

THE EUROPEAN UNION'S IMPACT ON TURKEY'S GENDER RELATED  
EMPLOYMENT POLICY SINCE 1999 HELSINKI SUMMIT

A Master's Thesis

by

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July 2018

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## **ABSTRACT**

### **THE EUROPEAN UNION'S IMPACT ON TURKEY'S GENDER RELATED EMPLOYMENT POLICY SINCE 1999 HELSINKI SUMMIT**

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Turkey and the European Union (EU) relations began in 1959 with Turkey's application for full membership. However, the literature on this issue has started to occupy substantial space in European studies as well as international relations since the 1999 Helsinki Summit in which Turkey's official candidacy was announced. Ever since, the EU has been "Europeanizing" Turkey through different mechanisms. Previous studies in the Europeanization literature have mostly neglected the social aspect of Europeanization in Turkey's accession process. In other words, most of the debate relating to Turkey - EU relations has been revolving around political and security related issues. However, the EU has worked on promoting gender equality to ensure that women and men are equal before the law since its establishment and as one of its founding principles. Thus, social policy as well as gender equality are important study areas which cannot be left behind other 'hard' policy areas. The aim of this thesis

is to examine the impact of the EU on Turkey's gender related employment policy. Therefore, this study is centered on the question which asks, "to what extent does Turkey's European Union (EU) accession process have an impact on its gender related employment policy since the 1999 Helsinki Summit?". This thesis aims to examine Turkey's position in terms of providing gender equality in employment before and after the 1999 Helsinki Summit and to examine the scope of Europeanization on Turkey's gender related employment policy. In this thesis, impact refers to changes that created by the EU accession process on Turkey's legal regulation.

**Keywords:** Employment Policy, Europeanization, Gender, the European Union, Turkey.

## ÖZET

### AVRUPA BİRLİĞİ'NİN 1999 HELSİNKİ ZİRVESİ SONRASI TÜRKİYE'NİN CİNSİYET TEMELLİ İSTİHDAM POLİTİKASINA ETKİSİ

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Türkiye ve Avrupa Birliği (AB) ilişkileri, Türkiye'nin 1959 yılında tam üyelik başvurusu ile başlamıştır. Ancak, bu konudaki literatür, Türkiye'nin resmi adaylığının açıklandığı 1999 Helsinki Zirvesi'nden bu yana, Avrupa çalışmalarında ve uluslararası ilişkilerde önemli bir yere sahip olmaya başlamıştır. O zamandan beri AB Türkiye'yi farklı mekanizmalar aracılığı ile Avrupalılaştırmaktadır. Avrupalılaştırma literatüründe daha önce gerçekleştirilen çalışmalar, Türkiye'nin katılım sürecinde Avrupalılaştırmanın sosyal yönünü çoğunlukla ihmal etmiştir. Başka bir deyişle, Türkiye ve AB ilişkileri ile ilgili tartışmaların çoğu politik ve güvenlikle ilgili konulara yönelmiştir. Ancak AB, kuruluşundan bu yana kurucu bir ilke olarak kadın ve erkeğin yasa önünde eşit olmasını sağlamak için toplumsal cinsiyet eşitliğini teşvik etmeye çalışmıştır. Dolayısıyla, toplumsal cinsiyet ve sosyal politika, diğer “sert” politika alanlarının

gerisinde bırakılmayacak kadar önemli çalışma alanlarıdır. Bu tezin amacı, AB'nin Türkiye'nin istihdam politikasında üzerinde cinsiyet eşitliği sağlanmasına yönelik etkisini incelemektir. Bu nedenle, bu çalışma, “Türkiye Avrupa Birliği (AB) katılım sürecinin, 1999 Helsinki Zirvesi'nden bu yana istihdam politikasını cinsiyet eşitliği sağlama yönünden ne ölçüde etkilediği” sorusu üzerine kurulmuştur. Bu tez, 1999 Helsinki Zirvesi öncesinde ve sonrasında istihdamda cinsiyet eşitliği sağlama açısından Türkiye'nin durumunu ve Avrupalılaştırmanın Türkiye'nin toplumsal cinsiyet ile ilgili istihdam politikası üzerindeki etkilerini incelemeyi amaçlamaktadır. Bu çalışmada, etkiden kasıt AB'ye katılım sürecinin Türkiye'de yasal düzenlemeler üzerinde yarattığı değişimlerdir.

**Anahtar sözcükler:** Avrupa Birliği, Avrupalılaştırma, Cinsiyet, İstihdam Politikası, Türkiye.

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## TABLE OF CONTENTS

ABSTRACT.....	i
ÖZET.....	iii
ACKNOWLEDGMENTS.....	v
TABLE OF CONTENTS.....	vi
LIST OF TABLES.....	viii
LIST OF FIGURES.....	ix
LIST OF ABBREVIATIONS.....	x
<b>CHAPTER I: INTRODUCTION.....</b>	<b>1</b>
<b>CHAPTER II: EUROPEANIZATION AS A FRAMEWORK.....</b>	<b>6</b>
2.1. Review of the Literature and Conceptualization of the Term.....	7
2.2. Mechanisms of Europeanization.....	10
2.3. Candidate Countries and Conditionality.....	17
2.3.1. EU Conditionality.....	18
2.4. Social Policy in Europeanization and an Alternative to Top-down.....	21
2.5. Europeanization of Gender Equality .....	27
2.6. Measurement of Europeanization Process.....	37
2.7. Three-Stage Analysis and Its Application to the Thesis .....	38
<b>CHAPTER III: BEFORE 1999 HELSINKI SUMMIT .....</b>	<b>40</b>
3.1. An Overview of the EU - Turkey Relations.....	40

3.2. EU Policy/Norm/Rule Requirements Regarding Gender Equality in Employment.....	46
3.2.1. Equal Pay.....	47
3.2.2. Equal Treatment.....	51
3.2.3. Reconciliation of Work and Family Life.....	56
3.3. Turkey’s Position Before 1999 Helsinki Summit .....	59
3.3.1. General Overview.....	59
3.3.2. Equal Pay.....	66
3.3.3. Equal Treatment.....	67
3.3.4. Reconciliation of Work and Family Life.....	69
3.4. Is there any misfit? .....	71
<b>CHAPTER IV: CURRENT STATE OF AFFAIRS .....</b>	<b>74</b>
4.1. First Period: 1999-2007.....	75
4.1.1. Equal Pay.....	78
4.1.2. Equal Treatment .....	78
4.1.3. Reconciliation of Work and Family Life .....	79
4.2. Second Period: 2007-2011.....	81
4.3. Third Period: 2011-2015.....	84
4.4. Status of Women and Gender Equality in Progress Reports (1998-2016).....	89
<b>CHAPTER V: CONCLUSION.....</b>	<b>97</b>
<b>REFERENCES.....</b>	<b>103</b>

## LIST OF TABLES

Table 1. Women in the Workforce by Occupation (2000).....	54
Table 2. Workers whose immediate superior is a man (2000).....	55
Table 3. Employment participation rate by gender and by education level (1999)...	65
Table 4. Legal Regulations Summary in Terms of Providing Gender Equality in Employment.....	72
Table 5. Summary of Progress Reports.....	93

## LIST OF FIGURES

Figure 1. Income categories of managers by gender.....	49
Figure 2. Income categories of workers by gender.....	50
Figure 3. Income categories of service workers by gender.....	51
Figure 4. Workers subjected to intimations.....	55
Figure 5. Workers exposed to unwanted sexual attention.....	55
Figure 6. Those contributing most to the household income.....	58
Figure 7. Mainly responsible for shopping and looking after home.....	58
Figure 8. Those involved in house work.....	59
Figure 9. Employment participation rate in Turkey by age (1999).....	61
Figure 10. Labor Force Participation Rate in Turkey during 1990s.....	63
Figure 11. Employment participation rate by sector in Turkey in 1999.....	66

## LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CJEU	Court of Justice of the European Union
EC	European Community
EEC	European Economic Community
EES	European Employment Strategy
EU	European Union
EWCS	Working Conditions in the European Union: the Gender Perspective Survey
IMF	International Monetary Fund
NGOs	Non-governmental Organizations
NPAA	Turkish National Program for Adoption of the Acquis
IOs	International Organizations
OMC	Open Method of Coordination
TFEU	Treaty on the Functioning of the European Union
TUIK	Turkish Statistical Institute
TUSIAD	Turkish Industrialists' and Businessmen's Association
UN	United Nations
US	United States of America

## CHAPTER I

### INTRODUCTION

The research problem of this thesis is to examine the extent to which Turkey's European Union (EU) accession process has had an impact on its gender-related employment policy since the 1999 Helsinki Summit. The main argument of the thesis is that the EU accession process has had a limited impact on Turkey's gender equality policy in employment as its implementation is problematic as a result of the "mixed competences" problem as well as Turkey's patriarchal social structure.

Gender is a term which is socially constructed. Sociologist of gender argues that gender is a product of a social process rather than a biological (Westbrook, 2013, p.35). For them, gender is a "set of behaviors and practices or identities that were rewarded and modeled by parents, teachers and other authority figures" (Green as cited in Deutsch, 2007, p.107). On the other hand, Candace West and Don Zimmerman's work "Doing Gender" provides another way of production for gender. They argue that gender is produced as a result of interaction. According to them, people always take into consideration that they can be judged according to their masculine and feminine behavior. Time, ethnic group and social situation are the main determinants for the normative conceptions of men and women. Therefore, "gender is an ongoing emergent aspect of social interaction" (Deutsch, 2007, p.107).

Equality between men and women is a necessity for all societies; however, at the same time, it is one of the most problematic policy area for most countries. Despite the lack of a common definition on gender equality, the Universal Declaration of Human Rights which was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 provides a basis for the creation of a definition. In that sense, while Article 1 states that "all human beings are born free and equal in dignity and rights", Article 2 argues that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any such as race, colour, sex ...". As it is highlighted in the Declaration, all human beings are equal without any gender-based difference.

The EU has worked on promoting gender equality to ensure that women and men are equal before law since its establishment as a founding principle. Its commitment to promoting gender equality "goes back to 1957 when principle of equal pay for equal work became part of Treaty of Rome" (European Commission, n.d.). Since then, the EU has made important progress on that issue. Equal treatment legislation, gender mainstreaming and specific measures for the advancement of women are three main important steps for the EU to ensure gender equality (European Commission, n.d.). The EU with its "hard" and "soft" measures continues to work on the issue as there is an ongoing gender inequality, especially in employment.

While regulating its own dynamics, the EU also defines 35 chapters (in other words policy areas) to be harmonized with national laws, policies, practices and norms as a requirement to be fulfilled during the accession process. In that sense, Chapter 19 Social Policy and Employment is one of them, including the gender equality

perspective. In this thesis, I mainly focus on this chapter to observe the impact of the EU on Turkey's gender related employment policy since the 1999 Helsinki Summit. Within this context, to comprehend 1999 Helsinki Summit, I provide background information related to Turkey's EU adventure since the first application to full-membership.

Turkey as a part of both the Europe and Middle East shows many similarities with the Middle Eastern and Southern European countries. However, "while its starting point and early development was closer to its Middle Eastern counterparts, the influence of the EU and recent reforms in the social policy domain mark an inclination towards the Southern European cluster" (Aybars & Tsarouhas, 2010, p.761). As Turkey's cultural and historical background assigns women a dominant role as mother, their role in employment is underrated. Thus, women in Turkey are faced with many difficulties not only during the recruitment process but also regarding social rights. Therefore, it is important to disclose Turkey's current situation of a structural transformation process related to the gender role in labour market and its position in the process of attaining the goals designated during this process. As Weber (2006) states, when Turkey's candidacy was accepted by the EU, "the Council's expectations was that Turkey like other candidate countries would benefit from a pre-accession strategy that would support reforms in both the political and the economic realm" (p.83). In that sense, gender equality in employment can be accepted as an important policy area in Turkey's accession process.

As indicated in the beginning, this thesis aims to examine the extent to which Turkey's EU accession process has had an impact on its gender related employment policy since

1999 Helsinki Summit. As Turkey is not a full-member of the Union, it is hard to observe the impact of the EU. The EU accession process is not the only factor that shapes Turkey's policy preferences related to gender equality in employment. It is really hard to distinguish the proper results from those derived from different factors. Therefore, it is important to be sure about the correlation between the result and reason. In other words, for my thesis, it is important to clarify the deriving force for the policy change while analyzing it. Thus, before reaching a conclusion related to a policy change, domestic as well as international dynamics should be evaluated clearly. Some domestic factors like elections as well as international factors like other international organizations might have an impact on policy changes. As a result, it is important to analyze the correlation between reason and result in policy change.

In addition to this, over the last two decades Europeanization has occupied a substantial part in European studies as well as other fields. Although the main theory applied by this thesis to analyze the development is Europeanization, normative Europeanization will be more applicable for the case of Turkey. Normative power means the "ability to shape conceptions of normal" (Manners as cited in Brommesson, 2010, p.226). On the other hand, diffusion can be defined as a spreading of something to substantially wide areas. In that sense, norm diffusion refers to spread norms from one actor to another in many different ways. As Gilardi (2012) explains it can take place within countries as well as between other actors in international arena since national governments are not only "relevant" units in international system (p.2). The European Union as an actor in international arena is eligible to diffuse norms towards states regardless of membership, as well as other international actors like international organizations.

Therefore, in this thesis Europeanization is going to be used to analyze the impact of the EU accession process on Turkey's gender related employment policy. As Manner mentioned, human right can be evaluated as one of the five major norms of the EU. Therefore, the EU with the help of norm diffusion has been affecting Turkey. In this thesis, the main focus is effect of the EU accession process on Turkey's legal regulations. In other words, for this thesis impact refers to changes in legal regulations. While reaching a conclusion, I mainly focused on Turkey's legal documents like the Constitution, Turkish Labor Law and Turkish Civil Code which includes articles related to gender equality.

This thesis includes 5 chapters. In chapter 2, I explain Europeanization as the theoretical framework of the thesis. This chapter includes a literature review as well as detailed information with regard to Europeanization like mechanisms and measurement. As my main focus is gender equality I also mention Europeanization of gender equality. Chapter 3 explains Turkey's position in terms of working towards gender equality before the 1999 Helsinki Summit. While doing this, I provide a background information in terms of the EU-Turkey relations. However, the main focus of this chapter is whether there is a misfit between the EU and Turkey's position in terms of ensuring gender equality in employment. In chapter 4, I try to uncover the Turkey's change through Europeanization while providing equal rights for men and women in working life. In order to understand the change, I divided years between 1999 and 2015 into three main periods. Finally, in chapter 5, I mention the main findings and arguments of the thesis.

## CHAPTER II

### EUROPEANIZATION AS A FRAMEWORK

Europeanization is frequently used in academic literature; however, what does it really refer to? It is necessary to make clear that Europeanization does not mean European integration (Tsarouhas, 2012, p.162). While Europeanization is a "two-way process of interaction between the EU and national level, the latter is about member state adjustment to obligations stemming from Brussels-made commitments" (Tsarouhas, 2012, p.162). In other words, there is reciprocal interaction between the EU and nation states in Europeanization. However, European integration is one-way process in which the EU is the driving force for the change. Member states are supposed to make necessary adaptations in accordance with their commitment to the EU. In addition to this, Europeanization does not affect all the member states equally in the Union (Tsarouhas, 2012, p.162). However, European integration provides for the same obligations for all member states. As Uluğ-Eryılmaz (2015) mentions European integration studies' main concern is why a state has a desire to share its sovereignty with a supranational authority. On the other hand, Europeanization is concerned with European integration's impact on the domestic level. Therefore, the reason behind the existence of Europeanization is European integration (p.9). As understood from this comparison, it is necessary to analyze the conceptual framework of Europeanization in detail.

In addition to this, there is a remarkable difference between the Europeanization of member states and the Europeanization of third parties. While the EU might use hard law and some enforcement mechanisms for a member state to Europeanize, it is not possible for a candidate state. Europeanization of a candidate state is directly related with its willingness to be Europeanized. In other words, a candidate state accepts and adopts the EU norms voluntarily.

In this chapter, to identify Europeanization clearly, first of all I focus on the definition of the term. I share the different definitions from the literature as well as my own definition. Secondly, I mention mechanisms of the Europeanization, in other words, how Europeanization works. Thirdly, I emphasize the Europeanization of candidate states in other words accession Europeanization as the main focus of the thesis due to its emphasis on the EU's impact on Turkey. In this part, I specifically mention conditionality as I believe that it is the most important tool and the way for the Europeanization of candidate states although in my case it does not work efficiently. Fourthly, I briefly mention social policy in Europeanization to specifically focus on gender issues. Finally, to define the methodology and measurement process of the thesis, I try to outline three stage analysis.

## **2.1. Review of the Literature and Conceptualization of the Term**

Europeanization occupies a growth area in European Studies. The dynamic structure of integration process forces the researchers to focus on EU's impacts on the member

states, candidate states and neighbors (Bulmer, 2008, p.46). However, in contrast to its dominance in European Studies, there is no single definition of Europeanization.

To define it clearly, Olsen (2002) creates a typology which identifies Europeanization under five categories focusing on *what is changing* (p.3-4). First of all, Europeanization is used to focus on "*changes in external territorial boundaries*". For this use, "Europeanization is taking place as the EU expands its boundaries through enlargement" (Olsen, 2002, p.3). In that sense, the 'big bang expansion' of the EU in 2004 can be an example through which enlargement spreads EU policies, rules and values to new member states. (Bulmer, 2008, p.47). Secondly, he defines Europeanization as "*the development of institutions of governance at the European level*". This definition focuses on creating a collective action capacity, coordination and coherence. Institutions both facilitate and constrain, in other words determine, the capacity of decision-binding at the core of this definition (Olsen, 2002, p.4). Thirdly, Europeanization is identified as "*central penetration of national and sub-national systems of governance*". In this definition, Europeanization refers "adapting national and sub-national systems of governance to a European political center and European-wide norms" (Olsen, 2002, p.4). With this definition, Olsen includes different levels governance to the European political life. Fourthly, Europeanization is explained as "*exporting forms of political organization and governance that are typical and distinct for Europe beyond the European territory*" (Olsen, 2002, p.4). In this identification, the main concerns are non-European actors, institutions and role of the EU in world order. The final usage is to explain the Europeanization "*as a political project aiming at a unified and politically stronger Europe*" (Olsen, 2002, p.4).

Separate analysis of each changes' structure and dynamic is a requirement to comprehend how Europeanization appears. However, in real life these five typologies of Olsen are interwoven (Olsen, 2002, p. 5).

In addition to Olsen, many other definitions have been provided. According to Börzel (as cited in Radaelli, 2000) Europeanization is a "process by which domestic policy areas become increasingly subject to European policy-making" (p.3). On the other hand, Caporaso (as cited in Radaelli, 2000) has another alternative definition for Europeanization as follows:

We define Europeanization as the emergence and development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem-solving that formalize interactions among the actors, and of policy networks specializing in the creation of authoritative rules (p. 3).

In addition to all these definitions, Radaelli provides a more inclusionary definition for Europeanization as he tries to analyze its different processes. Thus, he defines Europeanization as:

Processes of construction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies (Radaelli, 2000, p. 4).

His broader definition includes different stages of Europeanization which are sometimes neglected. This definition defines the formal and informal character of

Europeanization, which accepts Europeanization as a "complex process of socialization into new ways of acting" (Tsarouhas, 2012, p.163).

In this thesis, Europeanization is identified as domestic policy change of member states or candidate states as a result of EU pressures (directly or indirectly). This process might be affected by many factors. These factors might be related with the mechanisms used by the EU to affect the domestic level. In other words, the method applied by the EU to create a change in domestic level will create its own limitations. For example, the EU might use conditionality as a adaptational pressure for candidate states. However, candidate countries' willingness to become a member will directly affect the success level of Europeanization. If the cost of compliance is higher than cost of non-compliance, rationally, the candidate state will have a tendency to reject the impact that is tried to be created by the EU. Moreover, in this thesis the Europeanization process will be assumed as a 'top-down' process as Turkey is a candidate country and does not have any influence over EU policies in any policy area. Therefore, similar to other studies working on candidate countries, this thesis uses accession Europeanization.

## **2.2. Mechanisms of Europeanization**

In general, the literature on Europeanization studies mainly focuses on 'what' is changing. However, there is a considerable amount of scholars who work on 'how' the change occurs.

First of all, although misfit of policies and institutions is not a precondition which is necessary to observe a Europeanization process, in most of the Europeanization processes, there is a misfit situation. The misfit can be observed either in policies or institutions. As Tekin (2015) explains “certain policies and institutions of the EU cause policy or institutional misfit in the member/candidate states” (p.5). Policy misfit can be occurred when there is a nonconcurrence between EU policy restrains and domestic policies. On the other hand, EU rules, norms and policies may create a negative pressure and impact on formal and informal institutions at the domestic level. As a result of this impact, institutional misfit might occur. (Börzel and Risse as cited in Tekin, 2015, p. 5).

As Europeanization is not only applicable to member states, these misfit conditions are also available for candidate states with some differences. For the candidate states, if there is a mismatch between the EU requirements for accession and domestic policies, policy misfit might be observed. On the other hand,

Formal institutional misfit can be often traced to the lack of sufficient institutional capacity in candidate states to successfully manage the accession process and formal interaction with the EU. Informal institutional misfit can be observed when EU norms clash with the existing deep-seated domestic norms. Thus, an EU norm may lead to institutional mis fit even if it is not part of EU conditionality for accession (Tekin, 2015, p.5).

As a result of misfit, the EU tries to spread its norms, policies and institutions through members and candidate states to Europeanize them. Europeanization may alter member states' policies in different ways.

Basically, there are three different mechanisms by which Europeanization affects domestic policies. First, the EU creates direct institutional pressures on member states. The EU may describe concrete obligation and necessities with which member states have to comply (Knill & Lehmkuhl, 1999, p.4). In other words, "EU policy 'positively' prescribes an institutional model to which domestic arrangements have to be adjusted" (Knill & Lehmkuhl, 1999, p.4). Second, more implicit than the first mechanism, the EU may create a change in the domestic opportunity structures of member states; thus, indirectly, the EU may influence "distribution of power and resources between domestic actors" (Knill & Lehmkuhl, 1999, p.4). Finally, the EU may lead to an alteration in the "beliefs and expectations" of the actors of member states. For the last mechanism it is possible to infer that "changes in domestic beliefs may in turn affect strategies and preferences of domestic actors, potentially leading to corresponding institutional adaptations" (Knill & Lehmkuhl, 1999, p.4). As the Europeanization process creates pressure on member states to adopt the new norms, rules and practices, the literature on Europeanization studies has tried to disclose the explanation of adaptational processes. In that sense, rational institutionalism and sociological institutionalism provides different explanations for this process. On the one hand, rational institutionalism proposes that "Europeanization leads to domestic change through a differential empowerment of actors resulting from a redistribution of resources at the domestic level" (Börzel & Risse, 2000, p.2). On the other hand, sociological institutionalism claims that "Europeanization leads to domestic change through a socialization and collective learning process resulting in norm internalization and development of new identities" (Börzel & Risse, 2000, p.2). In addition to Knill and Lehmkuhl's categorization, Börzel and Risse (2012, p.5) identify two types of mechanisms: direct and indirect mechanisms. According to

Börzel and Risse (2012, p.6-8) there are four different direct mechanisms used by the EU which are physical or legal coercion, negative or positive incentives, socialization and persuasion.

First of all, physical and legal coercion is applicable to both member states and candidate ones. As Börzel and Risse (2012, p.6) mention “legal coercion has to be distinguished from the use of force in the sense that member states or accession candidates have voluntarily agreed to be subject to coercion by virtue of them being EU members or candidates to membership”. However, it is necessary to note that physical or legal coercion most of the time is used for member states, not for candidate ones (Börzel and Risse, 2012, p.6).

Secondly, the EU uses positive or negative incentives to foster institutional change in candidate countries either through conditionality or capacity building. As the most important aspect of conditionality is cost-benefit calculations, the EU tries to affect calculations through incentives. On the contrary, with capacity-building programs, the EU tries to persuade actors to change by providing them additional resources (Börzel and Risse, 2012, p.7).

Thirdly, normative rationality or logic of appropriateness are crucial for Europeanization through socialization (Börzel and Risse, 2012, p.7). If the actors are concerned with social expectations rather than their self-interest, Europeanization through this way might be observed. For this use, the EU might be labeled as a ‘teacher of norms’ (Finnemore as cited in Börzel and Rises, 2012, p.7). Socialization as a

mechanism is applicable for the countries who seek to become liberal and democratic states (Börzel and Risse, 2012, p.8).

Lastly, the EU uses persuasion as a method of Europeanization. Especially, persuasion is used by the EU in the accession processes of candidate states, “neighbouring countries, and in its external relations with third countries in general” (Börzel and Risse, 2012, p.8). During the accession process and political dialogues, the EU tries to persuade candidate countries or third countries to adopt its norms, policies and practices and ‘normative validity and appropriateness of the EU’ institutional models’ (Kelley as cited in Börzel and Risse, 2012, p.8).

Börzel and Risse (2012) also argue that none of these four mechanisms consists of passive accep of EU norms, policies or practices. On the contrary, every mechanism contains ‘adaptation, change, interpretation, and resistance’ processes. In other words, member states, candidates or third parties are not passive recipients (p.8).

In addition to these direct mechanisms, the EU also uses indirect mechanisms through three different mechanisms of emulation: competition, lesson-drawing and mimicry (Börzel and Risse, 2012, p.9-10).

First of all, competition includes ‘unilateral adjustments’ to reach ‘best practice’ (Börzel and Risse, 2012, p.9). To reach certain standards, actors may adjust ideas, policies or norms as they seek to meet certain criteria like increasing export and decreasing import, reducing the crime rate or reaching a high quality in educational standards. “Competition entails not only the diffusion of ideas as normative standards for political or economic behaviour but also the diffusion of causal beliefs, e.g. by

learning from best practice, on how to best reach these standards” (Börzel as cited in Börzel & Risse, 2012, p.9). Competing with other states while attaining a standard accelerates and facilitates the diffusion of norms, ideas, policies and practices.

Second, lesson-drawing is generally observed when an actor faces a problem whose solution depends on an institutional change. To solve the problem, the actor seeks appropriate institutional solutions. Most of the time, actor adopts institutional solutions partly rather than as a whole. In other words, they adopt the necessary part of the solution which is required (Börzel and Risse, 2012, p.9).

Finally, Börzel and Rises (2012) explainfwould mimicry as follows:

It almost resembles the automatic ‘downloading’ of an institutional ‘software’ irrespective of functional need, simply because this is what everybody does in a given community. Thus, we expect normative emulation or mimicry to be at work particularly in situations and in regions where the EU is considered particularly legitimate (p.10).

In brief, according to Börzel and Risse, the EU may spread its norms, policies, practices and institutions either through direct mechanisms which are physical or legal coercion, negative or positive incentives, socialization or persuasion or indirect mechanism which is emulation.

On the other hand, Tekin (2015) defines mechanisms of Europeanization under three different categories as follows:

1. Conditionality: the model expects a logic of consequences to be operative in the rule-adoption behavior of the non-member state under the conditions of external

incentives by the EU, namely the reward of membership (Schimmelfennig and Sedelmeier as cited in Tekin, 2015, p.6). The main variables in this model are external rewards and sanctions as well as cost-benefit analysis of rule adoption by the applicant government (Tekin, 2015. p.6).

2. Domestic empowerment: the EU can alter domestic opportunity structures by providing incentives for societal actors, which in turn can lead to a change in the cost-benefit calculation of the government of the candidate state (Sedelmeier as cited in Tekin, 2015, p.6).

3. Lesson-drawing: both the government and societal actors can draw lessons from the EU to tackle better the problems they face (Tekin, 2015. p.6).

Although all of the categorizations of mechanisms written by Knill & Lehmkuhl, Tekin and Börzel & Risse have differences, conditionality as a mechanism has an important place in all of them. Turkey as a candidate country has to fulfill the accession criteria determined by the EU. Therefore, in this thesis, conditionality which is used by the EU to harmonize candidate countries' domestic policies and institutions with the EU acquis, will be used as the main mechanism of Europeanization. However, as the opening criteria for the Chapter 19 has not been fulfilled by Turkey yet, the reward system does not work properly. However, Turkey in order to continue the accession process and pave the way of full-membership voluntarily adopt some EU norms. In an indirect way conditionality continues in the case of gender equality in Turkey; however, this does not occur in a concrete way.

### 2.3. Candidate Countries and Conditionality

When the Europeanization studies are analyzed, it may be inferred that Europeanization is most of the time used to explain the member states. However, it is not accurate to limit Europeanization just by focusing on member states. The EU's enlargement processes and the member states' accession process deserve. Sedelmeier (2006) summarizes Europeanization for non member states as follows:

the Europeanization of candidate countries has distinctive characteristics, which suggest that it can be seen as a particular sub-field of Europeanization research. First, the status of candidates as non-members has implications on the instruments used by EU institutions to influence the adjustment process...Second, as non-member states, the candidates had no voice in the making of the rules that they have to adopt and the power asymmetry vis-à-vis the incumbents has led to a top-down process of rule transfer, with no scope for 'uploading' their own preferences to the EU level (p. 5).

In general, studies of the Europeanization of candidate countries focus on the EU's impact on the domestic level. In other words, they seek to analyze the effectiveness of the EU's influence. However, Sedelmeier (2006) mentions that some studies also focus on how the EU exercises influence (p. 8).

The predominant strategy applied by the EU to affect candidate countries is conditionality, that is using incentives as reward for member states to ensure their compliance with EU rules. However, there is not a single method of conditionality as a result of differentiation between issues, time and countries. There are also alternative models which will be mentioned under the title of EU conditionality. The impacts of

Europeanization on candidate states explicitly shows that the EU with the help of conditionality forces candidate countries to apply EU laws and policies.

The *acquis communautaire* has to be adopted by the candidates in its entirety, and the negotiations are primarily concerned with determining how much of it should be implemented prior to accession and which parts of the *acquis* will be subject to a transitional period after joining (Grabbe, 2003, p.3).

In other words, the negotiation process paves the way for expected changes. "A key aspect in the success of EU conditionality concerns the perceived costs of demanded conditions. When domestic decision makers consider the costs of compliance higher than the rewards, then the latter are likely to default on the conditions" (Tocci, 2005, p.75).

The EU might have influence over the candidate countries through two different channels. The first channel is intergovernmental. In this channel the EU has direct impact over the government and policy-makers of candidate countries. On the other hand, for the second channel which is called societal, the EU's impact is indirect. In this channel, the pressures made by domestic groups help the EU to have an impact on the candidate country.

### **2.3.1. EU Conditionality**

The main logic behind conditionality is the system of reward. This means that some external incentives are provided by the EU for the candidate countries to make sure that they comply with the conditions determined by the EU. However, there might be some other reasons which can explain the candidate countries' desire to apply EU

rules. For instance, they might believe that applying EU norms and rules is a solutions for their domestic challenges (Schimmelfenning and Sedelmeier, 2004 p. 662).

Schimmelfenning and Sedelmeier (2004) provide three alternative models for the EU's external governance. The first model is 'the external incentives model'. This model might be labeled as the 'bargaining model'. In this model both sides are in a cooperation to maximize their power and welfare. To achieve mutual gain, they tend to share information, threats and promises. According to this model, the EU applies conditionality on candidate countries which means that if a candidate country has a desire to be rewarded by the EU such as with trade and cooperation agreements, it has to fulfill the conditions (p.663). In other words, the EU pushes the candidate country to comply with its rules to reward.

Under this strategy, the EU pays the reward if the target government complies with the conditions and withholds the reward if it fails to comply. It does not, however, intervene either coercively or supportively to change the cost-benefit assessment and subsequent behaviour of the target government by inflicting extra costs ('reinforcement by punishment') or offering extra benefits ('reinforcement by support') (Schimmelfenning and Sedelmeier, 2004 p. 663-664).

For the bargaining process, the current status quo of the candidate country which is directly related with its preferences and bargaining power is important. The EU's conditionality might use the intergovernmental bargaining directly to affect the domestic government. On the other hand, it may strive to achieve indirect influence by empowering domestic actors. The most critical point is that if the benefit of rewards is more than the cost of domestic adoption then the candidate country will have a

tendency to adopt the EU's rules (Schimmelfenning and Sedelmeier, 2004 p.664).

There are four main factors which affect directly the calculation of cost and benefit.

These are respectively,

(i) *the determinacy of conditions* which means that if the effects of a rule is explained clearly, its legal status and determinacy will be higher. In other words, it provides an opportunity for the domestic government to know what they should do to have the rewards.

(ii) *the size and speed of rewards* which directly affect the fulfillment of the conditions. There is a positive relation between the size and speed of rewards and compliance.

(iii) *the credibility of conditionality* which refers to the reliability of the conditions that occur when the EU withholds or deliver the rewards.

(iv) *the size of adoption costs* which may be balanced with rewards provided by the EU (Schimmelfenning and Sedelmeier, 2004 p.665-667).

These four components may directly affect the cost and benefit calculation and thus the compliance of candidate states.

The second alternative model which is provided by Schimmelfenning and Sedelmeier (2004) is the social learning model. This model is not rational like the first one; in contrast, the important criteria for this model is appropriateness. If the EU has enough persuasive power which may derive from legitimacy, identity and resonance, the candidate state will be more prone to demonstrate compliance (p.667).

The final model is the lesson drawing model which neglects the incentives and persuasion provided by the EU. In this model, the member state will adopt EU rules if the rules are expected to solve domestic policy challenges. Schimmelfenning and Sedelmeier, (2004) clearly explain that

Whether a state draws lessons from EU rules depends on the following conditions: a state has to (i) start searching for rules abroad; (ii) direct its search at the political system of the EU (and/or its member states); (iii) evaluate EU rules as suitable for domestic circumstances (p.667).

In other words, without reward the candidate state might have a tendency to apply the EU rules if such rules address domestic policy failures (Sedelmeier, 2006, p.9).

#### **2.4. Social Policy in Europeanization and an Alternative to Top-down**

Most of the debate related to Turkey - EU relations is around political and security related aspects; however, it would be wrong to neglect the social aspect of Europeanization in Turkey's accession process (Tsarouhas, 2012, p.161).

EU social policy, which traditionally meant labor market regulation, anti-discrimination and income support to regions, has broadened its definition. Despite the extension of definition, there are still two opposite ideas with regards to Europeanization of social policy. On the one hand, because of high level of social exclusion and poverty, some argue that there is a need for common Europeanized response for all these social problems. However, on the other hand, some argue that social policy should be untouchable as it is nation states' responsibility to serve citizens welfare (Tsarouhas, 2012, p.165). In other words; "it is commonly thought that social policy development is restrained by national governments eager to retain control over

welfare provision and social expenditure budgets in their ongoing bids to gain and retain the support of their electorates" (Threlfall, 2007, p.274). However, when we look at the European Union history, there has been a major extension of social dimensions of Europeanization.

Until 1980s, social policy could not find an important place in the agenda of the Community as the primary focus was creating and ensuring the existence of common market. At that time, social policy was accepted as the area which national governments ought to be concerned with. (Tsarouhas, 2012, p.166). Jacques Delors who was the President of the Commission (1985-1995) is the key actor for the inclusion of social policy to the EU agenda. During his period, health and safety issues as well as employee protection were included in the *acquis*. He also initiated the European Social Dialogue to increase cooperation with regards to employment and social issues (Tsarouhas, 2012, p.166). Social dialogue provides an opportunity for the contributions coming from social partners while determining a European Social Policy agenda. Social dialogue provides an opportunity for the contributions coming from social partners while determining a European Social Policy (European Parliament, n.d.).

In addition to the creation of social dialogue, 1989 The Community Charter of the Fundamental Social Rights of Workers and Social Protocol annexed to the Maastricht Treaty was another corner stone of the EU's social policy progress (Tsarouhas, 2012, p.166). The Community Charter of the Fundamental Social Rights of Workers was adopted on 9 December 1989 by all member states except for the United Kingdom. It decided the main principles and paved the way for the creation of European social

model in the following decade (Eurofound, 2011a). With this Charter, the Community provided fundamental social rights as following:

- Freedom of movement (Articles 1 to 3)
- Employment and remuneration (Articles 4 to 6)
- Improvement of living and working conditions (Articles 7 to 9)
- Social protection (Article 10)
- Freedom of association and collective bargaining (Articles 11 to 14)
- Vocational training (Article 15)
- Equal treatment for men and women (Article 16)
- Information and consultation and participation for workers (Articles 17 to 18)
- Health protection and safety at the workplace (Article 19)
- Protection of children and adolescents (Articles 20 to 23)
- Elderly persons (Articles 24 to 25)
- Disabled persons (Article 26)
- Member States' action (implementation) (Articles 27 to 30) (Eurofound, 2011a).

Moreover, the Social Protocol annexed to the Maastricht Treaty increased the Community's power on the social sphere. Like in the Community Charter of the Fundamental Social Rights of Workers, the United Kingdom did not sign the protocol. Some of the aims of the protocol were "the promotion of employment, improvement of living and working conditions and adequate social protection" (Eur-lex, n.d.). The principles provided by the Fundamental Social Rights of Workers and Social Protocol created a ground for the 'European social model'. The Commission in 1994 describes the model in terms of "values that include democracy and individual rights, free collective bargaining, the market economy, equal opportunities for all, and social

protection and solidarity" (Eurofound, 2011b). The base for this model is the idea of the inseparability of social and economic progress.

The Agreement on Social Policy which was annexed to the Protocol of Social Policy of the Treaty of Maastricht, was adopted by eleven-member states except for the United Kingdoms. However, in 1997 after the election held in UK, the government decided to put an end to the 'opt-out'. Therefore, "The Social Policy Protocol was deleted and the Agreement on Social Policy was incorporated into a revised 'Social Chapter' of the EC Treaty by the 1997 Treaty of Amsterdam" (Eurofound, 2013). Nearly all of the articles of the Agreement on Social Policy are added to the chapter.

The European Council held in Nice in 2000 provided objectives for the eradication of poverty and social exclusion (Tsarouhas, 2012, p.167). At the same year, in the Lisbon European Council meeting held on 23-24 March 2000, the Union defined a new strategic goal for the following ten years: "to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion" (European Parliament, n.d.).

For the implementation of the strategy defined in the Lisbon European Council, the Union identifies the new open method of Coordination (OMC). Article 7 of the Presidency Conclusion explains that:

Implementing this strategy will be achieved by improving the existing processes, introducing a **new open method of coordination** at all levels, coupled with a stronger guiding and coordinating role for the European Council to ensure more coherent strategic direction and effective monitoring of progress. A meeting of the European

Council to be held every Spring will define the relevant mandates and ensure that they are followed up (European Council, n.d.).

In brief, European social policy originated from Jacques Delors' period with the Social Dialogue. The Community Charter of the Fundamental Social Rights of Workers (1989), Social Protocol annexed to Maastrich Treaty, 1997 Amsterdam Treaty, Nice European Council and finally Lisbon European Council (2000) are the critical events that shaped European social policy. In other words, as a result of all of these milestones, social policy is included in the Union's policy agenda. It is important to note that the Union at that time appreciated the importance of social policy area to reach a more coherent and harmonized Europe.

When Europeanization studies are analyzed, it can be inferred that the process of Europeanization has two ways. First way is 'bottom-up' which refers to the evolution of European institutions. On the other hand, the second way refers to 'top-down' processes which emphasize the impact of the institutions' evolvement on member states and political structures (Börzel, 2002, p. 193).

Recently, the EU has changed its roots from traditional top-down regulatory approaches to more open, flexible and participatory ones. This shift can be observed in the traditional top-down tools like directives as their newer contents are more open than traditional ones. The EU also provides new participatory methods which can be directly detected in the European Employment Strategy (EES) (Mosher & Trubek, 2003, p.63).

The EES is a product of crisis happened in 1990s resulting from high levels of unemployment and/or low levels of employment. Existing policies were not suitable to solve the problem. In addition to this, there was a need for a European level of employment policy as most of the member states needed an applicable and feasible mechanism to solve the problem. Member states sought to solve the problem without creating a distortion in their social model. Therefore, neo-liberal solution for the problem which suggests economization in social protection system, would automatically be rejected. (Mosher and Trubek, 2003, p.64-65). However, for the Union level solution there was a problem of competence. Member states were reluctant to give a competence to the Union in all areas. The solution was a system which was previously applied during the economic convergence process in the creation of monetary union. The system which was based on national plans, monitoring, peer review and corrective action was successful; therefore, it seemed applicable to solve the problems in employment. As Mosher and Trubek (2003) explain:

the EU has endorsed the EES and similar new governance arrangements and dubbed them 'the open method of coordination'. They combine broad participation in policy-making, co-ordination of multiple levels of government, use of information and benchmarking, recognition of the need for diversity, and structured but unsanctioned guidance from the Commission and Council (p.64).

On the other hand, OMC was identified during the 2000s as a part of employment strategy. OMC is a soft law instrument. The EU identifies and defines certain policy objectives to be achieved which are "proposed by the commission, agreed by national governments and adopted by the EU Council" (European Commission, n.d.); then, measuring instruments like statics and indicator are determined jointly. Thus, national

policies are determined by member states in accordance with these objectives. The EU evaluates countries progress one by one; however, the main roles of the Commission are observance and coordination. The European Parliament and Court of Justice were not parts of this process (Eur-Lex, n.d.). The EU members "engage in an array of simultaneous and interlocking cooperation and mutual surveillance processes, covering poverty reduction (social inclusion), education, training, pensions, and job creation, among others. Through these, the EU is building a 'still fragmented' but 'distinctive EU welfare dimension'" (Threlfall, 2007, p.274).

With the help of more flexible instruments like EES and OMC, the EU has adopted more participatory measures for policy changes. These methods do not neglect national differences; therefore, applicability and sustainability of policies has been more than traditional top-down measures.

However, as bottom-up Europeanization is a two-way process, it is not applicable for non-member states because of asymmetrical relations. For instance, Turkey as a candidate country does not have any direct influence over EU policies or any other tools in any area as a result of asymmetrical relation. Therefore, as mentioned earlier, for this thesis top-down Europeanization especially through conditionality is the main focus.

## **2.5. Europeanization of Gender Equality**

For my thesis, Europeanization refers to domestic policy change of member states or candidate states as a result of the EU's direct or indirect pressures. Member states of

the EU, even candidate states or neighbors, have been affected by the Union on their attitudes which directly create a change in policy process (Alvarez and Guillen, 2004, p. 285).

Europeanization happens through diffusion. Indeed, as Börzel & Risse (2012) argue Europeanization should be studied and evaluated under the diffusion which might be identified as spreading ideas, norms, policies and institutions (p.5).

On the other hand, Gilardi (2012) explains that diffusion is a product of interdependence (p.2). He identified four different types of diffusion mechanisms namely coercion, competition, learning and emulation. (Gilardi, 2012, p.13). First of all, coercion refers to the use of pressure on one actor to adopt certain policy. In this sense, conditionality is an important tool for diffusion. For example, the European Union used conditionality over central and eastern countries to spread its norms, policies and institutions. Secondly, Gilardi (2012) defines competition as “the process whereby policy makers anticipate or react to the behavior of other countries in order to attract or retain economic resources” (p.15). Thirdly, policy makers use other countries’ experiences to make a calculation regarding their policy consequences which might be categorized as learning under Gilardi’s diffusion mechanisms. Policy makers use reports and assessments; however, other states can be another information source in order to reach an evaluation regarding policy consequences. In other words, when an actor decides to apply a policy in a certain area, the expected results may not be clear before applying. In this case, policy maker might observe a state which has already applied the same policy to see the results. Then, policy makers might compare

these results with another country which does not apply the same policy. Therefore, he or she can decide whether the policy is useful or not (Gilardi, 2012, p.17).

In addition to mechanisms of norm diffusion, how norm diffusion happens is another important point. Finnemore and Sikkink state that norm diffusion consists of three phases which are norm emergence, cascade and internalization. In the first phase “new rules of appropriate behavior” are identified by norm promoters (as cited in Gilardi, 2012, p.23). In the international area, state leaders, NGOs and IOs are eligible to promote norms. Norm promoters try to persuade an adequate number of states to pass to the second phase called “cascade”. In this phase, “norms are promoted in a socialization process that rewards conformity and punishes noncompliance” (Gilardi, 2012, p.23). Finally, if it is accepted as the only appropriate type of behavior by the states who internalize norms, it means that the process is in its “internalization phase” (Gilardi, 2012, p.23).

For the EU, Manners defines five core norms: peace, liberty, democracy, human rights and rule of law and four minor norms: social solidarity, anti-discrimination, sustainable development and good governance (As cited in Brommesson, 2010, p.226). Manners also identifies six factors that accelerate and facilitate the diffusion of norms. First one is that the EU may unintentionally diffuse norms and ideas through *contagion*. Second, with the help of communication the EU may diffuse norms through *informational diffusion*. Third, norms may be diffused through the ties established as a result of the institutionalized relationship between the EU and third party which is called *procedural diffusion*. Fourth, when the EU and third party have a relation as a result of exchange of goods, trade or aid, diffusion may be observed. *Transference* is

important for this kind of diffusion. Fifth, *overt diffusion* is observed as a result of physical presence of the EU' either in third states or international institutions. Lastly, the *cultural filter* plays an important role for the adaptation or rejection of norms (As cited in Brommesson, 2010, p.226). Therefore, The Union tries to Europeanize gender related employment policies by use of these mechanisms.

Revolution in women's patterns of participation in education, employment, politics and in family life has been witnessed during recent decades. Especially, during the 1980s, "dual earner families become the majority group among two parent families" in some parts of the world. Moreover, between 1980s and 2000s, women increased their contribution to family income (Irwin & Bottero, 2000 p.262). However, at the same time, discrimination against women increased as well. Psychological and sexual harassment, unjust payroll distribution and overtime hours can be accepted as the indicators of gender based discrimination (Öneren, Çiftçi, Özder, 2014 p. 327).

However, the EU has a body of laws, regulations etc. on gender that goes back to the period before the 1980s. Therefore, it can be said that gender equality has become an important phenomenon for the EU before other regions of the world have paid attention to the issue.

The European Commission (2011) listed the main principles behind all the articles, directives and soft measures regarding gender equality:

- Ensuring the equal treatment of men and women at work,
- Prohibiting discrimination in social security schemes,
- Setting out minimum requirements on parental leave,,
- Providing protection to pregnant workers and recent mothers,

- Setting out rules on access to employment, working conditions, remuneration and legal rights for the self-employed (p.6).

The EU provides legal protection to ensure the implementation of these principles both with hard and soft law. The EU has adopted many articles as well as directives to guarantee gender equality within the Union. In that sense, the directives, articles and ECJ jurisprudence related to gender equality constitute hard measures of the EU. Equal pay, equal treatment and reconciliation of employment and family life are the three main plots around which the EU's hard legislative framework on gender equality has primarily developed (Aybars, 2007, p.77).

In addition to all these legal protections, the EU also provides soft policy measures which leave more places for the member states' policy implementation preferences. In other words, with the help of soft measures member states can more freely select their implementation method. Gender equality in the EU was generally regulated through hard measures until the Luxembourg Summit in 1997. The adoption of the EES paved the way for the introduction of soft measures into this field (Aybars, 2007, p.91). "The EES is the European Union's main instrument for coordinating EU countries' reform efforts in the area of labour market and social policies. The mechanism is based on benchmarking, monitoring and learning rather than legislation (Eur-Lex, n.d.)."

In addition to the EES, OMC is another important step for the EU in terms of soft law. The OMC was firstly created in the 1990s as part of the EES. Then it was defined as an instrument of the Lisbon Strategy. The OMC is "a form of intergovernmental

policy-making that does not result in binding EU legislative measures and it does not require EU countries to introduce or amend their laws” (Eur-Lex, n.d.).

This method is different from hard law as it changes the top-down perception of law implementations. Before OMC, all member states had to adopt the law regardless of national differences. The OMC was permits diversity in national policies. It is a more flexible and participatory method (Aybars, 2007, p. 92).

As it does not include compulsory measures, soft measures may be preferable for member states. Similarly, Fiona (2012) states that “it can be clearly demonstrated that soft instruments have played an important role in the framing of policy problems in EU gender equality issues” (p.31). As soft measures are more flexible, member states have more place to adopt policies in their own preferred way.

On the other hand, when I look at hard law, the Union’s concerns about gender equality go back to the Treaty of Rome. Article 119 of the Treaty claims that “Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work” (Treaty of Rome, 1957, p. 43). However, at that time, the reason behind why this provision was added to the treaty was economic concerns, not social ones. As France was the only founding member of the EEC who had equal pay regulations, it argued that this might create a potential competitive disadvantage so this provision was supposed to be applicable for all member states (Martinsen, 2007, p. 549-550). Although the provision was added to the Treaty, its implication was limited.

For the implementation, the Social Action Programme was introduced in 1974. Actually, Article 119 was designed to be implemented before 1 January 1962; however, member states were not willing to harmonize their national laws with the Article. Therefore, the implementation of Article 119 became one of the most important aims of Social Action Programme (Burri & Prechal, 2008, p. 4).

To accelerate and facilitate the implementation of Article 119, many directives were adopted. Firstly, the Equal Pay Directive (75/117/EEC) was adopted on 10 February 1975. First article of the directive clearly define what equal pay means as following:

(...) for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration. In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex (Eur-Lex, 1975).

In addition to this, the directive identifies the necessary measures which should be taken by the member states to provide for equal pay. Article 4 of the directive states that

Member States shall take the necessary measures to ensure that provisions appearing in collective agreements, wage scales, wage agreements or individual contracts of employment which are contrary to the principle of equal pay shall be, or may be declared, null and void or may be amended (Eur-Lex, 1975).

The second directive (76/207/EEC) related to gender equality in employment was adopted 9 February 1976. The directive was concerned with “the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions” (Eur-Lex, 1976). Article 2 of the directive defines the principle of equal treatment as follows: “there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status”. The directive defines obligations of member states while clearly explains how has to be the application of the principle of equal treatment. “There shall be no discrimination whatsoever on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy” (Article 3).

In 1976, member states could not agree on the application of the principle of equal treatment on social security. Therefore, its application was postponed (Burri and Prechal, 2008, p.11). To broaden the application area of equal treatment, the Union adopted another directive (79/7/EEC) on 19 December 1978 with respect to social security. According to the Directive’s principle of equal treatment has to be applied on;

statutory schemes which provide protection against the following risks: sickness, invalidity, old age, accidents at work and occupational diseases and unemployment and social assistance, in so far as it is intended to supplement or replace the schemes referred to in statutory schemes (Article 3).

Since the beginning of the 1990s, the EU has introduced the second wave of equality policies. On 19 October 1992, another directive (92/85/EC) was adopted specifically

for pregnant workers, workers who have recently given birth or who are breastfeeding (Article 1). “From 1992 onwards, five additional directives were introduced concerning the organisation of working time, parental leave, burdens of proof in sex discrimination cases, and framework agreements on part-time work” (Martinsen, 2007, p.550).

On 5 October 2002, Directive 76/207/EEC was modernized. Especially, directive 76/207/EEC did not include some necessary definitions. Therefore, the new version of it (2002/73/EC) defined some concepts as follows:

- direct discrimination: where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation,
- indirect discrimination: where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary,
- harassment: where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment,
- sexual harassment: where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment (Article 2)

“In 2006, a new directive was adopted in which the existing provisions of different sex equality directives are brought together and some case law of the European Court of Justice is incorporated (Directive 2006/54/EC)” (Burri and Prechal, 2008, p.14).

The purpose of this Directive is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. To that end, it contains provisions to implement the principle of equal treatment in relation to: (a) access to employment, including promotion, and to vocational training; (b) working conditions, including pay; (c) occupational social security schemes. It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate procedures (Article 1).

With the adoption of the recast directive, some of the related directives were repealed (like 75/117/EEC, 76/207/EEC and 2002/73/EC).

All of these developments demonstrate that, gender equality issues are conceived as supranational policy areas rather than national. In other words, the Union since its establishment has not left the gender policy area to domestic policy making. Although, in the beginning the main concern was not social but economic, in time the Union has evolved its perception and included gender policies into the main agenda.

However, most of the time EU gender studies directly focus on the Union level rather than its impact on member/candidate states. Studies concentrating on the EU and member/candidate states relations and the implementation of EU gender policies into domestic level remain limited (Forest & Lambordo, 2012, p.8). Therefore, in this thesis

I will try to evaluate the Unions' impact on a candidate state related to gender equality policy through Europeanization.

## 2.6. Measurement of Europeanization Process

Europeanization of member states or candidates might be in different levels. Börzel and Risse (as cited in Tekin, 2015, p. 7) define three different levels: absorption, accommodation and transformation. Similarly, Radaelli (as cited in Tekin, 2015, p. 7) uses absorption and transformation; however, excluding accommodation, he includes two different levels: inertia and retrenchment. On the other hand, Tekin (2015) defines four types for measurement of Europeanization. These are;

1. *Inertia*: the EU policy/norm/practice causes tension, but no alteration ensues.
2. *Absorption*: the EU policy/norm/practice is adopted without any tension or need for alteration.
3. *Accommodation*: the EU policy/norm/practice causes tension but alters the national system only slightly.
4. *Transformation*: the EU policy/norm/practice causes tension and alters the underlying national political philosophy (Tekin, 2015, p.7).

However, in this thesis, I do not prefer to apply these different types of measurement as in this policy area it is not possible to reach a certain conclusion. The result probably be multiple as a result of changing political attitudes of Turkey towards EU accession process.

## 2.7. Three-Stage Analysis and Its Application to the Thesis

The book called ‘Europeanization of Turkey’ edited by Tekin and Güney (2015) which consists of five parts and fifteen chapters, applies a three-stage analysis for every chapter written by different scholars to see whether Europeanization is possible in many different policy areas which is also applicable for my thesis. As it is understood from its name, this analysis mainly consists of three main stages: the misfit, process of Europeanization and outcomes. Every stage has its own questions to analyze and measure the stage. For the first stage the questions are:

- a. What are the EU policy/rule/norm requirements?
- b. How was the issue (policy/polity/politics) area (in Turkey) before December 1999?
- c. What is the “goodness of fit” between the domestic status quo and the EU rule? Is there a policy misfit or an institutional misfit, or neither, or both? (Tekin, 2015, p.8)

p.8) For the second stage:

- a. Are there any costs and benefits to the government of adopting the EU rule in question?
- b. Does the interaction lead to differential political empowerment of competing domestic actors – in other words, who wins or loses from the process that would cause domestic change?
- c. Can the government draw any lesson from the EU to tackle an outstanding domestic problem in a more cost-effective way?
- d. Is there any social learning from the EU through persuasion? (Tekin, 2015, p.8)

Finally, to evaluate the outcomes:

- a. *Inertia*: is the status quo preserved?
- b. *Absorption*: is the EU requirement assimilated into the system without much friction?

c. *Accommodation*: is the EU requirement adopted with only superficial or minor changes to the domestic system?

d. *Transformation*: is the EU requirement adopted only after major changes in national policy, institutional structure and underlying policy-making philosophy?

(Tekin, 2015, p.8)

For this thesis, I will try to answer the question of first stages to find out whether there is a misfit or not. I will not focus on second stages' questions as these are too broad to answer in this thesis as a result of the framework that I defined. In this thesis, impact means to changes in legal regulations of Turkey. Therefore, to observe the impact I focus on legal documents. In addition to this, I will not reach any of the conclusion mentioned in third stage as Europeanization has multiple effects for my case. Therefore, it is not possible to labelled as one of these outcomes.

## **CHAPTER III**

### **EU - TURKEY RELATIONS**

#### **3.1. An Overview of EU - Turkey Relations**

Turkey has been interested in Europe since the establishment of the Ottoman Empire as it turned its face to the West. In this context, Turkey's adventure on the way towards European Union (EU) membership started on July 31, 1959 with Turkey's application to the European Economic Community (EEC) shortly after Greece's application for associate membership. Indeed, Greece's application to the Community was one of the main reasons for Turkey's application since Greece as a member of a strong organization would probably gain an advantage over Turkey in foreign policy (Oran, 2001, p.816).

However, at that period Turkey was not ready to compete with the developed European countries in a free competitive market as Birand (1978, p.53) explains:

with a population of 25 million, Turkey had a very high rate of population growth of 3 per cent; between 60 and 70 per cent were illiterate; more than 75 per cent of the labour force was in agriculture, producing four-fifths of total exports. Turkey was an under-developed country with a typical Mediterranean type of agriculture. Its industry, controlled by the state and protected by high-

tariff barriers, was still in its early stage of development. The private sector, satisfied with its profits in the domestic market, failed to take into account the demands of free international competition.

The first corner stone of the relations, the Ankara Agreement was signed on September 12, 1963 which came into force on December 1, 1964. The Ankara Agreement would be valid as long as the membership process continues. It can be said that the Agreement was a partnership agreement which sought to prepare Turkey for membership. According to this agreement, three stages were decided (Oran, 2001, p.831-837). The first stage was the preparatory period. In this period, for the following five years Turkey would not have any obligations except strengthening its economy (Birand, 1978, p.54). "At the end of this period, after a joint study of the state of the Turkish economy, the Association Council (the Governments of the Six and of Turkey) would decide if the so-called transition period of 12 years should begin" (Birand, 1978, p.54). "November 13, 1970 The Additional Protocol, signed and annexed to the Association Agreement between the EEC and Turkey, set out in detail how the Customs Union would be established between the two sides" (Erdemli, 2003, p.4). In other words, the Additional Protocol provided a road map for the Customs Union. With this protocol the transition period began. However, the period after the signing of the Additional Protocol, relations between the European Community (EC) and Turkey got worse. The enlargement of Community (Britain, Ireland and Denmark), Turkey's second intervention to the Cyprus in 1974 and a governmental crisis constituted the biggest challenges between the EC and Turkey (Birand, 1978, p.56). In 1982, The EC decided to halt relations with Turkey because of the 1980 military coup d'état. This decision lasted nearly 7 years when the "Turkey-EEC Association Council meets and relations between the EC and Turkey resume" (Erdemli, 2003, p.5).

In 1987, a new phase of relations started with Turkey's application for full-membership. Nearly after two and a half years, the European Commission prepared a report on Turkey declaring that until the implementation of the single market in 1992, enlargement would not be possible. In addition to this, Turkey still needed to develop to close the economic and social gap with European countries (Erdemli, 2003, p.5).

In 1995, Turkey and the EC signed the formal Customs Union Agreement which came into effect on January 1, 1996. The importance of this agreement was that it was the first customs unions agreement which was signed by the Union with a third state. As Erdemli (2003) mentions:

This Customs Union goes further than the abolition of tariff and quantitative barriers to trade between the parties and the application of a Common External Tariff to imports from third countries, and envisages harmonization with EEC policies in virtually every field relating to the internal market (p.5).

In other words, Turkey was going to apply the Union's common external tariff while trading with third countries (Hale & Avcı, 2001, p. 32)

After the creation of the customs union with the Union, Turkey's expectations related to a full-membership increased. This is why Turkey became frustrated after the Luxembourg Summit in 1997. "The European council excludes Turkey from the list of formal candidates, effectively "rejecting" Ankara's request for accession" (Erdemli, 2003, p.6). According to the Turkish government, the decision of Luxembourg Summit had been taken under the influence of Greece; therefore, it had been discriminatory and politicized (Eralp, 2004, p.71). As a response, Turkey partially suspended its relations with the EU (Erdemli, 2003, p.6).

However, Turkey and the EU had mutual interests (Eralp, 2004, p. 76). Finally, in 1999 the EU confirmed Turkey's candidacy at the Helsinki Summit. Until that year, Turkey had made an effort to become a member of the Union nearly for thirty-six years. As Eralp (2004) states "Turkey is the longest standing applicant to the EU" (p.69). There were some probable reasons of change in the EU's attitude towards Turkey's application. First one was the EU's realization of Turkey's strategic position's importance as a result of intervention to Kosovo in 1999. Second reason was the United States' (US) support for Turkey's membership. Indeed, the US supported Turkey's EU membership as a result of its strong ties with NATO. Third reason was government changes happened in some EU countries. Especially in countries like Germany, conservative parties which had rejected Turkey's membership as a result of identity problem and cultural differences changed place with social democrat parties. Fourth reason was Greek Simitis government's moderate attitudes towards Turkey. Finally, economic and political developments happened in Turkey directly affected EU's attitude. Especially, Turkey's monetary programs developed with different international organization, being in the first place International Monetary Fund (IMF), affected EU's attitudes positively (Oran, 2002, p.352).

With the Helsinki Summit Turkey's pre-accession process started. The candidate status of Turkey was the beginning of another long and compelling road for Turkey. Achieving this status has brought Turkey lots of responsibilities and obligations which had already been known.

The accession process as mentioned in the official website of the European Commission consists of three stages:

1. To start the negotiations the first step is becoming candidate for membership.
2. Formal membership negotiations start with unanimous decision by the EU Council. The accession negotiations process includes “the adoption of established EU law, preparations to be in a position to properly apply and enforce it and implementation of judicial, administrative, economic and other reforms necessary for the country to meet the conditions for joining, known as accession criteria” (European Commission, n.d.). During the negotiations, every policy field (chapters) is analyzed by the Commission and candidate state together to observe the country’s position. According to the screening process, the Commission prepares a conclusion and submits it to the member states. This conclusion report “is a recommendation of the Commission to either open negotiations directly or to require that certain conditions – opening benchmarks - should first be met” (European Commission, n.d.).
3. Finally, when the reforms of the candidate country comply with the EU Acquis and satisfy both sides of the negotiations, the candidate state becomes a member of the Union.

Although Turkey’s candidacy had been approved by the Union, Turkey has to cover an important distance to open all the necessary chapters for negotiations to harmonize its legislation with the EU. Therefore, the 2000 Accession Partnership Document was the road map for Turkey's accession process. As Günter Verheugen, member of the European Commission responsible for enlargement, stated in his speech on 8

November 2000 "the document sets out practical short and long-term priorities in the political and economic fields as well as for the harmonisation of legislation, which Turkey should implement in the context of a national programme in order to satisfy the Copenhagen criteria. Financial cooperation with Turkey will be guided by these priorities" (European Commission, 2000). The Copenhagen Criteria were determined by the European Council in 1993. Countries who apply for the full-membership and initiate negotiations need to have:

- stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- a functioning market economy and the capacity to cope with competition and market forces in the EU;
- the ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic and monetary union (European Commission, n.d.).

As a response, Turkey prepared its first "Turkish National Program for the Adoption of the Acquis" (NPAA) which was submitted to the European Commission in March 2001 (Eralp, 2004, 80). With this document, it was declared that:

Turkey will accede to all relevant international conventions and take the necessary measures for their effective implementation in order to align further with the universal norms manifest in the EU acquis and practices in EU Member States, particularly in the areas of democracy and human rights (NPAA, 2001).

Meanwhile, the EU had started to evaluate Turkey's progress with the annual Progress Reports since 1998. While preparing the annual report, Commission uses official

feedbacks of governmental and non-governmental institutions and the Delegation of the EU to Turkey.

Turkey's years between 1999 and 2005 can be labeled as "the period of reforms" (Ata, 2017, p.107). In 2001, 34 articles of the Constitution were amended to meet the Copenhagen Criteria. In 2002, a harmonization package was adopted by Turkey. "In 2003 and 2004, another constitutional reform, five legislation packages and a new penal code followed this decision. Consequently, the Council concluded that Turkey sufficiently fulfilled the political criteria, hence, accession negotiations could begin on 3 October 2005" (Ata, 2017, p.107).

As it can be understood from the history of the EU and Turkey, Turkey has made a considerable effort to become a member of the Union. Since the very beginning of the pre-accession period, Turkey has tried to adopt the framework which was set out by the EU to decide and demonstrate procedures and priorities for the accession. The accession negotiation process started in 2005 and still formally continues. The starting point for this research is the 1999 Helsinki Summit as from then on, the change in Turkey's policies might be observed in relation to the EU.

### **3.2. EU Policy/Norm/Rule Requirements Regarding Gender Equality in Employment**

Since the Treaty of Rome, the EU has been trying to provide gender equality in many areas including employment. The main focus of my thesis is employment; therefore, in this part, I explain the requirements of gender equality in work life for the EU.

Aybars (2007) mentions that there are three main indicators of the gender equality in employment which are equal pay, equal treatment and providing work/life balance (p.77). For my thesis, I use these the three indicators as units of measurement. In other words, removing or reducing the gender pay gap, providing equal treatment and reconciliation of employment and family life are three main parameters of gender equality. For my thesis, I limit the definition of gender equality in terms of employment to these three indicators due to thesis concrete nature and fairly straightforward assessment.

### **3.2.1. Equal Pay**

First of all, the gender pay gap occurs if there is a difference between the average income of men and women as a result of gender based discrimination (European Commission, n.d.). There might be different types of gendered differentiation of wages. The first one is ‘allocative discrimination’ which refers to discriminations starting from recruitment and continuing with promotions, payment and hiring. The second one is ‘within job wage discrimination’. In this type of discrimination women and men work in the same job; however, women earn less than men. Finally, there is also ‘valuative discrimination’. For this type of discrimination, “occupations held primarily by women are paid lower wages than those held primarily by men, although skill requirements and other wage-relevant factors are the same” (Petersen et. al, 1997, p.199).

Since 1957, the principle of equal pay has been accepted as one of the founding principles of the EU (Article 119 of EEC Treaty which turned Article 141 of EC Treaty). As Foubert (2017) explains

Since the entry into force of the Treaty of Lisbon (2009), the principle is embodied in Article 157 of the Treaty on the Functioning of the European Union (TFEU). According to the current Article 157 TFEU, ‘pay’ refers to ‘the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.’ (p.34).

To ensure the application of the principle, the EU also issued directives. The equal Pay Directive 75/117/EEC which was changed with the Recast Directive 2006/54/EC (Foubert, 2017, p.34) is one of the most influential directives. Article 1 of the Directive clearly explains that the main purpose of the Directive is to guarantee gender equality in employment. While doing this, the Directive strictly prohibits gender pay gap.

Since 1970s, in addition to articles and directives the Court of Justice of the EU (CJEU) has paid attention on this issue “which have apparently constituted a powerful tool for the uniform enforcement of the principle in the Member States” (Foubert, 2012, p.7).

In 1996, the Code of Practice which was adopted by the Commission was another important improvement to prevent gender pay gap (EurWork, 2012). In briefly,

The Code aims to provide concrete advice for employers and collective bargaining partners at business, sectoral or intersectoral level to ensure that the principle of equality between women and men performing work of equal value

is applied to all aspects of pay. In particular it aims to eliminate sexual discrimination whenever pay structures are based on job classification and evaluation systems (Commission of the European Communities, 1996, p.4).

Moreover, the EU has provided roadmaps (2006-2010), strategies (2010-2015), and action plans (2014 and 2018-2019) to ensure gender equality in terms of pay.

However, despite all of these legal regulations there was still gender pay gap in the EU. To observe the impact, I used Working Conditions in the European Union: the Gender Perspective Survey (EWCS) prepared by European Foundation for the Improvement of Living and Working Conditions (Eurofound). For my thesis, to see the position of the EU when Turkey's official candidacy was announced, third EWCS conducted in 2000 provides necessary data.

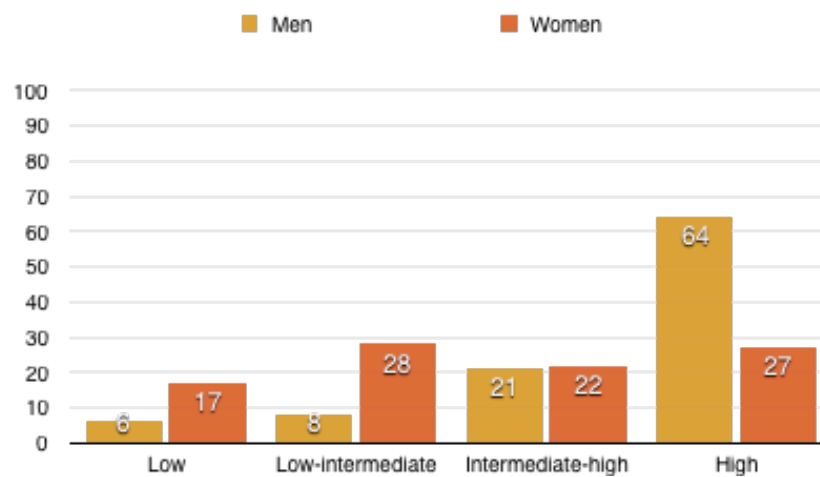


Figure 1. Income categories of managers by gender

(Source: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0121en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0121en.pdf))

Figure 1 shows that nearly 85% of male respondents of the EWCS who work as manager got high income while only 49% of female manager respondents got high income. Only 14% of male manager respondent got low income in contrast to 45% female rate.

The tendency was similar for workers and service workers as shown in Figure 2 and Table 3. When I analyze Table 2, only 35% of women earn high level salaries while this rate was 61% for male workers.

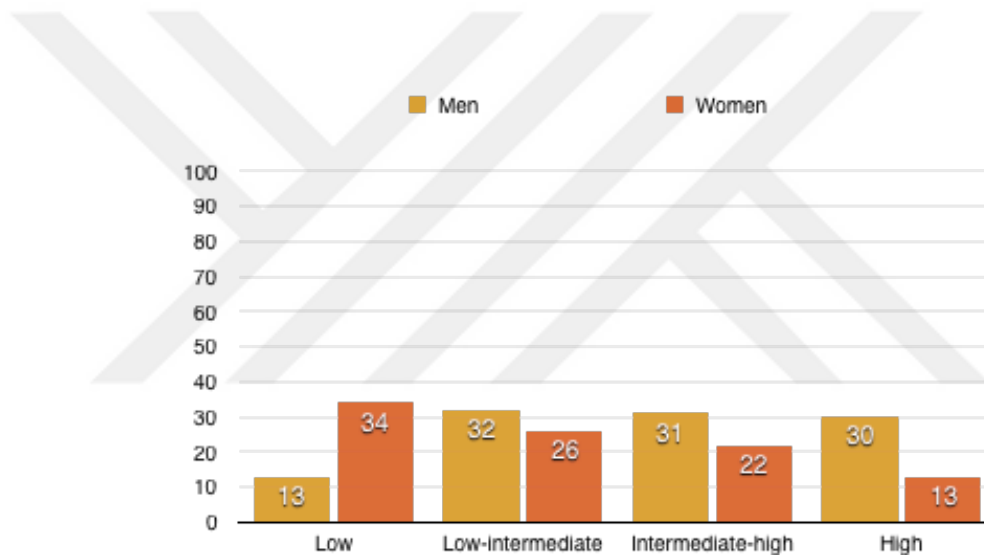


Figure 2. Income categories of workers by gender

(Source: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0121en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0121en.pdf))

Although the rate of high income was low compared to other occupations (manager and worker), gender pay gap was also relatively high for service workers. Only 19% of female service workers earned high level of income while 61% of male service workers earned high salaries.

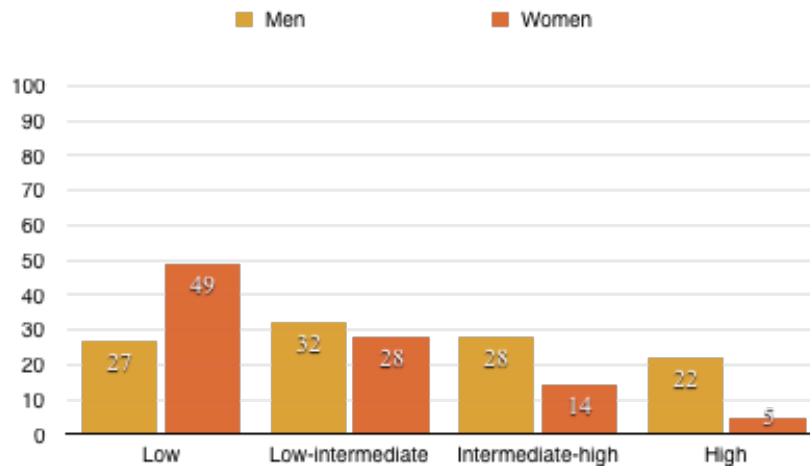


Figure 3. Income categories of service workers by gender

(Source: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0121en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0121en.pdf))

To sum up, there was not any significant difference between white or blue collar employers. In all of these three occupations, gender pay gap was observed despite all legal regulations.

### 3.2.2. Equal Treatment

The second indicator of the gender equality for my thesis is equal treatment. Equal treatment means that “all people, and in the context of the workplace all workers, have the right to receive the same treatment, and will not be discriminated against on the basis of criteria such as age, disability, nationality, race and religion” (EurWork, 2011). The main concern of the Directive (76/207/EEC) which was adopted on 9 February 1976 was the implementation of the principle of equal treatment in employment including training, promotion and working conditions (Eur-Lex, 1976).

Furthermore, in 2000 the Council adopted another directive (2000/78/EC) to revise the Directive (76/207/EEC) and to provide a general framework of the principle of equal treatment. The Directive defines direct and indirect discrimination as follows:

- direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds (Article 2 Paragraph (a)), of religion or belief, disability, age or sexual orientation as regards employment and occupation (Article 1).

- indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons (Article 2, Paragraph (b)).

In addition to these directives, a directive which regulates the burden of proof for the gender based discrimination which burden the proof on respondents during the violation of equal treatment principle (Council Directive 97/80/EC) and another directive which explains the ways for implementation of the equal treatment principle (Directive 2000/78; and Council Directive 2000/43) were also adopted by the Union.

To monitor implementation and to prevent discrimination, the EU fosters specialized bodies both in the EU and at national level, such as the European Union Agency for Fundamental Rights. “Such bodies usually have a special role in relation to victims of discrimination, and engage in both political and legal processes”. (EurWork, 2011). Indeed, the motto of the agency is “helping to make fundamental rights a reality for

everyone in the European Union” (FRA Official Website). The agency provides suggestions and advices for EU institutions as well as member states. The main purpose and objective of the agency is to guarantee the protection of fundamental rights of EU citizens. “The objective, the scope and the tasks of the Fundamental Rights Agency are set out in Council Regulation (EC) No. 168/2007, establishing the European Union Agency for Fundamental Rights” (FRA Official Website).

Gendered work definitions might be accepted as problematic for the principle of equal treatment as it concerns with recruitment. Bettio and Verashhagine (2009) define Employment segregation as “a rather dramatic expression for the gendered division of labour in paid employment” (p.30). Gendered segregation might be observed “occupational versus sectoral segregation, horizontal versus vertical, vertical versus hierarchical”. To see whether a segregation or not, I used Working Conditions in the European Union: the Gender Perspective Survey (EWCS) prepared by European Foundation for the Improvement of Living and Working Conditions (Eurofound). For my thesis, to see the position of the EU when Turkey’s official candidacy was announced, third EWCS conducted in 2000 provides necessary data.

I analyzed three different set of data to see women position at work in the EU in 2000: women’s proportion in different occupation to see whether there is any horizontal segregation, gendered proportion of bosses to see whether there is any vertical segregation and bullying at work statics to see whether the principle of equal treatment is applied properly or not.

Table 1 shows that 34% of legislators and managers were women in 2000 while only 5% of armed forces were women. Also among agriculture and fishery workers women's rate is relatively low compared to professionals. The data clearly shows that most of the European women worked for white-collar works rather than blue-collar. At the end, it also shows that women and men did not have a equal proportion in occupations; therefore, it can be said that there is horizontal segregation in European Union.

Table 1. Women in the Workforce by Occupation (2000)

<b>Occupation</b>	<b>%</b>
Legislators and managers	34
Professionals	47
Agriculture and fishery workers	26
Armed forces	5

(Source: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0121en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0121en.pdf))

Table 2 shows the rate of immediate superiors according to occupations. It can be inferred from the table that, nearly for all the occupations, male superiors are common. Especially, for agricultural workers and armed forces nearly all of the immediate superiors are male. Despite high proportion of women as professional (as shown in Table 4), the superiors are male (as shown in Table 5). As a result, there is also vertical segregation in the EU.

Table 2. Workers whose immediate superior is a man (2000)

Occupation	%
Managers	83
Professionals	71
Agriculturel workers	95
Armed forces	97
Service workers	61

(Source: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0121en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0121en.pdf))

Finally, as a part of equal treatment principle I try to see the bullying statistics by gender. As mentioned in the EWCS 2000 report harassment might be observed in two different ways: intimidation and sexual harassment.

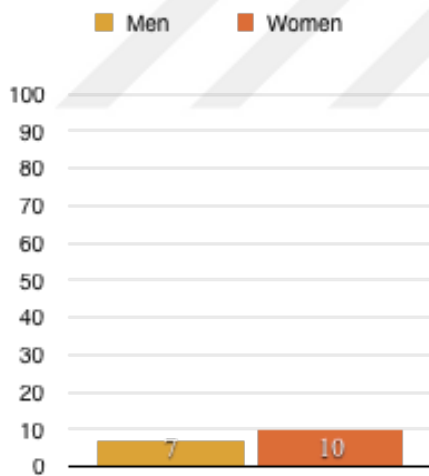


Figure 4. Workers subjected to intimidations.

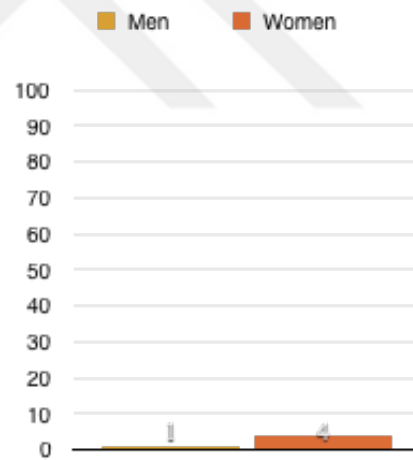


Figure 5. Workers exposed to unwanted sexual attention

(Source: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0121en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0121en.pdf))

Intimidation in other words bullying or mobbing was common in the EU. According to the results one in ten workers (9%) exposed to intimidation in the workplace. In that type of harassment women respondents stated that they were subjected to intimidation more than men. Like in intimidation, Figure 5 shows that women also exposed to sexual harassment more than men in the work place.

### **3.2.3. Reconciliation of Employment and Family Life**

As a third indicator of gender equality in employment, I use reconciliation of employment and family life. In other words, ensuring work - life balance is an important criterion for providing gender equality in terms of employment.

To create a balance between work and family life, it is necessary to offer some facilitating regulations, especially for women. These might be parental leave (paternity and maternity leave), carers' leave, flexible working arrangements (European Commission, n.d.). In that sense, the International Network on Leave Policies and Research (as cited in Prpic, 2017) defines the terms as follow:

-Maternity leave: 'leave generally available to mothers only (except in a few cases where part of the leave can be transferred to other carers under certain circumstances). Usually understood to be a health and welfare measure intended to protect the health of the mother and new-born child, to be taken just before, during, and immediately after birth'.

-Paternity leave: 'leave generally available to fathers only, usually to be taken soon after the birth of a child, and intended to enable the father to spend time with his partner, new child and older children'.

-Parental leave: 'leave available equally to mothers and fathers ... generally understood to be a care measure, intended to give parents the opportunity to spend time caring for a young child; can usually only be taken following the end of maternity leave' (p.2).

The EU, mainly with 1992 Maternity Leave Directive and 2010 Parental Leave Directive has been working on family leave procedures (Prpic, 2017, p.1). The 1992 Maternity Leave Directive deserves special mention.

The Directive regulates the working conditions for;

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

(b) worker who has recently given birth shall mean a worker who has recently given birth within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice;

(c) worker who is breastfeeding shall mean a worker who is breastfeeding within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice (Article 2).

The Directive states that all member states have to provide at least 14-week maternal leave (before and/or after the confinement) for workers defined in Article (2). The Directive also prohibits dismissal from the beginning of pregnancy to the end of maternity leave.

ECWS 2000 Survey concluded two important results to show work-life balance position of the EU. First of all, as shown in Figure 6 83% male respondents were main contributors of household income while only 40% of women were. (p.39).

Secondly, 25% of male respondents declared that they responsible for shopping and looking after home. However, this rate was relatively high for female respondents (85%). It can be inferred from these two figures that men were seen as breadwinner while women were accepted as the main care giver and responsible for house works like shopping.

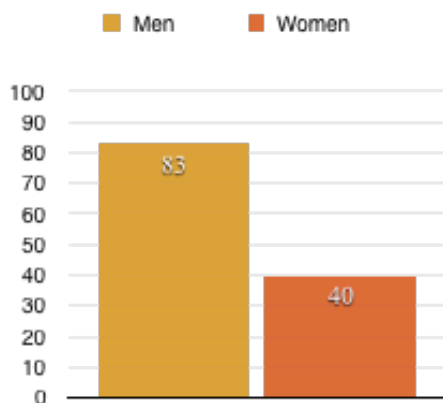


Figure 6. Those contributing most to the household income

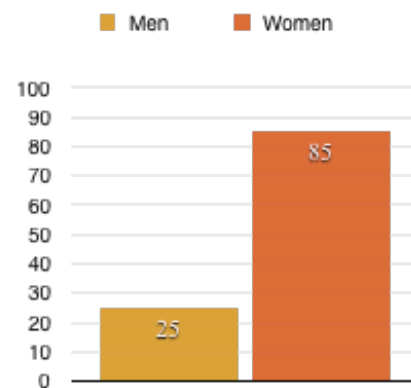


Figure 7. Mainly responsible for shopping and looking after home

(Source: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0121en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0121en.pdf))

To support the inference that women were main care giver and responsible for houseworks, Figure 8 shows the ratio of male and female respondents' involvement in houseworks. As it is observed, rate of women involved in cooking, caring for children and doing house work were significantly high compared to men.

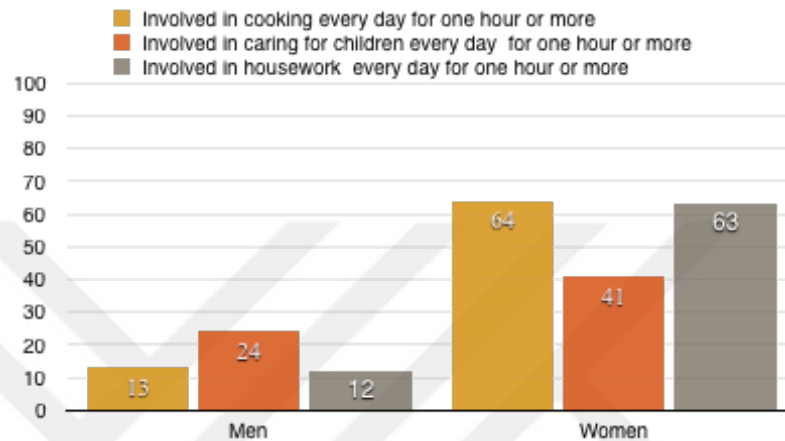


Figure 8. Those involved in house work

(Source: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0121en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0121en.pdf))

### 3.3. Turkey's Position Before the 1999 Helsinki Summit

#### 3.3.1. General Overview

Turkey's national gender equality position before 1999 is important to see the EU's impact on it through time. Therefore, under this title I explain Turkey's gender perspective and legal regulations before the Helsinki Summit when Turkey's official candidacy was approved.

In the beginning of the Republic, Turkey made investment to foster industrialization. Industrialization efforts created an increase in the number of women who participated in the labor market. The rate was 43% in 1955. However, in time, it started to decline. The main reason of this decline was the migration from villages to cities. At the end, in 2000, the rate of women participation to employment declined to 28% (Marshall, 2013, p.55).

Women were generally employed as workers in the service sector or as civil servants in public sector. However, most of the time they were hired as lower or middle level managers rather than at top level managing positions. Women were generally away from being a top level manager in public sector (Zeytinoğlu as cited in Marshall, 2013, p.56).

Women also worked in the industrial sector. However, like in service and public sector they were hired in the lowest paying jobs, such as textile production (Berik and Zeytinoğlu as cited in Marshall, 2013, p.56).

The general overview was more frustrating in the agricultural sector as women were generally workers in agriculture without any payment, or family workers (Zeytinoğlu as cited in Marshall, 2013, p.56). They worked for their family without any payment and without any social security protection. Their working hours were long and they did all kind of works, including heavy ones. They did not receive any payment as their earning were under the control of “male members of the family” (İlkkaracan as cited in Marshall, 2013, p.56).

By the 1990s, as a result of migration from villages to cities most women who were living in urban areas did not attend the labor force. Therefore, women's participation to the labor force declined. Moreover, women who participated in working life left their job in time as a result of their marriage or children.

Figure 9 shows Turkey's 1999 employment participation rate by age. Women participation rate was at its highest between the ages 20-24 while it declined between the ages 25-29. The main reason of this decline was marriage and giving birth at those ages (TUSIAD, 2000, p.131).

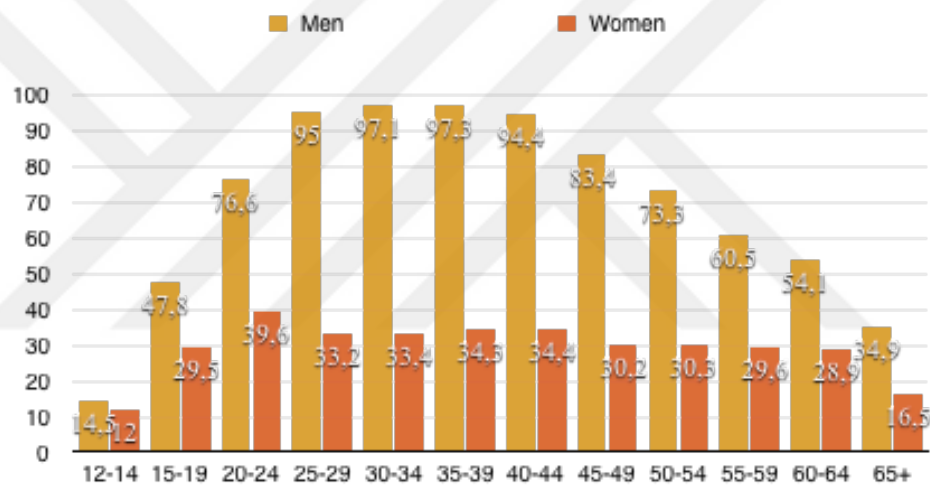


Figure 9. Employment participation rate in Turkey by age (1999)

(Source: TUSIAD Report, 2000)

During the 1990s, women usually confronted family opposition to work. Indeed, the idea of a husband permission for working was supported by the Civil Code which was in force on those years (Marshall, 2013, p.56). In Turkish culture, women were dependent on their husbands or fathers. The majority of women were excluded from the social security system or were included through their fathers or husbands (Özar &

Yakut-Cakar, 2013, p.24). Since the male breadwinner perception was still prevalent in many parts of the country, women were generally excluded from working life. Moreover, working was difficult for women who had a child as a result of a lack of child care services. Unfortunately, the Labor Law that regulated the presence of child-care facilities augmented the problem. The law required workplaces with more than one hundred women workers to provide nurseries and those with more than three hundred women workers to also provide child-care facilities. Many employers in the private sector employed less than the required numbers to avoid providing these facilities (Zeytinoğlu as cited in Marshall, 2013, p.56).

As a result of strong family ties elderly people expect care activities from their daughters and sons which was also a consequence of the lack of care services. However, these expectations were different from daughters and sons. From their daughters their expectations intended to be more on care activities while from their sons these expectations related to financial support (Nauck et al. as cited in Marshall, 2013, p.56). As İlkkaracan (As cited in Marchall, 2013, p.56) mentions these expectations related to care activities such as cooking and cleaning kept women away from working.

As shown in Figure 10, women participation to labor force during 1990s was very low compared to men.

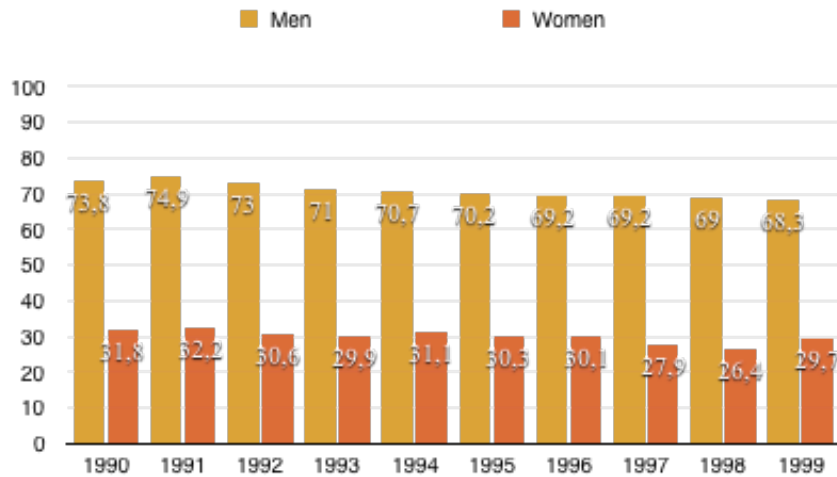


Figure 10. Labor Force Participation Rate in Turkey during 1990s

(Source: TÜİK)

“In Turkey the symbolisation of women continues. Women are treated as a mechanism for the protection of the cultural borders of the community. Therefore, they are the guards and the social and biological carriers of tradition, society and collective identity” (Gündüz, 2004, p.124). As a result of the patriarchal culture of the community, women are accepted as caregiver while men are breadwinner. Therefore, their labor force participation rate has a tendency to be dramatically lower than men’s employment rate. In that sense, patriarchy is one of the most important reasons for gender inequality in Turkey. Özar and Yakut-Çakar (2013) state that the patriarchal structure in Turkey’s domestic life is an outcome of the roles which are attributed to men and women according to their inborn differences (p.26). In this context, the definition of patriarchy deserves attention. The Oxford English Dictionary (n.d.) defines patriarchy as “the predominance of men in positions of power and influence in society, with cultural values and norms favouring men”. In Turkey men generally are accepted as breadwinner while women are responsible for the care activities like child

care and elderly care. These roles legitimize the patriarchal structure prevailing in much of Turkey's domestic and social life (Özar & Yakut-Cakar, 2013, p.26). In this regard, domestic work is assigned to women while men are responsible for economic activities as the 'breadwinners of the household'. Therefore, women's roles in work life are frequently marginalized.

Moreover, as a result of this patriarchal structure, traditional care activities are also generally done by women. Therefore, inflexible working hours discourage women from working. Even women who have a high level of education sometimes leave their job to care for their children. The inadequate market conditions create a barrier for women who feel the pressure to carry out traditional family responsibilities. Because of Turkey's limited child care opportunities, women encounter many difficulties finding paid work as a result of their child care responsibilities. Therefore, although they have desire to work, because of the lack of public service they cannot work (Özar& Yakut-Cakar, 2013, p.29).

In that sense, in Turkey cultural conservatism and assigned gender roles can be accepted as the primary sources of gender based discriminatory practices in the workplace.

However, the impact of these discouraging effects might be decreased by education. Table 3 shows the participation rate of women to employment in accordance with their education level. Women who live in cities and have a college or faculty degree had a tendency to eliminate the effects of patriarchy with 71,3% rate of employment.

Therefore, it can be said that although it is not possible to remove patriarchic view of Turkey towards women, its effects might be eliminated through education.

Table 3. Employment participation rate by gender and by education level (1999)

	Turkey		Urban		Rural	
	Women	Men	Women	Men	Women	Men
Illiterate	27	51,2	5,5	40,7	42,5	57,2
Literate without diploma	20,6	46,2	7,5	35,1	35,6	55,1
Primary school	30,5	73	10,8	67,2	52,9	79
Secondary school	17	56,7	12,1	53,5	30,3	62,4
Technical school (secondary)	3,4	34,9	3,8	25	-	54,1
High School	33,2	71	28,6	67,9	50,4	80,2
Technical school (High school)	44,7	78,2	40,4	76,2	66,8	85,3
College or faculty	71,8	84,7	71,3	83,7	77,7	90,5
Total	29,7	68,3	15,8	64,3	47,6	73,6

(Source: TUSIAD Report)

To see whether there is a misfit or not, I try to discuss Turkey's situation in 1999 in terms of equal pay, equal treatment and reconciliation of work and family life.

### 3.3.2. Equal Pay

Turkish Labor Law (Law number: 1475) was in force from 1971 to 2003. Article 26 of the Law mentions the equal pay principle. According to this article, there can not be different wages for male and female workers who work in the same job and work equally in a workplace because of their gender. No contradictory provision can be put on collective labor contracts and service contracts (Article 26). Therefore, it is obvious that Turkey had the necessary legal provisions in place regarding equal pay when its official candidacy of the EU was announced.

Figure 11 shows women's employment participation rate in 1999 by sectors. 67,9% of women who participated in working life worked in agriculture. However, the problem was that most of them were working in their family lands as family workers without any payment. Therefore, although Turkey had a legal protection against the gender pay gap, in practice it was not easy to overcome it.

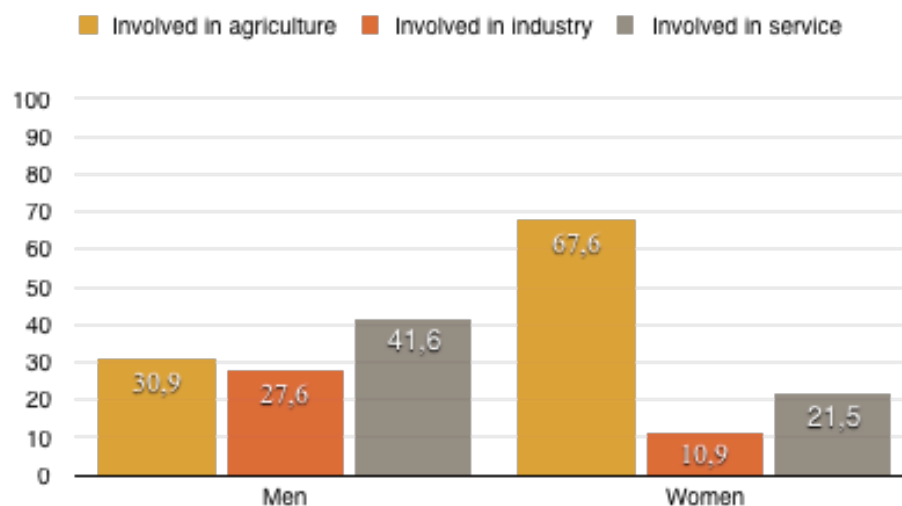


Figure 11. Employment participation rate by sector in Turkey in 1999

(Source: TÜİK)

### 3.3.3. Equal Treatment

In terms of equal treatment there was not any legal provision in then-current Labor Law (Law number: 1475) in Turkey. However, Turkey in 1985 signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 11 of the convention directly dealt with equal treatment, and Turkey did not put any reservation to that Article. The Article states that

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work... (UN Women)

Therefore, Turkey by signing the Convention accepted to take the necessary measures to prevent gender based discrimination in the work place. However, the harmonization of national law to CEDAW was not accomplished in 1999.

In practice, there was a huge amount of discrimination in recruitment and promotion. In employment women's recruitment and promotion were evaluated not only with their productivity but also with regard to many other factors. The recruitment process consists of three sub-processes. The first stage is a declaration of free positions. The second stage is the determination of the committee who makes interviews with the candidates, the determination of the examination process, determination of who is going to recruit candidates. Final stage is about wage, responsibilities and additional charges. Discrimination in recruitment is generally seen in the second and third stage as there is legal protection for the prevention of discrimination in the first stage (Petersen and Togstad, 2006, p.241). However, in Turkey during 1990s, there was no legal protection in terms of equal treatment. Therefore, in all three stages of recruitment women encountered discriminatory practices. Gendered work definitions might be accepted as problematic for the principle of equal treatment as it concerns recruitment. Bettio and Verashhagine (2009) define employment segregation as “a rather dramatic expression for the gendered division of labour in paid employment” (p.30). Gendered segregation might be observed horizontally, vertically or occupationally.

In terms of promotion, women faced many discriminatory practices as well. In that sense, in 1986 an article published in Wall Street Journal used “glass ceiling” as a metaphor to emphasize on unequal treatment in workplaces. The glass ceiling metaphor implies that employers allow women to get low or middle level job while they block their participation to high level positions (Elliot and Smith, 2004, p. 366). All over the world as well as in Turkey women encounter glass ceiling.

As Süral & Kiliçoğlu (2011) mention sexual harassment that women encounter in the work place in Turkey is one of the most important sources of gender-based discrimination. As they explain, “harassment and sexual harassment are contrary to the principle of equal treatment between men and women and constitute discrimination on grounds of sex” (p.656). However, the Labor Law of the period did not have any provision to protect women from all kinds of harassment. Women develop their own strategies to cope with it. These strategies can be as follows:

- Direct verbal reaction,
- Indirect verbal reaction such as talking about their relationship,
- Changing the subject,
- Body language,
- Walking away,
- Ignoring the situation (Süral & Kiliçoğlu, 2011, p.655 ).

However, these kind of personal efforts were not enough to solve the problem of harassment; therefore, women either resign from their job or continue to be exposed to these kind of discriminatory practices in their work places.

#### **3.3.4. Reconciliation of Employment and Family Life**

Having a balance between work and family life is important for employers. Productivity of workers who experience a conflict between these two spheres of life decreases as a result of this conflict (Abendroth and Dulk, 2011, p.235). In that sense, to provide a work-life balance, workers need support from three different levels. The first one is private level in which support comes from people around the worker such

as family. The second level is work level in which support comes from managers, bosses and colleagues. The final level is the national one in which support comes from social and employment policies (Abendroth and Dulk, 2011, p.236). For my thesis, I focus on the national level to observe the EU's impact on Turkey. Therefore, legal regulations and policy preferences in terms of providing balance between work and family life are highlighted.

Labor Law (Law number: 3008) governed employee and employer relations till 1971 Labor Law (Law number: 1475). Both of them had articles regarding maternity leave and breast-feeding leave.

Labor Law 3008, Article 25 put a ban on working of pregnant female workers three weeks before and after the date of birth (total six weeks). This period could have been extended to 12 weeks. However, during this period the employer pays half of the wage. On the other hand, woman who has not worked for at least three months in the same workplace cannot receive any payment (Article 25). The Law also had a paragraph related to breast-feeding leave. Article 40 paragraph 4 (d) states that wage deduction is forbidden for nursing women workers for the time when they are appointed to breastfeed their children.

The then-current law of the period (Law number: 1475) also had a provision regarding maternity leave. Article 70 extended the given time for maternity leave to twelve weeks (six before and six after the birth). It also stated that this period might be extended through medical report when needed. Article 62 listed the situation which accepted as included in working times. Breastfeeding time was also included in the list

for nursing women. Therefore, implicitly the Law claimed that the employer cannot make any wage deduction for breastfeeding time of nursing women.

### 3.4. Is there any misfit?



Figure 12. Europeanization of Gender Related Employment Policy

For my thesis, the EU in terms of gender related employment policies, has been Europeanizing Turkey since 1999 Helsinki Summit. The outcomes of this effect might be observed in three different indicators: providing equal pay, ensuring equal treatment, supporting work-life balance.

Misfit is not a precondition for Europeanization. However, to observe the impact appropriately, I prefer to analyze current situation in 1999. Therefore, I found out whether there is a misfit or not. I created Table 4 as a summary of misfit.

Table 4. Legal Regulations Summary in Terms of Providing Gender Equality in  
Employment

	<b>Equal Pay</b>	<b>Equal Treatment</b>	<b>Work-Life Balance</b>
<b>The EU</b>	Article 119 EEC (Article 141 EC)  Directive 75/117/EEC	Directive 76/207/EEC Directive 2000/78/EC Directive 2000/43/EC Directive 97/80/EC	1992 Maternity Leave Directive
<b>Turkey</b>	Labor Law (Number:1475)  Article 26	There is not any provision in Turkish  Labor Law	Labor Law (Number:3008)  Article 25 Article 40  Labor Law (Number:1475)  Article 70 Article 62
<b>Is there any misfit?</b>	No	Yes	Yes

As shown in the Table 4, in terms of equal pay since the establishment of the Republic Turkey has the legal protection. However, with regards to equal treatment, although

Turkey signed CEDAW in 1985, during the 1990s there was no legal provision in place. On the other hand, to support work-life balance, although Turkey had some provisions; it was behind EU requirements. Because of the lack of comparable statistics for the EU and Turkey in 1999, I did not use statistics as an indicator of misfit.



## **CHAPTER IV**

### **CURRENT STATE OF AFFAIRS**

In this chapter, I divided EU – Turkey relations since the 1999 Helsinki Summit into three main periods. As it is not possible to observe the impact of the EU on Turkey without analyzing political developments, I used periodization of Aybars, Copeland and Tsarouhas (2018). The first period covers the years between 1999-2007. On those years, Turkey's Europeanization reached its top position. Second period includes the years between 2007-2011. In second period Turkey preferred an attitude which moved Turkey away from commitment to the EU. Final period contains the years between 2011-2015. Aybars, Copeland and Tsarouhas (2018) label this period as 'Europeanization without substance'. In order to analyze the impact of the EU on Turkey's employment policy, I examine the screening reports prepared by the European Commission. To observe the EU's view on Turkey's progress, I also check the related parts of the progress reports which have been prepared by the European Commission since 1998. After I dealing with the EU documents, I assess Turkish legal documents starting from the Constitution to observe amendments made since the 1999 Helsinki Summit. Finally, in order to comprehend whether the amendments find a place in real life or not, I employ some statistical data.

#### **4.1. First Period: 1999-2007**

After a long waiting-period, gaining the candidate statue in 1999 motivated Turkey to make reforms in terms of providing gender equality. The EU's recognition of official candidacy paved the way for improvements as it provided new opportunities to create an interaction with European countries (Aybars, Copeland and Tsarouhas, 2018).

In this period, it is possible to observe many legal amendments to adopt the EU Acquis. The main protector of the women in Turkey is the Constitution. Article (10) of the Constitution, under the title of equality before law, argues that "Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds". In 2004, another paragraph was added to the Article which explains that "men and women have equal rights. The State has the obligation to ensure that this equality exists in practice". Moreover, Article (41) with 2001 amendments accepts the equality between men and women. According the previous version, the article states that "Family is the foundation of the Turkish society"; however, with the amendment it was added "based on the equality between the spouses" (Turkish Constitution, Article 41).

With the 2004 amendments, Article 90 of the Constitution suggests that if there is a conflict between Turkish law and international treaties with regards to human rights, the provisions of the international agreement will have supremacy over national ones (Constitution of the Republic of Turkey, Article 90). Therefore, this article includes gender equality in an implicit way as Turkey signed CEDAW in 1985 and European Social Charter in 1996. However, Turkey has made reservations for many articles of

the Charter. Article 8 of the European Social Charter is about the right of employed women to protection of maternity which claims that parties should take necessary measures:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;
5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women (European Council, 1996).

Reservations of Turkey on Article 8 demonstrates that Turkey's road to provide gender equality in employment was still long.

In the Turkish Civil Law, before 1999 there were many discriminatory articles. In 2000, the Law had many provisions which made the husband superior over the wife. According to the Turkish Civil Law of the period, the head of family was the husband who also had responsibility to meet his family's needs. In other words, husband was legally declared as breadwinner. Therefore, women's participation to work life was discouraged. Moreover, the only representer of the family and marriage was husband. The dominance of husband on the custody of minors was also problematic. With this

provision, wife/mother, had no words on children in case of a disagreement with his husband. The Law gave all rights in terms of custody of minors to husband/father; therefore, women had always concerns about not loosing their children restricting their movements and decisions which shows the husband's superiority over the wife.

In 2002, the new Civil Law came into force which strengthened women's position in family life. Strong women in family means strong women in society. Therefore, although these regulations did not happen to meet the criteria of Chapter 19, these are also important to grasp the affect of patriarchy. In the new Civil Law, "head of household" phrase removed which traditionally and legally assigned men in the previous Law. Moreover, permission of spouses to work is not a requirement in the new Labour Law. It means that women do not have to take the permission of their husbands to have a job. Indeed, the previous version of the Law, depends on both women and men's work on the permission; however, as culturally and legally men were labelled as breadwinner and the head of family, the article related to permission directly had an impact on women, not men. Interrelatedly, the amendment happened in the Civil Law in terms of removing permission condition on job acquiring had directly improve women's position in family and social life. The most important Article of Civil Code for my thesis is Article 186 which claims that the spouses join the expenses with their labor and assets with proportion of their strength (Civil Law, Article 186). It means that women and men equally contribute family expenses. This article encourage women to participate work life.

Turkey also adopted a new Labor Law in 2003 (Law number: 4857). In terms of my three indicators of gender equality the new Labor Law provides equal pay, equal treatment and support for work life balance as follow;

#### **4.1.1. Equal Pay**

Article (5) Paragraph (4) and (5) provides equal pay for women and men suggesting that “differential remuneration for similar jobs or for work of equal value is not permissible. Application of special protective provisions due to the employee’s sex shall not justify paying him (her) a lower wage.”.

#### **4.1.2. Equal Treatment**

The Article (5) paragraph (1) of the new Labor Law (Law no: 4857) provides equal treatment principle stating that;

Except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the conclusion, conditions, execution and termination of his (her) employment contract due to the employee’s sex or maternity.

However, there is no provision defining direct and indirect discrimination, harassment and sexual harassment.

Although sexual harassment is one of the most important problems for women in the workplace, the Turkish Labor Code does not cover the issue in detail. Sexual harassment is just mentioned in Article 24 and 25 as a reason for the employee’s right to break the contract. On the other hand, the Turkish Criminal Code outlawed sexual harassment. Article 105 states that “if a person is subject to sexual harassment by

another person, the person performing such act is sentenced to punishment from three years to two years upon complaint of the victim” (The Turkish Criminal Code, Article 105). However, the important part is that if the offender realizes sexual harassment by using the advantage of working in the same place with the victim the punishment will increase by one half (The Turkish Criminal Code, Article 105). Moreover, “if the victim is obliged to leave the business place for this reason, the punishment to be imposed may not be less than one year” (The Turkish Criminal Code, Article 105). Therefore, the Turkish Criminal Code tries to ensure the prevention of sexual harassment especially in the workplaces.

#### **4.1.3. Reconciliation of Work and Family Life**

Maternity and Nursing Leave which are mentioned in Article (74) Paragraph (1) state that “in principle female employees must not be engaged in work for a total period of sixteen weeks, eight weeks before confinement and eight weeks after confinement.” Additional details related maternal leave, are also determined in the Law. Moreover, Paragraph (6) is about breastfeeding leave which clearly explains that “female employees shall be allowed a total of one and a half hour nursing leave in order to enable them to feed their children below the age of one”. Paragraph (2) also states that to care their child, after the end of maternity leave free permission is given to mothers as half of their weekly working hours for sixty days in first birth, one hundred and twenty days in second birth and one hundred and sixty days in following births (added in 2016). The provisions of this Article shall apply to all workers who work under the employment contract without considering whether they are covered by this law or not (added in 2016).

In order to care for and raise the child from the conclusion of the postpartum maternity leave as used in accordance with the first paragraph, and if the child is alive, the wishes of the female or male workers who adopt the child who has not completed the age of three with the female worker shall be sixty days in first birth, one hundred and twenty days in second birth, free for as long as one-half of the weekly working period for one hundred eighty days.

On the other hand, paternity leave is provided with Additional Article (2) “Five-day paid leave is allowed in case the worker's wife gives birth”.

For the Civil Servants, Civil Servants Law (Law number: 657) takes necessary measures to ensure gender equality. Article (203) regulates the way of paying family allowance. However Paragraph (2) of the Article states that if the wife and the husband are both civil servants, then the allowance is paid only to husband. The paragraph is against the equal pay principle.

In terms of equal treatment principle, Article 7 states that civil servant must be impartial. A civil servant while fulfill his/her duty it is forbidden to make any discrimination based on language, race, gender, political thought, philosophical belief, religion and sect etc. However, it is not directly define equal treatment principle. There is not also any provision defining direct and indirect discrimination, harassment and sexual harassment.

Like Labor Law, Civil Servants Law regulates maternal, breastfeeding and paternal leave. Similar to the Labor Law, maternal leave is sixteen weeks (eight weeks before confinement and eight weeks after confinement) (Article 104, paragraph A). For breastfeeding leave, different than Labor Law female civil servants after the end of maternal leave has three hours off per day for first six month, following six months like in the Labor Law this leave decreases one and a half hour per day (Article 104, paragraph B).

On the other hand, ten days paternity leave for male civil servants whose wife gives birth is provided with paragraph (B) of the Article (104).

To sum up, on those years, Turkey's desire to harmonize its legal regulations with the EU Acquis reached its top. As Aybars, Copeland and Tsarouhas (2018) mention this period can be labelled as "peak of Europeanization". Recognition of Turkey's official candidacy motivated Turkey to adopt EU policies. Moreover, the accession process opened new ways for Turkey with creating relations with European countries.

#### **4.2. Second Period: 2007-2011**

In the second period Turkey's desire to be Europeanized had a declining tendency. Justice and Development Party (JDP) won the election in 2007 with 46 percent (Aybars, Copeland and Tsarouhas, 2018). Between the years 2007 and 2011 Turkey's commitment to EU Acquis declined. The main reason of this change was the governing parties self-confidence as a result of election results (Aybars, Copeland and Tsarouhas, 2018). Moreover, in consequence of this self-confidence, JDP highlighted its own

view of gender equality focusing on “women’s role as mothers and standard bearers of ‘family values’” (Aybars, Copeland and Tsarouhas, 2018). However, despite its own perception of gender equality, it is possible to observe some improvements in line with the EU Acquis.

In 2008, Prime Ministry Directorate General on the Status of Women published an action plan which was prepared by working groups for each category. Indeed, the plan consists of 8 policy areas which includes female employment as well. In terms of employment, the action plan had three main aims;

1. Efforts will be made to increase the employment of women.
2. The economic position of women in rural areas will be improved.
3. Gender discrimination will be tackled in the labor market and wage differentials between men and women will be reduced (p.40-41). In of these aims, the plan defines strategies and assigns responsible institutions and partner institutions to carry these strategies into effect.

In addition to this, the Commission on Equal Opportunities for Women and Men (KEFEK), since its establishment in 2009, has examined and supervised on the implementation of policy regarding gender equality. Moreover, the Commission evaluates applications with regards to gender equality violations. As a result of the evaluation, it can warn the relevant authority to resolve gender inequality. The Commission has the authority to examine legislative acts and proposals, as well as to examine individual applications, to inform the public, to raise awareness, and to hold national and international meetings, panels and symposiums.

The mission of the Commission is to protect and improve women rights, to observe the developments both within and outside the country and to inform the Grand National Assembly of Turkey. On the other hand, the vision of the Commission is to provide parliamentary audit with supporting legislative improvement (KEFEK, 2018).

Although Turkey sustained its desire to be part of the EU, political discourse demonstrated that Turkey highlighted women's role as mothers. JDP attributed a special role to family. Aybars, Copeland and Tsarouhas (2018) mention that:

Erdoğan made repeated references to the family as ‘the most sacred being, the building block of our society’, where ‘our fathers are called “the head of our households” and our homes are called “father’s home”’, referring to traditional Turkish sayings (Milliyet as cited in Aybars, Copeland and Tsarouhas, 2018).

Change in Turkey's attitude also was derived from officials skepticism against EU's sincerity in terms of being behaved as a ‘typical’ candidate country. In other words, Turkish officials believed that the EU behaves differently to Turkey than other candidate countries. Reliability of the EU decreased according to the some Turkish officials. Similarly, some EU countries also had skepticism toward Turkey's full-membership although Turkey would meet all the needs of the EU. This reciprocal skepticism decreased Turkey's commitment to the EU.

### **4.3. Third Period: 2011-2015**

In the last period, JDP guaranteed its political power again in 2011 election with 50 per cent. Therefore, most of the officials in Turkey believed that now the JDP talks on behalf of all people in Turkey (Aybars, Copeland and Tsarouhas, 2018). During this period, the EU was criticized by government officials because of ‘double standards’ that EU applies against Turkey. In political discourse, EU membership was not accepted as a goal of the country (Aybars, Copeland and Tsarouhas, 2018).

In this period, Turkey started to use the concept ‘gender justice’ instead of gender equality (Aybars, Copeland and Tsarouhas, 2018). In that sense, gender equality focuses on equality between two sexes while gender justice emphasizes on ‘different characteristics of men and women by nature. In this context, according to the political discourse women and men have inborn differences which assign them different roles: looking after family for men and taking care of children for women (Aybars, Copeland and Tsarouhas, 2018). In other words, it normalizes ‘natural division of duties derived from biological differences’ which is directly against gender equality. In that sense, Turkey started to be away from the EU gender equality principles (Aybars, Copeland and Tsarouhas, 2018).

Despite secession from the EU norms, Turkey still made some progress in terms of providing gender equality according to its own definition.

In order to increase women’s employment and provide gender equality in opportunity Prime Ministry of Turkey adopted a circular in 2010. The main purpose of the circular

was to strengthen women's socio-economic status, to guarantee gender equality in social life, to ensure equal pay for equal work and to increase women's participation in the labor force. In that sense, with the participation of representatives from many governmental institutions as well as representatives from NGOs and universities, National Employment Monitoring and Coordination Board was established. During audit, the compliance of employer to the Article 5 of Labor Law No. 4857 in both public and private sector (Article 1) should be examined. Whether or not compliance with the provisions on gender equality stated in Article 5 of the Labor Law No. 4857 is included in the audit report for all audits carried out on public and private sector workplaces (Article 3). Public institutions and local governments will include a gender equality perspective to strategic plans, performance programs and activity reports they will prepare (Article 4). Moreover, during recruitment, participation to in service training programs and promotion all kind of gender-based discrimination is not allowed. Indeed, the principle of equal treatment must be considered during these processes (Article 6).

In 2013, with the decision of Council of Ministers, way of working in public institutions for head scarfed women was opened. Before that time, women who wore head scarf were not allowed to work in public institutions (Official Gazette no:28789, Decision Number: 2013/5443). The previous ban of headscarf was against human rights as well as the principle of equal treatment.

Regulation for Pregnant and Nursing Women (Lactation Room and Day Care Services) was adopted on August 16, 2013). Aim of the regulation is to enhance pregnant and nursing employees working conditions and to regulate child care

facilities of work places (Article 1). Regardless of their age and marital status, it is obligatory for the employer who has 100-150 female employees to establish a breastfeeding room for nursing employees (Article 13, Paragraph 1). Moreover, regardless of their age and marital status, employer who has 100-150 female employee has to establish a day care center (Article 13, Paragraph 2). All expenses of the rooms and day care centers such as building, foundation, floor, vehicles, equipment, nutrition are under the responsibility of the employers (Article 21)

The government made also some additional efforts like Additional Employment Incentive by ISKUR. With this incentive, ISKUR provides 12 months insurance premium for each employee under certain circumstances (see Provisional Articles 20 and 21 of Unemployment Insurance Law No. 4447). The employee must be employed in private sector during the dates between 1/1/2018 and 31/12/2020. However, if the employee is a woman; then the support period increases to 18 months. With this incentives, ISKUR foster employer to employ women.

There is another employment incentive (Based on Law no. 6111) which is conducted by ISKUR. Under certain circumstances, it provides insurance premium to employers for each employee hired. However if the employee is a woman than the period of support increases (12-54 months). If a female employee has professional competence certificate, the period of support is higher. Therefore, the incentive aims at not only to encourage employers to recruit female employees but also to help women to have a professional competence certificate.

Moreover, Turkey Human Rights Institution was established 2013 which is re-established in 2016 as Turkey Human Rights and Equality Institution. The main purpose of the Institution to observe, investigate, intervene and follow up discriminations, to provide guidance to victims about administrative and judicial processes and to prevent discrimination by other institutions. The Law of the Institution lists the types of discrimination as follows:

- Segregation,
- Ordering discrimination and applying the order,
- Multiple discrimination,
- Direct discrimination,
- Indirect discrimination,
- Intimidation,
- Not making reasonable arrangements.
- Harassment,
- Default based discrimination (Article 4).

The Law also defines all types of discriminations (see Article 1).

Article (6) prohibits all types of discrimination in employment, including in the recruitment of pregnant workers and working mothers. The Institution in terms of violation of equality, has a right to apply administrative sanctions like administrative fine.

As part of the accession negotiations, the EU provides a screening process to provide information for candidate countries regarding the *acquis*, while demonstrating their level of similarity. In that sense, before opening it, the European Commission

publishes screening reports for each chapters. For chapter 19 - Social Policy and Employment, explanatory meetings held on 8-10 February 2016 while bilateral meetings were held on 20-22 March 2016.

In the report, the Commission evaluates Turkey's current position in terms of its legislation and policies. According to the Screening Report;

- In terms of equal pay for women and men, Turkey provides necessary legal protection.
- In terms of equal treatment, there is a lack of definitions; direct and indirect discrimination, harassment and sexual harassment in legislation. Moreover, some provisions are gendered. Gendered advertisements is permitted which is against equality. Finally, some jobs' requirements are also gendered.
- In terms of work-life balance, Turkish legislation provides maternal leave. However, Turkey's non-acceptance of Article 8 of the European Social Charter is problematic. With regards to parental leave there is not any legal regulation.
- In terms of institutions which play an important role in the protection and implementation of equality Turkey is inadequate. In that sense, the establishment of an equality body is important for the acquis (European Commission, 2006, p.10).

With this regard, although Turkey has legal protection for equal pay for women and men, additional efforts are needed in terms of equal treatment and work-life balance. The commission decided to use two opening criteria for the chapter; guarantee of union rights and preparation of an action plan. The Action Plan was prepared and defined the

actions to meet all criteria required by the EU. However, for guaranteeing union, compromise has not been reached. Therefore, the opening criteria for the chapter has not been fulfilled.

As a summary, in this period, Turkey moved away from Europeanization. The main reason of this distance was political. Although Turkey made some progress in terms of providing gender equality in employment, driving force for this change was not the accession process.

#### **4.4. Status of Women and Gender Equality in Progress Reports (1998-2016)**

To see the interaction between the Union and Turkey, Progress Reports are an important reference point for my thesis. As the European Commission evaluates Turkey's position and improvements in terms of the EU Acquis, Reports includes important developments occurring in Turkey. Moreover, the Reports also mention deficient parts of the adjustment policies. Therefore, scanning the progress reports in terms of gender equality in employment is significant to observe the effect of the Union on Turkey.

The Commission in general focuses on Turkey's legal documents as well as international treaties signed by Turkey, institutions related to gender equality, women's participation rate to work life and women's position in terms of employment.

The Commission has made assessments on Turkey's legal documents in nearly all of its progress reports. While the Civil Code and the Family Law<sup>1</sup> which were valid in 2000, were accepted as really problematic in terms of its provisions for providing gender equality (European Commission, 2000, p.16), amendments in the Turkish Constitution (See 2001, 2004 and 2010 Progress Reports) and in the Turkish Civil Code (See 2002 Progress Report) were evaluated as important improvements by the Commission. The Commission also claimed that Turkish Civil Code entered into force in January 2002, the new Labour Law of May 2003 which recognized the principle of equal treatment in employment and the new Penal Code (Law No: 5237) which was adopted in September 2004 were important steps to guarantee equality between women and men in employment. (See 2002, 2003, 2005 Progress Reports)

In terms of international treaties, Turkey's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985 (European Commission, 1998, p.17) and the removal of the reservations<sup>2</sup> against it (European Commission, 1999, p.13) were evaluated as an improvement on the way of providing equality for women and men.

Other legal documents like regulations and circular were also analyzed by the Commission. For example, a circular issued by Prime Ministry of Turkey in 2004 which was about public service's recruitment regarding gender discrimination and in 2010 which aimed to promote women's participation to labor market and to provide

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<sup>1</sup> According to the Family Law, the only representer of the family and marriage was husband.

<sup>2</sup> Turkey made the reservations in 1985 when the Convention was signed. According to Turkey, sub-articles 1 and 4 of Article 15 and sub-articles (c), (d), (f), (g) of Article 16 have contradictions with Turkish Civil Code. Therefore, Turkey made reservations on them. However, in 1999 Turkey removed all of these reservations. For more information see: <http://humanrightscenter.bilgi.edu.tr/tr/content/122-kadnlara-kars-her-turlu-ayrmlgn-onlenmesi-sozlesmesi/>

equality in employment were evaluated as insufficient by the Commission in terms of its adoption and application (See 2004 and 2010 Progress Reports).

Moreover, institutions of Turkey which were established to provide gender equality were mentioned in the Reports. Establishment of the Directorate General for the Status of Women which aims to strengthen women in social, economic, cultural and political life was evaluated as an improvement by the Commission (2005, p.96). Although the administrative capacity of it was announced as enhanced (European Commission, 2007, p.54), lack of the Law establishing a Directorate-General for the Status was problematic for the Commission (See 2004 and 2007 Progress Reports). On the other hand, Committee on Equal Opportunities for Men and Women which was created in 2009 aimed to observe gender equality improvements, suggest law drafts and take into consideration international agreements were highlighted as a positive attempt in terms of institutions of equality. (European Commission, 2009, p.22). On the other hand, despite the creation of the Committee, there was a need for a gender equality body which was a requirement of the acquits (See 2006, 2007, 2009, 2012, 2013, 2014 Progress Reports).

The new Employment Package which was adopted by Turkey in 2008, was evaluated as an indicator and accelerator of women presence in business, academia, civil service and politics (European Commission, 2008, p.20). Although Turkey prepared “a national action plan for gender equality” for the years between 2008 and 2013, there was a lack of information regarding “human and financial resources” (European Commission, 2009, p. 65).

The low participation rate of women in labor market and its decreasing tendency demonstrated that gender equality was not achieved properly although the legal framework for providing gender equality was appropriate according to the European Commission (European Commission, 2008, p.20-21) (See also 2006, 2009, 2010, 2014, 2015, 2016 Progress Reports)

Not only women's participation rate but also their distribution in employment has been criticized by the Commission several times. Especially, the Commission reported that women generally worked for their family for free as well as without social protection (See 2009, 2011, 2012, 2013, 2014, 2015 and 2016 Progress Reports).

Furthermore, the lack of childcare opportunities, challenges that prevent girls from attending secondary and higher level education and the prevalence of gendered stereotypes affected women's employment rate (European Commission, 2010, p.25) (See also 2012, 2013 and 2014 Progress Reports).

The Commission concluded in nearly all of Progress Reports that legislation did not ensure the prevention of all kind of discrimination in employment in terms of gender (See 2002, 2003, 2004, 2008, 2009, 2010, 2012, 2014, 2015 Progress Reports).

Table 5. Summary of Progress Reports<sup>3</sup>

Year	Overview to Progress Reports			
	Equal Pay	Equal Treatment	Reconciliation of Work and Family Life	Others
1998		Ratification of CEDAW		
1999		Turkey's removal of the reservations against the CEDAW		
2000			The Civil Code The Family Law	
2001			Constitutional amendment (Article 41)	
2002		Amendments of Turkish Civil Code		Statutory and occupational social security schemes
2003		The new Labor Law (Law No: 4857)	Turkey's non-acceptance of Article 8 of the European Social Charter	
2004		Constitutional amendment (Article 10)  Circular issued by Prime Ministry (January 21, 2004)	Communiqué No: 2004/3 (July, 2004)  Regulation on the Conditions for the Operation of Women Workers at Night (August, 2004)	Lack of the Law establishing a Directorate-General for the Status and Problems of Women
2005				Establishment of the Directorate General for the Status of Women  Penal Code (Law No: 5237)

<sup>3</sup> For more detailed information see relevant Progress Report.

2006				Women's employment participation rate
2007				Lack of the Law establishing a Directorate-General for the Status and Problems of Women  Administrative capacity of the Directorate General for the Status of Women  Lack of Equality Body
2008		2008 Employment Package		Women's employment participation rate
2009		Creation of Committee on Equal Opportunities for Men and Women  Women's employment in informal sectors  Lack of definition of direct and indirect definition		Lack of Equality Body  Women's employment participation rate  National Action Plan for Gender Equality (2008-2013) (but criticized with regards to human and financial resources)
2010		Constitutional amendments  Circular issued by Prime Ministry (May 25, 2010)		School text books (in terms of fostering gender stereotypes)
2011		Legal actions to prevent bullying at work	Initiatives made for civil servants	
2012	Women's employment as unpaid		Lack of child care facilities	

	family workers			
2013	Women's employment as unpaid family workers	Removal of the ban of headscarves	Non-applicability of Turkish Labour Law during recruitment  Deficiency in child and elderly care services	Media (in terms of fostering gender stereotypes)  Lack of complaint mechanism  Lack of equality body  Women's employment participation rate
2014	Women's employment as unpaid family workers		Lack of child and elderly care facilities  Gendered distribution of house works	Women's employment participation rate  Lack of equality body
2015	Women's employment as unpaid family workers  Gender pay gap		Lack of child and elderly care facilities	Women's employment participation rate  Lack of equality body
2016	Gender pay gap		Lack of child and elderly care facilities	Women's employment participation rate

(Adapted by the Progress Reports prepared by the European Commission since 1998)

\* Red: shows the critics of the Commission

\*Green: shows the improvements according to the Commission

As a summary, with the progress reports, the Commission since 1998 has been commenting on Turkey's position in terms of providing gender equality in work life. In general, the main critiques has been about women's low participation to work life

basically as a result of lack of child and elderly care activities. In addition to this, lack of equality body has been highlighted in most of the progress reports. Moreover, women's employment as unpaid family workers has been criticized by the Commission several times. Although Turkey provides some legal protections with amendments of laws, prime ministry circulars etc. the problem has been the implementation of these legal tools. The Commission claims that although Turkey has been providing necessary legal protections for providing gender equality in work life, additional efforts are needed to carry these efforts into effect. As the last comment, the EU's criticisms have increased for the last five years (See Table 5). The main reason was Turkey's distance to the EU as a result of JDP's different perception of gender.

## **CHAPTER V**

### **CONCLUSION**

Turkey's adventure on the EU membership has been lasting for nearly 60 years. However, 1999 Helsinki Summit in which Turkey's official candidacy was announced might be accepted as milestone for the relations between the EU and Turkey. Indeed, EU-Turkey relation is always shaped by politics. In other words, political agendas, priorities and strategies of Turkey and the EU directly affect the pace and intensity of Europeanization. Even in gender related issues, political will of both sides play an important role.

When I looked at the literature on the EU Turkey relations, I found out that most of the debate on this issue was about 'hard' policy issues like security and politics. However, as its one of the founding principle the EU has placed importance on gender equality. Therefore, as one of the human rights, gender equality is the main focus of my thesis. I also focused on employment as it is the most problematic area in which gendered discrimination might be observed in high level.

As the theoretical framework, I preferred Europeanization. For my thesis, it refers domestic policy change of member states or candidate states as a result of the EU's pressures (directly or indirectly). The EU uses different mechanism to Europeanize

member states and candidate states. Indeed, I found out in the literature of Europeanization that most of the scholars focus on the Europeanization of member states. However, the EU Europeanizes candidate states as well. Therefore, I put Turkey on my focal point as a candidate state. For candidate states, the EU uses conditionality as a driving force of Europeanization. This also happens in Turkey. To open any negotiation chapters, the EU decides opening criteria. To start negotiations on any chapter, the candidate states has to fulfill the necessities of the EU.

Chapter 19 Social Policy and Employment is directly related with my thesis. The opening criteria for this chapter has not been reached yet. In other words, negotiations on this chapter has not started yet. However, Turkey made considerable efforts to reach the EU's level in terms of providing gender equality in employment. In that sense, the EU might be labelled as 'teacher of norm' with regard to providing gender equality in workplaces. As Börzel and Risse (2012) argues normative rationality might be observed in liberal and democratic states as their policy-makers concern with social expectation rather than self-interest. Therefore, Turkey as a liberal and democratic country absorbs the norms of the EU in the sense of providing gender equality.

The EU tries to spread its norms to all member states as well as candidates. However, whether these norms are applied throughout the Union or not is an important question. The EU as a founding principle works on promoting gender equality in every sphere of the Union. In other words, the EU has worked on promoting gender equality to ensure that women and men are equal before law since its establishment. Equal treatment legislation, gender mainstreaming and specific measures for the advancement of women are three main important steps for the EU to ensure gender

equality. With its “hard” and “soft” measures, the Union works on the issue. However, I found out that although the EU has many regulations, directives, articles to provide gender equality in employment, in real life its effects have been limited. When I used the data provided by ECWS, I observed that despite all legal protection, neither gender pay gap nor unequal treatment problem could be solved by the EU. In practice there are many discriminatory practices.

In order to be a ‘norm diffuser’ or a ‘teacher of norm’, is it necessary to apply these norms by your own first? Without implementing them appropriately in the Union, does the EU spread norms to other parts of the world? Does own implementation success of the norm diffuser have an impact on its diffusion power? These are important questions. In further studies these questions might be studied to observe the correlation between own implementation success of norm diffuser and its spreading power. In my study, although the EU has many deficiencies in implementation, I tried to observe the change that the Union created on Turkey’s legal regulations.

As the main indicators of gender equality in employment, I selected three main criteria. The first is equal pay which refers the right of male and female workers to be paid equally for same or similar work. The second criterion is equal treatment which means that all workers must be treated equally in their work life starting from recruitment to retirement without considering their gender-based differences. Final criterion is reconciliation of work and family life. In that sense, my final criterion implies that to improve women’s work life conditions and to provide equality in employment, balance between work and family life must be ensured.

In order to observe a change, there has not to be a misfit. However, to see the impact clearly, I tried to disclose whether there was misfit in Turkey's legal regulation in terms of three main criteria of gender equality in employment when its official candidacy was announced by the EU. I found out that, in terms of equal pay there was not any misfit as Turkey had necessary legal protection to prevent gender pay gap. On the other hand, in terms of providing equal treatment and ensuring work – life balance, there were misfit between Turkey's legal protection and the EU's. At that time, Turkish Labor Law did not have any article to provide equal treatment. Even the definition of discrimination could not find any place in Turkish Labor Law. Without any definition, it is not possible to prevent it. Moreover, although there were some articles (Article 25 and 40 of Labor Law No:3008, Article 70 and 62 of Labor Law No:1475) with regard to providing work-life balance, they were not enough to ensure reconciliation of them.

However, after periodization of the years between 1999 and 2015, I found out that concept of misfit does not fit in my case. It does not help to understand the dynamics of Europeanization because EU-Turkey relations go through different political stages. Politics has a substantial effect on EU-Turkey relations as well as Turkey's Europeanization process. It has also direct impact on gender equality in employment. Indeed, politics affects the perception of gender. For example, in the first period Turkey as a result of its political will to be a member, had a tendency to adopt EU norms in terms of providing gender equality. However, when we come to second and third period, the concept of gender equality changed. As a result of lack of trust to the EU as well as political power gained by the JDP, Turkey replaced concept of gender

equality with gender justice. This change directly affected its pace and density of being Europeanized in terms of gender equality in work life.

Moreover, Europeanization has multiple affects. Therefore, it is not possible to evaluate it as directly inertia, absorption, accommodation or transformation. In the first period, Turkey made many improvements to reach the EU standards because it had a political will to be a member. In the second and third stage, there were less evidence of Europeanization. It might also be observed in Table 5. Density of green (which shows improvements according to the Progress Reports) decreases especially for last five years while density of red (which shows criticisms according to the Progress Reports) is substantially high. The reason of these density change is political will of both sides.

In 1999, the EU's perception of Turkey changed as a result of many political reasons. This is why it accepted Turkey as official candidate. Therefore, in the first period, its comments on Turkey's improvements were more prone to be green. Similarly, on those years, Turkey as a result of its will and strategy to be a member was more prone to implement EU norms and practices. However, in the second period, as a result of lack of trust to the EU and political power gained by JDP, Turkey's attitude changed. Being a member of the Union was still in the agenda of Turkey; however, it was not a strategic priority. Therefore, on those years, Turkey's improvements decreased. In the final period, although Turkey did not lose its desire to be a member completely, its political priority changed. Political power gained by JDP increased. Therefore, Turkey defined its own type of gender equality. Different conception of gender equality moved

Turkey away from meeting the needs of the Union. The reason of red density in Table 5 in last five years is that change.



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