and Karlsson, J. Ashgate, 2006. 127-147.

Crompton, R. and Birkelund, G. "Employment and Caring in British and Norwegian Banking." Work, Employment and Society. 14. 331-352: 2000.

Crompton, R. Lewis, S. Lynotte, C. Women, Men, Work and Family in Europe. Hampshire and New York: Palgrave MacMillan, 2007.

Crompton, R., Lewis, S., and Lyonette, C. "Introduction: The Unraveling of the 'Male Breadwinner' Model- and Some of its Consequences." Women, Men, Work and Family in Europe. Eds. Crompton, R., Lewis S. and Lyonette C. Hampshire and New York: Palgrave Macmillan, 2007. 1-16.

Çaha, Ö. Civil Women: Civil Society and Women in Turkey. Ankara: Vadi Yayınları, 1996.

Davidoff, L. Hall, C. Family Fortunes: Men and Women of the English Middle-class 1780-1750. London: Hutchinson, 1987.

Delphy, C. Close To Home: A Materialist Analysis Of Women's Oppression. London: Hutchinson, 1984.

DeVault, M. L. Feeding The Family- The Social Organization of Caring as Gendered Work. Chicago and London: The University of Chicago Press, 1991.

Dowd, N. E. "Work and Family: The Gender Paradox and the Limitations of Discrimination Analysis in Restructuring the Workplace." Applications of Feminist Legal Theory to Women's Lives. Ed. Weisberg, D. K. Philadelphia: Temple University Press, 1996.

Drew, E and Emerek, R. M. Women, Work and the Family in Europe. London and New York: Routledge, 1998.

Dulk, Lauren den and Doorne-Huiskes, Anneke van. "Social Policy in Europe: Its Impact on Families and Work" Women, Men, Work and Family in Europe. Eds. Crompton, R. and Lewis, S. and Lynotte, C. Palgrave MacMillan, 2007.

Ecevit, Y. "İşgücüne Katılım ve İstihdam." Türkiye'de Toplumsal Cinsiyet Eşitliği: Sorunlar, Öncelikler ve Çözüm Önerileri. TÜSİAD-KAGİDER: İstanbul, 2008.

Ecevit, Y. “The status and changing forms of women’s labor in the urban economy.” Women in modern Turkish Society: A reader. Ed. Tekeli, Ş. New Jersey: Zed Books Ltd, 1995.

Eisenstein, Z. R. “The Female Body and The Law.” Feminism, Freedom and the Limits of Law. Ed. Jamieson, B. K. The Pennysylvania State University Press, 2001.

Elson, D. “Gender Justice, Human Rights, and Neo-liberal Economic Policies.” Gender, Justice, Development and Rights. Eds. Molyneux, M. and Razavi, S. Oxford University Press, 2002.

Engels, Frederick. The Origin of the Family, Private Property and the State. London: Lawrence and Wishart, 1940.

England, Paula; “Comparable Worth: Theories and evidence”, Aldine, New York, 1992

Epstein, C.F. Deceptive Distinctions: Sex, Gender, and the Social Order. Yale University Press, 1988.

Ertürk, Y. “Alternatif Kalkınma Stratejileri: Toplumsal Cinsiyet, Kadın ve Eşitlik.” METU Studies in Development. V. 23. N.3. 1996: 341-356.

Ertürk, Y. “Community, convention and the trends of change.” Agricultural Sector and Employment in Turkey. Ed. Bulutay, T. Turkish State Institute of Statistics, No. 2209. Ankara: 1998. 97-122.

Ertürk, Y. “Turkey’s Modern Paradoxes: Identity politics Women’s Agency and Universal Rights.” Global Feminism : Transnational Women’s Activism, Organizing and Human Rights. Eds. Ferree M. M. and Tripp A. M. NYU Press, 2006.

Ertürk, Y. and Dayıoğlu, M. Gender, Education and Child Labor in Turkey. Geneva: ILO, 2004.

Ertürk, Y. and Dayıoğlu, M. Gender, Education and Child Labor in Turkey. Geneva: ILO, 2004.

Eser, Ş. Part-time Çalışmanın Türkiye’de Kadın İstihdamı’ndaki Etkisi (Effects of Part-time Working on Women Employment In Turkey). T.C. Ankara: Başbakanlık Kadının Statüsü Genel Müdürlüğü, 1997.

EU Coordination Department. “Strengthening Social Dialogue for Innovation and Change in Turkey.” Reconciliation of Work and Family Life Workgroup Report. Ankara: 2007.

European Foundation for the Improvement of Living and Working Conditions. “Foundation Findings: Work life balance- Solving the dilemma.” 2007.

Downloadable at <http ://www.eurofound.europa.eu/pubdocs/2007/89/en/1/ef0789en.pdf> Access date: 10 August 2008.

European Women's Lobby (EWL). EWL Position Paper on Care Issues. 2006

Eurotreaties. <www.eurotreaties.com> Access date: 31.08.2008.

Fagnani, J. "Fertility Rates and Mothers' Employment Behavior in Comparative Perspective: Similarities and Differences in Six European Countries." Women, Men, Work and Family in Europe. Eds. Crompton, R., Lewis S. and Lyonette C. Hampshire and New York: Palgrave Macmillan, 2007. 58-75.

Ferrera, M. "Sosyal Avrupa'da Güney Avrupa Refah Modeli." Sosyal Polita Yazıları. Eds. Buğra, A. Keyder, Ç. İstanbul: İletişim Yayınları, 2006. pp.195-230.

Fine, B. Women's Employment and the Capitalist Family. London: Routledge, 1992.

Finley, L. M. "Transcendıng Equalıty Theory: A Way Out Of The Maternıty And The Workplace Debate." Columbia Law Review. 1986.

Fraser, N. "After the family wage: a post industrial thought experiment." Justice Interruptus: Critical Reflections on the Post-Socialist Condition. New York: Routledge, 1997.

Fredman, S. Women and the Law. Oxford: Clarendon Press, 1997.

Friedman, E. "Women's Human Rights: The Emergence of a Movement." Women's Rights Human Rights: International Feminist Perspective. Eds. Peters, J. and Wolper, A. London: Routledge, 1995. pp. 18-35.

Friedman, E. J.; "Gendering the Agenda: The Impact of the Transnational Women's Rights Movement at the UN Conferences of the 1990s." Women's Studies International Forum, Vol. 26, No.4. 2003. 313-331.

Frug, M.J. Postmodern Feminist Legal Manifesto (An Unfinished Draft). Harvard Law Review, 1991.

Gambles, R., Lewis, S., and Rapoport, R. "Evolutions and Aproachs to Equitable Divisions of Paid Work and Care in Three European Countries: Multi-level Challenge." Women, Men, Work and Family in Europe. Eds. Crompton, R., Lewis S. and Lyonette C. Hampshire and New York: Palgrave Macmillan, 2007. 17-34.

Garber, Marjorie B. Vested Interests: Cross-Dressing and Cultural Anxiety. New York: Routledge, 1992.

Gardiner, J. Domestic Labor Revisited: A Feminist Critique of Marxist Economics. Inside the Household: From Labour to Care. Ed. Susan Himmelweit. New York: St. Martin's Press, 2000.

Gerhard, U., Knijn, T. and Weckwert, A. Working Mothers in Europe: A Comparison of Policies and Practices. Cheltenham and Massachusetts: Edward Elgar, 2005.

Gershuny, Jonathan and Robinson, John P. "Historical Changes in the Household Division of Labor." Demography, Vol. 25, No. 4, 537-552. Nov. 1988.

Gonäs, L. and Karlsson, J. Gender Segregation: Divisions of Work in Post-industrial Welfare States. Ashgate, 2006.

Gough, I. "Social Assistance in Southern Europe" (originally published in 1996) Sosyal Politika Yazıları. Eds. Buğra, A. Keyder, Ç. İstanbul: İletişim Yayınları, 2006. pp. 231-260.

Gould C. "The Women Question: Philosophy of Liberation and the Liberation of Philosophy." Feminist Legal Theory- Foundations. Ed. Weisberg, D. K. Philedelphia: Temple Universtiy Press, 1993.

Gözler, K. Anayasa Hukukuna Giriş: Genel Esaslar ve Türk Anayasa Hukuku. Etkin Kitabevi Yayınları, Bursa: 2004.

Grabbe, H. "European Conditionality and the Acquis Communautaire." International Political Science Review. Vol. 23, No.3, 2002. 249-268.

Gündüz- Hoşgör,A. and Smits, J. "Variation in Labor Market Participation of Married Women in Turkey." Women's Studies International Forum. 31. 2008. pp. 104-117

Güngör, Y. "Eve İş Verme Sistemi İçinde Evde Çalışmanın Hukuki Niteliği." İktisat Dergisi. S. 430. Ekim 2002. 70-72.

Hakim, C. Work-lifestyle Hoices in the 21st Century: Preference Theory. Oxford: Oxford University Press, 2000.

Hakim,C. Key Issues in Women's Work. London: Athlone, 1996.

Haraway, D.J. "Animal Sociology and a Natural Economy of the Body Politic, Part II: The Past Is the Contested Zone: Human Nature and Theories of Production and Reproduction in Primate Behavior Studies." Signs, Vol. 4, No. 1. Women, Science, and Society Autumn, 1978.

Haraway, D.J. Primate Visions: Gender, Race and Nature in the World of Modern Science. 1989.

Hardy, S. and Adnett, N. "The Parental Leave Directive: Towards a 'Family-friendly' Social Europe." European Journal of Industrial Relations. V. 8 N. 2. London, Thousand

Hartmann, H. “The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union.” Women and Revolution: A Discussion of the Unhappy Marriage of Marxism and Feminism. Sargent, L. South End Press, 1981. 1–42.

Hartmann, Heidi. Capitalism, patriarchy and job segregation by sex. Gender: A Socilogical Reader . Eds. Jackson, S.& Scott, S. Routledge, 2002.

Hein, C. Reconciling Work and Family Responsibilities: Practical Ideas from Global Experiences. International Labour Organization, 2005.

Hekman, S. J. Gender and Knowledge: Elements of a Postmodern Feminism. Cambridge: Polity Press, 1992.

Hertz, R. More Equal than Others: Women and Men in Dual Carer Marriages. Berkely: University of California Press, 1986.

Hoq, L. A. “The Women’s Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights.” Columbia Human Rights Law Review, 32. 2000.

Hörnqvist, M. “Familjeliv och arbertsmarknad för män och kvinnor.” Familj, makt och jämställdnet. Eds. Göran Ahrne and Inga Persson. SOU. Stockholm: Fritzes, 1997.

Humphries, J. “Class Struggle and the Persistence of the Working-class Family.” Cambridge Journal of Economics. 1.3. 1977: 241-258.

International Labor Organization. Official website. <www.ilo.org> Access date: 21.08.2008.

İktisadi Kalkınma Vakfı. Avrupa Birliği’nde Kadın Hakları ve Türkiye. İKV Yayınları, 2003.

Jackson, P. C. “Managing the Mothers: The Case of Ireland.” Women and Social Policies in Europe: Work, Family and the State. Ed. Lewis, J. Aldershot and Vermont: Edward Elgar, 1993.

Jaggar, A. M. Feminist Politics and Human Nature. Brighton: Harvester Press, 1983.

James, S. and Dalla Costa, M. The Power of Women and The Subversion Of The Community. Bristol: Falling Wall Press, 1973.

Kaboğlu, İ. Ö. Anayasa Hukuku Dersleri. İstanbul: Legal Yayıncılık, 2006.

Kalan, İ. Kadın ve Adalet. Kaynak Yayınları- 247: 1998.

Karadeniz, O. & Yılmaz, H. "Türkiye'de Kadın İşgücü Piyasası İçindeki Konumu ve İşgücü Piyasasına Katılımını Etkileyen Faktörler." İs Dünyasında Kadın. TÜRKONFED İstanbul, 2007. pp.23-41.

Kardam, N. Turkey's Engagement with Women'S Human Rights. England: Ashgate, 2005.

Kay, H. H. "Equality and Differences: The case of pregnancy." Feminist Jurisprudence. Ed. Smith, P. Oxford: Oxford University Pres, 1993.

Kreimer, M. "Labor Market Segregation and the Gender-based Division of Labor." European Journal of Women's Studies. V.11, I. 2. 2004: 223-246.

Kuru B., Arslan R. and Yılmaz, E. Medeni Usul Hukuku: Ders Kitabı. Yetkin Yayınları, Ankara: 2007.

Law, S. "Rethinking Sex and the Constitution." 132 U Pennsylvania Law Review. 1984.

Leira, Arnlaug. "The 'Women-Friendly' Welfare State?: The Case of Norway and Sweden." Women and Social Policies in Europe: Work, Family and the State. Ed. Lewis, J. Aldershot and Vermont: Edward Elgar, 1993.

Letablier, M. Jönsson, I. "Caring for Children: The Logics of Public Action." Working Mothers in Europe: A Comparison of Policies And Practices. Eds. Gerhard, U. Knijn, T.

Levin, Y. Ç. "The Effect of CEDAW on Women's Rights." Human Rights in Turkey. Ed.

Levi-Strauss, C. "The Family." Man, Culture and Society. Ed. Saphiro, H. L. NewYork: Oxford University Press, 1971.

Lewis, J. "Introduction: Women, Work, Family and Social Policies in Europe." Women and Social Policies in Europe-Work, Family and the State. Eds. Lewis, J. Aldershot: Edward Elgar, 1993. 1-24.

Lewis, J. Women and Social Action in Victorian and Edwardian England. Aldershot: Edward Elgar, 199.1

Lewis, S. "Rethinking Employment: An Organizational Cultural Change Framework." The Work-Family Challenge. Eds. Lewis, S. and Jeremy, L. London: Sage Publications Ltd. 1-19.

Lorber, J. and Farrell, S. A. The Social Construction of Gender. London: Newbury Park, 1991.

Lorber, J. Paradoxes of Gender. Yale University Press, 1994.

MacKinnon, C. “Toward a Feminist Theory of the State” Cambridge: Harvard University Press, 1989

MacKinnon, C. A. “Feminism, Marxism, Method, and the State: An Agenda for Theory.” Signs, Vol. 7, No. 3. 1982: 515-544.

MacKinnon, C. A. “Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence.” Signs, Vol. 8, No. 4. Summer, 1983. pp. 635-658.

MacKinnon, C. A. “Women's lives, men's laws.” Cambridge: Belknap Press of Harvard University Press, 2005.

Mackinnon, C. A. Feminism Unmodified: Discourses on Life and Law. Cambridge , Massachusetts: University of Harward Press, 1987.

Manley, P. and Sawbridge, D. Women at Work. Lloyds Bank Review, 1980.

Martin, J. and Roberts, C. Women and Employment: A Lifetime Perspective. London: HMSO, 1984.

Maynard, M. “Feminism and possibilities of a postmodern research practice.” British Journal of the Sociology of Education. 14(3) : 327-31.

McGlynn, C. “Reclaiming a feminist vision: The reconciliation of paid work and family in European Union law and policy.” Columbia Journal of European Law 7. 2001.

McGlynn, C. Families and the European Union: Law, Policies and Pluralism. New York: Cambridge University Press, 2006.

McIntosh, M. “The State and the Oppression of Women”. Feminism and Materidism. Eds. Kuhn, A. and. Wolpe, A.M. London: Routledge and Kegan. Paul, 1978.

Melkas, H. and Anker, R. “Occupational Segregation by Sex in Nordic Countries: An Empirical Investigation.” International Labor Review, Vol. 136, No.3 (Autumn). 1997. 341-363.

Moreno, L. “Süper Kadınlar ve Akdeniz Refahı.” Sosyal Politika Yazıları. Eds. Buğra A., Çağlar, K. İstanbul: İletişim Yayınları, 2006. 375-393.

Morris, A. E. and Nott, S. M. Working Women and the Law: Equality and Discrimination in Theory and Practice. Routledge, 1991

Mossman, M.J. “Feminism And Legal Method: The Difference It Makes.” Canadian Journal of Women and the Law. 1985.

Nicholson, L. J. Ed. Feminism/Postmodernism. London: Routledge,1990.

Nussbaum, M. “Women’s Capabilities and Social Justice.” Gender, Justice, Development and Rights. Eds. Molyneux, M. Razavi, S. Oxford University Press, 2002.

Oakley, A. Housewife. Harsmondsworth: Penguin, 1976.

O'Donovan, K. “Sexual divisions in law.” London:Weidenfeld and Nicolson, 1985.

Office of the Prime Minister, Directorate General of Press and Information. “The Constitution of the Republic of Turkey.” <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm> Access date: 20.06.2007.

Official Journal of the European Communities Available at www.eur-lex.europa.eue Access date: 25 December 2008.

Olsen, F. “Statutory Rape: A Feminist Critique of Rights Analysis.” Feminist Legal Theory- Foundations. Ed. Weisberg, D.K. Philedelphia: Temple Universtiy Press, 1993.

Otto, D. “Gender Comment: Why Does the UN Committee on Economic Social and Cultural Rights Need A General Comment on Women.” Canadian Journal of Women and the Law. 2002.

Özbay, F. “Changes in Women’s activities both inside and outside the home” Women in modern Turkish Society: A reader. Ed. Tekeli, Ş. New Jersey: Zed Boks Ltd, 1995.

Özbilgin, M. “The Way Forward for Equal Opportunities by Sex in Employment in Turkey and Britain.” Management International. Fall. 2002. pp. 55-65.

Pahl, R. E. Divisions of Labour.Oxford: Blackwell, 1984.

Palmer, S. “Critical Perspectives On Women's Rights: The European Convention On Human Rights And Fundamental Freedoms.” Feminist Perspectives on the Foundational Subjects of Law. Ed. Bottomley, A. Cavendish Pub Ltd, 1995.

Parrenas, R.S. Servants of Globalization: Women, Migration, and Domestic Work. Stanford, CA: Stanford University Press, 2001.

Perrons, D. “Flexible Working Patterns and Equal Opportunities in the European Union.” The European Journal of Women’s Studies. 6. 391-418: 1999.

Phizacklea, A. and Wolkowitz, C. Homeworking Women: Gender, Racism and Class at Work. Sage, 1995.

Prop., 2002/03:1, Finansplanen, Utgiftsomrade 14, Bilaga 1, Fördelningen av ekonomiska resurser mellan kvinnor och man (The Division of Economic Resources between Women and Men). Stocholm: Finansdepartementet (Ministry of Finance), 2002.

Ramazanoğlu, C. and Holland, J. Feminist Methodology-Challenges and Choices. London: Sage, 2002.

Reinharz, S. Feminist Methods in Social Research. New York: Oxford University Press, 1992.

Riksföräkringsverket, www.rfv.se.; 2003

Robinson, O. "The Changing Labor Market; Growth of Part-Time Employment And Labour Market Segmentation in Britain." Gender Segregation at Work. Ed. Walby, S.

Rubery, J., Horrell, S., and Burchell, B. "Part-time Work and Gender Inequality in the Labor Market." Gender Segregation and Social Change. Ed. Scott, A.M. Oxford: Oxford University Press, 1994.

Sachs, A. and Wilson, J. H. "Sexism and the Legal Profession: A Study on Male Beliefs and Legal Bias in Britain and the United States." Women's Rights Law Reporter. 1978.

Scales, A. "Towards a Feminist Jurisprudence." Indiana Law Journal, 1981.

Scales, A.C. "Emergence of Feminist Jurisprudence: An Essay." The Yale Law Journal. 1985.

Scales, Ann C.; The Emergence of Feminist Jurisprudence D. Kelly Weisberg, 1993

Schneider, Elizabeth M. "Dialectics of rights and Politics." Feminist Legal Theory- Foundations. Ed. Weisberg, D.K. Philedelphia: Temple Universtiy Press, 1993.

Seccombe, Waly; The housewife and her labour under capitalism, New Left Review, 83, pp.3-24; 1974

Siim, B. "The Gendered Scandinavian Welfare States. The interplay between women's roles as mothers, workers and citizens in Denmark." Women and Social Policies in Europe: Work, Family and the State. Ed. Lewis, J. Aldershot and Vermont: Edward Elgar, 1993.

Smart, C. "The Woman of Legal Discourse." Social and Legal Studies, 29. 1992.

Smart, C. Feminism and the Power of Law. London and New York: Routledge, 1989.

Smelser, N. Social Change and the Industrial Revolution. Chicago University of Chicago Press, 1959.

Smith, P. "On Equality: Justice, Discrimination and Equal Treatment." Feminist Jurisprudence. Ed. Smith, P. USA: Oxford University Press, 1993.

Smith, R.R.M. and Anker, van der C. Human Rights. London: Hadder Arnold, 2005.

Social Services and Child Protection Institution(SSCPI). Official website: <http://www.shcek.gov.tr/hizmetler/cocuk/Kres_ve_Gunduz_Bakimevleri.asp> Access date: 15 August 2008.

Sohrab, J.A. "Avoiding the 'exquisite trap: A critical look at the equal treatment/special treatment debate in Law." Feminist Legal Studies Issue Volume 1, Number 2 / September. Netherlands: Springer, 1993.

SOU, Ty makten är din… Myten om det rationella arbetslivet och det jämställda Sverige. Betänkande från Kvinnomaktutredningen, Fritzes, Stockholm.
Soysal, T. Kamu-İş, C:8, S: 4. 2006, pp. 102-107.

Stamatopoulou, E. "Women's Rights and the United Nations." Women's Rights Human Rights: International Feminist Perspective. Eds. Peters, J. and Wolper, A. London: Routledge, 1995, pp. 36-48.

Süral, N. "Legal Framework for Gender Equality." Bridging the Gender Gap in Turkey: A Milestone Towards Faster Socio-economic Development and Poverty Reduction. Poverty Reduction and Economic Management Unit Europe and Central Asia Region, 2003 , pp. 10-31.

Süral, N. "Uluslar arası Çalışma Örgütü'nün (ILO) Çalışan Kadınlara İlişkin Düzenlemeleri ve Türkiye." Prof. Dr. Nuri Çelik'e Armağan, Cilt II. İstanbul: 2001.

Şafak, Can. "İş Güvencesinin Sınırları Genişletilebilir." Sendika.org. 16 December 2005. <http://www.sendika.org/yazi.php?yazi_no=4016> Access date: 29 Novemner 2008

T.C. Anayasa Mahkemesi. Official website. <www.anayasa.gov.tr> Access date: 31 January2008

T.C. Başbakanlık Kadının Statüsü Genel Müdürlüğü, İletişim Dokümantasyon ve Yayın Daire Başkanlığı (Turkish Republic Prime Ministry General Directorate On The Status Of Women, Chairmanship of Communication Documentation and Publication Department). http://www.ksgm.gov.tr/tcg/12.pdf, 14/08/2008

Tálos, E. “Atypische Beschäftigung.” Internationale Trends und sozialstaatliche Regelungen. Wien: 1999.

Taub, N. Schneider, E. M. “Women’s Subordination and the Role of Law.” Feminist Legal Theory- Foundations. Ed. Weisberg, D. K. Philedelphia: Temple Universtiy Press, 1993

TBMM <http://www.tbmm.gov.tr/develop/owa/kanun_tasarisi_sd.sorgu_yonlendirme> Access date: 29 November 2008.

The Court of Justice of the European Communities. CVRIA. <http://curia.europa.eu/en/instit/presentationfr/index_cje.htm> Access date: 29 November 2008

The Republic of Turkey Official Journal, 24.07.2003 <http://rega.basbakanlik.gov.tr/#> Access date: 27.11.2008.

The United Nations web site. <http://www.un.org/womenwatch/daw/beijing/platform/economy.htm#object6> Access date: 17 November 2008.

The United Nations. Official website. <www.un.org> Access date: 30 August 2008.

Therborn, Goran, Framtidens Samförstand, FRN- Framtidstudier.

Tilly, C. “Labor Market Inequality, Past and Future: A perspective from the United States.” Gender Segregation: Divisions of Work in Post-industrial Welfare States. Eds.

Tilly, L. and Scott, J. Women, Work and Family. New York: Holt, Rinehart and Winston, 1978.

Toksöz, G. Women’s Employment Situation in Turkey. Ankara: International Labour Office, 2007.

Trubek, D. M., Cottrell P. and Nance M. “Soft Law, Hard Law, and European Integration: Toward a Theory of Hybridity.’ University of Wisconsin-Madison, 2005.

Turkish Statistical Institute. Time Usage Statistics 2006. Turkish Statistical Institute Publishment, Ankara,2006

Türkiye Kamu-sen. Official website. <http://www.kamusen.org.tr/mevzuat.asp?menu=disiliskiler&dis_id=128> Access date: 4 January 2009

Türkiye Kamu-sen. Avrupa Topluluklari Adalet Divanının Eşit İşe Eşit Ücret İlkesine İlişkin Kararı. 26 October 2006.

<http://www.kamusen.org.tr/mevzuat.asp?menu=disiliskiler&dis_id=128> Access date: 4 January 2009.

United Nations Educational, Scientific and Cultural Organization. <www. unesco.org> Access date: 24.08.2008.

Vural-Dinçkol, B. "Kadının Hukuksal Statüsünün Tarihsel Gelişimi." 20. Yüzyılın Sonunda Kadınlar ve Gelecek Konferansı. Ed. Çitçi, O. TODAİE Yayın No:285, İnsan Hakları Araştırma ve Derleme Merkezi Yayın No- 16: 1998. 43–46.

Wacjman, J. Managing Like a Man. Cambridge: Polity Press, 1998.

Walby, S. "Women's Employment and the Historical Periodisation of Patriarchy." Politics of Everyday Life. Eds. Corr, H. and Jamieson, L. New York: St. Martin's Press, 1990b.

Walby, S. Patriarchy At Work: Patriarchal And Capitalist Relations In Employment. Cambridge: Polity Press, 1986.

Walby, S. Patriarchy at work: patriarchal and capitalist relations in employment. Cambridge: Polity Press,1986.

Walby, S. Theorizing Patriarchy. Oxford: Blackwell, 1990.

Weisberg, D. K. Applications of Feminist Legal Theory to women's lives. Philedelphia: Temple Universtiy Press, 1996

Weisberg, D. K. Feminist Legal Theory- Foundations. Philedelphia: Temple Universtiy Press, 1993.

West ,R. "Jurisprudence and Gender." The University of Chicago Law Review, Vol. 55. 1988. pp. 1-72

West, C. and Zimmerman D. H. "Doing Gender." The Social Construction of Gender. Eds. Lorber, J. and Farrell, S. A. London: Newbury Park, 1991.

Wilson, E. Women and the Welfare State. Routledge, 1977.

Wishik, Heather Ruth. "To Question Everything: The Inquiries of Feminist Jurisprudence." Feminist Legal Theory- Foundations. Ed. Weisberg, D.K. Philedelphia: Temple Universtiy Press, 1993.

Yeandle, S. Women's Working Lives. London: Tavistock, 1984.

Zaretsky, E. Capitalism, the Family and Personal Life. Harper & Row, 1976.